

TRUST MEDIATION MEDIATION RULES – May 2010

These are the Rules referred to in the Agreement to Mediate and are to be applied by the Mediator and adhered to by the Participants to ensure that the Mediation is set up, undertaken, and concluded in an effective and appropriate manner. The Rules also deal with the Participant's responsibility for fees and conduct after the mediation, and all Participants should ensure that they have had legal advice as to their meaning and effect.

1. INTERPRETATION

1(1) Definitions

In these Rules, the following terms shall have the following meanings:

- (a) "Trust Mediation" means Trust Mediation Limited.
- (b) "Director" means the designated voluntary director of Trust Mediation Limited responsible for the overall administration of the corporation.
- (c) "Agreement" means an oral or written agreement between the Participants.
- (d) "Mediation" means a mediation scheduled by the Participants on a specific date and time with Trust Mediation.
- (e) "Registrar" means the designated individual at Trust Mediation, in charge of booking Mediations, of dealing with fees, and all administration.
- (f) "Confirmation Form" means the form confirming the mediation.
- (g) "Mediator" means a member of Trust Mediation's panel of mediators, appointed by the Participants as a neutral to conduct the mediation. The Mediator is an independent contractor chosen by or agreed to by the Participants with whom they contract for services rendered. The Mediator is not an employee of Trust Mediation.
- (h) "Agreement to Mediate " means a contract to mediate, prepared by Trust Mediation for the Participants, their Representatives, the Mediator and Non-Participants attending the Mediation, to be executed prior to the commencement of the Mediation, containing various provisions relating to the process of Mediation, confidentiality, privilege, without prejudice, liability, duties and obligations of the Participants to each other, to the Mediator and to Trust Mediation. The Rules are attached to the Agreement to Mediate.
- (i) "Participant" means a Participant to a dispute, controversy, claim, or action.
- (j) "Representative" means the Solicitor, or Counsel, or an authorised representative of the Participant.
- (k) "Settlement Agreement" means a document signed by the Participants or their Representatives at the conclusion of the Mediation, setting out agreed terms of settlement which are legally binding.

2. AGREEMENT OF PARTICIPANTS

- 2(1) These Rules, and all amendments to them, shall be deemed to have been made a part of the Agreement to Mediate which provides for Mediation with a Trust Mediation mediator.
- 2(2) Subject to approval by the Director, these Rules may be varied at any time by a written agreement signed by the Participants and the Mediator.

3. MEDIATION PAPERS, BRIEFS, AND SUMMARIES

- 3(1) The Participants shall normally agree and prepare a Mediation Brief with relevant information.
- 3(2) Each Participant may also prepare a confidential summary to be supplied to the Mediator which will not be disclosed to the other Participant.

4. AUTHORITY

- 4(1) Unless otherwise agreed, the Participants and/or their Representatives shall attend the Mediation with authority to settle.
- 4(2) If a Participant has authority to settle but only up to a certain level the Participant shall disclose the existence of this restriction (but not what that level is) to the Mediator before the Mediation begins.
- 4(3) If a Participant requires the approval of some other person not present, whether for any settlement or simply above a certain level, then that Participant shall tell the Mediator before the Mediation begins whether the person with authority who is not present can be contacted during the time available for the mediation.
- 4(4) In the event that the person not present with unrestricted authority is not likely to be available during the time available for the Mediation then the restricted Participant shall disclose this restriction (but not the level) to the other Participant and offer them the option as to whether they wish to proceed with the mediation.

5. ATTENDANCE AT THE MEDIATION

- 5(1) The Mediation may be attended by any person provided all Participants and the Mediator agree - such agreement shall not unreasonably be withheld.
- 5(2) Any person who is not a Participant or a legal representative of a Participant shall sign a confidentiality agreement by which in consideration of their being permitted to attend the Mediation they solemnly undertake and agree to keep all matters they see and hear strictly confidential.

6. PRIVACY AND CONFIDENTIALITY OF THE MEDIATION

- 6(1) All Mediations held with Trust Mediation are private and confidential.

- 6(2) At the Mediation, each Participant should be prepared to make a brief oral statement explaining his or her perspective. Each Participant shall participate in the structured negotiations with the active assistance of the Mediator. Each Participant should bring any documents needed in order effectively to negotiate. These documents will also be helpful to the Mediator to understand the case but can be kept confidential on request and, in that event, will not be revealed to any other Participant.
- 6(3) The Mediator may meet privately with each Participant and Representative during the Mediation. Any Participant and Representative may request a private meeting with the Mediator at any time.
- 6(4) Each Participant shall co-operate and negotiate in good faith with the Mediator. All Representatives agree that they shall continue to abide by their profession's applicable Code of Conduct during the mediation.
- 6(5) Subject to Section 7(1), all offers, promises and proposals, whether oral or written, actions, determinations, representations and statements (including but not limited to admissions) made or transmitted in the course of the Mediation by any of the Participants, their agents, employees, experts, Representatives or by the Mediator, and all notes, documents and reports prepared or exchanged during the Mediation are "without prejudice" and for the purpose of negotiation only.
- 6(6) Such offers, promises, proposals, conduct, statements, notes, documents and reports shall not be disclosed to any third Participant and they shall not be offered as evidence in any arbitration, judicial or other proceeding.
- 6(7) Notwithstanding Rule 6(5), evidence that is otherwise admissible shall not be rendered inadmissible simply because it has been used in a Mediation with Trust Mediation.
- 6(8) There shall be no electronic recording, stenographic or other transcribed record made or reconstructed of the whole or any part of the Mediation.

7. SETTLEMENT AGREEMENT

- 7(1) No settlement or agreement reached at the Mediation shall be binding in law or deemed as intended to be binding in law unless it is reduced to writing (or printed text) in some suitable form (which may for example include heads of agreement, a minute, a draft Order, a Note, or a contract) and signed by all of the Participants who intend to be bound by it before the Mediation has been terminated.
- 7(2) Nothing in 7(1) shall stop Participants agreeing during the mediation to settle or agree to anything on any unrecorded or unsigned basis always providing they accept and appreciate that such a settlement or agreement shall not by reason of Section 6 above be capable of being relied upon at a later date.

8. AFTER THE MEDIATION

- 8(1) Neither the Mediator, nor any of Trust Mediation's Directors, the Registrar or employees shall be compelled to appear as a witness or expert in any pending or

future adversarial or judicial proceeding involving any one or more of the Participants or relating in any way to the subject matter of the Mediation. This restriction is a term and condition precedent of the Agreement to Mediate.

- 8(2) Any notes of the Mediator are confidential to the Mediator and shall be destroyed by the Mediator immediately after the Mediation: they shall not be available to the Participants at any time, nor shall they be subject to subpoena for production as evidence in any arbitration, judicial or other proceeding.

9. TERMINATION OF MEDIATION

9(1) Mediations with Trust Mediation shall be terminated:

- (a) by agreement between the Participants; or
- (b) if a Settlement Agreement is concluded by the Participants; or
- (c) at any time if in the Mediator's absolute discretion the Mediator believes it ought to be terminated: in such an event the Mediator shall not give any reason for the termination of the Mediation and the Participants hereby undertake not to ask or to pursue the Mediator for the reason at any time or by any means.

9(2) Once the Mediation has been terminated then, if the Participants continue to negotiate, their negotiations and any subsequent settlement will not be concluded under these Rules or under the Agreement to Mediate.

10. EXCLUSION OF LIABILITY

10(1) Trust Mediation and its employees or agents, including the Mediator, shall not be liable to any Participant or Representative for any act or omission howsoever arising in connection with any Mediation conducted by the Mediator or as booked by Trust Mediation for the Participants. The Participants accordingly hereby agree and acknowledge that no claim action or proceedings can be brought against the Mediator and that the Mediator is not a compellable witness or Participant in any matter.

10(2) The Participants' legal advisers agree that they have made any or all necessary disclosures relevant to the Proceeds of Crime Act 2002 and they indemnify the Mediator in such respect.

11. FEES FOR SERVICES

11(1) Trust Mediation has a standard fee of £1,500 plus applicable VAT, for a four hour mediation. It is made up of two components: a mediation fee of **£1,250** for the Mediator and an administration fee **£250** for the administration by Trust Mediation. **VAT** at the current rate is payable on the mediation fee where the mediator or the mediator's firm or company is registered for VAT. VAT is not payable on the administration fee because Trust Mediation is not currently registered for VAT. Accordingly, the typical fees are:

	£
Mediation fee	1,250.00
VAT	218.75
Administration Fee	250.00
Total fees and vat	1,718.75

The defendant will often agree to pay all of the fees, particularly where liability is not substantially in issue, but where two parties are each paying the due fees in equal shares the typical half share of the fees is:

	£
Mediation fee	625.00
VAT	109.38
Administration Fee	125.00
Total fees and vat	859.38

- 11(2) The standard fees must be paid in advance unless otherwise agreed.
- 11(3) The Participants shall also, unless they agree some other arrangement with Trust Mediation, (see paragraph 16 below) pay the due fees in equal shares by cheques drawn in favour of Trust Mediation Limited.
- 11(4) The fee covers a period of up to four hours from the beginning of the Mediation although at the discretion of the Mediator this can be extended to five hours without additional charge. If the matter extends past five hours then the Participants must agree in advance Overtime as set out in paragraph 13.

12. PREPARATION

- 12(1) The Mediator's preparation for mediation is included in the fee.

13. OVERTIME AND ANY SUBSEQUENT TIME

- 13(1) If the Mediator is prepared to work overtime beyond 5 hours on the date of the Mediation overtime will be charged at £200 per hour plus VAT from the end of the fourth hour and any extraordinary travel expenses of the Mediator which may be incurred due to the lateness of the hour. The Mediator shall have the right to determine the time available for overtime. The Mediator will ask the Participants to endorse the Agreement to Mediate with confirmation of their request and willingness to continue the Mediation under Overtime rates from the end of the fourth hour. A copy of the amended Agreement to Mediate shall be filed by the Mediator with the Registrar who shall raise the necessary fee note.
- 13(2) If after the Mediation has terminated the Mediator is summonsed by any Participant or the Court for any reason or has to deal with any non-administrative matter arising from or relating to the Mediation in any way then the Mediator shall be entitled to be paid for such time reasonably engaged (including waiting, travelling time, and preparation) at the rate of £200 per hour (plus VAT where applicable).

13(3) In the event of paragraphs 13(1) or (2) applying then the Participants shall be jointly and severally liable to discharge fee notes raised by or on behalf of the Mediator within 14 days of presentation to them by Trust Mediation.

13(4) The fees due under 13(2) shall be payable in any event, regardless of the outcome of any hearing or proceedings and irrespective of the general rule in respect of costs in a civil action: the Participants agree to this acknowledging that the Mediator only acts because this term, is in place as a condition precedent.

13(5) The Participants also agree as a condition precedent that they shall at no time for any reason whatsoever claim, seek, or request any legal or other costs or expenses, fees, disbursements or damages from the Mediator on any account.

14. TRAVEL

14(1) Travel within England and Wales is included in the fee. Other travel will fall to the Participants to discharge and will be agreed in advance: the Mediator will travel by First Class rail fare or by Club/Business class flight.

15. CANCELLATIONS AND ADJOURNMENTS

15(1) If the Mediation is cancelled by either Participant prior to seven business days before the date scheduled for the Mediation and is rescheduled, there is no cancellation fee for the first adjournment.

15(2) If the Mediation is cancelled within seven business days prior to the date scheduled for the Mediation and whether or not rescheduled, a cancellation fee of £500 plus VAT will be payable.

15(3) Cancellations shall be in writing, faxed and e-mailed to the Registrar.

16. COSTS AS BETWEEN PARTICIPANTS

16(1) Whilst the Participants are in accordance with Rules 11 and 13 above jointly and severally liable to Trust Mediation for the payment of fees and disbursements of the Mediator and Trust Mediation, they are free as between themselves to agree as to which of them ultimately shall bear those costs and in what proportion.

16(2) The Participants agree that their joint and several liability to Trust Mediation does not purport to determine the responsibility as between the Participants themselves as to the costs either of the claim or of the mediation.

16(3) The Participants shall therefore be deemed to intend in any reference to "costs" set out in any settlement agreement, draft order, or other minute of agreement concluding the Mediation that "costs" shall be taken to include the costs of the mediation including any associated disbursements, fees, and expenses, unless some other arrangement is expressly stated.

- These Rules are effective as of 12 May 2010 and replace all earlier versions.-

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