

ADR Group mediations are governed by the following procedure ('The Mediation Procedure') as amended by ADR Group from time to time. It will be taken that the parties have agreed that the mediation shall be conducted in accordance with the Mediation Procedure.

## 1. Mediation Procedure

- 1.1 The parties to the dispute or negotiation in question will attempt to settle by mediation. Representatives of the parties including, if desired, their advisers (legal representatives) and the mediator will attend the mediation session.
- 1.2 The representatives (Legal or otherwise) of the parties must have the necessary authority to settle the dispute. If a party is a natural person, that person must attend the mediation session. If a party is not a natural person it must be represented at the mediation session by an officer or employee with full authority to make binding agreements settling the dispute. If that person comes with 'limited' authority, that is, authority up to a certain amount, he or she must disclose this information to the mediator prior to the mediation.
- 1.3 Any and all communications relating to, and at, the mediation are private & confidential and will be without prejudice.
- 1.4 Upon request ADR Group will provide to the parties, details of recommended mediators drawn from its panel of mediators (ADR Net Limited). Consideration will be given to the nature of the dispute, the complexity, the location and the experience required. If the parties are unable to agree to the appointment of a mediator, ADR Group will appoint a mediator if requested to do so.

## 2. Mediation Agreement

- 2.1 The parties sign an agreement ('Agreement to Mediate') at the start of the mediation. This agreement governs the relationship between the parties before, during and after the mediation.
- 2.2 Each party, in signing the Agreement to Mediate, will be deemed to be agreeing on behalf of both itself and all such other persons to be bound by the confidentiality provisions of the Mediation Procedure.

## 3. The Mediator

- 3.1 The Mediator will:
  - Attend any meetings with any or all of the parties preceding the mediation, if requested to do so, or if the mediator decides it is appropriate
  - Prior to the commencement of the mediation read and familiarise him/herself with each party's Position Statement and any documents provided in accordance with paragraph 6.1
  - Determine the procedure
  - Assist the parties in drawing up any written settlement agreement
  - Abide by the terms and conditions of the Mediation Procedure, the Agreement to Mediate and ADR Group's Code of Conduct
- 3.2 The Mediator will not:
  - Analyse an party's legal position or rights
  - Impose a settlement on the parties
  - Offer legal advice or act as legal adviser to any party

- 3.3 The parties and mediator acknowledge that the mediator is an independent contractor and is not appointed as an agent or employee of any of the parties or ADR Group. Neither the mediator nor a member of his or her firm or business will act, or have acted, as a professional adviser, or in any other capacity, for any of the parties individually in connection with the dispute either before, during the currency of the mediation or at any time thereafter.

#### **4. Mediation Agreement**

- 4.1 ADR Group will in consultation with the parties and the mediator, make the necessary arrangements for the mediation including, as appropriate:
- Recommend mediators with regard to, inter alia, nature of the dispute, degree of complexity, location of parties etc and drawing up the Agreement to Mediate
  - Liaise between the parties to agree suitable date and venue
  - Assist the parties in preparing their Position Statement (see paragraph 6) and supporting documentation
  - Discuss or meet with any or all of the parties or their representatives (and the mediator if appropriate), either together or separately, on any matter pursuant to the proposed mediation
  - General administration in relation to the mediation

#### **5. Representation**

- 5.1 Parties do not require legal representation to attend the mediation.
- 5.2 Where a party is un-represented, ADR Group encourages such party to obtain independent legal advice prior to the mediation.
- 5.3 Each party is required to notify ADR Group and other parties involved in the mediation of the names of those people intended to be present on its behalf at the mediation.

#### **6. Position Statements and Documentation**

- 6.1 Each party will be required to prepare and deliver to the mediator, seven (7) days prior to the mediation, a concise summary ('Position Statement') of the case in dispute. Together with this statement should be copies of documents referred to in the Position Statement and those which parties will be seeking to refer to during the mediation.
- 6.2 ADR Group do not impose any obligation on the parties to exchange Position Statements, but parties are free to agree to the simultaneous exchange of the Position Statements, if so agreed or if considered appropriate.
- 6.3 The Position Statement is private and confidential and will not be disclosed (by the mediator) to any other third party unless expressly authorised to do so. ADR Group will provide to the parties a guide to position statement preparation.
- 6.4 Parties are encouraged to prepare and agree a joint bundle of documents where appropriate.

#### **7. The Mediation**

- 7.1 No formal record or transcript of the mediation will be made.
- 7.2 The mediation session is for the purpose of attempting to achieve a negotiated settlement and all information provided during the mediation session is without prejudice and will be inadmissible in any litigation or arbitration of the dispute. Evidence, which is otherwise admissible, shall not be rendered inadmissible as a result of its use in the mediation session.

- 7.3 If the parties are unable to reach a settlement during the mediation, the mediator may, if requested to do so, facilitate further negotiation after the mediation session itself has ended.

## **8. Settlement Agreement**

- 8.1 Any settlement reached in the mediation will not be legally binding until it has been recorded in writing and signed by, or on behalf of, the parties.

## **9. Termination**

- 9.1 Any of the parties may withdraw from the mediation at any time and shall immediately inform the mediator and the other representatives either orally or in writing. The mediation will terminate when:
- A party voluntarily withdraws from the mediation or
  - A written settlement agreement is concluded or
  - The mediator elects, in his / her sole discretion, that continuing the mediation is unlikely to result in a settlement or
  - The mediator decides that he / she should retire for any of the reasons set out in the Code of Practice

## **10. Settlement Agreement**

- 10.1 Where the dispute has been referred to mediation by the Court or where the Court has ordered that the parties consider mediation, and the mediation does not achieve settlement, the current litigation or arbitration in relation to the dispute may be commenced or continued, notwithstanding the mediation, unless the parties agree otherwise.

## **11. Settlement Agreement**

- 11.1 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 and
  - All information, (whether given orally or in writing or otherwise), produced for, or arising pursuant to, the mediation including the settlement agreement (if any) arising out of it

except if so far as is necessary to implement and enforce any such settlement agreement.

Notwithstanding the above it would be prudent of the parties to include an express confidentiality clause (if so desired) in any settlement agreement.

- 11.2 All documents or other information produced for, or arising in relation to the mediation will be privileged and not admissible as evidence or discoverable in any litigation or arbitration connected with the dispute (see paragraph 11.1 above). This does not apply to any information, which would in any event have been admissible or discloseable in such proceedings.
- 11.3 The parties will not subpoena or otherwise require the mediator, ADR Group (or any employee, consultant, director or representative of ADR Group) or any other person attending the mediation under the auspices of ADR Group to testify or produce records, notes or any other information or material whatsoever in any future or continuing proceedings.

## **12. Mediation Costs**

- 12.1 It is usual that the costs of the mediation are borne equally between the parties.
- 12.2 Payment of these costs will be made to ADR Group in accordance with its fee schedule and terms and conditions of business (as amended from time to time).
- 12.3 Each party attending the mediation is to bear its own costs and expenses of its participation in the mediation (including legal representative costs) and unless agreed otherwise, such costs will be costs in the cause.

## **13. Waiver of Liability**

- 13.1 Neither the mediator nor ADR Group shall be liable to the parties for any act or omission in connection with the services provided by them in, or in relation to, the mediation, unless the act or omission is fraudulent or involves wilful misconduct.

## **14. Human Rights**

- 14.1 The referral of a dispute to mediation does not affect any rights that may exist under Article 6 or the European Convention of Human Rights. Should the dispute not settle through the process of mediation, the parties right to a fair trial shall remain unaffected.