

# AGREEMENT TO MEDIATE

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Agreement made on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Between \_\_\_\_\_

(First Party)

and \_\_\_\_\_

(Second Party)

the Mediator who is named below and enters this Agreement on the basis set out in Appendix 1.

This Agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

**Date of mediation:**

**Start time:**

**Duration:**

**Mediator:** Dr Daniyal Shakeel

**Definitions:**

1. This mediation has been arranged by Dr Daniyal Shakeel.
2. The Mediator is the person named on the first page of this Agreement and whose further details appear in Appendix 1.

**Agreement**

A dispute has arisen between the First Party and the Second Party ("the Parties"). The Parties and the Mediator agree as follows:

**A. Duties and Obligations**

1. The Parties hereby appoint the Mediator on the terms set out below and agree to mediate the Dispute on the date and at the time set out above ("the Mediation").

2.(a) The Mediation and the entire mediation process is confidential.

2.(b) The Mediation and the entire mediation process, and all negotiations, statements and documents expressly prepared for the purposes of the Mediation shall be “without prejudice” unless and until a settlement is reached and reduced to writing (save that it is further agreed that any statement or document prepared for the litigation of the Dispute shall not acquire without prejudice status merely because it was used in the Mediation).

2.(c) Neither the Parties or the Mediator may (whether by themselves or an agent) disclose to any person

- any information regarding the mediation process (including pre-process exchanges and agreements and, in cases where a settlement is not reached on the day of the Mediation, continuing discussions and communications between the Mediator and the Parties) or

- any content (including written and oral information) of the Mediation

unless

- it is so agreed in writing among all the Parties and the Mediator,

- it is required by law and ordered by the Court,

- the Mediator reasonably considers that there is a serious risk of significant harm to the life or safety of any person if the information in question is not disclosed; or

- the Mediator reasonably considers that there is a serious risk of his being subject to criminal proceedings unless the information in question is disclosed.

2.(d) Whether, where settlement is reached, the settlement terms or outcome of the Mediation are to remain confidential thereafter is a matter for the Parties to negotiate and agree upon.

2.(e) If litigation is pending, the Parties may inform the court of the timing and overall status of the Mediation for purposes of litigation management.

2.(f) No party shall seek to require the Mediator to give evidence in any subsequent litigation about the Mediation or the Dispute and any party asked by the court either to give evidence about the Mediation or to procure evidence from the Mediator about the Mediation shall bring to the attention of the court the appropriate provisions of this Agreement.

3. (a) The Mediator shall not be liable for any act or omission in connection with the Mediation, other than as a result of its/his/her own wilful misconduct or gross negligence. Further, the Parties agree that any liability the Mediator may have in respect of the Mediation shall be capped at £1 million. For the avoidance of doubt this cap is in respect of the total overall liability for all claims arising directly or indirectly out of or connected with the Mediation and “claim” shall include damages, compensation, interest, costs or any other item of claim.

3.(c) The Mediator has no previous commitments that are likely to significantly delay the expeditious conduct of the Mediation and will ensure that no such commitments are made.

## **B. The Mediation**

1. (a) The Mediator will attempt to resolve the dispute with a view to the Parties reaching a mutually agreed resolution of the Dispute.

1.(b) The Mediator will not evaluate or determine the Dispute.

1.(c) The Parties acknowledge that

- the Mediator will not provide legal advice and
- to the extent that the Mediator might appear to one or more party to hold an opinion, it must not be interpreted as advice, guidance, or an indication as to the outcome of the Dispute.

1.(d) The Parties agree and acknowledge that they will rely on their own representatives or legal adviser(s) for legal advice.

2.(a) The Mediator may terminate the Mediation if:

- after consultation with the Parties, the Mediator feels unable to assist the Parties to achieve resolution of the Dispute
- the Mediator receives, from a source outside the Mediation, confidential information relevant to the Dispute or any party
- the Mediator receives confidential information relevant to a client during the Mediation or
- the Mediator in his absolute discretion considers it appropriate for any other reason (which reason the Mediator may decline to give to the parties, in which event the Parties undertake not to pursue the Mediator in any way for an explanation).

2.(b) A Mediation shall end if a settlement is reached by the Parties and reduced into writing and signed. No settlement shall be deemed to have been concluded, nor any Settlement Agreement deemed to have been reached unless and until:

- it is reduced into writing; and
- signed by both Parties and/or their legal representatives.

(See A2.(d) above regarding the confidentiality of any settlement which may be reached.)

2.(c) In cases where a settlement is not reached on the day of the Mediation, any continuing discussions and communications between the Mediator and the Parties shall be governed by the terms of this Agreement so that, in particular, the arrangements concerning confidential and without prejudice communications shall continue to apply. (A further fee may become payable with the Parties written consent.)

### **C. Remuneration**

1.(a) Each party will pay its own legal costs and disbursements (expenses) in respect of the Mediation.

1.(b) Notwithstanding the above:

- I. the Parties shall be at liberty to agree (and to incorporate into any written Settlement Agreement or Tomlin Order) such terms on costs as they think appropriate;
- II. there will be a presumption that, unless it is otherwise agreed or otherwise ordered by the court, the Fees and all expenses, legal costs and disbursements in respect of the Mediation will, as between the Parties, be costs in the case (that is, paid by the party who loses the action to the party who wins the action, if an order for costs is made in that party's favour);

III. whatever agreement the Parties may reach on costs as between themselves, paragraphs E.1.(a) above shall continue to govern the liability of the Parties to the Mediator regarding the Fees.

D. Proceeds of Crime Act 2002

1.(a) The Parties' legal advisers hereby agree and confirm to the Mediator that they have made any or all necessary disclosures relevant to the Proceeds of Crime Act 2002 and that if and insofar as it may be necessary, they will indemnify the Mediator against the consequences of any non-disclosure.

**E. Governing Law and Jurisdiction**

This agreement is governed and shall be subject to the law and jurisdiction of England and Wales.

**F. Amendments to Agreement**

No changes can be made to this Agreement after signature unless they are made in writing and signed by all parties.

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For and on behalf of the First Party

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For and on behalf of the Second Party

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Mediator (who signs on the basis set out in Appendix 1)

**Appendix 1**

**The Mediator**

The Name of the Mediator is set out below.

- The services of the Mediator in respect of this Agreement are provided to the Parties by the Mediator.
- The Mediator holds professional indemnity insurance in respect of the mediation services that it provides.
- The Mediator will collect the Fees referred to at part C of the Agreement and Appendix 2 below above from the parties.

Name of Mediator: Dr Daniyal Shakeel

## **Appendix 2**

### **Remuneration Schedule**

1. The fees payable for the mediation services are: £ for each party for a hour fixed fee mediation session.
2. Payment terms: the fees shall be invoiced and are payable at the latest, 7 working days before the Mediation Appointment is to take place.
3. If the fees are not paid prior to the commencement of the mediation the mediation will not proceed.

## **Appendix 3**

### **Details of other persons (if any) attending the mediation and confidentiality arrangements**

I, the undersigned, in consideration of my having been given permission by the Parties or their representatives to attend the mediation, hereby agree that I will be bound by the Agreement as though I were a Party (except for the obligation to pay fees) and in particular:

- a) I will keep the affairs of the Parties and the mediation confidential,
- b) I will not refer to anything that I hear, see or learn at the mediation at any time or in any place and
- c) I will not give evidence about any of these matters; further
- d) I will not seek to require the Mediator to give evidence in any subsequent litigation about the mediation except in the case of an allegation of misconduct during the mediation.

Name :

Address :

Signed :