

DATED _____ **2017**

(1) A

(2) B

[REDACTED]

MEDIATION AGREEMENT

THIS AGREEMENT is dated the2017

BETWEEN:-

(1)

(2)

(3)

WHEREAS:-

(1) and (2) (referred to herein as "the Parties") have agreed to submit the Disputes to mediation by the Mediator.

IT IS AGREED as follows:-

1. The Parties hereby appoint the Mediator, and the Mediator accepts the appointment, to mediate the Disputes in accordance with the terms of this agreement.

CONFIDENTIALITY

2. The Parties undertake to each other and agree that the entire mediation and the fact that the mediation has been agreed to take place and has taken place is and will be kept confidential and in particular:
 - (a) The Parties, their representatives and advisers shall keep all statements and other matters whether oral or written including any settlement agreement relating to the mediation confidential except insofar as disclosure is necessary to implement and enforce such settlement agreement;
 - (b) The entire process of the mediation (including all communications and meetings between the parties and/or the

Mediator and the representatives of any of them prior to the date of this agreement) shall be treated as privileged and will be conducted on the same basis as without prejudice negotiation in an action in the courts or in arbitration. All documents, submissions and statements made or produced for the purposes of the mediation whether oral or written shall be inadmissible and not subject to disclosure in any arbitral, judicial or other similar proceedings except that evidence which is otherwise admissible or disclosable shall not become inadmissible or non-disclosable by reason of its use in connection with this mediation.

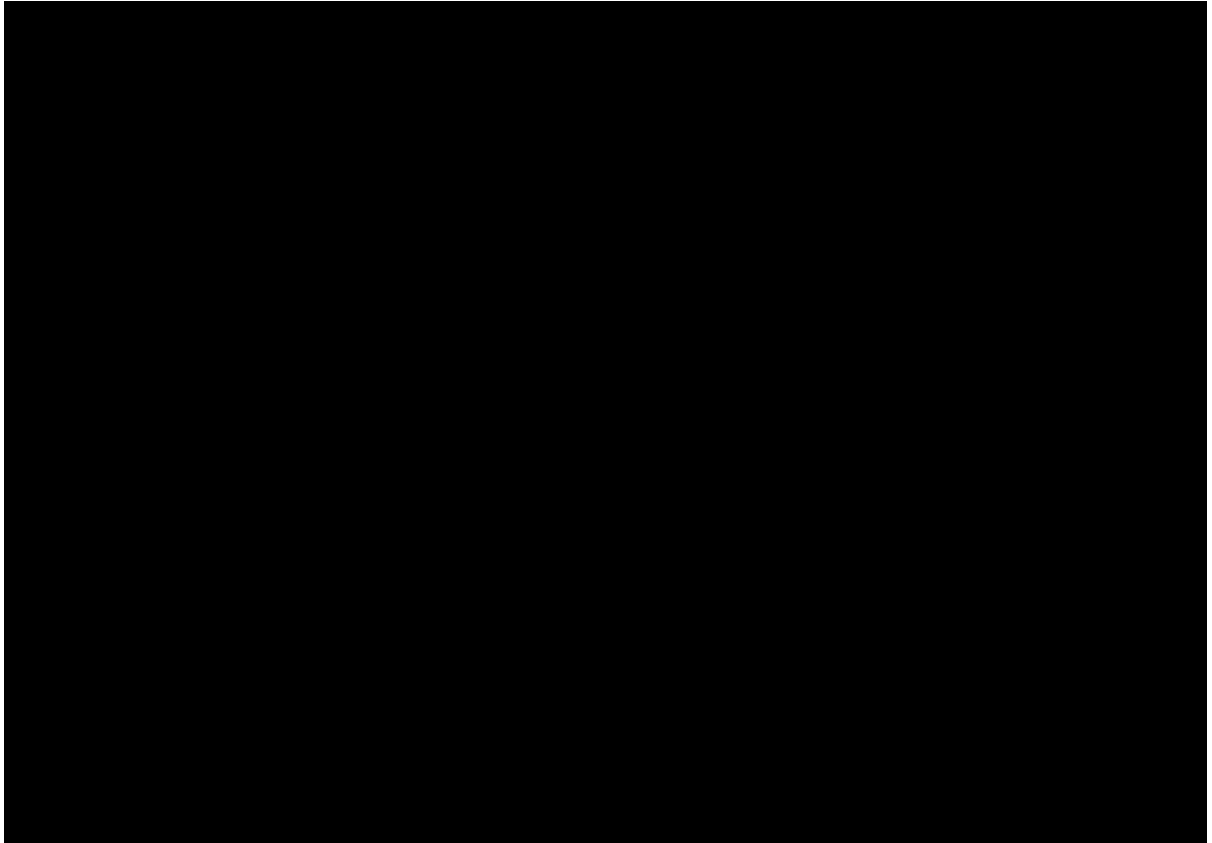
3. The Parties further agree that:
 - (a) The Mediator may not act for the parties in any capacity with regard to the subject matter of the mediation, and the parties acknowledge that in acting under this agreement, the Mediator is not representing or giving legal advice to, nor assessing, upholding or protecting (or attempting to assess, uphold or protect) any rights of either party;
 - (b) None of the parties may have access to the Mediator's notes or call the Mediator as a witness nor require the Mediator to produce documents, in any arbitral, judicial or other proceeding in respect of the Disputes;
 - (c) None of the parties shall take any action that would cause the Mediator to breach his obligations contained in this Agreement.
4. The Mediator shall keep confidential any private communications made to him by the parties at any stage unless and until whichever of them who made such communication agrees otherwise.
5. Save as provided herein or otherwise agreed by a written agreement between them, the parties reserve their legal rights should the mediation not result in a settlement of all of the Disputes.

THE MEDIATOR

6. The Mediator shall be neutral and impartial. The Mediator shall help the parties to develop and explore options for resolution of the Disputes and, if possible, achieve expeditious resolution of the Disputes by agreement between them.
7. The Mediator makes no representation that any such agreement between the parties will be equivalent to any result which might be achieved in any contested court or arbitration proceedings concerning the Disputes or any part of them.
8. The Mediator shall not make decisions for a party nor impose a solution on either of them. If both the parties request and the Mediator agrees, the Mediator may provide the parties with a non-binding recommendation based on the Mediator's own knowledge of the subject matter and law. Such a recommendation will not attempt to anticipate what a court or arbitrator might order or award but will set out what the Mediator suggests are appropriate ways of resolving any outstanding issues or possible settlement terms in all of the circumstances of the Disputes.
9. The Mediator shall not obtain advice or an opinion on any aspect of the Disputes from any person.
10. The Mediator acknowledges that, before beginning the mediation, the Mediator has disclosed to the parties any prior dealings that he has had with either of them and any other matters that may be thought to cause any doubt as to his impartiality.
11. If, during the mediation, the Mediator becomes aware of any circumstances that might reasonably be considered to affect the Mediator's capacity to act impartially, the Mediator shall immediately inform both the parties of those circumstances. The parties shall then decide whether the mediation will continue with the Mediator, or with a new mediator appointed jointly by the parties.

12. The Mediator shall not accept any appointment in relation to any arbitral or judicial proceeding relating to the Disputes or any of them.

THE MEDIATOR'S FEES AND EXPENSES



CONDUCT OF THE MEDIATION

15. The Parties have agreed the following steps in relation to the conduct of the Mediation
- (a) The parties shall on or before provide to the Mediator:
 - (i) a Chronology of key facts. Such Chronology shall be agreed between the parties and shall include only such key facts as they agree to include;

- (ii) A bundle of such key documents as the parties shall agree cross referenced where appropriate to the Chronology.
- (b) The parties shall on or before exchange and copy to the Mediator:
 - (i) a concise position statement, as to what it sees as the key issues of its case in relation to the Disputes and which may outline what it hopes to achieve in the mediation but such statement shall not exceed 20 A4 pages;
 - (ii) a concise bundle of supporting documents to which it refers in the statement and/or to which it intends to refer in the mediation in so far as the same are not in the bundle referred to in Sub-clause 15(a)(ii) ;
- (c) the mediation meetings shall take place at[a venue to be agreed between The Parties] on ...and but the parties shall remain available to continue such meetings if necessary on.....;
- (d) on or before shall send each other, and copy to the Mediator, a list of their respective attendees at the mediation meetings indicating the current status and title of each of them and his role in relation to the Disputes.
- (e) The parties shall, as soon as practicable following the signing of this agreement, agree a circulation list for all communications and the Parties shall copy all communications with and from the Mediator to the full circulation list unless the communication is in the category referred to in Clause 16.

16. Each of the parties may, following the exchange of the position statements referred to in Sub-clause 15(b)(i), send to the Mediator private communications in respect of its position in relation to the Disputes together with any relevant further documentation which it wishes to disclose in confidence to the Mediator, but not to the other party, clearly stating in writing that such communication and documentation is confidential to the Mediator.
17. The Mediator shall, in consultation with both the parties, give such further directions in relation to suitable procedural steps that the Mediator considers necessary and useful in facilitating the mediation process.
18. No formal record or transcript of the Mediation shall be made.
19. The Mediator shall be entitled, but not obliged, at any stage in the Mediation if so requested by either party to express his view privately to whichever of them has requested his view, as to the reasonableness or otherwise of any argument or proposal made by that party.

COOPERATION

20. Each of the parties and their respective representatives shall, in good faith, use its best endeavours to comply with requests made by the Mediator and to promote the efficient and expeditious resolution of the Disputes. If either party or its representative does not do so, the Mediator may terminate the mediation.

AUTHORITY

21. Each of the parties shall be represented by such person or persons that it chooses but such representatives shall include a person with full authority to settle all or any of the Disputes and to agree to any other matters that may assist or cause the efficient and economic resolution

of all or any of the Disputes. If either of such authorised representatives has any limitation on his or her authority to settle, this shall be disclosed to the Mediator before the mediation begins.

22. Each of the parties warrants that it will procure that its representatives will in particular comply fully with Clause 2 hereof.

TERMINATION

23. The mediation will terminate if:
- (a) The parties agree that it should not continue;
 - (b) Either party withdraws from the mediation;
 - (c) The Mediator feels unable to further assist the parties to achieve resolution of the Disputes; or
 - (d) The Mediator considers it appropriate for any other reason
 - (e) A written settlement agreement resolving all the Disputes is signed on behalf of the parties.
24. If any of the events provided for under Sub-clause 23 (a), (b), (c) or (d), does arise all material communications shall be recorded in writing and shall be provided to the parties.
25. Save in the circumstances referred to in Sub-clause 23(e), the Mediator may, if so requested by the parties, continue to assist them to reach resolution of the Disputes if no settlement of the Disputes is achieved at or pursuant to the meetings referred to in Sub-clause 15(c).
26. Termination of the mediation does not terminate Clauses 2 to 5 12, 14, and 28 to 30 hereof.

SETTLEMENT

27. No agreement as to the terms of any settlement reached during the mediation shall be legally binding on the parties unless and until it is reduced to writing and signed on behalf of both of them.

ENFORCEMENT

28. If the Disputes or any of them are settled, either party may:
- (a) enforce the terms of the settlement agreement for those Disputes by judicial proceedings, and
 - (b) cite evidence of, and incidental to, the settlement agreement in such proceedings (other than any matters which are confidential or privileged under Clause 2 and are not essential evidence).

FEEES, COSTS AND EXPENSES

29. Unless otherwise specified in any settlement agreement reached at or pursuant to the mediation, each of the parties shall bear its own legal and other costs of preparation for, participation in, and representation at, the mediation and all expenses other than those referred to in clause 13 and the costs, if any, of the venue (which shall be shared in equal proportions)
30. Both the parties agree that no judicial or other tribunal may treat the Mediator's fees and expenses and either of their legal costs and expenses incurred in and as a result of the mediation as costs in the case in relation to any litigation or arbitration, whether or not the mediation results in settlement of the Disputes or any of them.

EXCLUSION OF LIABILITY

31. The Mediator shall not be liable to either party for any act or omission (whether negligent or otherwise) in the performance of his obligations under this agreement provided that this clause shall not relieve the Mediator from any liability for fraud or wilful misconduct. This agreement may be produced and relied upon by the Mediator as a defence to any claim arising out of the mediation made against the Mediator.

GOVERNING LAW AND JURISDICTION

32. This agreement is governed by, and is construed and takes effect under the laws of England and Wales. The courts of England and Wales shall have exclusive jurisdiction to settle any claim, dispute or matter of difference that may arise out of, or in connection with, the mediation.

GENERAL

33. Neither this agreement, nor the mediation, will affect or impair the rights of either party under the Laws of England and Wales. Should the dispute not be settled by mediation the parties' rights to a fair trial remain unaffected.

34. This document contains the entire agreement between the parties as to the subject matter hereof. This Agreement may be signed in three counterparts, in which event the three originals together will constitute the entire agreement between the parties.

This agreement has been entered into on the date stated at the beginning of it.

Signed for and behalf ofby

.....
Signature

Signed for and behalf of by

.....
Signature

Signed by the Mediator:

.....
Signature

DRAFT