

MEDIATION AGREEMENT

This **Mediation Agreement** is made the day of 2019

BETWEEN:

("Party A")

Add

("Party B")

Add

(Jointly **"the Parties"** and each a **"Party"**)

and

Peter Higgins

("the Mediator")

Add

("The Assistant Mediator /Observer")

1. The Dispute

In this Agreement, “**the Dispute**” has the meaning set out in Part 1 of Schedule 1.

2. Participation in a Mediation

The Parties will attempt in good faith to settle the Dispute by mediation (“**the Mediation**”). The Parties signing this Agreement agree that the provisions of the Mediation Procedure set out in Schedule 2 to this Agreement will apply to the Mediation, are incorporated in and form part of this Agreement. The definitions in the Mediation Procedure are used in this Agreement. A draft Mediation Agreement (**the Mediation Agreement**) will be sent by the Mediator to the parties for approval and any proposed amendments will be inserted by agreement with the Parties. The Mediation Agreement will usually be signed at the beginning of the mediation day by the Mediator and on behalf of the Parties. Subsequent to the appointment of the Mediator by the Parties during contact prior to the day of the Mediation the Parties will observe the Mediation Procedure’s terms as to confidentiality and payment of the Mediator’s remuneration regardless of whether or not the Mediation Agreement already been signed.

3. The Mediator

The Mediator will be Peter Higgins. The Assistant Mediator/Observer will be ‘add’

The Representatives

- a. The Lead Negotiators and the Representatives of the parties shall be the persons identified in Schedule 1.
- b. Each Party will immediately notify the other Party and the Mediator of any change to this information.

4. Place and Time

The Mediation will take place at the time and place set out in Schedule 1 Part 3.

5. Mediator’s Remuneration

- a. The Parties jointly and severally agree to pay the Mediator the sum of £xxxx plus VAT, being the Mediator’s fee for one eight hour day of mediation and all preparation and pre-mediation contact with the Parties (“**the Mediation Fee**”) together with £xxxx plus VAT for each additional hour of time spent at the mediation plus vat (“**the Additional Mediation Fee**”)
- b. Unless otherwise agreed each Party shall pay the Mediator an equal share of the sums referred to above. Invoices will be rendered prior to the Mediation for the Mediation Fee and are payable before the Mediation takes place. Invoices (if any)

issued after the Mediation for the Additional Mediation Fee not already invoiced are payable within 14 days of such invoices being rendered.

6. Cancellation and Postponement

In event of cancellation by either party received by the Mediator in writing:

- a. Seven days or less but more than 24 hours before the Mediation was due to take place the Mediator will be entitled to 50% of the Mediation Fee.
- b. 24 hours before the Mediation was due to take place the Mediator will be entitled to 75% of the Mediation Fee.

7. Authority and Status

The person signing this Agreement on behalf of each Party warrants having authority to bind that Party and all other persons present on that Party's behalf at the Mediation to observe the terms of this Agreement and also having authority to bind that Party to the terms of any Settlement Agreement. Without prejudice to the generality of the foregoing, by signing each such person expressly confirms for themselves and those on whose behalf they sign their adherence to the confidentiality provisions of clause 8 of the Mediation Procedure.

8. Law and Jurisdiction

- a. The Agreement shall be governed by and construed in accordance with English law.
- b. The Parties submit to the exclusive jurisdiction of the courts of England in relation to any claim, dispute or matter in difference arising out of or in connection with this Agreement, and waive all rights any of them may otherwise have or may have had to rely upon the jurisdiction of any other court, provided that nothing in this clause shall prevent a Party from commencing proceedings in any court which (but for this clause) would have jurisdiction over any defendant where the proceedings are brought for the purpose of restraining the defendant from a breach of any term of this Agreement (including this clause)

9. Human Rights Act 1998

The referral of the Dispute to mediation does not affect any of the human rights or fundamental freedoms that any Party may possess under the Human Rights Act 1998, and if the Dispute is not finally settled by the Mediation, the rights of the Parties, including, in particular, the right to a fair trial, remain unaffected.

This Agreement has been entered into on the date appearing on the front of it.

Signed by:

for and on behalf of Party A

Signed by:

for and on behalf of Party B

Signed by:

the Mediator

Signed by:

the Assistant Mediator / Observer

SCHEDULE 1

Part 1

“The Dispute” means: As identified in the mediation bundle and **position statements** of the Parties

Part 2

The Lead Negotiators are:

For Party A:

For Party B:

The Representatives/other attendees are:

For Party A :

For Party B:

Part 3

Place of Mediation:

Date and time of Mediation:

Schedule 2

Mediation Procedure

i. The Mediator

- a. The Mediator, after consultation with the Parties where appropriate, will:-
 - i. attend any meetings with any or all of the Parties preceding the mediation, if requested or if the Mediator decides this is appropriate and the Parties agree;
 - ii. read before the Mediation:
 1. each Case Summary (as defined below); and
 2. such of the Documents (as defined below) sent to him as he considers relevant and appropriate, taking into account the volume of such Documents and the time in advance of the Mediation they were delivered;
 - iii. chair, and determine the procedure for the Mediation;
 - iv. assist the parties in drawing up any written settlement agreement;
 - v. abide by the terms of this Mediation Procedure, the Mediation Agreement and the Mediator's Code of Conduct.
- b. The Mediator and or Assistant Mediator/Observer will not act for any of the Parties individually in connection with the Dispute in any capacity either during the currency of this Agreement or at any time thereafter. The Parties accept that in relation to the Dispute the Mediator and Assistant Mediator/Observer are not agents of, advisors to, or acting in any capacity for, any of the Parties.
- c. If there is any issue about the conduct of the Mediation upon which the Parties cannot agree within a reasonable time, the Mediator will, at the request of any Party, decide the issue for the Parties, having consulted with them. The Parties agree to abide by and comply in a timely manner with all decisions of the Mediator made pursuant to this clause.

2. Participants

- a. No person will attend the Mediation other than the persons identified in Schedule 1 to the Mediation Agreement as:
 - i. the Lead Negotiators for the Parties, who must have full authority to settle the Dispute; and
 - ii. the Representatives of the Parties, being any other persons (such as professional advisers or colleagues) who will also be present at, and/or participating in, the Mediation on that Party's' behalf.

- b. The person signing the Mediation Agreement on behalf of each Party warrants having authority both for the Party he/she represents and all persons present on that Party's behalf at the Mediation, to be bound by the provisions of the Mediation Agreement and this Procedure.

5. **Exchange of Information**

- a. The Parties will agree a bundle of key documents for use at the Mediation ("**the Documents**"). The Mediator will nominate one of the Parties to provide the Documents to him at least one week before the Mediation, or by such other date as may be agreed between the Parties and the Mediator, or in the absence of agreement as directed by the Mediator. Each Party will send to the Mediator by the same deadline, a concise summary ("**the Case Summary**") of its case in the Dispute; and
- b. In addition, each Party may send to the Mediator and/or bring to the Mediation further documentation, which it wishes to disclose in confidence to the Mediator but not to any other Party, clearly stating in writing that such documentation is confidential to the Mediator.

6. **The Mediation**

- a. The Mediation will take place at the place and time stated in Schedule 1 to the Mediation Agreement.
- b. The Mediator will chair, and determine the procedure at, the Mediation.
- c. No formal recording or transcript of the Mediation will be made but the Parties and/or their Representatives may take notes of proceedings at the Mediation.
- d. Any Party time constraints should be notified to the Mediator as soon as known

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, the Parties (a "**Settlement Agreement**").

6. **Termination**

Any of the Parties may withdraw from the Mediation at any time and shall immediately inform the Mediator and the other representatives. The Mediation will terminate when:

- a. a Party withdraws from the Mediation; or
- b. a written Settlement Agreement is concluded; or

- c. the Mediator decides that continuing the Mediation is unlikely to result in a settlement; or
- d. the Mediator decides he should retire for any of the reasons in the Mediator's Code of Conduct.

Where the mediation does not end in complete settlement, the mediator may make contact with the parties thereafter to see whether further progress might be possible. Many disputes, which do not settle at the mediation, settle later, usually as a result of what occurred or was learned at the mediation. Where the mediator is in contact with the parties after the mediation, the provisions of the Mediation Agreement continue to apply.

7. Stay of Proceedings

No litigation, arbitration or adjudication in relation to the Dispute may be commenced or continued after the date of this Agreement until the conclusion of the Mediation unless the Parties agree otherwise or a court so orders.

8. Confidentiality

- a. Every person involved in the Mediation will keep confidential and not use for any collateral or ulterior purpose:
 - i. 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; and
 - ii. all information (whether given orally, in writing or otherwise) arising out of, or in connection with, the Mediation including the fact of any settlement and its terms,
- b. All information (whether oral or in the form of documents, tapes, computer discs etc.) arising out of, or in connection with, the Mediation will be without prejudice, privileged and not admissible as evidence or disclosable in any current or subsequent litigation or other proceedings whatsoever. This does not apply to any information, which would in any event have been admissible or disclosable in any such proceedings.
- c. Paragraphs 8a and b shall not apply insofar as any such information is necessary to implement and/or enforce any settlement agreement arising out of the Mediation or insofar as it is necessary for any Party to inform their auditors, insurers, re-insurers, insurance brokers and regulatory bodies.
- d. None of the Parties to the Mediation agreement will call the Mediator or Assistant Mediator/Observer as a witness, consultant, arbitrator or expert in any litigation or other proceedings whatsoever nor require them to produce in evidence any records or notes relating to the Mediation in any litigation, arbitration or other formal process arising from or in connection with the Dispute and/or the Mediation. The Mediator and Assistant Mediator/Observer will not voluntarily act in any such

capacity. If any Party does make an application involving the Mediator and/or Assistant Mediator/Observer that Party will fully indemnify the Mediator and/or Assistant Mediator/Observer in respect of any costs incurred in resisting and/or responding to such an application, including reimbursement at the Mediator's standard hourly rate for the Mediator's and/or Assistant Mediator's/Observer's time spent in resisting and/or responding to such application.

8. Fees, Expense and Costs

The Mediator's fees and the other expenses of the Mediation will be borne equally by the Parties. Payment of these fees and expenses will be made to the Mediator in accordance with clauses 5 of the Mediation agreement. If the Mediation does not result in a settlement, in the absence of any other agreement regarding costs, the Parties agree that the costs of and associated with the Mediation will be treated as "costs in the case" in any litigation between them.

10. Exclusion of Liability

The Mediator shall not be liable to the Parties for any act or omission in connection with the services provided by him in, or in relation to, the Mediation, unless the act or omission is shown to have been fraudulent or to have involved willful misconduct.