

## **Face to Face Terms of Appointment**

1. The parties to the dispute in question, Paul Houghton Mediation Limited (“PHM”), and Paul Houghton will enter into an agreement based upon this document under which PHM will procure the services of Paul Houghton (“the Mediator”) to act as mediator. This Document will be incorporated into and will form part of the Agreement to Mediate between the parties, PHM and the Mediator.

## **PHM**

2. PHM will procure the appointment of Paul Houghton as mediator for the purposes of the dispute between the parties. All payments should be made to PHM by direct bank transfer.

## **The Mediator**

3. The Mediator will:

Attend any meetings or hold discussions with any or all of the parties prior to the mediation if requested to do so by any of the parties, if the Mediator decides that this would be appropriate, and if the Parties agree terms as to costs;

Before the Mediation, read any case summary and documentation sent to him

Decide upon the appropriate procedure for, and thereafter conduct the Mediation

Assist (if necessary) the parties in drawing up any written settlement agreement

Abide by the European Code of Conduct for Mediators.

The Mediator will not act for any of the Parties individually in connection with the dispute in any capacity, during the currency of this Agreement. In signing the Agreement to Mediate, the Parties accept that in relation to the dispute, the Mediator is not an agent of, nor acting in any capacity for any of the Parties. The Parties and the Mediator accept that the Mediator is acting as an independent contractor.

## **Participants**

- 4 Each party will state in the Agreement to Mediate the names of:

The person(s) who will be the Lead Negotiator(s) for that Party, who must have full authority to settle the dispute;

any other person(s) who will be present at the Mediation in any capacity for any Party.

The person signing the Agreement to Mediate on behalf of a Party (usually the parties' representative) will be deemed to be agreeing on behalf of both the Party that he/she represents, and all persons present on that Party's behalf at the mediation, to be bound by the provisions of this Terms of Appointment Document, and the Agreement to Mediate.

## **Documents**

- 5 Each Party will send to the Mediator, **at least ten days prior to the Mediation** - or by such other date as may be agreed between the Parties and the Mediator - a Case Summary/Position Statement setting out that Party's case in the particular dispute, and also copies of all of the documents to which the Case Summary refers, and any others to which a Party may want to refer to during the Mediation.

Any Party may send the Mediator and/or bring to the Mediation further documentation which it wishes to disclose in confidence to the Mediator, but not to another Party - provided that such documentation should be clearly identified in writing as being confidential to the Mediator.

The Parties should try to agree upon the documentation to be used at the Mediation, and a single paginated bundle should be provided to the Mediator - if possible.

## **The Mediation**

- 6 The Mediation will take place at the place and time stated in the Agreement to Mediate.

No recording or transcript of the Mediation will be made, and no notes of the Mediation will be retained by the Mediator.

## **The Settlement Agreement**

- 7 Any settlement agreement 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.

## **Termination**

- 8 Any of the Parties may withdraw from the Mediation at any time and (if prior to the mediation), should immediately inform the Mediator and other Parties, or their representatives, in writing.

The Mediation will terminate when any of the following occurs:

- a Party withdraws from the Mediation, or
- a written settlement agreement has been concluded, or
- the Mediator and/or the parties decide that continuing the Mediation would be unlikely to result in a settlement, or
- the Mediator decides he should retire for any of the reasons contained within in the European Code of Conduct.

Further, the Mediator reserves the right to terminate or adjourn the mediation without cause.

## **Stay of Proceedings**

- 9 Any litigation or arbitration in relation to the dispute may be commenced or continued notwithstanding the Mediation unless the Parties agree otherwise or a court so orders

## **Confidentiality**

- 10 Every person involved in the Mediation will keep confidential and will not use for any other purpose whatsoever:

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;

all information (whether given orally, in writing or otherwise) arising out of or in connection with the Mediation including the facts of any settlement and its terms,

All information (whether oral or in the form of documents, tapes, hard drives etc) arising out of, or in connection with, the Mediation will be without prejudice, privileged and not admissible as evidence or discloseable in the current or subsequent litigation or any other proceedings whatever. This will not apply to any information which would have been admissible or discloseable in any such proceedings in any event.

The parties shall be free to agree changes to this requirement in relation to any settlement reached to allow necessary information to be passed to third parties as may be required by particular circumstances.

The preceding clauses of this section will not apply where any such information is necessary for the enforcement or implementation of a settlement agreement, or where otherwise required by any statutory enactment.

None of the Parties will seek to call the Mediator to give any evidence of any sort before any court or tribunal or otherwise, as regards the conduct, content or outcome of, the Mediation. The Mediator would not give such evidence without the written agreement of all the Parties.

The Mediator will maintain confidentiality in all aspects of the Mediation unless required to disclose any details of the process and actions of the parties - whether in the mediation or otherwise – as required by any rule of law or decision of an appropriate Court.

In the event of either party seeking to obtain information/evidence from the mediator in relation to any aspect of the mediation, the parties will meet the reasonable costs and expenses incurred by the mediator either in seeking representation to resist any such request, and/or in providing such information should it be ordered to be produced.

Paul Houghton Mediation Ltd is registered with the Information Commissioner's Office with certificate Reference number ZA473644

All information provided to the Mediator in respect of each mediation will be treated as confidential. With the exception of case summaries/position statements which are retained solely for research and statistical analysis, and documents forming the contractual basis of the appointment of the Mediator, all other documents – including notes taken by the Mediator (if any), will be deleted from media maintained by the Mediator 4 weeks after the mediation has been held. All hard copy documentation will be destroyed immediately after use.

### **Fees and Expenses**

- 11 The Parties will meet the fees of the Mediator (together with any VAT), in equal shares between themselves – unless the parties and the mediator agree a different basis.

Each Party will bear its own costs of preparation for and participation in, the Mediation

Notwithstanding the previous paragraph, the parties shall be free to agree between themselves how the costs should be dealt with by the court in the event that the mediation is unsuccessful, and the proceedings have to continue, but such agreement will not impact on the parties' obligations to meet the fees of the Mediator as set out above.

Solicitors will be expected to instruct PHM Ltd and make payment of fees, on an agency basis (making the respective law firms primarily liable for their client's proportion of those fees).

In the event of a cancellation of the Mediation within 2 working days of it taking place, the fees remain payable in full.

In the event of earlier cancellation taking place after the date on which the documents are delivered, a fee for consideration of the documents at a rate of £400 plus VAT per hour or part thereof will be payable. It will be based upon time actually spent in such consideration, and will be payable equally by both parties unless a separate agreement has been reached.

Any cancellation at any time will render the parties (or their solicitors if an agency appointment has been agreed) liable to the mediator in relation to any expenses already incurred by the mediator at the time of cancellation, provided that the mediator had agreed with both parties (or their solicitors/representatives) that those expenses could be incurred.

All invoices in relation to the mediation are due on presentation and are to be paid by direct bank transfer.

All invoices will be sent (where possible) by email as PDF copy documents. Hard copies will only be sent on request.

### **Exclusion of Liability**

- 12 The Mediator will not be liable to any of the Parties for any act or omission in connection with, or arising out of, the Mediation or the preparation for it, unless such act or omission is committed in bad faith.

### **Complaints**

- 13 In the case of any complaint, this should be made in writing to the Mediator. It will be acknowledged within 5 days and responded to by the Mediator within 21 days.
- 14 The Mediator is a member of the Association of Northern Mediators ("ANM"), which maintains its own complaints process. In the event that a party is dissatisfied with the Mediator's response provided under 13 above, it may, within 21 days of receipt of the Mediator's response, request a review by a mediator nominated by the ANM. The Association's contact details are available on its website – [www.northernmediators.co.uk](http://www.northernmediators.co.uk).
- 15 Following the procedure at 14 above, if the finding is not accepted, there may be a further appeal available to the Civil Mediation Council (CMC). Details of the CMC's appeal processes can be found here: <https://civilmediation.org/for-the-public/complaints/>