

**Agreement for XXX
to mediate a dispute**

between.....

and.....

The parties hereby appoint **XXX (the Mediator)** to mediate in the dispute identified in the Schedule and the Mediator accepts such appointment upon the following terms and conditions:

1. If deemed by the Mediator to be necessary, the parties or their representatives will participate in a Preliminary Conference with the Mediator to be conducted as agreed either by personal attendance or by videoconference, teleconference or telephone for the purpose of discussing and agreeing between themselves and the Mediator upon the collation and presentation of the material and documentation and upon such other planning and administrative arrangements as are appropriate to enable the mediation to proceed.
2. The parties and all persons brought within the mediation by them shall observe the confidentiality of the mediation and in particular there shall not be introduced as evidence or relied on in any arbitral or judicial proceedings or otherwise disclosed:
 - exchanges whether oral or documentary passing between any of the parties and of the parties and the Mediator or between any two or more of the parties within the mediation.
 - views expressed or suggestions or proposals made within the mediation by the Mediator or by any party in respect of a possible settlement of the dispute,
 - admissions made within the mediation by any party,

- the fact that any party has indicated with the mediation willingness to accept any proposal for the settlement made by the Mediator or by any party,
- documents brought into existence for the purpose of the mediation such as position papers or notes made within the mediation by the Mediator or by any party.

Every aspect of every communication within the mediation including the communications referred to above shall be without prejudice.

This clause in no way fetters the legitimate use in enforcement proceedings or otherwise of any written and signed settlement agreement reached in or as a result of this mediation. Any constraints on disclosure included in such settlement agreement will have effect in accordance with their terms.

3. The making of this Agreement and its terms shall not be disclosed except for the purpose of asserting or enforcing any right or liability arising under it.
4. There will be no settlement of the dispute (or any dispute arising during the course of mediation) except and until the terms of settlement are reduced to writing and signed for or on behalf of the parties to be bound by the settlement.
5. The parties will not be bound by any comments, opinions, suggestions, statements or recommendations put forward by the Mediator.
6. Throughout the whole course of the mediation process the Mediator will be free, at the Mediator's own unfettered discretion, to communicate and discuss the dispute privately with any of the parties or other persons brought within the mediation by them including their legal advisers PROVIDED ALWAYS that the mediator will preserve absolute secrecy of the content of any such communications and will not expressly or by implication convey any knowledge or impression of such content to any other party unless specifically authorised to do so.

7. No statements or comments, whether written or oral, made or used by the parties or their representatives or the Mediator within the mediation shall be relied upon to found or maintain any action for defamation, libel, slander or any related complaint and this document may be pleaded in bar to any such action.
8. The parties jointly and severally release, discharge and indemnify the Mediator in respect of all liability of any kind whatsoever (whether involving negligence or not) which may be alleged to arise in connection with or to result from or to relate in any way to this mediation.
9. The parties jointly and severally agree to pay to the Mediator an all-inclusive fee of \$.00 per day of up to 8 hours and \$.00 per hour for extension beyond 8 hours and for other attendances including preliminary conferences and preliminary consideration together with travelling and accommodation costs and other expenses of the mediation such as room hire.

9.a. Such payment will be shared equally between the parties;

or

9.b. Such payment will be apportioned between the parties in such shares as the Mediator considers to be just and equitable having regard to the extent of each party's interest in the dispute and involvement in the mediation.

(Delete 9.a. or 9.b.; if neither is deleted 9.a. will apply).

10. Each party will pay its own costs and expenses of the mediation.

Each party confirms that it enters into this mediation with a commitment to attempt in good faith to negotiate towards achieving a settlement of the dispute.

Name of Party:.....

Signature:.....**Date:**.....

Mediator:

Signature:.....**Date:**.....

SCHEDULE

(Briefly identify the matter in dispute or attach documents involving the dispute.)