



Draft Mediation Clause

Businesses, organisations and others are now regularly inserting dispute resolution clauses into a wide variety of contracts in order to ensure that disputes and other differences are resolved as efficiently and effectively as possible.

Core suggests the following clause as suitable for a wide variety of disputes. It is important that parties seek legal advice before using such a clause. Although so far as we are aware, such clauses have not been reviewed by courts in Scotland, English courts have upheld enforceability of mediation clauses.

Draft mediation clause:

"If a claim, dispute or difference between the parties arising out of or in connection with this agreement cannot be resolved by direct negotiation between them, the parties agree to endeavour to resolve the matter by mediation, which shall be conducted in accordance with the procedures set out in [Core's Terms of Engagement and Code of Conduct for Mediators](#), 10 York Place, Edinburgh, EH1 3EP ("Core"), which is deemed to be incorporated in this contract.

Either party or both parties may approach Core to initiate the mediation process and appoint a mediator. The mediator shall be selected by agreement between the parties in discussion with Core. [Optional: Failing such agreement, within 15 days of one party or both parties requesting the appointment of a mediator, the parties agree that the mediator shall be appointed by Core after consultation with the parties.] Unless they agree otherwise, the parties shall share equally the fees, costs and expenses relating to the mediation and each party shall pay its own expenses of preparation for, and participation and representation in, the mediation."

Optional:

["Should the parties fail to reach agreement on or resolve their dispute or difference through mediation, the dispute or difference shall be referred to and finally resolved by [expert determination failing which] [arbitration under the Rules of the Chartered Institute of Arbitrators, which Rules are deemed to be incorporated by reference into this clause failing which] [litigation]."]