

**MEDIATION AGREEMENT**

**THIS AGREEMENT dated**.....

**IS MADE BETWEEN**

**PARTY A**

.....of.....

(Represented by) .....of .....

**PARTY B**

.....of.....

(Represented by) .....

**THE MEDIATOR** (a term which includes any agreed Mediator Observer or Co-Mediator):

“The Mediator” is Ann Encontre, 25B Quai Charles Page, Geneva 1205, Switzerland.

**THE DISPUTE** .....

(“The Dispute”)

**IT IS AGREED** by those signing this Agreement **THAT:**

**1. THE MEDIATION**

- 1.1. The Parties are acting in good faith in attempting to settle their dispute through mediation.
- 1.2. The mediation day itself shall be referred to throughout this Mediation Agreement as “the Mediation”.
- 1.3. The Mediator agrees to conduct, and the Parties agree to participate in, the Mediation in accordance with the terms of this Mediation Agreement and its Schedules.
- 1.4 The Parties and the Mediator will agree whether the Mediation will take place in person or online. If the Mediation takes place online the Mediator will use Zoom Pro.

1.5 Regardless of whether the Mediation takes place in person or online, the Parties will attend the Mediation personally, or in the case of corporations, through their authorised representatives.

## **2. THE MEDIATOR**

2.1 The Parties hereby agree to appoint The Mediator to mediate their dispute.

2.2 The Mediator agrees to mediate this dispute in accordance with this Mediation Agreement and its Schedules.

2.3 The Mediator undertakes the Mediation and is guided and bound by the Codes of Practice of that Organisation and the European Code of Conduct for Mediators which are attached at Schedule One of this Mediation Agreement.

## **3. AUTHORITY AND STATUS**

3.1 The person signing this Agreement on behalf of each Party warrants that they have full authority to bind that Party, and all other persons present on that Party's behalf at the Mediation, (or any part thereof), to observe the terms of this Agreement, and the person signing this Agreement also warrants that they have authority to bind that Party to the terms of any settlement.

3.2 Any restriction on the authorised representative's authority to settle is to be raised with the Mediator prior to the Mediation.

3.3 Neither the Mediator nor "The Mediation Specialists" ("TMS" being the company through which the Parties were introduced to the Mediator) shall be liable to the Parties for any act or omission in relation to the Mediation unless the act or omission is proved to have been fraudulent or involved wilful misconduct on the part of the Mediator, or TMS.

## **4. MEDIATION PROCEDURE**

4.1 The Parties confirm that they have read, understood, and agree to abide by the mediation procedure "The Mediation Procedure" attached hereto at Schedule Two.

4.2 The Mediator is an accredited CEDR Civil & Commercial Mediator, and the Mediator confirms that The Mediation Specialists' Mediation Procedure is consistent with the most recent CEDR Model Mediation Procedure and CEDR's Code of Conduct for Third Party Neutrals current at the date of this Agreement. [Code-of-Conduct-for-Third-Party-Neutrals.pdf \(cedr.com\)](#)

## **5. CONFIDENTIALITY AND WITHOUT PREJUDICE STATUS**

5.1 Every person involved in the Mediation will keep confidential all information arising out of or in connection with the Mediation, including the terms of any settlement, unless otherwise agreed by the Parties in writing but not including the fact that the Mediation is to take place or has taken place or where disclosure is required by law, or to implement or enforce terms of settlement or to notify their insurers, insurance brokers and/or accountants.

- 5.2 Every person involved in the Mediation, whenever the Mediation takes place online, will ensure that only those persons who have received prior authority to engage in the Mediation attend the Mediation and will take steps to ensure that no third party can hear or see the Mediation and the Privacy of the Mediation, and its confidential nature is maintained throughout the Mediation. There will be no live feed, deferred video, or audio relay of the mediation, online or otherwise by any party to any third party. Every person involved in the Mediation agrees not to video or audio record any part of the Mediation. All intellectual property rights are assigned to the Mediators. If a recording is inadvertently or otherwise created the person creating that recording undertakes to destroy such recording as soon as they become aware of its existence.
- 5.3 Every person involved in the Mediation acknowledges that all communications and information passing between the Parties, the Mediator, and/or The Mediation Specialists (TMS), however communicated, is agreed to be without prejudice to any Party's legal position and may not be produced as evidence or disclosed to any judge, arbitrator, or other decision-maker in any legal or other formal process except where otherwise disclosable in law.
- 5.4 Where a Party privately discloses to the Mediator, or TMS any information in confidence before, during or after the Mediation, the Mediator, or The Mediation Specialists will not disclose that information to any other Party or person without the consent of the Party disclosing it, except under the circumstances provided in Section 3 of the Mediation Procedure attached hereto at Schedule Two.
- 5.5 The Parties understand that the Mediator, and TMS do not:  
give legal advice and agree that they will not make any claim against the Mediator, or The Mediation Specialists in connection with this Mediation. The Parties will not make an application to call the Mediator or any employee of and/or consultant of The Mediation Specialists as a witness, nor require them to produce in evidence any records or notes relating to the Mediation, in any litigation, arbitration or other formal process arising out of, or in connection with their dispute and the Mediation; nor will the Mediator nor any employee or consultant of the Mediation Specialists agree to act as a witness, expert, arbitrator, or consultant in any such process. If any Party does make such an application (as listed above), that Party will fully indemnify the Mediator or the employee or consultant of The Mediation Specialists in respect of any costs any or all of them incur in resisting and/or responding to such an application, including reimbursement at the Mediator's standard hourly rate for the Mediator's time spent in resisting and/or responding to such an application.

## **6. SETTLEMENT FORMALITIES**

- 6.1 No terms of settlement reached at the Mediation will be legally binding until set out in writing and signed by, or on behalf of, each of the Parties.

## **7. MEDIATION FEES, EXPENSES AND COSTS**

- 7.1 The Parties will be responsible for the fees and expenses of the Mediator ("The Mediation Fees") in accordance with the terms and conditions of this Agreement, including any additional hours incurred by the Mediator in preparation for the Mediation, in attendance at the Mediation and after the Mediation which are more than the allocated hours).

7.2 Unless otherwise agreed by the Parties and the Mediator in writing, each Party agrees to share the Mediation Fees equally and to bear its own legal and other costs and expenses of preparing for and attending the Mediation (“each Party’s Legal Costs”). However, each Party further agrees that any court or tribunal may treat both the Mediation Fees and each Party’s Legal Costs as costs in the case in relation to any litigation or arbitration where that court or tribunal has power to assess or make orders as to costs, whether the Mediation results in settlement of their dispute.

7.3 Payment of the Mediation Fees is to be made to Ann Encontre (made payable to Ann Encontre), United Nations Federal Credit Union, New York, USA, ABA 226078609, Account No. 20005080972 in accordance with the terms and conditions of business and fee information attached at *Schedule Three of this Mediation Agreement*.

## **8. CONSULTING WITH LEGAL ADVISORS**

8.1 A Party does not require legal representation to attend the Mediation, but it is highly recommended.

8.2 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.

8.3 The Parties recognise that neither The Mediator, nor The Mediation Specialists offer legal advice or act as a legal advisor for any of the Parties of the Mediation.

## **9. TERMINATION OF THE MEDIATION**

9.1 Any of the Parties or the Mediator shall be entitled, in their absolute discretion, to terminate the Mediation at any time without giving a reason.

9.2 The Parties or the Mediator may, at any time, adjourn the Mediation in order to consider further information or specific issues raised during the Mediation, obtain further information or for any other reason which the Parties or the Mediator consider helpful in furthering the mediation process. The Mediator will liaise with the Parties to reconvene the Mediation.

## **10. EXCLUSION OF LIABILITY**

10.1 Neither the Mediator, nor The Mediation Specialists shall be liable to the Parties for any act or omission in connection with the services provided by them in, or in relation to, the Mediation, unless the act or omission is shown to be fraudulent or in bad faith. This exclusion clause applies subject to any applicable law.

## **11. COMPLAINTS PROCEDURE**

11.1 The Mediator is committed to providing a fully satisfactory mediation service for both Parties. The Mediator and the Parties agree that should either Party have a concern over the Mediator’s conduct of the Mediation their concern is to be addressed in accordance with the Mediator’s complaints procedure which is attached at *Schedule Four of this Agreement*.

**12. HUMAN RIGHTS**

12.1 The referral of this dispute to Mediation does not affect any rights that exist under Article 6 of the European Convention on Human Rights. If the dispute is not settled by mediation, the Parties’ right to a fair trial remains unaffected.

**13. LAW AND JURISDICTION**

13.1 This Mediation Agreement is governed by the law of England and Wales and the courts of England and Wales shall have exclusive jurisdiction to decide any matters arising out of or in connection with this Agreement and the Mediation.

**14. CHANGES TO THIS AGREEMENT**

14.1 Any changes to this Agreement and/or the Mediation Procedure are set out below: The mediation will take place online / face to face.

**15. SIGNATURE OF THIS MEDIATION AGREEMENT**

15.1 This Mediation Agreement is to be signed by the instructed legal representative of each Party attending the Mediation (if represented) on behalf of that Party.

15.2 The legal representative is liable for the costs of the mediation in the same way as they are liable for disbursements incurred during litigation.

**A** ..... (Represented by)

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

**B** ..... (Represented by)

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

**C** **ANN ENCONTRE** (the Mediator)

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

**DATE:** \_\_\_\_\_

# **MEDIATION AGREEMENT**

## **SCHEDULE ONE**

### **European Code of Conduct and Civil Mediation Council Code of Conduct.**

#### **European Code of Conduct for Mediators**

### **1. COMPETENCE, APPOINTMENT AND FEES OF MEDIATORS AND PROMOTION OF THEIR SERVICES**

#### **1.1. Competence**

Mediators must be competent and knowledgeable in the process of mediation. Relevant factors include proper training and continuous updating of their education and practice in mediation skills, having regard to any relevant standards or accreditation schemes.

#### **1.2. Appointment**

Mediators must confer with the parties regarding suitable dates on which the mediation may take place. Mediators must verify that they have the appropriate background and competence to conduct mediation in a given case before accepting the appointment. Upon request, they must disclose information concerning their background and experience to the parties.

#### **1.3. Fees**

Where not already provided, mediators must always supply the parties with complete information as to the mode of remuneration which they intend to apply. They must not agree to act in a mediation before the principles of their remuneration have been accepted by all parties concerned.

#### **1.4. Promotion of mediators' services**

Mediators may promote their practice provided that they do so in a professional, truthful and dignified way.

### **2. INDEPENDENCE AND IMPARTIALITY**

#### **2.1. Independence**

If there are any circumstances that may, or may be seen to, affect a mediator's independence or give rise to a conflict of interests, the mediator must disclose those circumstances to the parties before acting or continuing to act.

Such circumstances include:

- any personal or business relationship with one or more of the parties;
- any financial or other interest, direct or indirect, in the outcome of the mediation;
- the Mediator, or a member of his/her firm, having acted in any capacity other than mediator for one or more of the parties.

In such cases the mediator may only agree to act or continue to act if he is certain of

being able to carry out the mediation in full independence in order to ensure complete impartiality and the parties explicitly consent.

The duty to disclose is a continuing obligation throughout the process of mediation.

## **2.2. Impartiality**

Mediators must at all times act, and endeavour to be seen to act, with impartiality towards the parties and be committed to serve all parties equally with respect to the process of mediation.

## **3. THE MEDIATION AGREEMENT, PROCESS AND SETTLEMENT**

### **3.1. Procedure**

The mediator must ensure that the parties to the mediation understand the characteristics of the mediation process and the role of the mediator and the parties in it. The mediator must in particular ensure that prior to commencement of the mediation the parties have understood and expressly agreed the terms and conditions of the mediation agreement including any applicable provisions relating to obligations of confidentiality on the mediator and on the parties.

The mediation agreement may, upon request of the parties, be drawn up in writing. The mediator must conduct the proceedings in an appropriate manner, taking into account the circumstances of the case, including possible imbalances of power and any wishes the parties may express, the rule of law and the need for a prompt settlement of the dispute. The parties may agree with the mediator on the manner in which the mediation is to be conducted, by reference to a set of rules or otherwise. The mediator may hear the parties separately if s/he deems it useful.

### **3.2. Fairness of the process**

The mediator must ensure that all parties have adequate opportunities to be involved in the process.

The mediator must inform the parties, and may terminate the mediation, if:

- a settlement is being reached that for the mediator appears unenforceable or illegal, having regard to the circumstances of the case and the competence of the mediator for making such an assessment, or
- the mediator considers that continuing the mediation is unlikely to result in a settlement.

### **3.3. The end of the process**

The mediator must take all appropriate measures to ensure that any agreement is reached by all parties through knowing and informed consent, and that all parties understand the terms of the agreement.

The parties may withdraw from the mediation at any time without giving any justification.

The mediator must, upon request of the parties and within the limits of his competence, inform the parties as to how they may formalise the agreement and the possibilities for making the agreement enforceable.

#### **4. CONFIDENTIALITY**

The mediator must keep confidential all information arising out of or in connection with the mediation, including the fact that the mediation is to take place or has taken place, unless compelled by law or grounds of public policy to disclose it. Any information disclosed in confidence to mediators by one of the parties must not be disclosed to the other parties without permission, unless compelled by law.



## SCHEDULE TWO

### **Mediation Procedure**

**(This Mediation Procedure is broadly based on the CEDR Model Mediation Procedure - 2020 edition)**

#### **1. WHAT IS MEDIATION?**

Mediation is a process for negotiating a resolution of a dispute. It is conducted by an impartial professional known as a mediator. The mediator is a facilitator of discussions and negotiations between the parties with a view to resolving the dispute and concluding negotiations with a settlement agreement which the lawyers for the parties then record in writing.

##### **1.1 The characteristics of mediation.**

- A swift process taking little time to set up and usually only taking one day of negotiations to conduct.
- Highly effective with an eighty percent success rate.
- Even if mediation is unsuccessful, it can still be highly effective in narrowing the extent of the issues between the parties that require litigation or arbitration.
- Inexpensive in comparison to litigation.
- In some judicial systems there is an increasing expectation, or even requirement, that parties will mediate first before taking their dispute to court.
- Can take place regardless of whether litigation or arbitration has already commenced. If litigation is contemplated, mediation can be used first. If litigation or arbitration is under way mediation can still be used if parties agree subject to the Court ordering otherwise.
- Enables parties to maintain control of the outcome of a dispute and reach creative solutions bespoke to their needs without abdicating responsibility to a judge or adjudicator who will impose a solution without reference to the commercial or emotional requirements and needs of parties.
- Saves time and energy and makes commercial and emotional sense.
- Confidential; the outcome of mediation cannot be referred to in litigation without the consent of all parties.
- Requires party representatives to have requisite authority to settle.
- A flexible process that can be tailored to the parties' needs in consultation with the mediator.
- Encourages creative and constructive outcomes that suit both parties' ongoing needs which is especially important where there is a likelihood or requirement for an ongoing relationship between the parties.
- Suitable for national and international disputes, two-party and multi-party disputes.
- If parties are unable to reach a settlement through mediation, they can revert to litigation or arbitration.

#### **2. DECIDING TO MEDIATE AND WHICH MEDIATOR TO CHOOSE**

A decision to mediate can result from:

- a voluntary approach to a mediator by one party or both parties jointly. If one party initially approaches a mediator, the mediator will ask that party to invite the other party to also contact the mediator.
- responding to a Pre-action Protocol, Court Rules, a Court Order, or a recommendation by a judge before trial or appeal.
- a commercial or government contract may have an ADR clause which stipulates that mediation must be used as a means of resolving a dispute between parties.
- a public sector or industry policy framework or policy which may have provisions that require mediation to be used.

If mediation is a requirement of a pre-existing process (contract, policy framework or court order, for instance) then the mediator will request that a copy of the document referring the matter to mediation is provided.

### **2.1 Choosing a mediator:**

- Whilst all mediators are trained to and capable of mediating any civil & commercial dispute, parties may decide to choose a mediator who has the most relevant experience for their particular dispute.
- Both parties may have a particular mediator in mind and agree to instruct a specific mediator.
- Alternatively, a selection can be made from the panel by each participant and any mutual choice can then be appointed.
- The parties may not be able to decide on a mutually acceptable mediator in which case the parties can ask The Mediation Specialists to nominate one mediator from the panel or recommend names from the panel (The Mediation Specialists' Appointment Service).
- A court order or a contract may nominate a specific mediator.
- Alternatively, the court may order the use of The Mediation Specialists' Appointment Service.

### **2.2 The Mediation Specialists' Appointment Service**

Both parties will be equally responsible for paying for the fees for The Mediation Specialists' Appointment Service ("the Appointment Service") unless otherwise agreed in advance or the Court orders otherwise.

The Appointment Service is activated by way of the parties making contact with the Director of The Mediation Specialists, Sheila Gooderham, on the Home page of The Mediation Specialists' website. Upon being notified that the Appointment Service is required The Mediation Specialists will appoint a mediator within 14 days of being notified that a dispute requires the use of the Appointment Service.

If the Appointment Service is required, The Mediation Specialists will only nominate or appoint a mediator who, in its view, possesses the relevant skills and experience to mediate the dispute for the parties effectively and for whom there is no conflict of interest in the provision of mediation services to the parties (see below). Upon selection by The Mediation Specialists, the mediator and the parties must immediately inform The Mediation Specialists if they are aware of the existence of any conflict of interest or any other reason why the mediator cannot act as a neutral third party in the mediation. If such circumstances arise which preclude the mediator from mediating, then, upon notification, The Mediation Specialists will select another mediator

and this process will be repeated until a mediator who is free from conflict of interest and available to mediate can be identified.

## **2.3 Mediation Observers and Co-Mediators**

The Mediation Specialists are committed to developing and enhancing mediation skills of all mediators and improving the mediation experience of all parties to mediation. As part of its commitment to the furtherance of the mediation profession and participant's engagement in mediation, an observer or co-mediator may be appointed by The Mediation Specialists to attend a mediation at no additional cost to the parties provided that the observer and/or co-mediator has no conflict of interest with either party and there is no other reason which would make the observer/co-mediator unsuitable to attend the mediation.

The identify of any observer or co-mediator proposed by The Mediation Specialists to attend the mediation will be made known in advance of the mediation to the parties, who are free to object to any such nomination or decline any such appointment. The observer and/or co-mediator will also comply with the mediation procedure and their professional codes of conduct as trained mediators.

The signature of the mediator on the Mediation Agreement will bind any observer or co-mediator attending the mediation to the terms of the Mediation Agreement. All references to the mediator in the Mediation Agreement are to be taken to indicate the plural in relation to the co-mediator and/or any observer.

The mediator may appoint a co-mediator at no additional cost to the parties where:

- The mediator considers it may be in the general interests of the parties to do so, and the parties' consent, and a mediator from the panel has requested the opportunity to co-mediate with the mediator and is willing and available to co-mediate.

A co-mediator may be appointed by the mediator at additional cost to the parties where:

- There are more than two parties to a mediation and the mediation will benefit from co-mediators.
- The specific experience or expertise of an additional mediator is required to enhance the mediation process.
- There are additional factors such as cultural and nationality factors or specific technicalities in the case that may benefit from an additional mediator.
- Parties specifically request co-mediation.

## **3. IMPORTANT CONSIDERATIONS**

### **3.1 The Mediator as a Third-Party Neutral**

If prior to, or at any point during the mediation process, the mediator becomes aware that there is any actual, apparent or potential conflict of interest or reason why the mediator should discontinue to manage the mediation, the mediator will disclose this to the Parties and having done so will not act, or continue to act, in the Dispute unless the Parties specifically acknowledge such disclosure and agree to the mediator continuing to act in the mediation process.

Such actual or potential conflicts of interest include, but are not limited to:

- any personal or business relationship with any of the parties;
- any financial or other interest in the outcome of the mediation;

- having acted (either personally or through the mediator's own firm or business) in any capacity other than as a mediator in another process for any of the parties;
- being in prior possession of any confidential information about any of the parties or about the subject-matter of the Dispute (but excluding any confidential information given to the mediator by one of the parties while acting as mediator in relation to the Dispute)
- any such matters involving a close member of the mediator's family.

The mediator will not (nor will any member of the mediator's own firm or business or close family) act for any of the parties individually in relation to the Dispute either while acting as mediator or at any time thereafter, without the written consent of all the parties.

### **3.2 Confidentiality and the Law**

Unless otherwise agreed between the parties in writing, this mediation procedure provides that what happens within the mediation process is to be treated as confidential by the parties, the mediator and The Mediation including the terms of settlement.

However, the fact that mediation is to take place or has taken place is not normally made confidential as one or both parties may wish to claim credit for agreeing to engage in mediation or may have been directed to attend mediation by a public court. If it is desired that the fact that mediation is taking place should be confidential then the Mediation Agreement can be amended to this effect to reflect the mutual desire of both parties.

The Mediation Specialists is also bound by confidentiality and will keep confidential information which the mediator may share with The Mediation Specialists for the purposes of case reports, professional development and training or queries regarding professional conduct.

In addition to circumstances where the parties may agree in writing to waive confidentiality in situations which would normally be considered confidential, there are rare circumstances where the confidentiality of the mediation process cannot be preserved such as:

- The mediator, or any party or their representative is required by law to make disclosure.
- 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.
- The mediator reasonably believes that there is a serious risk of being personally subject to criminal proceedings unless the information in question is disclosed. This may arise, for instance, in relation to duties under the Proceeds of Crime Act 2002 or related legislation or any other legislation.

**NB:** Legal Representatives (who may also have a comparable duty to disclose information in their own capacity) must take full responsibility for advising their clients of the implications in relation to any such matters before and during a mediation.

### **3.3 Insurance**

To conduct the mediation, the Mediator will have in place adequate Professional Indemnity Insurance with a responsible insurer against such risks as may arise in the performance of the mediator's duties as a third-party neutral in the mediation.

### **3.4 The Mediation Agreement**

A copy of a standard draft Mediation Agreement, including schedules, can be found on the mediator's website.

It is important that all parties read and understand the Mediation Agreement in advance of mediation commencing as it forms the legal basis for the mediation.

The mediator will

- send a draft Mediation Agreement to the legal representatives of the parties (or the parties directly if not legally represented) that reflects the parties' initial instructions and any recommendations made by the mediator.
- amend the draft Mediation Agreement as necessary by the mediator with the consent of both parties.
- Send the final version of the Mediation Agreement to the parties' legal representatives and require the legal representatives (or unrepresented parties) to sign the mediation agreement.

In recognition of the terms under which the parties and the mediator are engaging, it is the mediator's standard practice for all the parties to the dispute and the mediator to sign the mediation agreement before any substantive work on preparation for the mediation is undertaken by the mediator beyond initial discussions with the legal representatives or the parties themselves if not legally represented.

### **4. PREPARING FOR THE MEDIATION DAY**

Once the mediator (and co-mediator where applicable) has been appointed through the signing of the mediation agreement, the lead mediator (who has signed the mediation agreement) will make the necessary arrangements for the mediation as agreed by the parties or under the terms of any scheme which applies to the parties.

In advance of the mediation, the Mediator will:

- Speak to the legal representatives of both parties (if the parties are legally represented) or the parties in person if they are not.
- Prepare a list of all proposed attendees at the mediation, which includes details of each attendee's role in the mediation and circulate this list to all parties for approval prior to the mediation taking place.
- Seek agreement of both parties on the time and date of mediation and whether the mediation is going to take place online or in person.
- If online mediation is agreed, seek clarification whether all parties are familiar with Zoom meetings and arrange a trial pre-mediation Zoom session to address technical competence issues so that the mediation day runs as smoothly as possible.
- If the mediation is to take place in person, require that the parties agree venue arrangements and seek confirmation that the parties have arranged and paid for the mediation venue and any catering required for the mediation day.
- Set up and attend pre-mediation meetings, if needed, on terms and according to agendas agreed by the parties and the mediator.
- Contact a representative from each of the parties before the mediation date to discuss any relevant issues and prepare for the mediation.

- Arrange and circulate an agreed list of pre-mediation documents, including case summaries and document bundles and a timetable for the exchange of documents between the parties and the mediator in good time and in advance of the mediation day.
- **NB:** To avoid late delivery of documentation which could compromise the assimilation of information by either party or the mediator, and thus compromise the mediation process itself, **only documents exchanged at least two clear working days before the mediation day will be included within the mediation by the mediator.**
- Read each case summary and document bundle submitted in good time in advance of the mediation by the parties.
- Continually ensure that the CEDR Code of Conduct for Third Party Neutrals is complied with and should at any time it come to the attention of the mediator that a conflict of interest has arisen or other relevant matter (subject to confidentiality and privilege) report this to the parties immediately.

The parties will:

- Agree to select the mediator or a process by which the mediator will be selected.
- Either directly or indirectly engage with the mediator over mediation arrangements.
- Inform the mediator of the names and roles of all those attending the mediation on their behalf.
- Find a suitable venue, date, and start time and agree this between themselves and with the mediator or agree to mediate online.
- Ensure the lead negotiator with full authority to settle signs the Mediation Agreement once provided by the mediator.
- Ensure that a lead negotiator who has full authority to settle the dispute attends the mediation and is always available to sign the settlement agreement on the day Pay the mediator's fees and expenses in accordance with the mediator's Terms & Conditions of business.
- Adhere to the pre-mediation timetable which each party has agreed with the mediator and exchange their case summaries and any agreed and requisite document bundle needed for the mediation with each party and with the mediator in accordance with the pre-mediation timetable and as soon as possible and in any event **no less than one week prior to the mediation date** to give the mediator and the other party sufficient time to read prior to mediation commencing.
- If it is a party's intention that all or any part of a case summary or documentation is intended to be confidential to the mediator only, make it clear to the mediator that this is the case.
- **No less than one week prior to the mediation date**, ensure that the mediator is made aware of whether case summaries have been exchanged between the parties and if not, whether the mediator is needed to effect exchange.
- **NB:** Late submission of documents to either the mediator or the other party may be indicative that the party who is not adhering to the agreed timetable is acting in bad faith in terms of their involvement in the mediation process as failing to meet document exchange timetable commitments can undermine the mediation process and jeopardise the prospects of success.
- **NB:** To avoid late delivery of documentation which could compromise the assimilation of information by either party or the mediator, and thus compromise the mediation process itself, **only documents exchanged at least two clear working days before the mediation day will be included within the mediation by the mediator.**

- Ensure that a lead negotiator who has full authority to settle the dispute is available to attend the mediation and is always available on the mediation day to sign the settlement agreement.
- In the event that the lead negotiator has only limited authority to settle, the mediator must be notified as soon as possible and (unless there is a very good reason to the contrary) the other parties also need to be notified of any limitation on authority to settle, for instance lack of legal capacity, or the need for ministerial committee, court approval, or board ratification, in which case the lead negotiator will need to have power to recommend acceptance of any settlement. Late disclosure of any limitations on authority to settle can lead to questions as to whether that party is acting in good faith in participating in mediation and is likely to have a detrimental effect on the prospects of resolving the dispute through mediation.

#### **4.1 Documents**

A benefit of mediation is that its success is not dependent on exhaustive disclosure of documentation making it a swifter and more cost-effective process.

Mediation bundles are generally limited in size in that they only contain key documents and brief case summaries.

The mediator can facilitate simultaneous exchange of bundles if required to do so.

Documents which are created strictly for the purposes of mediation, such as case summaries, are privileged and cannot be referred to in any later court proceedings. However, documents which would normally be disclosable in court proceedings, but which are being produced for the first time in mediation do not generally have privileged status and can therefore usually be disclosed in any later court proceedings. However, it is the responsibility of each party to take legal advice on the status of their documentation.

**Confidential documents:** There are some documents which a party may wish to be treated as confidential and to be disclosed to the mediator only and not the other party. These undisclosed documents may include, for instance, counsel’s advice, an expert report, draft proof of evidence, or a confidential briefing specifically for the mediator. All such documents that are to remain confidential **MUST** be clearly marked as confidential and instructions given to the mediator that the documents are not to be disclosed to the other party.

### **5. THE MEDIATION DAY**

#### **5.1 Professional advisors:**

It is standard practice for professional advisors, especially lawyers for each party, to attend the mediation day and they play an important role in providing support and advice to their clients throughout the day, advising on fact, evidence and law and negotiating on their clients’ behalf, advising on the consequences of settlement and legal costs and drafting the settlement agreement and any consent order.

#### **5.2 Recording and note taking:**

Whether mediation takes place in person or online, there must be no verbatim recording either by video, audio, streaming, or transcript taken of the mediation by the parties, their legal advisors, the Mediator, or any other participant in the mediation. Participants can make private notes which

are not disclosable to anyone else and cannot be used in any subsequent litigation or arbitration. If any recording is taken inadvertently or otherwise that party undertakes to destroy any such recording/copies as soon as they become aware of its existence.

### **5.3 The process on the mediation day:**

Regardless of whether mediation takes place online or in person, each party will have either a virtual or actual private room in which they and their representatives can conduct private discussions. Throughout the day the mediator will spend some time in the private room of each party discussing the dispute on a confidential basis.

Generally, should everyone agree, there will also be a (virtual or actual) joint meeting room in which all parties will meet with the mediator. Usually, a joint meeting will take place towards the beginning of the day and there may be further joint meetings during the day should the mediator and the parties all agree that it would further the resolution of the dispute to all be in the same room. Sometimes legal representatives only will meet without the parties if this is agreed to be beneficial for the resolution of the dispute. It will be up to the mediator to craft the mediation process to meet the specific needs of the parties on the day.

As the mediator is responsible for facilitating the discussions and negotiations throughout the course of the mediation day, the mediator will chair any joint meetings and take responsibility for determining, in consultation with the parties, the best possible mediation process in terms of the balance between private meetings and joint meetings.

Generally, the stages of the mediation process for an in-person mediation day proceeds as follows.

- The mediator has short Initial preliminary meetings with each party as they arrive at the venue in which the mediator reminds parties of how mediation works, its confidential nature and what to expect next. If suitable a decision is made on whether to have a joint meeting.
- The mediator hosts a joint meeting with all parties present during which each party will be invited to give an oral presentation of their perspective on the dispute.
- After the joint meeting the parties retire to their private rooms and negotiations commence with the mediator shuttling between the private rooms.

### **5.4 Timekeeping on the mediation day and attendance of those with authority to settle.**

The one-day model of mediation requires everyone to attend promptly on the day in order to make best use of time and so it is recommended, if there is significant travel to a mediation venue, that local overnight accommodation is arranged for the night prior to and after the mediation day as it is possible for a mediation to last beyond the hours of a standard working day. Therefore, it is also important that the key people engaged in the mediation and particularly those who have authority to settle are always available in person or at worst, by telephone or video conference for as long as the mediation continues. If any attendee has time constraints, this needs to be reported to the mediator as soon as it is known as any unavailability, including delayed arrival or unexpected departure, could be detrimental to the mediation, be perceived as disrespectful by others and may lead to a premature end to the mediation.

## **6. THE ENDING OF THE MEDIATION**

There are several ways in which a mediation may end:



- The dispute is resolved, and a settlement is reached, in whole or in part. If this is the case the terms upon which the dispute has been resolved will be written down and form a settlement agreement (or drafted as a court order). The parties will sign the agreement and the agreement will then be binding upon them.
- There may be a tentative agreement, “an agreement in principle” with both parties agreeing to draft a binding agreement after the mediation day.
- The mediator may advise the parties that there is no prospect of reaching a settlement that day.
- One or more parties deciding to end the mediation without achieving a settlement.
- An agreement to adjourn the mediation for the time being and to reconvene at a time to be agreed by the mediator and the parties.
- By withdrawal of the mediator due to the mandatory or optional circumstances specified below.
- By production of a mediation summary document or recommendations by the mediator, if requested, by all parties and agreed by the mediator.

### **6.1 Withdrawal by the Mediator**

The Mediator will cease to act in the mediation of the dispute at any time if:

- Asked to do so by a party unless the parties have agreed to a procedure which includes a binding decision to conclude their dispute through the mediation.
- Continuing to act in the mediation would be in breach of the mediator’s code of practice.
- One or more of the parties is asking the mediator to act or refrain from acting in a way which would be in material breach of the mediator’s code of practice or in breach of the law.
- In the Mediator’s own discretion, after such consultation with the parties as the mediator deems necessary and appropriate under the circumstances (taking account of the mediator’s obligations concerning confidentiality) the mediator concludes that one or more of the parties is in material breach of the Mediation Agreement and this mediation procedure.
- Any of the parties is acting in an unconscionable or criminal manner.
- The Mediator concludes that continuing with the mediation is unlikely to result in a settlement.
- Any of the parties allege that the mediator is in material breach of the Mediator’s code of practice.

### **6.2 The Settlement Agreement as the conclusion of mediation**

The legal representatives for both parties are responsible for drafting the settlement agreement. The mediator will facilitate the drafting process.

Where court proceedings in respect of the dispute have not yet started, the settlement agreement will (if this is the parties’ intention) be a legally binding and enforceable contract.

If legal action has already commenced in relation to the dispute, then it is standard practice for the legal representatives to an agreed consent order either at the mediation or after and

lodge the relevant tribunal or court to end proceedings in the terms agreed. At the mediation parties should agree who will be responsible for lodging the consent order.

### **6.3 Continuing discourse in the days and weeks following the mediation.**

If it is not possible to reach a complete settlement on the mediation day, the mediator will contact the parties after the mediation day to see if further progress can be made. Some disputes, taking account of the options and progress made on the mediation day, just take a bit more time for all parties to reflect on what has happened during the mediation day and then decide how best to proceed. It is not uncommon for a dispute to settle shortly after the mediation day and usually directly because of the progress made on the mediation day.

Where the Mediator agrees to stay in contact with the parties after mediation and continue to facilitate discourse, the provisions of the mediation agreement will apply to those communications with and/or including the mediator.

If a settlement agreement is not reached on the day of mediation or in the immediate aftermath, the mediator, if requested and agreed by both parties and the mediator, may produce a non-binding opinion or recommendation in order to progress the matter constructively.

### **6.4 Feedback**

After the mediation, the mediator will be in contact with both parties and their legal representatives to seek feedback on everyone's perspective on the mediation service provided by the mediator as part of the mediator's ongoing commitment to learning, improving the experience for parties and professional development.

### **SCHEDULE THREE**

#### **Terms and Conditions of Business including Fees and Expenses**

1. Both parties will be equally responsible for paying for the fees for The Mediation Specialists' Appointment Service ("the Appointment Service") unless otherwise agreed in advance or the Court orders otherwise.
2. The initial mediation arrangement fee ("The Arrangement Fee") is payable at the beginning of the mediation process. It is due once both parties have agreed to instruct the mediator, any amendments to the draft mediation agreement have been made and the Mediator has sent the finalised mediation agreement to both parties for signature.
3. Any expenses payable will be agreed (for instance for long distance travel and accommodation for the Mediator) in advance and specified in the mediation agreement or otherwise in writing and agreed between the Mediator and both parties.
4. The Mediator will only commence preparation for the mediation once The Arrangement Fee has been paid in full.
5. Mediation fees and expenses are shared equally between both parties unless otherwise specified in the mediation agreement.
6. Legal representatives are responsible for making payment of all mediation fees and expenses on behalf of the parties as they would be in respect of any other disbursement.
7. For the purposes of these terms, any reference to fees or expenses automatically includes any VAT or taxes due.
8. The parties, through their legal representatives, are responsible for arranging meeting room hire and catering for the mediation day and making payment for the mediation day accommodation and expenses direct with the provider of those services.
9. It is the Mediator's responsibility to ensure they have a Zoom Pro licence for the provision of online mediation services. It is for the legal representatives to ensure that they, and the parties, have adequate access to facilities that will enable online mediation to take place.
10. After the mediation day, the final invoice will be submitted by the mediator for any additional hours incurred over and above those covered by The Arrangement Fee. If agreed expenses have yet to be paid, this final invoice will include those expenses. Invoices will be sent by email and receipted invoices will also be sent by email.
11. All invoices are due for payment within seven days of the invoice date. Interest will accrue on any unpaid invoices.
12. All invoices for mediation fees and expenses are due for payment, in Euros.
13. All fees and expenses are payable to  
Account Name: Ann Encontre,  
Bank: United Nations Federal Credit Union, (UNFCU) New York, USA  
ABA 226078609,

Account Number: 20005080972,  
Quote the invoice number as a reference.

### **Fees**

The Appointment Service: £250.00 (in accordance with The Mediation Specialists' separate terms and conditions if this service is required).

#### Mediation:

The Arrangement Fee: €5,000.00, based on two parties (at 5 hours preparation - including reading, communication with parties, drafting - and 8 hours on the mediation day - the standard mediation day being 9am to 6pm with one hour lunch).

Additional hours: €400.00 per hour.

14. Cancellation must be given in writing to the Mediator.

## **SCHEDULE FOUR**

### **Complaints Procedure**

The Mediator is committed to providing the parties with the best possible mediation service. Communication is essential to all good relationships and, as such, the mediator will always endeavour to assist with any concerns that legal representatives and parties may have regarding the mediation process and the mediator's service.

Initially it is requested that any concerns should, where appropriate, be initially raised with the Mediator orally or in writing on an informal basis so that any issues can be swiftly addressed.

However, if an informal approach does not resolve concerns or the complainant does not consider the concerns can suitably be addressed by an informal approach, then the following formal complaints procedure applies:

1. A formal letter of complaint (or email) is to be sent to the Mediator containing the following;
  - Name, address and contact details of the complainant.
  - The name of the Mediator.
  - A clear description of the concerns/complaint.
  - Details of any suggestions or ideas as to how the matter could be resolved to the satisfaction of the complainant (if applicable).
  - Copies of any relevant correspondence or documents related to the complaint.
2. The Mediator will acknowledge receipt of the complaint in writing within 5 working days of the date the complaint is received.
3. The Mediator will provide a substantive written reply to the complaint within 21 working days of the date the complaint is received.
4. If the complainant is dissatisfied with the outcome of the mediator's investigation of the complaint and the mediator's recommendations as to how the complaint can be resolved, then the complainant will be referred to the mediator's registered professional body.