

HUGH ELDER MEDIATION AGREEMENT (2020 EDITION)

THIS AGREEMENT dated IS MADE BETWEEN:

Party A

.....

(name)

.....

(address)

Party B

.....

(name)

.....

(address)

(together referred to as 'the Parties')

The Mediator

Hugh John Mainwaring Elder of 3 Dalkeith Court, 45 Vincent Street, Westminster, London SW1P 4HH

(a term which includes any agreed Mediator Observer)

in relation to a mediation to be held

on

at

[or remotely online using Zoom and/or telephone]

('the Mediation')

IT IS AGREED by those signing this Agreement THAT:

The Mediation

1. The Parties agree to attempt in good faith to settle their dispute at the Mediation. The Mediator agrees to conduct and the Parties to participate in the Mediation in accordance with this Agreement to mediate.

Authority and status

2. The person signing this Agreement on behalf of each Party warrants having authority to bind that Party and all other persons present on that Party's behalf at the Mediation, (or any part thereof), to observe the terms of this Agreement, and also having authority to bind that Party to the terms of any settlement.
3. The Mediator shall not be liable to the Parties for any act or omission in relation to the Mediation unless the act or omission is proved to have been fraudulent or involved wilful misconduct.

Confidentiality and without prejudice status

4. Every person involved in the Mediation:
 - 4.1 will keep confidential all information arising out of or in connection with the Mediation, including the terms of any settlement, unless otherwise agreed by the Parties in writing but not including the fact that the Mediation is to take place or has taken place or where disclosure is required by law, or to implement or to enforce terms of settlement or to notify their insurers, insurance brokers and/or accountants; and
 - 4.2 acknowledges that all such information passing between the Parties and/or the Mediator, however communicated, is agreed to be without prejudice to any Party's legal position and may not be produced as evidence or disclosed to any judge, arbitrator or other decision-maker in any legal or other formal process, except where otherwise disclosable in law.
5. Where a Party privately discloses to the Mediator any information in confidence before, during or after the Mediation, the Mediator will not disclose that information to any other Party or person without the consent of the Party disclosing it, except where:
 - 5.1 The Mediator is required by law to make disclosure whether under the Proceeds of Crime Act 2002 or related legislation or under any other legislation.
 - 5.2 The Mediator reasonably considers that there is a serious risk of significant harm to the life or safety of any person if the information in question is not disclosed.

- 5.3 The Mediator reasonably considers that there is a serious risk of being personally subject to criminal proceedings unless the information in question is disclosed.
6. The Parties understand that the Mediator does not give legal advice and agree that they will not make any claim against the Mediator in connection with this Mediation. The Parties will not make an application to call the Mediator as a witness, nor require him to produce in evidence any records or notes relating to the Mediation, in any litigation, arbitration or other formal process arising out of or in connection with their dispute and the Mediation; nor will the Mediator agree to act as a witness, expert, arbitrator or consultant in any such process. If any Party does make such an application (as listed above), that Party will fully indemnify the Mediator in respect of any costs he may incur in resisting and/or responding to such an application, including reimbursement at the Mediator's hourly rate as set out in clause 10 hereof for the Mediator's time spent in resisting and/or responding to such an application.

Settlement formalities

7. No terms of settlement reached at the Mediation will be legally binding until set out in writing and signed by or on behalf of each of the Parties.

Fees and costs of the Mediation

8. The Parties will be responsible for the fees and expenses of the Mediator ('the Mediation Fees') as set out in this Agreement (including any provision for additional hours if the mediation process extends beyond the allocated hours).
9. The Mediator's fee for the Mediation will be £ [], which will be payable in full at least seven days in advance of the Mediation, and will include:
- 9.1 up to five hours preparation including telephone calls with the Parties prior to the mediation day;
 - 9.2 seven hours (10.00am to 5.00pm) mediation on the mediation day;
 - 9.3 all travelling time and travel expenses within the UK;
- and will **not** include:
- 9.4 hire of the premises used for the mediation and refreshments during the day, this being for the Parties to arrange and pay for;
 - 9.5 overnight hotel accommodation for the Mediator, if reasonably required;
 - 9.6 VAT, if payable;
 - 9.7 The Mediator's travel expenses outside the UK, if applicable.

10. In addition to the fee payable under clause 9 above there will be an additional fee for preparation time in excess of five hours and time spent in excess of seven hours on the mediation day of £ [] per hour or part thereof.
11. Unless otherwise agreed by the Parties in writing, each Party agrees to share the Mediation Fees equally and also to bear its own legal and other costs and expenses of preparing for and attending the Mediation ('each Party's Legal Costs'). However, each Party further agrees that any court or tribunal may treat both the Mediation Fees and each Party's Legal Costs as costs in the case in relation to any litigation or arbitration where that court or tribunal has power to assess or make orders as to costs, whether or not the Mediation results in settlement of their dispute.

Online and telephone mediations

12. The Parties and the Mediator may agree that the Mediation will be conducted online via Zoom and/or by telephone.
13. In the absence of wilful default by the Parties, the Mediator or any of them, none will have any liability to each other for the failure or malfunction prior to, or during, the Mediation of any hardware, software, application, broadband or equipment relating to online or telephone systems used (or intended to be used) in the Mediation.
14. The Parties agree that they, and only they, or their advisers, who will be identified to the Parties and the Mediator in advance of the Mediation day, will participate in the Mediation and that no-one other than the Parties and the Mediator will be able to see or hear any part of the Mediation.
15. The Parties and the Mediator agree that no part of the Mediation will be recorded by any electronic medium.

Conclusion of the Mediation

16. The Mediation may conclude by:
 - 16.1.1 settlement of the dispute in whole or in part, when all agreed matters must be written down and signed by the Parties to be binding; or
 - 16.1.2 the Mediator advising the Parties that a settlement, for the time being at least, cannot be reached.
 - 16.1.3 one or more Parties leaving the Mediation before settlement is achieved;
 - 16.1.4 an agreed adjournment for such time and on such terms as the parties and the Mediator agree.
- 16.2 Where the Mediation does not end in complete settlement, the Mediator may contact the Parties thereafter to see whether further progress might be possible. In these

circumstances the provisions of this Agreement shall apply to those communications with and/or including the Mediator.

Legal status and effect of the Mediation

- 17. This Agreement is governed by the law of England and Wales and the courts of England and Wales shall have exclusive jurisdiction to decide any matters arising out of or in connection with this Agreement and the Mediation.
- 18. The referral of the dispute to the Mediation does not affect any rights that exist under Article 6 of the European Convention of Human Rights, and if their dispute does not settle through the Mediation, the Parties' right to a fair trial remains unaffected.

Changes to this Agreement

- 19. No change to this Agreement is valid unless made in writing and signed by the Parties and the Mediator.

Signed

Party A

.....

[Sign and Print Name]

Party B

.....

[Sign and Print Name]

The Mediator

.....

[Sign and Print Name]