

# Withy King Mediation Services

## Mediation Agreement

This Mediation Agreement is made between

1. [ ]  
Represented by [ ]
2. [ ]  
Represented by [ ]

(“the parties”)

The parties hereby agree to appoint Withy King Mediation Services (“WKMS”) to act as mediator on their behalf, and WKMS agrees to mediate on behalf of the parties, subject to the WKMS Terms and Conditions (as attached) and the further terms and conditions set out below:

### **1. The Mediation**

- 1.1 [ ] is appointed on behalf of WKMS as Mediator.
- 1.2 The mediation appointment will be held at:  
Location.....  
Date.....  
Time.....
- 1.3 The parties agree that they will attend the mediation appointment in person, or by a representative who is fully authorised to enter into a binding settlement on behalf of the party in question, save where any restriction or limitation on such authority is specifically brought to the attention of the Mediator in advance of the mediation appointment.
- 1.4 The parties may, if they so elect, appoint legal advisors to represent them at the mediation appointment, however legal representation is not obligatory. The parties acknowledge by entering into this mediation agreement that the Mediator will not offer legal advice to the parties, and the appointment of the Mediator will

not operate so as to create any solicitor/client relationship between the Mediator and the parties, or any of them.

- 1.4 Where a settlement is reached at the mediation appointment this will not be binding unless and until that settlement (“the settlement agreement”) has been set out in writing and signed by or on behalf of each of the parties.

## **2. Costs**

- 2.1 The mediator’s fees are payable in accordance with the WKMS Terms and Conditions.
- 2.2 All fees, costs and other expenses are payable to Withy King (“WK”).
- 2.3 The parties are responsible for payment of its own costs, fees and expenses associated with any legal or other representation arranged by them in connection with the mediation appointment or otherwise, and the parties agree that such costs, fees and expenses will be costs in the cause unless otherwise agreed.

## **3. Conduct of the mediation appointment**

- 3.1 The Mediator will make contact with the parties, or their legal representatives ahead of the mediation appointment to introduce themselves and to confirm the process to be adopted at the mediation appointment. The Mediator may invite a discussion on the dispute to be mediated, or seek further information or documentation which it is felt will assist the Mediator to better understand the nature of the dispute.
- 3.2 At the commencement of the mediation appointment the Mediator will invite the parties to make an opening statement intended to set out that party’s position in relation to the dispute. The parties are not obliged to make an opening statement.
- 3.3 Following the opening session the Mediator may hold private sessions with each of the parties in turn with a view to better understanding their respective positions and in order that the Mediator is better able to express that party’s position to the other party. Any information obtained by the Mediator in any private session will remain confidential save where the Mediator is given express permission by the party in question to release or disclose that information to the other party.
- 3.4 In the event that a settlement is reached between the parties it shall be the responsibility of the parties to draft the settlement agreement. The Mediator will not advise on the preparation or content of the settlement agreement.

- 3.5 Whether or not settlement is reached at the mediation appointment the parties, by signing this mediation agreement each undertake that they will keep confidential all information, of whatever nature, which is disclosed within the course of the mediation appointment. Furthermore the parties acknowledge that all information provided during the mediation appointment is without prejudice and will not be admissible in any other legal process save where the parties expressly waive privilege in writing.
- 3.6 Without prejudice to the generality of the matters set out at clause 3.5, the parties acknowledge that the Mediator has an overriding obligation within the requirements of the Proceeds of Crime Act 2002 to report any knowledge or suspicion relating to the use or involvement of the proceeds of crime, including but not limited to tax evasion, to the National Crime Intelligence Service, and the Mediator is precluded by law from informing the parties of such reporting or intention to report.
- 3.7 All parties involved or associated with the mediation agree to keep confidential the fact that the mediation is to take place or has already take place, save insofar as it is necessary to notify the fact to the court in the context of any relevant litigation, and furthermore the parties agree not to use the fact of the mediation for any related or ulterior purpose.
- 3.8 Where it is necessary to notify the court of a settlement achieved through the mediation appointment the parties agree to do so in writing but without disclosing the terms of the settlement unless otherwise agreed in writing by the parties.
- 3.9 The parties agree to keep all documentation, material, witness evidence and all other forms of information disclosed within the context of the mediation appointment, either prior to or during the mediation appointment itself, confidential save where expressly agreed in writing by the parties, or save where such materials have already been disclosed within the context of any related litigation or other legal process. The parties also expressly agree that the disclosure of evidence within the mediation which would otherwise be admissible in any other process will not render that evidence inadmissible purely as a consequence of its use or disclosure within the mediation.
- 3.10 It s open to the parties or to the Mediator to adjourn the mediation appointment at any time if it is considered appropriate to acquire further information or documentation to deal with any specific issues raised at the mediation appointment, or for any other where the parties expressly agree. If the mediation appointment is adjourned for any reason then WKMS will liaise with the parties regarding the resumption of the mediation appointment and any costs consequences of the adjournment.
- 3.11 Either of the parties, or the Mediator, shall be entitled in their absolute discretion to terminate the mediation appointment at any time without having to provide a

reason for so doing. In the event that the parties subsequently agree to resume the mediation appointment at a later date then I will be for the parties to liaise with WKMS regarding any such resumption, and in those circumstances the Mediator and WKMS reserve the right to refuse to take up the further appointment, or within their absolute discretion to apply a charging structure in line with a new appointment without restriction and without credit being given for any previous mediation service provided to the parties under any previous Mediation Agreement.

#### **4. Exclusion of liability**

- 4.1 Neither the Mediator, WKMS nor WK will be liable to the parties for any act or omission associated with or in connection with the provision of mediation services pursuant to this Mediation Agreement save where it can be shown that the act or omission relied upon is fraudulent or in bad faith, or save in so far as this exclusion of liability is contrary to any applicable law.

#### **5. Law and jurisdiction**

- 5.1 This Mediation Agreement shall be governed by, construed and take effect in accordance with English Law and shall be subject to determination by the courts of England and Wales.
- 5.2 Nothing in this Mediation Agreement shall affect the rights of the parties as set out under Article 6 of the European Convention on Human Rights, and in so far as the dispute is not settled by mediation the rights of the parties' to a fair trial are expressly unaffected by any of the provisions in this Mediation Agreement.

#### **6. Signature**

- 6.1 Where parties have legal representation then the legal representative is required to sign this Mediation Agreement on their behalf. Otherwise the parties are to sign in person or by their authorised representative in the case of a corporate body.
- 6.2 in signing this Mediation Agreement the parties, and each of them, as well as their legal representatives where appropriate confirm that they have read, understood and agree to be bound by the terms and conditions set out in this document as well as the WKMS Terms and Conditions that are attached to this document.

1. [ ]  
(Claimant)  
Signed.....  
Name.....  
Capacity.....  
Represented by [ ]  
  
Signed.....  
Name.....  
Firm.....

2. [ ]  
(Defendant)  
Signed.....  
Name.....  
Capacity.....  
Represented by [ ]  
  
Signed.....  
Name.....  
Firm.....

3. [ ]

(Mediator)

Signed.....

Name.....

Date.....

For and on behalf of WKMS