



Arpita Dutt Consulting Limited
86-90 Paul Street
London EC2A 4NE
Tel: (+44)7880790538

www.arpitadutt.com

Mediation Agreement

MEDIATOR: Arpita Dutt
(NAME OF MEDIATOR) ("the Mediator")

DATE AND LOCATION OF MEDIATION:

COMMENCEMENT OF MEDIATION PREPARATION ("COMMENCEMENT OF MEDIATION"):

BETWEEN:
PARTY 1:

Of (Address, Telephone Number and Email Address)

and
PARTY 2:

Of (Address, Telephone Number and Email Address)

(collectively "the Parties")

Mediation Agreement

DISPUTE:

Matters which are the subject of proceedings in the High Court of Justice, Division, Claim no./Employment Tribunal Claim No:

("the Dispute").

The Parties and the Representatives have agreed to submit the Dispute to mediation ("Mediation") in good faith with the Mediator under the terms of this signed agreement ("Mediation Agreement").

1. Interpretation

1.1. These Rules shall be interpreted in such a way as to provide the Parties with an efficient and effective Mediation.

1.2. In these Rules, the following terms shall mean:

1.2.1. "Mediator" means the independent contractor appointed by the Parties to conduct the mediation. The Mediator is not a person who will provide legal or professional advice to the Parties or their Representatives or who will give a judgment or an award.

1.2.2. "Mediation Agreement" means a legally binding contract to mediate, prepared by Arpita Dutt Consulting Limited for the Parties, their Representatives, the Mediator and any Non-Parties attending the Mediation, to be signed prior to the commencement of the Mediation, containing various provisions relating to the process of Mediation, confidentiality, privilege, liability, and the duties and obligations of the Parties to each other, to the Mediator and Arpita Dutt Consulting Limited. The Agreement to Mediate requires agreement to and compliance with these Rules.

1.2.3. "Party" means a party to a dispute, controversy, or legal action who is a participant in the Mediation.

Mediation Agreement

- 1.2.4. "Representative" means the lawyer, counsel, attorney, or other authorised representative of the Party.
- 1.2.5. "Evaluative Mediation" shall mean a process of mediation in which the parties jointly invite the Mediator to comment on the merits or substance of the case, and/or to provide a non-binding evaluation.
- 1.2.6. "Facilitative Mediation" shall mean a process of mediation in which the Mediator offers no comments on the merits or substance of the case, nor provides any evaluation but instead assists the Parties to an agreement using principled negotiation. The Mediator may in their absolute discretion comment on the use of the process of the Mediation if such comment is likely to assist the Parties.
- 1.2.7. "Settlement Agreement" means a document signed by the Parties or their Representatives before the conclusion of the Mediation, setting out agreed terms of settlement between the Parties which are intended by them to be legally binding.

IT IS AGREED THAT:

2. Mediation Procedure

- 2.1. The Mediation will comprise:
 - 2.1.1. the preparation work for the Mediation which will commence on the date set out above ("Commencement of Mediation"); and
 - 2.1.2. the initial day(s) of the Mediation including any extra hours ("Mediation Day") which will take place on the date, at the time and at the place set out above; and
 - 2.1.3. any communications between the Parties, or between any of the Parties and the Mediator after the Mediation Day (if the Mediation is not terminated on the Mediation Day) until the termination of the Mediation (see clause 13 below – "Mediation Termination").

Mediation Agreement

- 2.2. At the Mediation, the Parties agree that they will be prepared to make a brief oral statement explaining what they wish to achieve from the process and acknowledge that they are expected to participate in good faith in the process conducted with the assistance of the Mediator.
- 2.3. The Parties agree that the Mediator may meet privately with each Party and its Legal Representative(s) during the Mediation if the mediator considers that it will assist the process. Any Party and Legal Representative may request a private meeting with the Mediator at any time.
- 2.4. The Mediator will conduct the Mediation using Facilitative Mediation as defined in Rule 1.2.6. The Mediator will conduct the process non-judgmentally by exploring the interests needs and concerns of the Parties allowing them to generate options for a mutually agreed resolution.
- 2.5. The Mediator will not advise any person, nor comment or offer any legal or professional opinions. The Parties will rely on their own counsel or Legal Representatives for legal or professional advice.
- 2.6. The Mediator will not propose a settlement nor draft any offers of settlement.
- 2.7. The Mediator will continue to use Facilitative Mediation techniques until a settlement is reached, or the Mediation is adjourned or terminated as set out below.

Representatives

3. The Parties will be represented at the Mediation as set out in the Mediation Information and Booking Form.

Parties (including authority)

4. Each Party will:

Mediation Agreement

- 4.1. ensure that at least one of its attendees at the Mediation has full authority to negotiate, compromise and settle the Dispute.
- 4.2. inform the Mediator and each other immediately if there is any change to their attendees.
- 4.3. attempt to agree a bundle of relevant documents ("Documents Bundle") and supply the Mediator with the Documents Bundle at least 5 working days in advance of the Date of Mediation.
- 4.4. exchange with each other and supply the Mediator with a confidential mediation position statement at least 3 working days in advance of the Date of Mediation.
- 4.5. pay its share of the Mediator's Fees at least 3 working days in advance of the Mediation.

Mediator

5. The Mediator will:
 - 5.1. assist the Parties to compromise and resolve the Dispute.
 - 5.2. determine procedure at the Mediation, in consultation with the Parties.
 - 5.3. assist (if requested) in facilitating the drawing up of any Settlement Agreement, but not drafting, nor advising on any of its terms.
 - 5.4. decline hereafter to act for any Party in any capacity in connection with the Dispute.
 - 5.5. maintain and respect the confidentiality of all information provided to the Mediator by the Parties, save as may be required by law, whether under the Proceeds of Crime Act 2002 and/or any relevant Regulations.
6. The Parties accept and agree that the Mediator acts as an independent contractor and not as an agent of, or in any capacity for, any Party, and that the Mediator has no personal or financial interest in the subject matter of the Dispute.

Mediation Agreement

7. In no circumstances shall any Party or their advisers or representatives take any steps in any jurisdiction to require or compel the Mediator or Arpita Dutt Consulting Limited either to act as a witness in any proceedings connected in any way with the Mediation or the subject matter of the Dispute, or to disclose any documents or notes they may have prepared in connection with the Mediation. The Mediator or Arpita Dutt Consulting Limited will not voluntarily act as a witness for, or advisor to, any of the Parties.
8. The Parties agree that they shall not jointly or severally seek to summons the Mediator, or any person observing the Mediation or involved in the administration of the Mediation.
9. If, notwithstanding the provisions of clauses 7 and 8 above, any Party seeks to require or compel the Mediator or Arpita Dutt Consulting Limited to act as a witness in any proceedings connected in any way with the Mediation or the subject matter of the Dispute, that Party shall indemnify the Mediator or Arpita Dutt Consulting Limited for all the time at a rate of £250 per hour, costs and expenses arising out of, or in connection with, such action.
10. The Mediator or Arpita Dutt Consulting Limited shall not be liable to any Party or their Representatives or advisers for any view expressed by them during or in connection with the Mediation or for any act or omission in connection with their conduct of the Mediation unless the view expressed or the act or omission is shown to have been in bad faith or in breach of this Mediation Agreement.

Binding agreement

11. 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.
12. The Settlement Agreement shall not be drafted or signed by the Mediator.

Mediation Agreement

Termination

13. The Mediation shall terminate ("the Mediation Termination") when:
 - 13.1. a written settlement agreement is executed by the Parties; or
 - 13.2. any Party withdraws from the mediation; or
 - 13.3. the Parties and the Mediator agree that the Mediation should terminate either at the end of the Mediation Day, or later if it continues beyond the Mediation Day; or
 - 13.4. the Mediator decides in his/her absolute discretion 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 in which case the Parties agree that they shall not challenge that decision nor shall the Mediator give or be asked for a reason for the termination.
14. On termination, the Mediator will as soon as reasonably practicable destroy all notes and documents save for the Mediation Agreement, Booking Form information and any Schedules to the Mediation Agreement and/or Rules or amendments to the Rules.

Confidentiality and Privilege

15. The Parties and the Mediator shall keep confidential and regard as privileged and without prejudice, and shall not use, any information of any nature produced for, arising out of, or in connection with, the Mediation including:
 - 15.1. all communications of whatever nature, whether oral or written including all offers, proposals, actions, determinations, representations and statements, admissions between the Parties, their agents, employees,

Mediation Agreement

experts and the Mediator concerning negotiations for the settlement of the Dispute whether during the Mediation or thereafter; and

15.2. what happened and what was said at the Mediation and the terms of any settlement or Settlement Agreement; and

15.3. all documents, correspondence or information (in any format) produced for, arising out of, or in connection with, the Mediation.

("Confidential Information"), save as may be:

15.4. necessary to implement or enforce any Settlement Agreement or;

15.5. required by law or;

15.6. disclosed to professional advisors, insurers and reinsurers, if strictly necessary and for genuine reasons, and on the basis that the recipient is informed of the confidentiality of the information and agrees to maintain that confidentiality.

16. A person who is not a Party or a Legal Representative may only attend the Mediation with the consent of all the Parties and of the Mediator. Every such person shall sign Schedule 2 before the start of the Mediation.

17. All Confidential Information will be treated as privileged, and shall not be admissible as evidence or be disclosable in any proceedings connected in any way with the subject matter of the Dispute, unless such documents or information would have been admissible or disclosable in any event or unless otherwise ordered by a court of competent jurisdiction.

18. No formal record, transcript or mechanical, electrical or digital recording of the Mediation shall be made, even if the Mediation is conducted on a virtual platform.

19. Any notes made by the Mediator are confidential to the Mediator and shall not be available to the Parties at any time, and will not be subject to production as

Mediation Agreement

evidence in any arbitration, judicial or any other proceedings. The Mediator undertakes that they shall in any event destroy any notes taken upon completion of the mediation.

20. Notwithstanding Rule 17, the Parties acknowledge that evidence that is otherwise admissible shall not be rendered inadmissible because it has been used in Mediation.
21. Each Party shall ensure that all those present at the Mediation on its behalf or at its invitation and any person in receipt of any Confidential Information from that Party agrees to be bound by clauses 14 to 16 of this agreement.

Costs of the Mediation

22. The Mediator's agreed fees, costs and expenses ("Mediator Fee") and each of the Parties' own costs and expenses arising out of the Mediation ("Mediation Costs") shall be treated as follows:
 - 22.1. Subject to clause 22.8, or in the case of an individual Party, subject to clauses 22.8.4 - 22.8.9, or unless agreed otherwise in any settlement agreement, each Party shall bear its own share of the Mediator Fee.
 - 22.2. Where the Mediation is agreed to be held in-person, each Party shall be liable for its share of the venue costs, interpreter or other additional costs.
 - 22.3. Each Party will pay its share of the Mediator Fee within 14 days of the issue of an invoice by the Mediator, and in any event at least 3 working days in advance of the Mediation Day.
 - 22.4. The Legal Representatives to the Parties are liable for the payment of their respective client's share of the Mediator Fee. Settlement of the fees is not conditional upon the solicitors being in receipt of funds from their client.
 - 22.5. Where a Party does not have a solicitor representing them the invoice will be addressed to and payable by the Party itself in advance of the Mediation.
 - 22.6. If there is a settlement at the Mediation:

Mediation Agreement

- 22.6.1. the Mediator Fee will be borne by the Parties as set out in clause 22.1; and
- 22.6.2. the Mediation Costs will be borne by the Parties in accordance with the terms as to those costs agreed between the Parties and set out in the Settlement Agreement.
- 22.7. If there is no settlement at the Mediation, the Mediator Fee and the Mediation Costs of each of the Parties are to be treated as costs in the case in any litigation or arbitration in which the court or the arbitrator has power to assess, or make orders as to costs.

Cancellation by a business Party

- 22.8. If any Party cancels the Mediation, the following proportion of the Mediator Fee will be payable by each Party:
 - 22.8.1. if the cancellation is made two or less working days before the date of the Mediation, the full Mediator Fee including any preparation time; or
 - 22.8.2. if the cancellation is made three to five working days before the date of the Mediation, 50% of the Mediator Fee including any preparation time; or
 - 22.8.3. if the cancellation is made six to eight working days before the date of the Mediation, 25% of the Mediator Fee with no preparation time; in each case without prejudice to a Party's right to recover such sums from any Party it may consider to be at fault for the cancellation.

Cancellation by an individual Party

- 22.8.4. Under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, an individual has the right to cancel the Mediation within 14 days of entering into this Mediation Agreement ("cancellation period") by notifying the Mediator as follows:
 - 22.8.5. The cancellation period will expire after 14 days from the date you sign this Mediation Agreement.
 - 22.8.6. To exercise the right to cancel, the individual must inform the Mediator of the decision by a clear statement of cancellation sent by email to

Mediation Agreement

Arpita@ArpitaDutt.com or letter to Arpita Dutt Consulting Limited, 86-90 Paul Street, London EC2A 4NE, Tel (+44)7880790538. The cancellation form at Schedule 1 may be used, but it is not obligatory to do so.

22.8.7. To meet the cancellation deadline, it is sufficient to send the communication concerning the exercise of the right to cancel before the cancellation period has expired.

22.8.8. If the cancellation form at Schedule 1 is used, the Mediator will acknowledge receipt of the email promptly.

Effects of cancellation by an individual Party

22.8.9. If the Mediation is cancelled by an individual, any Mediator Fee paid will be refunded within 14 days after the day in which the Mediator was informed about the individual's decision to cancel the Mediation unless the Mediation was to take place within the cancellation period, or it was agreed with the Mediator to begin preparing for the Mediation in which case proportionate fees to the service performed up until the decision to cancel was communicated will be applied as per clauses 22.7.2 - 22.7.3 above. Any non-refundable travel costs, accommodation and expenses will not be refunded.

22.8.10. The same means of reimbursement as was used for payment of the Mediator Fees, Costs and expenses will be used unless expressly agreed otherwise.

Agreement, Law & jurisdiction

23. The Rules, and all amendments to them and these terms shall be the entire Agreement between the Parties. Subject to the agreement of the Mediator, the Rules may be varied at any time by written amendment signed by the Parties or their Representatives, and the Mediator.

24. 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



Mediation Agreement

exclusive jurisdiction to settle any claim, dispute or matter of difference which may arise out of, or in connection with, the Mediation or this agreement.

Exclusion of Liability

25. Neither the Mediator nor Arpita Dutt Consulting Limited shall be liable to any Party or Legal Representative for any act or omission howsoever arising in connection with any Mediation conducted by the Mediator.
26. Without prejudice to the Mediation Agreement and to the exclusions or limitations set out in these Rules, should contrary to these provisions any liability is found to attach to the Mediator then the Parties agree that it shall be limited to the maximum sum of £1,000,000 (one million GBP).

SIGNED:

.....
Party A

.....
Solicitor for Party A

.....
Party B

.....
Solicitor for Party B

.....
Mediator



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Mediation Agreement

SCHEDULE 1

Cancellation Form

Email to Arpita@ArpitaDutt.com

**To: Arpita Dutt of Arpita Dutt Consulting Limited of 86-90 Paul Street,
London, EC2A 4NE. Tel (+44)7880790538**

I hereby give notice of cancellation of the Mediation.

Name:

Address:

Signature (if by letter):

Date:



Mediation Agreement

SCHEDULE 2

CONFIDENTIALITY AGREEMENT FOR OBSERVERS/NON-LAWYERS/NON-PARTIES

Mediation between:

Party 1.....

And

Party 2.....

Mediation Day:.....**Venue/On-line**:.....

I, the undersigned shall keep confidential all the communications I hear, read or see at the above Mediation and shall not use or disclose any information of any nature produced for, arising out of, or in connection with the Mediation unless required by a Court or Tribunal or agreed in the terms of a Settlement Agreement. No formal record, transcript or mechanical, electrical or digital recording of the Mediation shall be made, even if the Mediation is conducted on a virtual platform.

Name	
Address	
Email	
Telephone No	
Signature	
Name	
Address	
Email	
Telephone No	
Signature	

Mediator:.....

Signed:.....

Dated:.....