

# MEDIATION AND RESOLUTION SERVICES LIMITED (“MRSL”)

## STANDARD MEDIATION AGREEMENT

1<sup>ST</sup> EDITION - OCTOBER 2020

This Agreement to mediate is between the Parties set out in the attached “Schedule of Parties and Mediation Details” (Schedule 1)

### 1. THIS AGREEMENT

- 1.1. The Parties agree to retain Mediation and Resolution Services Limited (“MRSL”) to provide Mediation Services on the terms and conditions set out in this Agreement and subject to the Standard Terms and Conditions of MRSL (“MRSL Terms”) which are hereby incorporated in this Agreement.
- 1.2. In the event of any conflict between this Agreement and the MRSL Terms, this Agreement will prevail.
- 1.3. This Agreement must be signed before the Mediation Meeting by:
  - 1.3.1. the Parties or their Legal Representatives on their behalf; and
  - 1.3.2. the Mediator; and
  - 1.3.3. any others attending the Mediation Meeting with the agreement of the Parties, even if they are merely observing or listening rather than actively participating

### 2. DEFINITIONS

- 2.1.1. Agreement: means this agreement unless specified otherwise
- 2.1.2. Dispute: as summarised in Schedule 1.
- 2.1.3. Legal Representative/s: qualified lawyer/s who has/have been retained to provide legal advice to any Party and who are authorised by that Party to attend the Mediation.
- 2.1.4. Mediation: comprises, whether in person or virtually, a) any discussions before the Mediation Meeting between the Parties and the Mediator b) the Mediation Meeting between the Parties and the Mediator, and c) any further such meetings or discussions up to the point the Mediation is terminated.
- 2.1.5. Mediation Meeting: the meeting between the Parties and the Mediator for the purpose of achieving a negotiated settlement of the Dispute, whether in person or conducted remotely thorough the internet or by telephone.
- 2.1.6. Mediation Services: the provision of the services of The Mediator to conduct the Mediation and any such further services that are agreed in writing between all the Parties and MRSL at the time of MRSL’s retainer.
- 2.1.7. Mediator: Anthony Hobkinson.

- 2.1.8. MRSL Terms: the standard terms and conditions of MRSL attached to this Agreement.
- 2.1.9. Party: one of the Parties
- 2.1.10. Parties: as shown in Schedule 1
- 2.1.11. Representative/s: includes Legal Representative/s or any other representative/s participating in the Mediation at the request of a Party and who is/are authorised to speak on that Party's behalf
- 2.1.12. Settlement Agreement: a singular document or multiple copies of the same document, signed physically or electronically or agreed in email, by all Parties or their Legal Representatives setting out the terms of settlement between the Parties.

### **3. CONFIDENTIALITY**

- 3.1. These confidentiality provisions will apply from the time of MRSL's retainer by the Parties.
- 3.2. The Mediation is private and confidential for the purpose of attempting to achieve a negotiated settlement. This includes any discussions held between the Parties and the Mediator in preparation for the Mediation Meeting.
- 3.3. All information provided and communications exchanged during the Mediation are without prejudice and will be inadmissible in any litigation or arbitration relating in any way to the Dispute. However, evidence which would otherwise be admissible shall not be made inadmissible as a result of its use in the Mediation.
- 3.4. All documents, statements, information and other material produced during the course of the Mediation, save to the extent that these documents have been disclosed already and are in the domain of the litigation, whether in writing or orally, shall be held in confidence by the parties and shall be used solely for the purposes of the Mediation.
- 3.5. Any notes made by the Mediator are confidential to the Mediator and will not be available to the Parties or their legal Representatives. These notes will be destroyed as soon as practicable on termination of the Mediation and will not be the subject of production as evidence in any arbitration, judicial or other proceeding.
- 3.6. The Parties agree not to make any verbatim transcript or recording of any part of the Mediation unless all Parties and the Mediator have given their prior written agreement.
- 3.7. The Parties will not issue a witness summons or require the Mediator, any MRSL director or employee, or any other person attending the Mediation as an observer to the Mediator, to testify or produce records, notes or any other information or material in any current or future proceedings relating in any way to the Dispute.
- 3.8. If notwithstanding the above agreement any Party does seek to call anyone referred to in clause 3.6 as a witness or require the production of documents, that Party will fully indemnify that person or entity for any legal or other costs they incur in

contesting or responding to such an application. In addition, the Party will pay MRSL the sum of £500 per hour spent by the Mediator or any other MRSL employee waiting, travelling, preparing, attending or being at Court or any other tribunal. This hourly rate is calculated as a realistic estimate of MRSL's loss of income.

#### **4. PRIVATE SESSIONS**

- 4.1. The Mediator may hold private sessions with a Party at any time if he considers this would assist in facilitating a resolution of the Mediation.
- 4.2. Information gained by the Mediator through such a session is confidential unless (a) it is already known independently by the Mediator through non-confidential sources, or (b) is already in the public domain, or (b) the Mediator is authorised by that Party to disclose it.

#### **5. THE MEDIATOR'S ROLE**

- 5.1. The Mediator is a neutral and independent facilitator and will not express any views on the merits of any Party's position nor offer legal advice to or advise any of the Parties during the Mediation.
- 5.2. The Mediator will not advise on nor be asked to advise on the appropriateness or reasonableness of any settlement nor will The Mediator draft any settlement terms.
- 5.3. Parties without legal representation at the Mediation Meeting should as far as possible ensure that they obtain appropriate advice before agreeing to any settlement terms.
- 5.4. MRSL use facilitative mediation techniques and therefore the Mediator will not express any views on the merits, propose a settlement, or recommend a settlement range unless this is expressly requested in writing by the Parties and agreed by The Mediator. Any resulting view or proposals do not constitute legal advice nor do they constitute an opinion on what would happen if the Dispute did not settle.

## **6. SETTLEMENT**

- 6.1. Any settlement agreed during the Mediation will not be legally binding until the Parties or their Legal Representatives complete a Settlement Agreement.
- 6.2. The Settlement Agreement shall not be drafted or signed by the Mediator and The Mediator will not advise on the appropriateness of the terms of settlement

## **7. EXCLUSIONS AND LIMITATIONS**

- 7.1. Neither the Mediator nor MRSL or its staff, employees or agents, shall be liable to any Party or Legal Representative for negligence or any other act error or omission howsoever arising in connection with any Mediation conducted by the Mediator. Liability will only arise if the Mediator has acted with wilful misconduct in the course of the Mediation.
- 7.2. The retainer for Mediation Services is between the Parties and MRSL and therefore in the event any of the provisions in clause 7.1 are found either to be of no effect or do not on a proper construction exclude any claim being brought, any liability will only attach to MRSL and not to the Mediator personally.
- 7.3. Without prejudice to clauses 7.1 and 7.2 above, should contrary to the foregoing provisions any liability be found to attach to MRSL or the Mediator then the Parties agree that any such liability shall be limited to £1,000,000 in the aggregate in relation to any one Mediation inclusive of any legal costs and expenses.

## **8. TERMINATION OF THE MEDIATION**

- 8.1. Any Party may in their absolute discretion give notice to terminate the Mediation at any time. No reason need be given for the termination, but the Parties agree to give the Mediator sufficient advance notice of their intention to terminate so as to allow the Mediator to reflect on whether anything can or should reasonably be done to permit the Mediation to continue.
- 8.2. The Mediator may in his absolute discretion give notice to terminate the Mediation at any time. No reason need be given for the termination.
- 8.3. Notice of termination may be oral, or in writing, or in any readable electronic format, and will be effective once communicated to all Parties and the Mediator.
- 8.4. The Mediation will also terminate if:
  - 8.4.1. mutually agreed between the Parties and communicated to the Mediator; or
  - 8.4.2. a legally binding settlement is reached by the Parties.

## **9. REPRESENTATIONS**

- 9.1. The Legal Representatives hereby confirm and represent that they have:
  - 9.1.1. carried out all necessary identity checks of their clients as recommended by their relevant regulatory body or required by law; and

9.1.2. advised their clients of the obligations of disclosure on the part of legal advisors and/or mediators under the Proceeds of Crime Act 2002.

9.2 The Parties hereby confirm and represent that they are attending the Mediation Meeting in good faith to try and negotiate a settlement of the Dispute and that they or any Representatives attending on their behalf have full authority to agree a legally binding settlement.

## **10. MISCELLANEOUS**

10.1 This Agreement combined with MRSL's Terms constitutes the entire agreement between the Parties and MRSL. This Agreement may only be varied if agreed by MRSL and the Parties and evidenced in writing or in email.

10.2 Anyone other than the Parties and their Legal Representatives may only attend the Mediation Meeting or participate in any other discussions during the Mediation with the consent of all of the Parties and have signed this Agreement to confirm their agreement to be bound by its confidentiality provisions

10.3 Any dispute arising out of or in any way relating to this Agreement or the Mediation itself shall be subject to the exclusive jurisdiction of the Courts of England and Wales

10.4 This agreement must be signed by the Parties or on their behalf by any Legal Representative attending the Mediation.

### **Signed By:**

*Party A:*

*Name: Signature: Date:*

*Represented by: Signature: Date:*

*Party B:*

*Name: Signature: Date:*

*Represented by: Signature: Date:*

:



**Schedule 1: Schedule of Parties and Mediation Meeting Details**

**1. Parties**

Party A	Party B	Party C	Party D
<b>Legal Representatives</b>	<b>Legal Representatives</b>	<b>Legal Representatives</b>	<b>Legal Representatives</b>
<b>Other Attendees</b>	<b>Other Attendees</b>	<b>Other Attendees</b>	<b>Other Attendees</b>
<b>Their role</b>	<b>Their role</b>	<b>Their role</b>	<b>Their role</b>

**NB: all Mediation Meeting attendees must sign this Agreement before the Mediation Meeting begins. Observers sign to acknowledge they are bound by the confidentiality provisions.**

2. **The Dispute:** *this section should to be completed jointly by the Parties if possible, and preferably in no longer than 150 words. Each Party will have the opportunity in position papers or at the Mediation to set out their position in more detail and highlight any particular areas of disagreement. This is merely intended to describe the factual context and the issues that the parties wish to resolve through the Mediation.*
3. **Details of any live court or arbitral proceedings.** *If there are active court or arbitral proceedings please summarise the current status.)*

**4. The Mediation Meeting:**

4.1 Date/s:

4.2 Online or Venue if in person:

4.3 Total time scheduled:

4.4 Deadline/s for Pre-Reading: *please insert agreed date/s for provision of any pre-reading to the Mediator including any reading bundle and written mediation statements*

**5. The Mediator (and any observer):** Anthony Hobkinson

**6. Total Mediation Charges agreed by the Parties:**

6.1 The Mediation Meeting:

6.2 The Mediator’s hourly rate if the total Mediation Meeting time scheduled is exceeded:

6.3 Is Preparation and pre-mediation Meeting discussion time included within a)?

6.4 If not, what is the agreed preparation fee:

6.5 Expenses are also payable as incurred and as per MRSL’s Terms

6.5 Percentage of the Total Mediation Charges and expenses payable by each Party:

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## **MEDIATION AND RESOLUTION SERVICES LIMITED STANDARD TERMS AND CONDITIONS**

**First Edition: October 2020**

### **CONTRACTING PARTIES**

1. Mediation and Resolution Services Limited (“MRSL”) is a limited liability company domiciled entirely in England and incorporated under the laws of England and Wales, Company number 12852158.
2. The Parties’ contract is with MRSL to provide Mediation Services, not the Mediator.
3. The Mediation Services are as set out in MRSL’s Standard Mediation Agreement which is incorporated by reference.
4. MRSL will provide the services of the Mediator. Unless otherwise stated at the time MRSL are retained the Mediator will be Anthony Hobkinson.

### **SHARING OF FEES AND COSTS**

5. Absent any binding agreement to the contrary, all fees and expense payable to MRSL will be divided into the same number of shares as the number of Parties participating in the mediation, and each Party will pay one share. (So, for example, if five Parties are participating each will pay 20% of MRSL’s fees and expenses.)
6. However where several parties are represented by the same Legal Representatives that will count as one share unless the Mediation Agreement specifies differently. (So, for example, if five Parties are participating and two are related companies represented by one law firm, those two companies would pay 25% of MRSL’s fees and expenses between them, and the other three Parties would each pay 25%.)
7. These cost sharing arrangements may be varied by the mutual agreement of the Parties but this must be done in writing and agreed by MRSL when MRSL is first retained.

### **MEDIATION FEES**

8. Unless otherwise agreed in writing, the Parties will pay MRSL a fixed fee covering the Mediator’s preparation time and attendance at the Mediation Meeting.
9. The fixed fee includes the following:
  - a. The day of the Mediation Meeting of up to 8 hours including any breaks, or a half day of up to 4 hours including breaks; and

- b. The Mediator's reading and preparation time, including any pre-mediation discussions between the Mediator and the Parties or their representatives.
  - c. Any additional time on the day of the Mediation Meeting or thereafter until the Mediation is terminated will be charged at the then applicable Mediator's hourly rate. The Parties must tell the Mediator in advance if they do not wish to exceed the number of hours allowed for in the fixed fee. If they do not then additional time will be payable.
10. As an alternative to a fixed fee MRSL will agree with the Parties an hourly rate but this must be done at the time MRSL is first retained.
11. VAT may be payable on the fixed fee or hourly rates including additional hours charged. <sup>1</sup>
12. MRSL'S normal mediator rates are available on request. Parties are strongly encouraged to discuss the scope, value, and complexity of the proposed mediation with MRSL ahead of retaining them so that the fees most closely reflect the likely value and complexity of the Dispute.

### **DISBURSEMENTS**

13. The Parties will reimburse MRSL for all reasonable expenses incurred by them or the Mediator in the preparation for and conduct of the Mediation, such as travel, accommodation and sustenance. All disbursements will be charged at cost and will include VAT where paid.
14. Travel will be on the following basis:
- a. Rail: standard class for up to 2 hours per journey; first class if over 2 hours
  - b. Car: 0.50p per mile plus parking and any congestion charges
  - c. Air travel: premium economy for flights up to 3 hours in duration (or economy if premium is not available) and business class for flights of over 3 hours
  - d. All tickets will be booked on a flexible basis rather than the cheapest fixed basis to allow for unplanned changes in the Mediation timings.
15. MRSL will not charge the parties for their administrative time and secretarial expenses.

### **VENUE AND ROOM ARRANGEMENTS**

16. Unless otherwise agreed, the Parties are responsible for arranging the venue for the Mediation Meeting and paying the costs of all rooms and any technological equipment needed to conduct the Mediation. For in person meetings this should include:
- a. One room for each party and their representatives; and
  - b. One room large enough to accommodate all parties for any joint sessions; and
  - c. One room for the mediator

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<sup>1</sup> As at October MRSL is not VAT registered

17. If MRSL agrees with the Parties to make arrangements for the venue hire those costs will be invoiced by and payable in full to MRSL immediately on those costs being incurred or 7 calendar days before the Mediation takes place, whichever is the earliest.
18. For online mediations each Party will be responsible for arranging any rooms needed by them from which to conduct the online discussions as well as any computer or technological equipment and internet access.

### **TIME AND RESPONSIBILITY FOR PAYMENT**

19. MRSL's invoices must be paid by electronic transfer to the account shown on the invoice within 14 calendar days of receipt of that invoice or earlier if required by any provisions below.
20. If the Parties are legally represented, the Parties and their legal representatives are jointly and severally liable to pay any sums due to MRSL.
21. Interest will be charged on overdue amounts at the rate of 5% per annum.
22. The fixed fee and expenses will be payable as follows:
  - a. A non-refundable deposit of £500 when MRSL is first retained;
  - b. The balance of the fixed fee (less the deposit paid) either 7 calendar days before the Mediation Meeting commences or on the day when the Mediator is required to begin preparation for the Mediation, whichever occurs sooner;
  - c. Any further fees and any all expenses incurred by MRSL will be invoiced on termination of the Mediation, however
  - d. if the Mediation is not terminated but continues for more than 7 calendar days after the original date scheduled for the Mediation Meeting, all fees and expenses incurred to that point will be invoiced by MRSL.
23. Notwithstanding clause 21. Above, if MRSL incurs expenses that either individually or in aggregate exceed £500 they may be invoiced by MRSL at any time.
24. In the event any payments due have not been received by MRSL before the Mediation Meeting, MRSL may in its absolute discretion withdraw the Mediator's services, or MRSL may allow the Mediation Meeting to proceed if appropriate irrevocable undertakings on payment have been received from the Parties' legal representatives.

### **CANCELLATION**

If the Mediation Meeting is cancelled the following will be payable:

25. Fees:
  - a. the non-refundable deposit; and

- b. if cancellation occurs more than 14 calendar days before the scheduled Mediation Meeting date the Parties will not pay the Fixed Fee but instead pay for the Mediator's actual time spent up to that point at MRSL's then applicable hourly rate, but capped at the equivalent of 50% of the Fixed Fee; or
  - c. if cancelled between 7 and 14 calendar days before the scheduled Mediation Meeting, 50% of the fixed fee; or
  - d. if cancelled less than 7 calendar days before the Mediation Meeting 75% of the Fixed Fee.
26. Expenses: all irrecoverable costs and disbursements incurred by MRSL such as but not limited to venue hire, hotel bookings and travel costs.

#### **POSTPONEMENT OR ADJOURNMENT**

27. If the Mediation Meeting is postponed before the scheduled Mediation Meeting date the Parties will pay MRSL any irrecoverable disbursements and expenses incurred as a result.
28. No cancellation fee will be payable provided that within 4 weeks from the time of the postponement a new Mediation Meeting date is re-booked with MRSL.
29. If no re-booking occurs with MRSL within that 4-week period then the Parties will pay MRSL an amount equivalent to the sum that would have been payable had the Mediation Meeting been cancelled at the time it was postponed.
30. If the Mediation Meeting begins but is adjourned at the Parties' request 100% of the Fixed Fee and any irrecoverable disbursements and expenses will be payable.