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## SPECIMEN AGREEMENT FOR [REMOTE] MEDIATION

### BETWEEN:

(1) ABC (represented by 123)

and

(2) DEF (represented by 456)

and

(3) ALISTAIR PYE of Pembroke House, 26 St Martin's Lane, Marshfield, South Gloucestershire, SN14 8LZ ("the Mediator").

### TERMS & CONDITIONS

We, the parties and the Mediator, agree to the appointment of the Mediator to mediate the dispute referred to in Clause 1, and that the mediation shall be conducted on the following terms and conditions, and that these terms and conditions shall be deemed to apply to the mediation of the dispute notwithstanding the absence of any one or more signatures to the agreement:

#### 1. The Dispute

1.1. [Concise definition of dispute, eg by reference to Court and Claim Number]

#### 2. The Appointment

2.1. The parties agree to the appointment of the Mediator on the terms of this Agreement.

2.2. The parties acknowledge that the Mediator is independent and neutral, is not an agent of any of the parties, and that the Mediator does not give legal advice.

2.3. The parties also understand that the role of the Mediator is to facilitate settlement of the dispute by negotiation and agreement where it is possible, and that the Mediator will not arbitrate or adjudicate the dispute unless asked to do so by both parties in writing and pursuant to further agreement.

2.4. The Mediator shall not be liable to the parties for any act or omission in relation to the mediation unless the act or omission is proved to have been fraudulent or involved wilful misconduct. The parties agree that they will respect the neutrality of the Mediator and any professional body to which the Mediator may belong, and not bring any claim, demands or proceedings against the Mediator.

2.5. Any notes of the Mediator are confidential to the Mediator and shall not be available to the parties at any time, nor subject to summons for production as evidence in any court, tribunal or other judicial hearing or proceeding.

### **3. Venue and Date**

3.1. The mediation will take place as follows:

Date:

Start time: 10.00am

End time: 6.00pm

Venue:

### **4. Fees**

4.1. The Mediator's fees are as follows:

Base fee (to include preparation time and 10.00am to 6.00pm): £0000.00 + VAT

Travel charge: £00.00

Overtime: £00.00 per hour or part thereof in excess of 8 hours

VAT is charged on the above fees at 20%

- 4.2. The parties shall share the fees equally and the Mediator shall raise invoices in respect of each party's share of the base fee, and VAT which the parties' solicitors will pay prior to the date for the mediation.
- 4.3. Following the conclusion of the mediation, the balance of the fees if any, together with any additional charges payable pursuant to this agreement, shall be paid by the parties to the Mediator (in the same proportions as stated at 4.2) within 14 days of receipt of an invoice.
- 4.4. In the event of late payment of any sum, interest shall accrue on the said sum at the rate of 4% above Barclays Bank base rate from time to time until payment and shall be added to the outstanding account.
- 4.5. Additional charges shall be payable by the parties in respect of:
- 4.5.1. Overtime beyond the times stated at paragraph 3.1 at the rate stated at 4.1, plus any extraordinary travel and / or accommodation expenses of the Mediator which may be incurred due to the lateness of the hour;
- 4.5.2. Additional preparation time by the Mediator occasioned by cancellation or adjournment by a party, to be calculated pro rata to the mediation fee;
- 4.5.3. Any agreed expenses of the Mediator;
- 4.5.4. Any incidental expenses, including venue hire, refreshments, and any other disbursements validly incurred by the Mediator in respect of the mediation;
- 4.5.5. Any costs, charges and expenses incurred in enforcing the payment of any fees or additional sums which shall be payable on demand entirely by the party in default.
- 4.5.6. VAT on any of the above sums.
- 4.6. If there is no settlement at the Mediation, the Mediator's fees and additional charges of each of the parties are to be treated as costs in the case in any litigation or arbitration in which the court or the

arbitrator has power to assess or make orders as to costs.

## **5. Cancellation and re-scheduling**

- 5.1. In the event of the cancellation of the mediation more than 7 days prior to the date of the mediation, a cancellation fee of 50% of the base fee, plus any additional charges incurred pursuant to Clauses 4.1 and 4.6, will apply and will be payable within 7 days of the Mediator receiving notice (whether verbally or in writing) of the cancellation.
- 5.2. In the event of the cancellation of the mediation 7 days or less prior to the date of the mediation, the entire base fee, plus any additional charges incurred pursuant to Clauses 4.1 and 4.6, will apply and will be payable within 7 days of the Mediator receiving notice (whether verbally or in writing) of the cancellation.
- 5.3. In the event of the re-scheduling of the mediation, whenever and for whatever reason, the parties and the mediator agree that there shall be a re-scheduling fee amounting to 25% of the base fee, plus any additional charges incurred pursuant to Clauses 4.1 and 4.6.
- 5.4. Notices of cancellation or re-scheduling shall be in writing to the Mediator.

## **6. Procedures**

- 6.1. The parties may be represented if they wish, but legal representation is not a requirement. Where a party is not legally represented, such party is advised to obtain independent legal advice before, during and after the mediation and prior to finalising any agreement reached pursuant to the mediation.
- 6.2. No other person shall attend the mediation without the consent of the parties and the Mediator.
- 6.3. It is acknowledged that the Mediator does not offer legal advice or act as a legal advisor for any of the parties nor will he protect any party's legal position or rights.
- 6.4. The parties may prepare mediation position statements which they should exchange with each other before the date of the mediation. The Mediator will write to the parties with a timetable for providing him with the position statements and any documents that the parties wish the Mediator to consider prior to the mediation. Each party may, if they so choose also prepare a confidential statement to the Mediator which will not be disclosed to the other party.
- 6.5. While it is recognised that mediation is a voluntary process and that the Mediator will not, and cannot, compel the parties to settle, nor even to continue the mediation, the parties agree to participate in good faith with the aim of achieving settlement.
- 6.6. The parties agree that they will have present at the mediation such people as are authorised to agree settlement terms, or ensure that they themselves have such authority.
- 6.7. The parties agree that any settlement reached in the mediation will not be legally binding until written and signed.
- 6.8. There shall be no recording or stenographic record of the mediation.
- 6.9. The parties or the Mediator may end the mediation at any time without giving a reason.

## **7. Confidentiality**

- 7.1. The parties recognise that the mediation is for the purpose of attempting to achieve a negotiated settlement and as such all information provided during the mediation is confidential, without prejudice and will be inadmissible in any litigation or arbitration of the dispute.
- 7.2. Evidence which is otherwise admissible shall not be rendered inadmissible as a result of its use in the mediation.
- 7.3. The parties will not subpoena or otherwise require the Mediator or any other person attending the mediation under the auspices of the Mediator to testify or produce records, notes or any other information or material whatsoever in any future or continuing proceedings.
- 7.4. Every person involved in the mediation will keep confidential and not use for any collateral or ulterior purpose the fact that the mediation is to take place or has taken place other than to inform a court dealing with any litigation relating to the dispute of that fact, save as otherwise may be required by statute or statutory instrument.
- 7.5. All documents, statements, information and other material produced prior to or 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 save as otherwise may be required by statute or statutory instrument.
- 7.6. At the termination of the mediation all such material shall be returned to the originating party or forthwith destroyed at their option.
- 7.7. The parties will not call the Mediator as a witness, nor require him to produce in evidence any records or notes relating to the Mediation, in any litigation, arbitration or other formal process arising from and in connection with the Dispute and / or the Mediation; nor will the Mediator act or agree to act as a witness, expert, arbitrator or consultant in any such process. If any Party does make such an application, that Party will fully indemnify the Mediator in respect of any costs he may incur in resisting and / or responding to such an application, including reimbursement at the Mediator's standard hourly rate (currently £400 per hour) for the Mediator's time spent in resisting and / or responding to such an application.

## **8. Human Rights**

- 8.1. The parties agree and acknowledge that the referral of this dispute to mediation does not affect the rights that may exist under Article 6 of the European Convention on Human Rights, and that if the dispute is not settled by mediation, the parties right to a fair trial remain unaffected.

## **9. Law and Jurisdiction**

- 9.1. This agreement shall be governed by, construed and take effect in accordance with the Laws of England and Wales.
- 9.2. The Courts of England and Wales shall have exclusive jurisdiction to hear any claim or dispute which may arise out of or in connection with the mediation.

**Name of Party: ABC**

Signed:.....

Date:.....

I, [Acting Solicitor] of [Solicitor's Firm],

have advised my clients of the meaning and effect of this agreement and undertake to ensure that my client's fees are paid to the Mediator in accordance with the terms of this agreement. Further, by my signature hereto I confirm that each person present at the mediation on behalf of or in support of my client agrees to the confidentiality provisions herein.

Signature of representative:.....

**Name of Party: DEF**

Signed:.....

Date:.....

I, [Acting Solicitor] or [Solicitor's Firm]

have advised my clients of the meaning and effect of this agreement and undertake to ensure that my client's fees are paid to the Mediator in accordance with the terms of this agreement. Further, by my signature hereto I confirm that each person present at the mediation on behalf of or in support of my client agrees to the confidentiality provisions herein.

Signature of representative:.....

**For and on behalf of ALISTAIR PYE**

Signed:.....ALISTAIR PYE

Date:.....