



Chartered
Institute of
Arbitrators

CI Arb

PRACTICE GUIDELINE 5: CIARB MODEL MEDIATION AGREEMENT

This Mediation Agreement (the “Agreement”) is made on [*Insert Date*] between [*Insert names and addresses of the parties*] (collectively referred to as “the Parties” and individually as a “Party”) and [*Insert name and address of the mediator*] (“the Mediator”).

WHEREAS

- A. A dispute (briefly described in Schedule 1 and called “the Dispute”) has arisen between the Parties, and
- B. The Parties have requested the Mediator to assist them to resolve the Dispute by mediation (the “Mediation”) in accordance with the terms of the Agreement.

IN CONSIDERATION of the mutual agreements set out below

IT IS AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. THE MEDIATOR, MEDIATION DATES, VENUE AND RECOMMENDATION

- 1.1 The Parties appoint the Mediator to assist them to resolve the Dispute in accordance with the Agreement.
- 1.2 If the date or dates and venue of the Mediation are not set out in Schedule 1, they shall be determined in writing by the Mediator after consultation with the Parties.
- 1.3 If the Parties are unable to reach a settlement during the Mediation, and only if all the Parties so request and the Mediator agrees, the Mediator may produce for the Parties a non-binding recommendation on possible processes or terms of settlement. This 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 Dispute.

2. MEDIATION RULES

- 2.1 The Mediation Rules of the Chartered Institute of Arbitrators (“Mediation Rules”) effective at the Effective Date (as defined in Schedule 1) are incorporated into, and form part of, the Agreement save as otherwise provided by any amendments and/or additions set out in Schedule 2. If no such amendments and/or additions are set out in Schedule 2, then there are deemed to be no such amendments and/or additions.

3. CONFIDENTIALITY AND PRIVILEGE

- 3.1 As a pre-condition to attendance of any person at the Mediation, that person must sign the agreement set out in Schedule 4.
- 3.2 Following termination of the Mediation, the provisions of Rules 1 and 12 of the Mediation Rules shall continue in effect as to all information (whether given orally, in writing or otherwise) produced for, or arising out of or in connection with, the Mediation passing between any of the Parties and/or between any of them and the Mediator and made for the purposes of the Mediation.
- 3.3 The Mediator shall be under no obligation whatever to retain any documents or electronic records made or obtained for the purposes of the Mediation. The Mediator may destroy or delete such materials at any time after termination of the Mediation under Mediation Rule 11 and/or Clause 4 of the Agreement.

4. START DATE AND TERMINATION OF THE MEDIATION

- 4.1 The Mediation shall begin on the Effective Date (as defined in Schedule 1).
- 4.2 The Mediation shall terminate either under the provisions of Rule 11 of the Mediation Rules or, in default of termination under the said Rule, 28 days after the date fixed for the Mediation (or, where more than one date is agreed, the last of such dates) unless expressly otherwise agreed in writing and signed by the Parties.

5. PAYMENT

5.1 Each Party shall pay the Mediator's fees and expenses set out in Schedule 3 in accordance with the payment terms in that Schedule in an amount equal to the total divided by the number of Parties unless otherwise agreed and set out in Schedule 3.

6. EXCLUSION OF LIABILITY AND INDEMNITY

6.1 Subject to Rule 15 of the Mediation Rules, none of the Parties may call the Mediator as a witness in any litigation, arbitration or adjudication in relation to or arising out of the Dispute and/or the Mediation. In the event that any Party, in breach of this provision, calls the Mediator as a witness, that Party shall indemnify and hold harmless the Mediator from and against all and any costs, including legal costs that the Mediator may thereby incur.

7. APPLICABLE LAW AND DISPUTES

7.1 This Agreement shall be governed by the law of []. The Parties hereby consent to the exclusive jurisdiction of the Courts of [], which shall be competent to hear any claim, dispute or difference in connection with or arising out of

7.1.1 this Agreement and/or

7.1.2 the Mediation and/or

7.1.3 any agreement in settlement and/or purported settlement of the Dispute.

The Parties agree, however, to use their best efforts, before any court proceedings are started, to settle by mediation, in accordance with the Mediation Rules, any such claim, dispute or difference.

8. LANGUAGE OF THE MEDIATION

8.1 The language of the Mediation shall be []. Unless all other Parties and the Mediator agree otherwise, any Party producing documents or participating in the Mediation in any other language shall, at that Party's expense, provide the necessary translations and interpreters.

IN WITNESS WHEREOF, the Parties and the Mediator have caused this Agreement to be executed by their undersigned duly authorised representatives

For: _____
[Insert name of Party]

By:

.....
Signature

For: _____
[Insert name of Party]

By:

.....
Signature

For: _____
[Insert name of Mediator]

By:

.....
Signature

[PLEASE ADD ANY ADDITIONAL SIGNATURE LINES AS ARE NECESSARY]

SCHEDULE 1

Brief description of the Dispute: [eg *court file reference number*]

If agreed by the date of this Agreement:

Date(s) of the Mediation session(s):

Venue(s) for the Mediation:

“Effective Date” means [*insert date of start of preparation for the Mediation*] or if no such date is here stated, the date of this Agreement

Schedule 2

The amendments to the Mediation Rules referred to in Clause 2.1 of this Agreement are as follows:

Schedule 3

The Mediator's fees and expenses (including payment terms) referred to in Clause 5 are:

If an apportionment of fees other than an amount equal to the total divided by the number of Parties has been agreed, that apportionment is:

(Note: If no different apportionment is agreed, please insert "Not applicable" above)

SCHEDULE 4

ATTENDANCE AND CONFIDENTIALITY AGREEMENT

[Note: to be signed by all those in attendance, including the Parties' representatives, their lawyers, experts, and any additional advisors to the Parties]

In consideration of my being permitted to attend the Mediation taking place under the provisions of the Agreement to which this Schedule 4 is part, I agree to be personally bound by the without prejudice nature and the confidentiality provisions of the Mediation Rules (as defined in Clause 2.1 of the Agreement, including but not limited to Rules 1 and 12 of the Mediation Rules. I also agree to be personally bound by Clause 5.1 of this Agreement (Exclusion of Liability and Indemnity).

Name	Signature

Name	Signature

Date:.....

[Note: The Mediator, and/or any Party, may request that this Schedule be re-signed at any and all subsequent Mediation sessions, or whenever new persons attend any Mediation session]

NOTES & OPTIONAL PROVISIONS

1. IMPORTANT NOTE

The CI Arb Model Mediation Agreement is drafted specifically for use with the Mediation Rules of the Chartered Institute of Arbitrators, which are expressly incorporated by reference into the Agreement. The CI Arb Model Mediation Agreement is not suitable for use with mediation rules other than those of the Chartered Institute of Arbitrators. The Mediation Rules of the Chartered Institute of Arbitrators can be found at <http://www.ciarb.org>

2. HUMAN RIGHTS IN EUROPE

Article 6 of The European Convention on Human Rights guarantees a right to a fair trial in the countries of the EU. The following draft additional provision is suggested:

Insert a new provision after Clause 7 as follows:

8. EUROPEAN CONVENTION ON HUMAN RIGHTS

8.1 The referral of the Dispute to Mediation in accordance with the Agreement does not affect any rights that may exist under Article 6 of the European Convention on Human Rights. If the Dispute is not settled by the Mediation, the rights of the Parties to a fair trial remain unaffected.

3 COSTS IN ENGLAND WALES AND NORTHERN IRELAND

Mediation Rule 13 may have the effect that each Party has to bear its own costs of the mediation in circumstances where the Dispute did not settle in Mediation and ultimately, as part of a court decision on the merits or an Award of an Arbitrator, a Party obtains an order that the other pays the costs of the proceedings/arbitration (see *National Westminster Bank PLC -v- Thomas James Feeney and Linda Catherine Feeney* on appeal). If the Parties wish to try to preserve the position to argue that the costs and expenses of the Mediation should be part of a costs assessment later, the following draft additional provision is suggested:

Insert additional Rule in Schedule 2 as follows:

13.2A In the event that the Dispute is not settled in the Mediation, nothing in the Mediation Rules 13.1 and 13.2 shall prevent any Party from seeking to recover on a post-mediation assessment of costs pursuant to a Court order or arbitration award on costs, as the case may be, its costs and expenses referred to in the Mediation Rules 13.1 and 13.2.

4. OPTIONAL PROVISION AS TO NO TRANSCRIPT OR RECORD

If there is to be a requirement that no formal note or transcript of the mediation is to be made, the following draft additional provision is suggested:

Insert an additional Rule in Schedule 2 as follows:

16. No formal record or transcript of the Mediation shall be made by any person attending the Mediation.