



CAYMAN  
LAW  
MEDIATION

Cayman Law Mediation Ltd, (“CLM”/ the “Mediator”)

SAMPLE MEDIATION AGREEMENT 2017

Dated as of the \_\_\_\_ day of \_\_\_\_\_ 2017

Name of Case: .....

CLM Reference: 2017/001/

**PARTIES AND REPRESENTATIVES**

**Party One**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

Representative of Party (if any): \_\_\_\_\_

Background and role: \_\_\_\_\_

**Party Two**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

Representative of Party (if any): \_\_\_\_\_

Background and role: \_\_\_\_\_

**The Parties and the Representatives hereby agree:**

1. CLM is the Mediator for this dispute, whether or not it acts through one or more members of the Cayman Law Mediation team.
2. The mediation will be held on \_\_\_\_\_ 2017, commencing at x: am.
3. The Parties shall act in good faith at the mediation, and agree that the provisions of CLM's Mediation Rules (the "Rules") attached hereto as Schedule One, shall apply to this mediation, and shall be monitored and enforced, as determined by the Mediator, at its sole discretion.
4. The Mediator is authorised to conduct the mediation generally using the Facilitative Mediation procedures set out in the Rules, where the Mediator offers little or no opinion on any of the issues before the Mediator. However, if the parties request same by initialling here, (Party One initials \_\_\_\_\_) & (Party Two initials \_\_\_\_\_), the Mediator may use other mediation techniques, including Evaluative Mediation techniques, in an attempt to further encourage dialogue between the Parties on opportunities for a settlement, even suggestions offered by the Mediator, rather than suggestions only offered up by the Parties themselves.
5. The Mediator has accepted this invitation from the Parties to mediate this matter on the basis that, by virtue of this Mediation Agreement, the Rules and the intrinsic nature of mediation: (i) no liability shall arise or accrue against the Mediator/CLM or its directors, officers, employees, agents or sub-contractors, as a result of the conduct of the Mediation by the Mediator or as a result of the administration of the Mediation by any of the aforesaid; and (ii) the Parties further, hereby, expressly release the aforesaid from any every claim they might otherwise bring against the same, and further expressly indemnify the Mediator and the aforesaid against any loss, cost, claim, expense, or damage (including attorney's fees) the Mediator or the aforesaid incurred or suffered as a result of any of the Parties bringing any action or claim against the Mediator or the aforesaid, or any of them and in any event, should any liability be found (by a Court of competent jurisdiction), to attach to the Mediator, then the Parties agree that compensation therefore, shall be limited to a maximum of US\$ 1,000.
6. Neither CLM, nor anyone attending the mediation for CLM, is permitted to provide legal advice to any one or more of the Parties and the Parties shall not interpret any comment/action/omission/assent of the Mediator as legal advice to them. The Parties are encouraged by CLM to obtain independent legal advice on all matters affecting them and their role in the mediation and matters discussed thereat, but it is the responsibility of the Parties to arrange their own legal advice.

**SCHEDULE ONE**  
**MEDIATION RULES, TERMS AND CONDITIONS**

**1. INTERPRETATION**

In these Rules, which are hereby expressly incorporated by this reference into this Agreement and, where the context allows or dictates generally, in this Mediation Agreement, the following terms shall have the following meanings:

- (a) "**Mediator**" is as defined above in this Mediation Agreement, yet individuals attending the mediation may be employed by CLM, or they may be an independent contractor of CLM, as CLM shall elect;
- (b) "**Mediation Agreement**" means this Agreement, to be executed at or 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 CLM Limited;
- (c) "**Legal Representative**" means the lawyer, counsel, attorney, or other representative of a Party;
- (d) "**Evaluative Mediation**" shall mean a process of mediation in which the Parties may invite, or jointly invite the Mediator to comment on the merits or substance of the case, and/or to provide a non-binding evaluation of same;
- (e) "**Facilitative Mediation**" shall mean a process of mediation in which the Mediator typically offers no comment on the merits or substance of the case, nor provides any evaluation but instead assists the Parties to an agreement (if any) they both sign up to. The Mediator may in its absolute discretion comment on the use of the process of the mediation, if, in the Mediator's view at the time, such comment may be likely to assist the Parties; and
- (f) "**Settlement Agreement**" means a document (if any) signed by the Parties and/or their Representatives before the conclusion of the mediation, setting forth any terms of settlement they agree upon.

- 2.** These Rules shall apply to all aspects of the mediation and if they require interpretation, CLM shall interpret same in whatever way it deems appropriate in an effort to provide the Parties with what it regards as an efficient and effective mediation. The Mediator may apply additional rules as it deems necessary during the mediation, and/or these Rules may be varied at any time by written amendment signed by the Parties and/or their Representatives, and the Mediator.

### 3. PRIVACY AND CONFIDENTIALITY OF MEDIATION

- (a) The mediation is to be private and confidential.
- (b) A person **who is not a Party or a Legal Representative of a Party** may only attend the mediation with the consent of all the Parties and of the Mediator. Every such person shall sign Schedule Two before the start of the mediation, or whenever requested so to do.
- (c) Every Party and Legal Representative agrees that all admissions, arguments, offers, promises and proposals, whether oral or written, actions, determinations, representations and statements (including but not limited to admissions) made in the course of the mediation by any of the Parties, their agents, employees, experts, Legal Representatives and all statements, comments, or observations made or relayed, by the Mediator, and all notes, documents and reports prepared or exchanged during the mediation are "without prejudice" and for the purpose of negotiation only.
- (d) The Parties agree that any such offers, promises, proposals, conduct, statements, notes, documents, and reports shall not be disclosed to any third party and they shall not be offered as evidence in any arbitration, judicial or other proceeding, at any time.
- (e) Notwithstanding Rule 3(d), *the Parties acknowledge that evidence that is otherwise admissible in Court proceedings shall not be rendered inadmissible solely because it has been used in a mediation.*
- (f) Neither the Mediator, nor any person present observing the mediation nor any of CLM's staff shall be invited or compelled by the Parties, jointly or severally, to appear as a witness in any pending or future adversarial or judicial proceeding involving any one or more of the Parties or relating in any way to the subject matter of the mediation.
- (g) The Parties agree that they shall not jointly or severally seek to summons the Mediator or any person observing the mediation or any of CLM staff, or any of the Parties in relation to the mediation, or, as regards CLM and its staff, as regards anything else.
- (h) Any **notes made by the Mediator are confidential to the Mediator** and shall not be available to the Parties at any time, nor subject to subpoena for production as evidence in any arbitration, judicial or other proceeding. The **Mediator undertakes to destroy any of its notes taken upon completion of the mediation.**

### 4. BASIC PRINCIPLES

- (a) The Parties and their Representatives agree that each Party shall attend the mediation with **full authority to settle.**
- (b) 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.

- (c) The Parties agree where reasonably practicable to make available to the Mediator such copies of documents or materials as are likely to be needed in order effectively to negotiate.
- (d) The Parties agree that the Mediator may meet privately (caucus) with each Party and its Legal Representative during the mediation if the mediator considers that it will assist the process. Any Party and Legal Representative may request a private caucus with the Mediator at any time.
- (e) The Parties agree that there shall be **no electronic recording** by any means of the mediation, nor any verbatim stenographic record taken of the mediation. Parties may make notes but these must not be shown to any person not a signatory to this Mediation Agreement, without the consent of the other Party and expressly are not admissible in any court, arbitration or other proceedings.

## **5. TERMINATION OF THE MEDIATION**

- (a) Whatever the process used in mediation, the mediation shall be terminated:
  - (i) by agreement between the Parties; or
  - (ii) if a settlement is reached by the Parties; or
  - (iii) at any time during the mediation, if the Mediator in his/her absolute discretion decides it should be terminated, in which case the Parties agree they shall not challenge that decision nor shall the Mediator give, or be asked, a reason for the termination;
  - (iv) if no settlement has been reached in the time allotted by the Mediator for the mediation and it is either impracticable to take further time, unless the Parties and the Mediator agree to adjourn the mediation; or
  - (v) if a Party does not wish to continue in mediation.
- (b) On termination, the Mediator will as soon as reasonably practicable destroy all notes and documents save for this Mediation Agreement and any of its Schedules.

## **6. SETTLEMENT AGREEMENT AND FORMALITIES**

Any settlement agreed at mediation will not be deemed to be concluded or to be legally binding unless/until the Parties (or their Legal Representatives) sign the same. It is NOT the responsibility of the Mediator to draft the terms of any settlement agreement, and the Mediator shall not be required to sign same. The Mediator will not of course insist upon any settlement; it is for the Parties to determine whether or not or what they want to settle on, and any offers of settlement should typically be drafted by the Parties themselves.

**7. FEES AND COSTS OF THE MEDIATION**

- (a) The Parties will be responsible for the fees and expenses of the Mediator (the “Mediation Fees”) as set out in Schedule 3 (including any provision for additional hours if the mediation process extends beyond the allocated hours).
- (b) Unless otherwise agreed by the Parties and CLM in writing, each Party agrees to share liability for the Mediation Fees equally and 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.

**8. LEGAL EFFECT AND STATUS OF THE MEDIATION**

This Mediation Agreement and these Rules are governed by the laws of the Cayman Islands, and the Courts of the Cayman Islands shall have exclusive jurisdiction to decide any matters arising out of or in connection with this Mediation Agreement and the mediation.

**SIGNATURE**

I have read, understand and agree the provisions of this Mediation Agreement, incorporating the Rules, Terms and Conditions.

Signed: \_\_\_\_\_ for and on behalf of Party 1 and its Representatives

Signed: \_\_\_\_\_ for and on behalf of Party 2 and its Representatives

Signed: \_\_\_\_\_ for CLM

**SCHEDULE TWO**

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

I/we the undersigned, in consideration of the Mediator and the Parties in the above mediation agreeing to us attending and observing the above mediation, hereby irrevocably agree to keep confidential all matters that I/we hear, read, observe, see or learn at the above mediation and shall never disclose any of the same unless compelled to do so by a competent Court in due process of law.

I am/we are:

**Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Email:** \_\_\_\_\_

**Telephone:** \_\_\_\_\_

**Signature:** \_\_\_\_\_



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