



**Mediation Agreement ODR**

**THE FOLLOWING PARTIES** namely:

1.     XXX                    of XXXX                    represented by XXX
2.     XXX                    of XXXX                    represented by XXX

(collectively the “Parties”) hereby agree to appoint Stephen Walker (“The Mediator”), to administer the Online mediation of the Dispute on the following terms and conditions:

**1.     MEDIATION PROCEDURES**

- 1.1.   The Online mediation shall be held and conducted according to this Agreement to Mediate (“Agreement”).
- 1.2.   The Mediator’s standard Terms and Conditions as specified on the Mediator’s website: [swalkermediation.com](http://swalkermediation.com) are incorporated into this Agreement. Where there is any conflict between them and this Agreement, the terms of this Agreement shall prevail.
- 1.3.   The Dispute shall mean [ all matters in dispute between the Parties arising out of ]
- 1.4.   The mediation session itself shall be referred to throughout this agreement as the mediation (“Mediation”).
- 1.5.   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. For the purpose of this Agreement it shall be sufficient if
  - 1.5.1   The Parties print out a copy of the settlement agreement sign it and scan it back to each other and the Mediator.
  - 1.5.2   The Parties sign the settlement agreement using an electronic signature.

Or

1.5.3 The Parties confirm by email to which the settlement agreement is attached that the email may be accepted as their signature.

Or

1.5.4 For the avoidance of doubt, it is not necessary for all the Parties to sign the same document. They can each sign a copy of the settlement agreement and exchange their signed parts.

## **2. MEDIATOR**

2.1. The Parties agree that Stephen Walker will be the Mediator.

2.2. The Parties recognise that the Mediator is an independent contractor, there is no contract between the Parties and any firm to which the Mediator may be a consultant and no duty of care is owed by any such firm to the Parties.

2.3. The Parties confirm that they shall not bring any claim against the Mediator for breach of contract, breach of duty or negligence unless the Mediator has acted dishonestly towards them.

## **3. MEDIATION FEES**

3.1 The mediation has been scheduled for an initial period of up to 8 hours ("Scheduled Period") starting at \_\_\_\_\_ on \_\_\_\_\_. All sums referred to in this Agreement are exclusive of Value Added Tax.

2. The mediation fee ("Mediation Fee") shall consist of:

(i) the deposit payable for the Scheduled Period in the sum of \_\_\_\_\_ to include all preparation time.

(ii) the additional sum of £. \_\_\_\_\_ plus VAT for each hour (or part thereof) the Mediation exceeds the Scheduled Period up to 12 midnight and at £500 plus VAT for each hour (or part thereof) after then. Invoices are payable within 7 days and in any event before the date of the Mediation.

3. The Mediation Fee shall be borne equally between the Parties, unless as a result of a mediated settlement, it is agreed otherwise. This provision shall not disentitle any party to recover the costs of the Mediation in any subsequent assessment of costs whether or not there has been a concluded settlement of the dispute which is the subject of the Mediation.

4. If the Mediation exceeds the Scheduled Period, the Parties acknowledge and agree that any additional time incurred is not included in the deposit amount and that such additional time will be charged for.
5. The Parties are required to inform the Mediator, either before or during the course of the mediation session, if they do not wish to exceed the Scheduled Period.
6. Interest at the prevailing judgment rate will be charged on overdue amounts.

#### **4. CONSULTING WITH LEGAL ADVISORS**

- 4.1. A party does not require legal representatives to participate in the Mediation but is free to choose whatever representation it wishes.
- 4.2. Where a party is not legally represented, such party is advised to obtain independent legal advice before, during and after the Mediation and prior to finalising any agreement reached pursuant to the Mediation.
- 4.3. The Parties recognise that the Mediator does not offer legal advice or act as a legal advisor for any of the parties of the Mediation nor will he analyse or protect any party's position or rights.
5. Each of the Parties warrant that they will:
  - 5.1 Tell the Mediator and the other parties of any person who they wish to participate in the Mediation by any means before the start of the mediation and confirm at the start of the Mediation who is participating or will participate during the Mediation.
  - 5.2 For the avoidance of doubt this includes any person who may be off camera or on any shared telephone or computer link.
  - 5.3 Not make any recording any medium, digital, electronic or otherwise, of the Mediation or any part of it without the prior written approval of the Mediator
4. Make themselves available for a private and confidential online session with the Mediator before the Mediation to allow the equipment and system to be used for the mediation to be tried out.
5. Ensure that they will have sufficient computer and telephone links available throughout the entire duration of the Mediation.

6. Procure that they or their representatives will have full authority to negotiate and enter into a legally binding settlement agreement disposing of the dispute at the Mediation.

## **2. PRIVATE SESSIONS**

1. The Mediator may hold private sessions with one party at a time. These private sessions are designed to improve the Mediator's understanding of the party's position and to facilitate the Mediator in expressing each party's viewpoint to the other side.
2. Information gained by the Mediator through such a session is confidential unless (a) it is in any event publicly available or (b) the Mediator is authorised by that party to disclose it.

## **2. CONFIDENTIALITY**

- 2.1. The Parties recognise that the Mediation is for the purpose of attempting to achieve a negotiated settlement and as such all information provided during the Mediation is without prejudice and will be inadmissible in any litigation or arbitration of the dispute.
- 2.2. Evidence, which is otherwise admissible, shall not be rendered inadmissible as a result of its use in the Mediation.
- 2.3. The Parties will not issue a witness summons or otherwise require the Mediator or any other person attending the Mediation under the auspices of the Mediator to testify or produce records, notes or any other information or material whatsoever in any future or continuing proceedings.
- 2.4. All documents, statements, information and other material produced prior to or during the course of the Mediation, save to the extent that these documents have been disclosed already and are in the domain of the litigation, whether in writing or orally, shall be held in confidence by the parties and shall be used solely for the purposes of the Mediation.
- 2.5. Any communication by or through the Mediator before the commencement of the Mediation or after its termination shall, unless expressly agreed in writing by the Parties, be subject to the same confidentiality provisions as set out elsewhere in this Agreement.
- 2.6. No recording or transcript of any of the sessions whether private or join sessions during the Mediation will be made by any means without the express prior consent of all the parties and the Mediator.
- 7.7. The Parties undertake that they will immediately inform the Mediator if any other person who was not identified as participating in the Mediation at the start of the Mediation joins the

Mediation by any means (including but not limited too by an online link) or enters the room in which the party is situated.

**TERMINATION OF THE MEDIATION**

3. Either of the Parties or the Mediator shall be entitled, in their absolute discretion, to terminate the mediation at any time without giving a reason. But any party wishing to do will give the mediator not less than 10 minutes notice of their intention to do this.

**4. SIGNATURE OF THIS AGREEMENT**

9.1 This agreement is to be signed by the instructed legal representative of each party attending the Mediation (if represented) on behalf of that party.

9.2 The legal representative is liable for the fees of the Mediation in the same way as they are liable for disbursements incurred in the course of litigation.

9.3 The legal representatives warrant they have carried out all necessary checks to verify the identity of their client and any person attending the mediation on behalf of their client.

Represented by Solicitors

Signed.....

Signed .....

Representative

Name .....

Name .....

Represented by Solicitors

Signed.....

Signed .....

Representative

Name .....

Name .....

Accepted to act as Mediator as provided for:-

Date.....

Signed..... ("the Mediator")

**Stephen Walker**

