

MEDIATION AGREEMENT

This Agreement to Mediate is made BETWEEN:

(1) (First Party)

Of:

Represented by:

(2) (Second Party)

Of:

Represented by:

And

(3) (The Mediator)

Of:

The name of case is:

Court reference (if relevant):

The parties and the Representatives, signing this Agreement, agree as follows:

1. The parties and the mediator shall approach the mediation in good faith.

2. The mediation will be

Held at: (location)

On: (date)

Commencing at: (time)

With a time estimate of: hours

3. The provisions of the Mediation Rules ("The Rules") attached hereto, shall apply to this mediation and form part of it unless varied by agreement of the Parties and the Mediator jointly. Any agreed variations of the Rules will be attached hereto.

4. The Mediator will conduct the mediation using the procedure set out in paragraph 8(1) of the Rules, namely Facilitative Mediation.
5. The Parties, their Representatives and in addition, any non-parties attending this mediation by consent of the Parties and the Mediator, in signing this Agreement, agree to maintain the privacy and confidentiality terms of the mediation as set out in paragraph 6 of the Rules and the subparagraphs thereof and confirm that this is a condition precedent.

I have read, understand and agree the provisions of this Agreement.

Signed: _____ for and on behalf of the First Party

Signed: _____ for and on behalf of the Second Party

Signed: _____ for and on behalf of The Mediator

Signed this _____ day of _____

NAMES OF THOSE ATTENDING WITH THE ABOVE AND WHO AGREE TO BE SO BOUND

	Name	Signed
First Party	_____	_____
	_____	_____
	_____	_____
	_____	_____
	_____	_____
Second Party	_____	_____
	_____	_____
	_____	_____
	_____	_____
	_____	_____

MEDIATION RULES

1. INTERPRETATION

1(1) Definitions

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

- (a) "Agreement" means an oral or written agreement between the Parties.
- (b) "Appointment" means a Mediation scheduled by the Parties on a specific date and time with the Mediator.
- (c) "Mediator" means an independent contractor chosen by or agreed to by the Parties with whom they contract for services rendered.
- (d) "Mediation Agreement" means a contract to mediate, entered into between the Parties, their Representatives, the Mediator and Non-Parties 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 Parties to each other, and to the Mediator.
- (e) "Party" means a Party to a dispute, controversy, or legal action.
- (f) "Representative" means the Attorney, or Counsel, or an authorised representative of the Party.
- (g) "Settlement Agreement" means a document signed by the Parties or their Representatives before the conclusion of the Mediation, setting forth agreed terms of settlement which are legally binding.

1(2) These Rules shall be interpreted liberally, and in such a way so as to provide the Parties with the most just and equitable outcome.

2. AGREEMENT OF PARTIES

2(1) These Rules, and all amendments to them, shall be deemed to have been made a part of any Agreement which provides for Mediation with the Mediator.

2(2) Subject to approval by the Mediator if the Mediation has begun or has completed, these Rules may be varied at any time by Agreement in writing.

3. INITIATING MEDIATION

3(1) Subject to the availability of the Mediator any Party may initiate Mediation by contacting the Mediator and booking an appointment.

3(2) The Party booking an appointment shall be responsible for contacting the other Party or Parties and providing them with the particulars of the appointment. The Mediator will also confirm the appointment with the Parties.

3(3) The Mediator will forward a confirmation form to the Parties to be completed and returned to the Mediator.

3(4) The Mediator will forward a draft Mediation Agreement to the Parties on confirming the appointment.

3(5) Any changes to the original appointment shall be subject to availability of the Mediator and confirmation by the Mediator.

3(6) Immediately prior to the commencement of the Mediation, the Parties and their Representatives and the Mediator will execute the Mediation Agreement. Non-Parties attending the Mediation on consent of the Parties and the Mediator, will execute the Mediation Agreement, acknowledging to be bound by the confidentiality terms thereof.

4. MEDIATION BRIEFS

4(1) Each Party shall prepare a Mediation Brief, or summary or relevant information such as that mentioned in 5(2) below.

4(2) Mediation Briefs shall be exchanged between the Parties and a copy shall be delivered directly to the Mediator in the letter confirming the appointment for Mediation. Mediation Briefs are to be delivered at least 7 business days before the Mediation date, with a covering letter faxed or delivered to the Mediator to confirm delivery of the Mediation Brief to the Mediator and the opposite Party.

5. SELECTION OF MEDIATOR

5(1) The Parties shall be at liberty, acting unanimously, to select a particular Mediator.

5(2) The Parties to the Mediation are encouraged to confer with each other, in person or by conference call, to discuss and, if possible, determine all procedural matters, including the following:

Issues

(a) what issues are in dispute and which matters, if any, can be agreed upon;

Forum

(b) unless otherwise agreed in writing, the law governing the Mediation will be Cayman Islands law;

Documents

(c) what documents, correspondence, books or records exist or can be produced, when they shall be produced or exchanged and by whom;

Inspections/Interviews

(d) whether "on site" inspections and/or interviews shall be part of the proceedings; and

Validity

(e) whether the Mediation Agreement is agreed as valid and in force and to be executed immediately prior to the commencement of the Mediation.

6. PRIVACY AND CONFIDENTIALITY OF MEDIATION

6(1) All Mediations are private and confidential. The Parties and their Representatives shall attend the Mediation with full authority to settle. Any other person may only attend with the consent of all of the Parties and of the Mediator to be given before the start,

6(2) At the Mediation, each Party should be prepared to make a brief oral statement explaining his or her perspective. Each Party is expected to participate in the structured negotiations with the active assistance of the Mediator. Each Party should bring any documents needed in order to effectively negotiate. These documents will also be helpful to the Mediation to understand the case but can be kept confidential on request and, in that event, will not be revealed to the other Party. The Mediator may caucus privately with each Party and Representative during the Mediation if he or she considers that it will assist the process. Any Party and Representative may request a private caucus with the Mediator at any time. Each Party should co-operate in good faith with the Mediator. Each Party should make every effort to attend a scheduled Mediation and should co-operate to avoid any unnecessary delays.

6(3) Every Party agrees that all offers, promises and proposals, whether oral or written, actions, determinations, representations and statements (including but not limited to admissions) made in the course of the Mediation by any of the Parties, their agents, employees, experts, Representatives and 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. Such offers, promises, proposals, conduct, statements, notes, documents, and reports shall not be disclosed to any third party and they shall not be offered as evidence in any arbitration, judicial or other proceeding, at any time.

6(4) Notwithstanding Rule 6(3), evidence that is otherwise admissible shall not be rendered inadmissible because it has been used in a Mediation with the Mediator.

6(5) The Mediator shall not 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 Parties or relating in any way to the subject matter of the Mediation. The Parties shall not jointly or severally seek to summons the Mediator. Any notes of the Mediator are confidential to the Mediator and shall not be available to the Parties at any time, nor subject to subpoena for production as evidence in any arbitration, judicial or other proceeding. The Mediator shall in any event destroy any notes taken on completion of the mediation. Clause 6(5) is an absolute condition precedent of the Mediator agreeing to act.

7. NO TRANSCRIPT OR RECORD

7(1) There shall be no electronic recording by any means of the mediation, nor any verbatim stenographic record taken of the Mediation. Parties may make notes but these must not be shown to any person not a signatory to the Mediation Agreement,

8. THE MEDIATION PROCEDURE

8(1) FACILITATIVE MEDIATION

The Mediator will attempt to resolve the dispute by way of facilitative mediation, exploring issues, interests, needs and concerns of the Parties and assisting them by generating options for a mutually agreed resolution of the matters in dispute.

8(2) EVALUATIVE MEDIATION

Unless specifically requested and agreed, the Mediator does not offer evaluative mediation. The Mediator will not assess the merits of the disputes. The Parties must (if they require an opinion on the merits of an issue, settlement, or proposal; or if they require legal advice) seek advice from their own chosen adviser, solicitor, or counsel. Parties unrepresented during a mediation may seek an adjournment to consult with an adviser, solicitor, or counsel, in person or by telephone, at any time. Parties who are represented may take such time as they need to obtain advice.

9. TERMINATION OF MEDIATION

Mediation with the Mediator shall be terminated:

9(1) by agreement between the Parties; or

9(2) if a settlement is reached by the Parties; or

9(3) at any time during the Mediation, if the Mediator in his/her absolute discretion which the Parties agree shall not be challenged believes it ought to be terminated: the Mediator shall then do so and shall not give or be asked for a reason; or

9(4) no agreement has been reached in the time available and it is either impracticable or not possible to take further time; unless the Parties and the Mediator agree to adjourn the mediation.

10. EXCLUSION OF LIABILITY

10(1) The Mediator shall not be liable to any Party or Representative for any act or omission howsoever arising in connection with any Mediation conducted by the Mediator for the Parties.

11. FEES FOR SERVICES

11(1) The Mediator does not set fees based on the value of the claim. There is a daily rate to be paid and split equally between the Parties in a two-party dispute or paid in such other manner as the parties agree. The daily rate is for the availability of the Mediator between 10.00 a.m. and 5.00 p.m. on the day fixed for the Mediation. The daily rate applies to any time spent by the Mediator, whether or not the full day is required. To the daily rate will be added fees for preparation, any overtime, disbursements etc

11(2) There is no additional fee charged in multi-party claims for additional Parties beyond two.

12. PREPARATION

Preparation for mediation shall be subject to an hourly fee.

13. OVERTIME

13(1) If the Mediator is prepared to work overtime beyond 5.00 p.m. on the date of the Mediation, overtime will be charged plus 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.

14. DEPOSITS

14(1) Prior to the date of the Mediation, there shall be paid to the Mediator a deposit to be divided equally between the Parties or paid in such other manner as they agree.

14(2) If the Mediator arranged hired rooms for the venue of the Mediation, the charge to be incurred will be ascertained or otherwise estimated and will be added to the request for the deposit. Additional fees for preparation and any overtime plus disbursements, will be invoiced following the conclusion of the Mediation and are payable within 30 days thereafter.

15. CANCELLATIONS AND ADJOURNMENTS

15(1) If the Mediation is cancelled by either party prior to seven business days before the date scheduled for the Mediation and is rescheduled, there is no cancellation fee for the first adjournment. Any preparation time spent preparing for the first date scheduled for the Mediation will be noted and charged in the eventual billing. If more than one adjournment

occurs, an adjournment fee of \$[] may be charged at the discretion of the Mediator for each adjournment following the first and deducted from the deposit.

15(2) If the Mediation is cancelled by either party prior to seven business days before the date scheduled for the Mediation and is not rescheduled, the preparation time and any other incurred expenses will be deducted from the deposit and the balance of the deposit returned to the Parties as they direct.

15(3) 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 preparation and any other incurred expenses will be deducted from the deposit and the balance of the deposit returned to the Parties as they direct. Cancellations shall be in writing, faxed and mailed to the Mediator

16. JOINT AND SEVERAL LIABILITY FOR FEES AND DISBURSEMENTS

16(1) The Parties are jointly and severally liable for the payment of fees and disbursements of the Mediator. Any agreement between the Parties to alter such responsibility, must be confirmed by all Parties, in writing, and faxed and mailed to the Mediator prior to the commencement of the Mediation. Otherwise the joint and several liability applies.

17. VENUE AND COSTS THEREOF

17(1) If the Mediation is being conducted at premises of a Party or its attorneys, then the Parties will make whatever arrangements are required and advise the Mediator. Alternatively, the Mediator will make the venue arrangements as an agent and on behalf of the parties. The charges will be dealt with as set out in Rule 14(1) as to "Deposits". Following the conclusion of the Mediation, any additional charges for the venue will be invoiced together with the remaining fees and disbursements.

19. PAYMENT OF FINAL INVOICES

19(1) The Parties are responsible for payment of the final invoices within 30 days of the date of the Mediation.

20. SETTLEMENT AGREEMENT

20(1) A settlement agreed at Mediation will not be deemed to be concluded or to be legally binding until the Parties or their Authorised Representatives sign a Settlement Agreement at the mediation setting forth the terms thereof.

20(2) The settlement agreement shall not be drafted or signed by the Mediator.