

**AGREEMENT AMONG PARTIES TO PARTICIPATE IN  
BINDING MEDIATION AND ADJUDICATION**

**MEDIATOR/ADJUDICATOR: [XXXXXXXXXXXXXX]**

PARTIES:

[XXXXXXX] 1<sup>ST</sup> PARTY

[LXX] 2<sup>ND</sup> PARTY

ETC.

This Agreement will have an Effective Date of [ XX.XX.XXXX], notwithstanding the date or dates of signature hereto.

PARTIES:

1<sup>ST</sup>

2<sup>ND</sup>

3<sup>RD</sup>

ETC.

Individually referred to as a numbered Party or collectively as numbered Parties or the Parties.

Whereas:

1. NARRATIVE OF RELATIONSHIP.
2. NARRATIVE OF OTHER PARTIES INTERESTS (I.E. FUNDERS, AUTHORITIES ETC).
3. NARRATIVE OF THE PROJECT/TRANSACTION.
4. NARRATIVE OF RELEVANT DOCUMENTS.
5. NARRATIVE OF RELEVANT MANAGEMENT STRUCTURES.
6. NARRATIVE OF RELEVANT FINANCIAL CIRCUMSTANCES.
7. NARRATIVE OF AGREED ANCILIARY DOCUMENTS.
8. NARRATIVE OF THE ISSUES BY RELEVANT HEADINGS.
9. NARRATIVE OF ANY FORMAL NOTICES SERVED UNDER THE REQUIREMENTS OF THE DOCUMENTS.

THEREFORE:

The Parties now wish to enter into this agreement to provide for a process of resolution of such disputes and differences as may have arisen or may arise among the Parties as follows:

1. NARRATIVE OF THE HEADS OF DISPUTE TO BE RESOLVED.
2. NARRATIVE OF THE APPOINTED AUTHORISED REPRESENTATIVES FOR EACH PARTY.
3. NARRATIVE OF THE APPOINTMENT OF THE DECISION MAKER (MEDIATOR/ADJUDICATOR OR M/A).
4. NARRATIVE OF THE POWER OF THE M/A TO MAKE DECISION ON THE ISSUES IN PLACE OF THE AUTHORISED REPRESENTATIVES AND ON BEHALF OF EACH OF THE PARTIES IN THE ABSENCE OF AGREEMENT.
5. NARRATIVE OF THE APPOINTMENT ACCORDING TO THE TERMS INCLUDED OR APPENDED.
6. NARRATIVE OF ABSOLUTE CONFIDENTIALITY.
7. NARRATIVE OF THE POWER OF THE M/A TO ORDER DISCLOSURE, REQUIRE ANY EMPLOYEE OF A PARTY TO ATTEND TO COMPEL ATTENDANCE AT MEETINGS AND TO DETERMINE AND CONTROL PROCEDURE SO FAR AS NOT PRESCRIBED HEREIN.
8. NARRATIVE OF CHOICE OF LAW AND LOCATION OF MEETINGS. (per the main contract)
9. NARRATIVE OF THE M/A POWERS TO APPOINT EXPERTS AND ADOPT THEIR DECISION OR ADVICE.
10. SPECIFICATION OF THE HEADS OF DISPUTE IN THREE LINE NARRATIVES. (This may be done by agreement of by each submitting three lines.)
  - i)
  - ii)
  - iii)
  - etc.
11. The 1<sup>st</sup> Party will provide the M/A with a bundle of documents comprising only the relevant contracts and agreements between the parties and any other ancillary contracts or agreements. (not submissions or correspondence)
12. The Parties have agreed a procedure to be followed in respect of each issue referred to the M/A for resolution or decision;
  - a. Step 1 is to identify [X] of the most pressing issues.

- b. Step 2 is to schedule the approach and further steps for submissions on the issues.
- i) Each Party submits a position on each issue identified on a sequential basis.
  - ii) A Party advocating a position in respect of an issue will make a response if there is no clear advocate to take the lead in submission the Parties will make submissions to each other and the M/A in the order of 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, etc.
  - iii) A response position can then be made to each submission and the M/A.
  - iv) The M/A may prioritise issues to be dealt with as the M/A decides is appropriate.
  - v) Step 3 is to identify a timetable within which the Parties will make their submissions and responses.
  - vi) This should be a reasonable period but since the issues are known and already partly addressed it should be no more than 4/5 weeks for submissions with the same period for responses. (The M/A may determine the periods based on each circumstance).
  - vii) Step 4 when a submission and response has been made, the M/A may call for further information.
  - viii) The M/A may then call the Parties to a meeting as a mediation meeting over 1/2/3 days or more chaired by the M/A. (preferably the date for this will be set when the order for submissions is made by the M/A thereby setting a clear timeline.)
  - ix) Meetings can be phased to deal with each issue separately or consecutively in continuous meetings.
  - x) At the meeting each Party can supplement their submission subject to management of the input and time by the M/A.
  - xi) The M/A can ask for further evidence or documents on each issue to be provided by a nominated Party under direction of the M/A within a specified time.
  - xii) Step 5 based on the initial submissions and based on the evidence the M/A issues a Preliminary Finding to the Parties and the time for this may be agreed at the meeting.
  - xiii) Step 6 The Parties may accept the Preliminary Finding or respond to the Preliminary Finding with comments and suggestions and address the questions if any to be asked of any expert the M/A wishes to appoint. A response to a preliminary finding will identify any points on which a Party considers the preliminary finding to be wrong and the reasons by reference to earlier submissions or material but no additional information may be submitted.
  - xiv) Following responses to the Preliminary Findings the M/A may issue a revised Preliminary Finding or adhere to the initial Preliminary Finding.
  - xv) Step 7 each Party can see and comment in one submission on any expert view given to the M/A. This will apply to any expert view whenever given during the process.
  - xvi) The Parties will if they accept the Preliminary Finding enter into a joint agreement confirming their acceptance. If the Parties or any of them reject

the Preliminary Finding M/A becomes an Adjudicator empowered to make a binding decision.

- xvii) Each Party may then make a further final submission on points within the final Preliminary Findings to the M/A as Adjudicator.
- xviii) Step 8 the M/A issues to each Party an adjudicated decision or if the contract clause in question requires an Expert Determination the M/A hands down the Expert Determination procured by the M/A through instruction of an Expert.
- xix) Step 9 each Party remits the decision to be implemented by the relevant part of each party's organisation.
- xx) Step 10 the outcome is applied to the relevant contract or situation and the appropriate documents are issued and payments made and confirmation given to the M/A of the relevant actions being taken.
- xxi) Step 11 each Party takes the necessary steps to make an addendum to the contract or minuted as a decision of the board or registered to ensure formal compliance with necessary procedures.
- xxii) Step 12 any Party who is required to do so must notify the decision to the relevant third party who has an interest.
- xxiii) If it is required a final step in the process can be inserted to achieve resolution of all remaining issues arising.

13. Each Party will bear their own cost and expense in preparing this Agreement up to the Effective date.
14. The terms of this Agreement will become operative and binding from the Effective Date of the main Contract.
15. The Parties will bear their own costs and expenses for the period during which they are making submissions under this Agreement.
16. On resolution of an issue by acceptance by the Parties of the M/A Preliminary Finding each Party will bear their own cost and expenses unless otherwise agreed or determined by the M/A on the basis of unreasonable behaviour by a party.
17. In the event that the M/A proceeds to make a determination as an Adjudicator of an issue between Parties the M/A may also make as part of an Adjudication determination an award of costs in favour of a Party in such amount or proportions as the M/A may deem appropriate.
18. Each Party undertakes to cooperate to the fullest extent reasonably practicable with the M/A and to provide all information, documentation, data, access to witnesses and any other assistance or disclosure requested by the M/A.
19. This Agreement is subject to and governed by the Laws of [xxxxxx] and the Parties agree to the exclusive jurisdiction of the Courts of [xxxxx] as the forum for resolution of any disputes relating to the terms of this Agreement or any resolution of issues not resolved by this Agreement. (This should be the position under the main terms of the Contract also.)

20. No third Party will have any right under the terms of this Agreement.
21. This Agreement will be read together with Schedule 1 to this Agreement which provides a narrative background and explanation to the terms being entered into. (this is intended to be a non-controversial description of the background and how the issues have arisen.)
22. The Signatories by their signature to this Agreement below confirm their power, authority and capacity to sign this Agreement and to bind the Parties for whom they sign to the terms of this Agreement and the resolutions and determinations reached through the procedure adopted herein.

1.Signed for 1<sup>st</sup> Party..... Witness.....

2.Signed for 2<sup>nd</sup> Party..... Witness.....

3.Signed for 3<sup>rd</sup> Party.....ETC