

## Agreement to Mediate

THE FOLLOWING PARTIES namely:

A .....

B .....

(collectively "the parties") hereby agree to mediate their dispute on the following terms and conditions:

### 1. MEDIATION PROCEDURES

- 1.1. The Mediation shall be held and conducted according to this Agreement to Mediate and the ADR Bahamas Mediation Rules.
- 1.2. The Mediation meeting itself shall be referred to throughout this Agreement as "the mediation".
- 1.3. An authorized representative of each party (person must be able to bind the party represented) will attend the mediation.
- 1.4. Any settlement reached in the mediation will not be legally binding until it has been reduced to writing and signed by, or on behalf of, each of the parties.

### 2. MEDIATOR

- 2.1. The parties agree that ..... will be the Mediator ("the Mediator").

### 3. MEDIATION FEES

- 3.1. The Mediation's fee and any other expenses in connection with the Mediation will be shared equally by the parties and each party will be solely responsible for their 50%, unless the parties agree otherwise. A deposit representing the first day of Mediation will be paid before the hearing starts.

The Mediator's fee will be ..... This fee is based on a one day Mediation (a normal day is based on a 10.00am start and 5.00pm finish). Additional Mediation time will be charged at an hourly rate of .....

- 3.2. The parties' respective representatives will be responsible for the Mediator's fee (in the same way as they are liable for disbursements incurred in the course of litigation) and an invoice will be sent for final payment within 14 days of the date of the mediation.
  - 3.3. The parties are required to inform the Mediator, either before or during the course of the Mediation session if they do not wish to exceed the scheduled period.
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3.4. Any lunch (if required) on the day of mediation will be at the cost of and payable by each party.

3.5. If the Mediation settles 7 days before the date of Mediation a fee of ..... will be charged. If it settles 3 days before the date of the Mediation, half of the agreed daily rate will be charged.

#### 4. PLACE AND TIME OF THE MEDIATION

4.1. The Mediation will take place on ..... at a venue to be confirmed.

#### 5. CONSULTING WITH LEGAL ADVISORS

5.1. A party does not require legal representation to attend the Mediation.

5.2. Where a party is not legally represented, such party is advised to obtain independent legal advice before, during and after the Mediation and prior to finalizing any agreement reached pursuant to the Mediation.

5.3. The parties recognize that the Mediator does not offer legal advice or act as a legal advisor for any of the parties of the Mediation nor will he/she provide any party with a legal analysis to protect any party's legal position or rights.

5.4. The parties agree that the Mediator will not be subject to or joined in any legal proceedings by them or any of them.

#### 6. PRIVATE SESSION

6.1. The Mediator may hold private sessions with one party at a time. These private sessions are designed to improve the Mediator's understanding of the party's position and to assist the Mediator in expressing each party's viewpoint to the other side.

6.2. Information gained by the Mediator through such a session is confidential unless (a) it is in any event publicly available or (b) the Mediator is specifically authorized by that party to disclose it. The clause is subject to the provisions in clause 7.

#### 7. CONFIDENTIALITY

7.1. The Mediator and the parties undertake to one another that, save as may be otherwise agreed in writing by the parties or their respective legal representatives, they will maintain confidentiality in respect of all statements and matters arising in the Mediation. The confidentiality provisions in this Agreement are however subject to the following exceptions:

7.1.1. Confidentiality does not apply insofar as any party needs to disclose any such statements and matters in order to comply with any statutory obligation or obtain professional advice.

7.1.2. Without prejudice to the generality of the above, the Mediator has an absolute obligation under the Proceeds of Crime Act 2002 to report to the National Crime Intelligence Service any knowledge or suspicion relating to

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the involvement of the proceeds of crime (including tax evasion) and is precluded by law from informing the parties of his intention to do so.

7.2. The parties recognize that the Mediation is for the purpose of attempting to achieve a negotiated settlement and as such all information provided during the Mediation is without prejudice and will be inadmissible in any litigation or arbitration of the dispute, even if there is a tiered dispute resolution process.

7.3. Evidence which is otherwise admissible shall not be rendered inadmissible as a result of its use in the Mediation.

7.4. The parties will not issue a witness summons against the Mediator or otherwise require the Mediator or any other person attending the Mediation under the auspices to testify or produce records, notes or any other information or material whatsoever in any future or continuing proceedings.

\*7.5. Every person involved in the Mediation will keep confidential and not use for any collateral or ulterior purpose the fact that the Mediation is to take place or has taken place, other than to inform a court dealing with any litigation relating to the dispute of that fact.

7.6. Where the Mediation has taken place as a result of a Court order, the parties agree that the Court can be notified of the fact that the case has been resolved through Mediation. The notification will come from the parties and take the form of a letter or draft consent order agreed between the parties at the conclusion of the Mediation. The notification will not disclose the terms of any settlement, unless otherwise agreed by the parties.

7.7. All documents, statements, information and other material produced prior to or during the course of the Mediation shall be held in confidence by the parties and shall be used solely for the purposes of the Mediation, save to the extent that these documents have been previously disclosed and are in the domain of the litigation, whether in writing or orally.

## 8. TERMINATION OF THE MEDIATION

8.1. Any of the parties or the Mediator shall be entitled, in their absolute discretion, to terminate the Mediation at any time without giving reason to do so.

## 9. EXCLUSION OF LIABILITY

9.1. The Mediator shall not be liable to the parties or any of them for any act or omission in connection with the services provided by him in, or in relation to, the Mediation, unless the act or omission is shown to be fraudulent or in bad faith. The exclusion applies subject to any applicable law.

## 10. HUMAN RIGHTS

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10.1. The referral of this dispute to Mediation does not affect the rights that may exist under Article 6 of the European Convention on Human Rights. If the dispute is not settled by Mediation, the parties' rights to a fair trial remain unaffected.

#### 11. LAW AND JURISDICTION

11.1. This agreement is governed by, construed and take effect in accordance with The Laws of The Commonwealth of The Bahamas.

11.2. The courts of The Commonwealth of The Bahamas shall have exclusive jurisdiction to settle any claim or dispute which may arise out of or in connection with the Mediation.

#### 12. SIGNATURE OF THIS AGREEMENT

12.1. This agreement is to be signed by the instructed (legal) representative of each party amending the Mediation (if represented) on behalf of that party. An identical copy has been forwarded to the representative for each party for signature.

A .....

Signed:.....

Name:.....

Date:.....

B .....

Signed:.....

Name:.....

Date:.....

Accepted to administer the Mediation as provided for:-

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Signed:.....

Date:.....

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