



NINESTJOHNSTREET MEDIATION

MEDIATION AGREEMENT

THIS AGREEMENT is made

BETWEEN

- 1.
- 2.

("the Parties") and

3. **Prof Mark Hill QC of 9 St John Street Chambers** ("the Mediator")

WHEREAS

4. A dispute has arisen between the Parties concerning: ("the Dispute")
5. The Parties wish to resolve all claims arising out of or in connection with the Dispute by mediation.
6. The Mediator has agreed to assist the Parties to resolve the Dispute on the terms and conditions set out in this Agreement.

NOW THEREFORE, THE Parties and the Mediator agree as follows:

7. **Appointment**
 - a. The Parties appoint the Mediator, and the Mediator accepts the appointment, to mediate the Dispute ("the Mediation") in accordance with the terms of this Agreement.
8. **Participation in the Mediation**
 - a. The Parties will attempt in good faith with the Mediator and with each other to settle the Dispute by Mediation.
 - b. All communications relating to, and at, the Mediation will be confidential and without prejudice.
 - c. No formal record or transcript of the Mediation will be made and no notes taken by the Parties during the Mediation or any other evidence concerning the conduct of the Mediation will be adduced in evidence in any subsequent proceedings between the Parties in connection with the Dispute.
 - d. Each Party will use its best endeavours to comply with reasonable requests made by the Mediator to promote the efficient and expeditious resolution of the Dispute including provision in advance of the Mediation of such documents or information as requested by the Mediator.
 - e. If a Party is a natural person, that Party must attend the Mediation meetings. If a Party is a partnership, it must be represented by a Partner or other individual with full authority to make binding agreements settling the Dispute. If a Party is not a natural person it must be represented at the Mediation meetings by an officer or employee with full authority to make binding agreements settling the Dispute.

- f. Each Party may also appoint one or more other persons including legally qualified persons actively to assist and advise the Party in the Mediation and to perform such role or roles in the Mediation as the Party and the Mediator requires.

9. **The role of the Mediator**

- a. The Parties and Mediator agree that:
 - i. The Mediator will conduct the Mediation (including all preliminary steps) in the manner considered appropriate having regard to the nature and circumstances of the Dispute and the goal of an efficient and expeditious resolution of the Dispute having taken account of the views of each Party.
 - ii. The Mediator will read the documentation provided by the Parties ("**Information**").
 - iii. The Mediator will meet as frequently as the Mediator decides is appropriate with the Parties together or with a Party alone (including with one or more individuals making up each Party's representation) and in the latter case the Mediator need not disclose the fact of that meeting to the other Party.
 - iv. The Mediator may communicate with a Party or Parties orally or in writing.
 - v. The Mediator will not disclose information disclosed to the Mediator by a Party in the absence of any other Party except with the consent of the Party from whom the information was received.
 - vi. The Mediator will not act for any of the Parties individually in connection with the Dispute, either during the currency of this Agreement or at any time thereafter. The Parties accept that in relation to the Dispute the Mediator is not an agent of, or acting in any capacity for, any of the Parties. The Mediator confirms that neither party is known to him, so far as he is aware, and there is no conflict of interest.

10. **The Advisers**

- a. The Advisers to the Parties are
 - i.
 - ii.
- b. A Party will immediately notify the other Parties and the Mediator of any change to its Advisers.

("the Advisers")

11. **Place and Time**

- a. The Mediation will start at _____ on _____
- b. It will take place at _____

12. **Provision of Information**

- a. Each Party may send Information and documentation which it wishes to disclose to the Mediator. If a Party wishes to disclose any Information in confidence to the Mediator in advance of the Mediation that Party must clearly state that such Information is confidential to the Mediator.

13. **Confidentiality**

- a. Each Party (on its own behalf and on behalf of any person present for it at the Mediation) and the Mediator agree in relation to all information disclosed to them during the Mediation, including the preliminary steps:
 - i. To keep that information confidential (save only as may be required to report to the court as to whether or not the matter has been resolved and to professional advisers, insurers, the Revenue or as required by law).
 - ii. Not to disclose that information except to a Party or a representative of that Party participating in the Mediation or if compelled by law to do so.
 - iii. Not to use that information for a purpose other than the Mediation.

- iv. That the obligation of confidentiality herein contained shall bind the Parties, all those attending on their behalf and the Mediator whether or not such confidential information is or later comes to be in the public domain.
 - v. That no permanent transcript shall be made during the Mediation and no notes taken by the Parties during the Mediation or any other evidence concerning the conduct of the Mediation will be adduced in evidence in any subsequent proceedings between the Parties in connection with the Dispute.
- b. The Parties and the Mediator agree that whatever is said, done or written by or on behalf of any of them in or in connection with the Mediation will be and will remain subject to "without prejudice" or negotiation privilege so long as that privilege applies.
 - c. All documents (which includes anything upon which evidence is recorded, including tapes and computer discs) or other information produced for, or arising in relation to the Mediation will be privileged and not be admissible in evidence or disclosable in any litigation or arbitration connected with the Dispute except any documents or other information which would in any event, whether or not the Mediation had taken place, have been admissible or disclosable in any such litigation or arbitration.
 - d. None of the Parties will call the Mediator as a witness, consultant, arbitrator, advocate or expert in any litigation or arbitration in relation to the Dispute.

14. **Settlement Agreement**

- a. Any settlement reached in the Mediation will not be legally binding until it has been reduced to writing and signed by, or on behalf of, each of the Parties.

15. **Termination**

- a. Either of the Parties may withdraw from the Mediation at any time and, if so, shall immediately inform the Mediator and the other Party.
- b. If, after consultation with the Parties, the Mediator forms the view that he will be unable to assist the Parties to achieve resolution of the Dispute or for any other reason in his discretion, he may immediately terminate his engagement as Mediator by immediately informing the Parties.
- c. If the Dispute shall be unresolved at the end of the day or days on which the Mediation takes place, the Mediation may be adjourned to such time as the Parties and the Mediator agree.

16. **Fees, expenses and costs**

- a. The Mediator's fee for preparation and conducting the mediation will be **£3,000** plus VAT ("**the Daily Fee**").
- b. Additional time spent after 4:30pm will be remunerated at the rate of **£350** per hour ("**Additional fee**").
- c. The Daily Fee and any Additional Fee and any expenses will be shared equally between the Parties unless otherwise agreed.
- d. The Mediator will address a VAT invoice to each Party's solicitors for payment within 21 days of the date of the VAT invoice. The Parties undertake that the sums so charged calculated in accordance with the Agreement will be paid by their Solicitors to the Mediator.
- e. If the Mediation is cancelled within 14 days of the date reserved for the Mediation, the Parties shall be liable for 50% of the daily Fee ("**the Abated Fee**"). If the Mediation is postponed to a later date, the Abated Fee will not be charged provided the Postponed Mediation takes place. If the postponed Mediation does not take place the Abated Fee will be charged to the Parties.

17. **Waiver of Liability**

- a. The Mediator shall not be liable to any of the Parties for any act or omission or default of the Mediator in connection with the Mediation other than as a result of his own wilful misconduct or bad faith.

- b. The Parties agree that they will not seek to call the Mediator to give evidence in any litigation or arbitration proceedings arising out of or in any way connected with the subject matter of the dispute.
- c. Absent wilful misconduct or gross negligence, the Parties hereby indemnify the Mediator and any servant or agent of the Mediator who may, with the consent of the Parties, be involved in the Mediation against any costs, expenses or disbursements including legal expenses incurred by him or them responding to any attempt (whether successful or not) by that party to require him or them to give evidence and/or provide documents concerning the Mediation in any litigation or arbitration proceedings arising out of or in any way in connection with subject matter of the dispute.

18. **Governing Law and Jurisdiction**

- a. This Agreement shall be governed by, construed and take effect in accordance with, the laws of England and Wales.
- b. The English and Welsh courts shall have exclusive jurisdiction to settle any claim, dispute or matter of difference which may arise out of or in connection with the Mediation.

The Parties and the Mediator have executed this as an Agreement on the date set out above.

..... on behalf of

..... Solicitor

..... On behalf of

..... Solicitor

..... Mediator, **Prof Mark Hill**