

- 1 The Parties (unless and until one of the Parties withdraws from the Mediation (as defined below), or it is otherwise determined) will use their best endeavours to attempt to resolve the Dispute by mediation and will take all such steps as may be necessary to participate fully in the mediation process (the “Mediation”), including the taking of all preparatory steps for the mediation meeting (the “Meeting”).

The Mediators

- 2 The Parties appoint Stephen Barker as Mediator in respect of the Mediation.

Representatives

- 3 The Parties’ Representatives at the Meeting will be :-

- 3.1 For the First Party – A & B of [];

- 3.2 For the Second Party – C & D of [];

- 3.3 or such other representatives as the Parties may notify to the Mediator and each other from time to time. No representative shall be permitted to represent any Party at the Meeting unless notification has been given to the Mediator and to the other parties at least 24 hours prior to the commencement of the Meeting unless the Mediator in his absolute discretion permits such representative to appear or all the Parties agree to such representative appearing.

Authority to settle

- 4 The Parties’ respective Representatives at the Meeting shall have full authority to settle the Dispute and each Party hereby warrants that its Representative at the Meeting shall have full authority to settle the Dispute.

Before the meeting

- 5 Not less than 7 days before the date fixed for the Meeting or within such shorter time as the Mediator may in his absolute discretion direct, each of the Parties shall submit to the Mediator and exchange with each other a written summary of its case together with supporting documents.
- 6 The Mediator may in his absolute discretion give such further or other directions for the conduct of the Mediation as he thinks fit. Such directions shall be communicated to the Parties' Representatives for the time being as soon as reasonably practicable.
- 7 The Meeting shall take place at 10.00 am on [xx/xx/2013]. If the Dispute has not been resolved at the end of the time allotted (nine hours) for the Meeting then, with the agreement of all the Parties and the Mediator, the Meeting may be resumed at such time and place as the Parties and the Mediator may agree. The venue for the Mediation shall be [xxxxxxx].
- 8 The procedure at the Meeting shall be determined by the Mediator in consultation with the Parties' Representatives. In the event of any disagreement the decision of the Mediator shall be final.
- 9 The Meeting shall continue during the time allotted and shall determine upon the happening of any of the following events:-
 - 9.1 The Mediator in his absolute discretion determines that no useful purpose would be served by continuing the Meeting;
 - 9.2 The Mediator in his absolute discretion determines for any reason that he ought not to continue as Mediator;
 - 9.3 One of the Parties withdraws from the Mediation;
 - 9.4 The Parties reach agreement.

Settlement

- 10 If agreement is reached between the Parties the same shall not be legally enforceable unless incorporated into written Heads of Agreement signed by them or by their Representatives who shall be deemed to have full authority to enter into such Heads of Agreement on their behalf.
- 10.1 Any such Heads of Agreement shall be legally enforceable by the Parties and the Parties agree to give effect to the terms thereof.
- 10.2 Unless otherwise provided in the Heads of Agreement, the Heads of Agreement shall be governed by and construed in accordance with English law and the Parties agree to submit to the exclusive jurisdiction of the Courts of England and Wales as regards any claim or matter arising under or in relation to the Heads of Agreement.
- 10.3 In the event that no Heads of Agreement are entered into by the Parties all the Parties' rights shall be reserved and shall remain in all respects unaffected by the Mediation save to the extent provided in this Agreement.

Confidentiality

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- 11.1 The Parties, their Representatives, their advisers and the Mediator shall keep confidential and shall not reveal, save as required by law and insofar as may be necessary to bring into effect or enforce the Heads of Agreement:-
- 11.1.1 All written summaries of the Parties' cases;
- 11.1.2 All statements whether oral or written made in the course of the Meeting;

11.1.3 All concessions or admissions of law or fact;

11.1.4 That any settlement has been reached;

11.1.5 The Heads of Agreement;

11.1.6 The fact that the Mediation has taken place, is taking place or is going to take place;

PROVIDED that the foregoing shall not prohibit the disclosure of the matters set out in paragraphs 11.1.4 and 11.1.6 hereof insofar as may be strictly necessary to keep informed any court, tribunal or other party to any dispute for the proper management of any litigation concerning or related to the dispute or disputes the subject of the Mediation.

11.2 The Mediation shall be confidential and shall be treated as though the same was a negotiation conducted upon a “without prejudice” basis with a view to settling proceedings and shall be privileged accordingly.

11.3 All documents, written case summaries, written submissions, written concessions or admissions of law or fact or written statements (whether prepared specifically for the purposes of the Mediation or not) used or disclosed for the purposes of the Mediation shall not be the subject of disclosure, in any legal or similar proceedings whatever provided that documentary evidence which would otherwise be subject to disclosure, inspection or production in such proceedings shall not be protected against disclosure, inspection or production by reason of its use or disclosure in the course of the Mediation.

11.4 All oral submissions, oral statements or oral concessions or admissions of law or fact made in or for the purposes of the Mediation shall be inadmissible as evidence in any legal or similar proceedings whatever provided that if they would otherwise have been admissible in such

proceedings they shall not be rendered inadmissible by reason of having been made also in the course of the Mediation.

- 11.5 The Parties agree not to request the Mediator or the Assistant Mediator (if any) to disclose to them any notes or papers that he has in his possession relating to any aspect of the Mediation or the Mediator's discussions with the Parties. The Mediator shall be at liberty to destroy any papers in his possession relating to the Mediation without reference to the Parties, and the Parties acknowledge that it is his usual practice to destroy papers following the Meeting.
- 11.6 The Parties shall not be permitted to see or inspect or to make use of the Mediator's or any Assistant Mediator's notes or any document prepared by them for the purposes of or in the course of the Mediation for the purposes of any legal or similar proceedings or in any form of alternative dispute resolution in relation to the Dispute or any matter related to or concerning the subject matter of the Mediation including in relation to any proceedings brought for the purposes of the enforcement of the Heads of Agreement and even insofar as they relate to any matters relevant to such proceedings.
- 11.7 The Parties shall not be permitted to call the Mediator or the Assistant Mediator if any as a witness in any legal or similar proceedings or in any form of alternative dispute resolution in relation to the Dispute or any matter related to or concerning the subject matter of the Mediation or otherwise.
- 11.8 The Parties shall not be permitted to rely upon any expression of opinion, advice or comment made by the Mediator in the course of the Mediation in or for the purposes of any legal or similar proceedings or any form of alternative dispute resolution in relation to the Dispute or any matter related to or concerning the subject matter of the Mediation.

Fees and Expenses

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- 12.1 Unless otherwise agreed in writing all the costs of the Mediation, the fees and expenses of the Mediator (which expression shall include the Assistant Mediator where one is appointed), the costs of the Meeting and any other charges including all Value Added Tax shall be borne by the Parties in equal shares. The Mediator shall be remunerated in accordance with any special terms agreed between the Mediator and the Parties.
- 12.2 All fees, costs and charges of the Mediation shall be paid to the Mediator.
- 12.3 The costs and expenses of the Mediation as estimated by the Mediator shall be payable by the Parties in advance on dates fixed by the Mediator. The Mediator shall be at liberty to require the payment of further estimated costs and expenses from time to time. If the Parties fail to make payment in accordance with the Mediator's requirements from time to time the Mediator shall be at liberty to suspend the Mediation until payment in full has been made and to cancel any meeting without prejudice to any other claims, rights and remedies which he may have.
- 12.4 The Parties will be invoiced for any additional sums not paid in advance and such invoice shall be paid within 14 days of its date. Late payments will bear interest at 5% per annum over Barclays Bank plc Base Lending Rate compounded with daily rests.
- 12.5 In the event that the Parties settle the Dispute before the Mediation or for any other reason the Mediation does not take place or is adjourned, but after fees payable in advance have become due (whether paid or not) the Mediator shall be entitled to retain or receive payment (as the

Name:

On behalf of the First Party

Signed:.....

Name:

On behalf of the Second Party

Signed:.....

Stephen Barker, the Mediator