



# NINESTJOHNSTREET MEDIATION

## **MEDIATION TERMS OF APPOINTMENT**

### **1. Definitions**

In these Mediation Terms of Appointment the following definitions apply:

- 1.1 “The Parties” means the Parties to the Mediation each of whose details are set out in the Agreement. Any reference to “a Party” in these Mediation Terms of Appointment or in the Agreement is to each of the Parties separately
- 1.2 “The Mediator” means the person whose details are set out in the Agreement
- 1.3 “The Advisers” means the firm of solicitors or other professional advisers (if any) appointed by a Party to arrange and have the conduct of the Mediation on that Party’s behalf whose details are set out in the Agreement.
- 1.4 “The Agreement” means the agreement to be signed by the Parties
- 1.5 “The Dispute” means the dispute which has arisen between the Parties brief details of which are set out in the Agreement
- 1.6 “The Mediation” means the settlement meeting which the Parties have agreed to attend with the Mediator at which they will attempt in good faith to settle the Dispute

### **2. Terms of Appointment**

- 2.1 In accepting the date proposed by the Parties for the Mediation, the Mediator does so upon the terms of these Mediation Terms of Appointment which will govern the Parties’ preparation for the Mediation including as to payment of the Mediator’s charges in the event of cancellation of the Mediation.
- 2.2 These Mediation Terms of Appointment will, on the signing of the Mediation Agreement by the Parties and/or their Advisers, be incorporated into that agreement and will bind the Parties and their Advisers.

### **3. Participation in the Mediation**

3.1 The Parties and their Advisers (if any) will attempt in good faith with the Mediator and with each other to settle the Dispute by Mediation

3.2 All communications relating to, and at, the Mediation will be confidential and without prejudice.

3.3 Each Party and its Advisers 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.

3.4 If a Party is a natural person, that Party must attend the Mediation meetings unless otherwise agreed by the Mediator and the other Parties. 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.

### **4. The role of the Mediator**

The Parties and Mediator agree that:

4.1 The Mediator will conduct the Mediation (including all preliminary steps) in the manner which the Mediator considers 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 and that Party's Advisers.

4.2 The Mediator will meet as frequently as the Mediator decides is appropriate with the Parties together or with a Party alone (including with that Party's Advisers) and in the latter case the Mediator need not disclose the fact of that meeting to the other Party.

4.3 The Mediator may communicate with a Party or the Parties and with the Advisers orally or in writing (including by email).

4.4 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.

4.5 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 the Mediator, so far as the Mediator is aware, and that there is no conflict of interest.

## **5. Provision of Information**

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.

## **6. Confidentiality**

Each Party (on its own behalf and on behalf of any person present for it at the Mediation), the Advisers and the Mediator agree in relation to all information disclosed to them during the Mediation, including the preliminary steps:

6.1 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);

6.2 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;

6.3 Not to use that information for a purpose other than the Mediation;

6.4 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;

6.5 That no permanent transcript or recording shall be made during the Mediation and no notes taken by the Parties or the Advisers 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;

6.6 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 mediation privilege so long as that privilege applies;

6.7 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;

6.8 None of the Parties will call the Mediator as a witness, consultant, arbitrator, advocate or expert in any litigation or arbitration in relation to or arising out of the Dispute.

## 7. Settlement Agreement

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.

## 8. Termination

8.1 A Party may withdraw from the Mediation at any time and, if so, shall immediately inform the Mediator and the other Party. If, after consultation with the Parties, the Mediator forms the view that the Mediator will be unable to assist the Parties to achieve resolution of the Dispute or for any other reason, in the Mediator's discretion the Mediator may immediately terminate the Mediator's engagement as Mediator by immediately informing the Parties.

8.2 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.

## 9. Fees, expenses and costs

9.1 The Mediator's fee for preparing and conducting the mediation will be £ .....plus VAT ("**the Fee**"), inclusive of expenses, for the first full day of the mediation (up to 5.30pm on that day)

9.2 Time spent in addition to that covered by the Fee will be charged at the rate of £..... per hour plus VAT ("**the Additional fee**")

9.3 The Fee and any Additional Fee will be shared equally between the Parties unless otherwise agreed

9.4 The Mediator will address a VAT invoice to each Party or to that Party's Advisers for that Party's share of the Fee and any Additional Fee. Each Party and that Party's Advisers undertake that the sums so charged will be paid by them within 21 days of the date of the VAT invoice unless otherwise agreed between the Party (or the Parties) and the Mediator.

9.5 If the Mediation is cancelled within 14 days of the date reserved for the Mediation, the Parties shall be liable for 50% of the 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 within 3 months of the original date fixed for the Mediation. If the postponed Mediation does not take place within that time the Abated Fee will be charged to the Parties and will be payable by them or by their solicitors.

## 10. Waiver of Liability

10.1 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 the Mediator's own wilful misconduct or bad faith

10.2 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 the Mediator or them responding to any attempt (whether successful or not) by that party to require the Mediator 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.

## **11. Governing Law and Jurisdiction**

11.1 The Agreement and these Mediation Terms of Appointment shall be governed by, construed and take effect in accordance with, the laws of England and Wales.

11.2 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.