



# MEDIATION AGREEMENT

## 1. Definitions

"Party 1" is [ ] represented by [ ]

"Party 2" is [ ] represented by [ ]

Party 1 and Party 2 are individually "a Party" and collectively "the Parties"

"The Mediator" is Simon Goldring

"The Mediation Fee" is £[ ] per Party

"The Mediation Meeting" is on [ ]

"The Mediation Period" is from [ ] to the date of the termination of the Mediation

"The Dispute" means the dispute between the Parties as set out in [ ]

"The Mediation" means the process where the Mediator assists the Parties to resolve the Dispute during the Mediation Period, including at the Mediation Meeting, which may be held in person or virtually.

## 2. Expectations and Confidentiality

2.1. The Parties wish to submit to the Mediation.

2.2. The Mediator shall work diligently and shall act in good faith and impartially during the Mediation;

2.3. The Parties shall act in good faith during the Mediation and they shall have at least one representative at the Mediation Meeting who has authority to settle the Dispute;

2.4. The Mediation is private and confidential;

2.5. All communications between a Party and the Mediator created during the Mediation shall be subject to litigation privilege and be confidential;



- 2.6. All communications between the Parties made for the purpose of the Mediation, including those relayed via the Mediator, are made “without prejudice”.
- 2.7. Any documents (in any format) provided to the Mediator or to the other Party for the purpose of the Mediation shall be kept confidential and where those documents are privileged, there shall be no waiver of privilege;
- 2.8. The Parties shall agree in advance who will attend the Mediation Meeting. Any third parties who are not bound by the confidentiality terms of this Agreement (such as experts, accountants or insurers) who so attend shall agree to be bound by section 2 of this Agreement, by signing the attached Schedule;
- 2.9. If during the Mediation it is necessary for a Party to obtain input from a professional advisor, funder, expert, insurer or reinsurer who has not entered into such confidentiality agreement then it may disclose only that part of the confidential information that is strictly necessary to obtain such input and on the basis that the recipient is informed of the confidentiality of the information and agrees to maintain that confidentiality and on the basis that there is no waiver of privilege.
- 2.10. The Parties shall not make any recording of any part of the Mediation Meeting and agree that any such recording, or transcript of a recording, or any notes of the Mediation Meeting shall not be admissible as evidence in any subsequent legal process.
- 2.11. Of particular importance to virtual mediations, but not limited to them, the Parties shall immediately inform the Mediator if any person who was not identified as participating in the Mediation Meeting attends that meeting by any means, including by telephone link.
- 2.12. As part of any settlement agreement, the Parties may agree to alter these confidentiality provisions to include the sharing of necessary information with professional advisors, regulators, insurers or reinsurers.

### **3. Mediation Fee and Mediation Costs**

- 3.1. Each Party shall pay to the Mediator the Mediation Fee and this shall be payable seven days prior to the date of the Mediation Meeting;
- 3.2. Where the termination of the Mediation is more than one clear day before the agreed date of the Mediation Meeting, the Mediation Fee shall be reduced by



50% and if a refund is due to a Party then the Mediator shall make that refund within seven days of the termination of the Mediation;

- 3.3. Where the agreed date of the Mediation Meeting is changed the Mediator shall increase the Mediation Fee by the amount of any non-recoverable expenses, but not if the change was at the request of the Mediator;
- 3.4. Any other costs incurred by a Party in the Mediation shall form part of their costs in the Dispute, unless the Parties agree otherwise.

#### **4. Mediator's liability and involvement in the Dispute**

- 4.1. The Parties agree the Mediator shall have no liability to them for any act, omission, statement or opinion, including negligent ones, made in connection with the Mediation although this exclusion of liability shall not apply where the Mediator has acted dishonestly;
- 4.2. The Parties agree that any statements made by the Mediator shall not be regarded as advice to them and they agree they shall not rely on any such statements in deciding whether or not to settle the Dispute;
- 4.3. The Parties agree they shall not make any claim of any kind against the Mediator for any matter in connection with the Mediation;
- 4.4. The Mediator agrees that he shall not act for any Party in connection with the Dispute including voluntarily as a witness;
- 4.5. After the termination of the Mediation, the Parties shall not ask the Mediator to comment on what was said or done at the mediation and if they do ask, the Mediator will decline to make such comment;
- 4.6. The Parties shall not request or apply for a subpoena (or similar) that the Mediator provides evidence or documents in any proceedings connected in any way with the Mediation or the subject matter of the Dispute . The Mediator's notes are confidential and shall be destroyed immediately after the termination of the Mediation.



## **5. Termination**

The “termination of the Mediation” shall occur when:

- 5.1. a written settlement agreement is executed by the Parties; or
- 5.2. any Party withdraws from the mediation; or
- 5.3. the Parties and the Mediator together agree that the Mediation should terminate; or
- 5.4. the Mediator decides, and notifies the Parties (whether on the Mediation Day or thereafter) that continuing the Mediation is unlikely to result in a settlement or is undesirable or inappropriate for any reason; or
- 5.5. Automatically, seven days after the date of the Mediation Meeting.

## **6. Miscellaneous**

- 6.1. No settlement agreement reached between the Parties as a result of the Mediation shall be legally binding until it has been reduced to writing and signed by or on behalf of the Parties;
- 6.2. Any reference in this agreement to the Party includes their solicitors;
- 6.3. The Mediation and this agreement shall be governed by and construed in accordance with English law, and the courts of England and Wales shall have exclusive jurisdiction over any dispute which may arise in connection with it;
- 6.4. The Parties may execute this Agreement on the following signature page in counterparts.

[Signature page follows]



In signing this Agreement, the Parties agree all of the above with each other and with the Mediator.

For Party 1	Solicitors for Party 1
.....  Name Position Date	.....  Firm Date

For Party 2	Solicitors for Party 2
.....  Name Position Date	.....  Firm Date

The Mediator
.....  Simon Goldring Date



## **Schedule 1:        Non Parties' Confidentiality Agreement**

I agree to be bound by the terms of section 2 (Expectations and Confidentiality) of this Agreement as if I were a Party to it.

In particular, I agree to keep all information that I obtain as part of this Mediation confidential and I agree not to disclose it to any third party, unless required to do so by an Order of the Court.

.....  
Name  
Position  
Date

.....  
Name  
Position  
Date