



## Draft Agreement to Mediate

This Agreement is among:

,  
and

**("Party A")**

,  
(together "the Parties")

**("Party B")**

**John Sturrock QC**, 10 York Place, Edinburgh EH1 3EP **("the Mediator")**

and

**Core Solutions**, 10 York Place, Edinburgh EH1 3EP **("Core")**

The following other persons are referred to:

of **("Party A's Representatives"<sup>1</sup>)**

of **("Party B's Representatives")**

**("Party A's Advisers"<sup>2</sup>)**

**("Party B's Advisers")**

of **("The Assistant Mediator"<sup>3</sup>)**

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<sup>1</sup> A Party's Representative is the negotiator appointed by the Party to attend on its behalf (applicable where the Party is a corporate or unincorporated body).

<sup>2</sup> A Party's Adviser is the legal and/or other adviser(s), in whatever capacity, who attends the mediation to assist the Party in the mediation. The Adviser will sign the schedule at the end of the Agreement in acknowledgement of the confidentiality provisions.

<sup>3</sup> There may, in some circumstances, be an Assistant Mediator or Co-Mediator. If there is, he or she will also sign the Agreement. The parties will always be consulted about the appointment of such an Assistant or Co-Mediator.

The Parties, Core and the Mediator agree the following:

**1. Appointment and Mediation:**

- 1.1. The Parties appoint the Mediator to mediate between them and shall, in good faith, attempt to resolve the dispute or other differences between them. Core's Terms of Engagement are incorporated as part of this Agreement.
- 1.2. The Parties confirm that they or at least one of their representatives present has full authority to negotiate and resolve the dispute or other differences.
- 1.3. Mediation will take place at the offices of [COMPANY/ADDRESS] on [date] (the "mediation day") and may continue, if Parties agree, on such other days as Parties agree. Mediation will continue until agreement is reached, or until (a) the Parties agree that it should not continue, (b) one of the Parties withdraws from mediation or (c) the Mediator withdraws or adjourns mediation. Any Party may withdraw from mediation at any time.
- 1.4. The Parties reserve their respective legal rights should mediation not result in an agreement being reached between them. Any court, adjudication, arbitration or other proceedings in relation to the subject matter of mediation may be commenced or continued notwithstanding mediation, unless the Parties agree or have agreed otherwise or a court so orders .
- 1.5. Where a party is not legally represented, the Party acknowledges that it has been advised to obtain independent legal advice and that neither Core nor the Mediator has provided or will provide such advice. Each Party agrees that it will not rely on any advice from Core or the Mediator or upon any draft documents produced, or the preparation of which was facilitated, by them.
- 1.6. No formal record or transcript of the mediation shall be made.

**2. Resolution:**

- 2.1 No agreement on the terms of any resolution reached during mediation shall be legally binding unless and until it is reduced to writing and a Resolution Agreement is signed by the Parties or the Representatives on their behalf. The Parties shall be legally bound by such a written and signed Resolution Agreement and undertake to give effect to such agreement.
- 2.2 If an agreement is not reached and / or if Core or the Mediator continue to assist the Parties to reach a resolution of the dispute or other differences after the mediation day or days, the provisions of this Agreement shall continue to apply.

**3. Confidentiality:**

Subject to the detailed provisions of Core's Terms of Engagement and any agreement to the contrary reached by the parties or any requirement of the law:

- 3.1 The entire process of mediation between the Parties will be kept confidential and not disclosed or used for any purpose. This includes the fact and terms of any resolution and the fact that the mediation has occurred. All communications, however communicated, pertaining to the mediation will be kept confidential and not disclosed or used for any purpose. The mediation will be conducted on the same privileged basis as "without prejudice" negotiations in an action in the courts or similar proceedings.

**4. Fees:**

- 4.1 Core's fees and expenses relating to mediation will be payable by the parties in advance of the mediation day in accordance with Core's Terms of Engagement;

4.2 Each party will pay its own expenses of preparation for, and participation and representation in, mediation.

**5. Exclusion of liability and Indemnity:**

5.1 Neither Core nor the Mediator shall be liable to the parties for any act or omission or default, whether negligent or otherwise, in connection with the mediation except in the case of fraud.

5.2 The Parties together and separately release, discharge and indemnify Core and the Mediator against all claims and costs, however incurred, except in the case of fraud, arising out of or in any way connected with this Agreement or the mediation. This Agreement may be produced and relied upon as a defence to any claim made by a Party against Core or the Mediator.

**6. Representation:**

In signing this agreement each Party and Party representative is deemed to be agreeing to the provisions of this Agreement on behalf of the Party which he or she represents and all other persons present on behalf of that Party at, or consulted by it in connection with, the mediation.

**7. Applicable Law**

7.1 Unless the parties agree otherwise, this Agreement shall be governed by the laws of location of the mediation, whose courts shall have exclusive jurisdiction.

Signed at [place] on [date] as follows by:

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for and on behalf of Party A

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for and on behalf of Party B

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the Mediator and for and on behalf of Core

the Assistant Mediator

*Acknowledgement signed by the Advisers to the Parties at* \_\_\_\_\_ *on* \_\_\_\_\_ *:*

We acknowledge and agree to be bound by the confidentiality provisions of this Agreement:

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# Core's Terms of Engagement and Code of Conduct for Mediators

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- The purpose of this document is to outline the basis upon which you may appoint a mediator using Core's mediation services.
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## Mediation Enquiries

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To enquire about using Core's mediation services, please contact Core's Executive Assistant and Business Manager, Paula Cumming, in the first instance on 0131 524 8188 or email at [paula.cumming@core-solutions.com](mailto:paula.cumming@core-solutions.com). See our [website](#) for more information.

- The Business and Mediation Manager can provide information, including details of fees and availability of mediators. Fees and availability will always be confirmed by email after the initial contact.
  - The Business and Mediation Manager can arrange a confidential, without commitment discussion with Core's Chief Executive and Senior Mediator, if helpful.
  - Core can also contact another party in the dispute, suggest mediation and provide information about how the process works.
  - Core also offers a without commitment telephone discussion or meeting with parties or party representatives.
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## The Mediator and the Mediation Process

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- The Mediator is an independent facilitator of the process of mediation and shall:
    - be competent and knowledgeable in the process of mediation. The Mediator shall have undertaken proper training and shall undertake continuous education and practice in mediation skills;
    - satisfy himself or herself as to his or her competence to conduct mediation before accepting appointment as a mediator and, upon request, shall disclose information concerning his or her background and experience to the parties;
    - prepare adequately for the Mediation Day, including reading the parties' summaries and any supporting documents;
    - satisfy himself or herself that the parties understand the characteristics of the mediation process and the role of the Mediator and the parties in it;
    - ensure, prior to commencement of mediation, that the parties, their representatives and advisors have understood and expressly agreed the terms and conditions of the Agreement to Mediate (referred to below), including in particular obligations of confidentiality imposed on the Mediator and on the parties and others participating;
    - ensure that the Agreement to Mediate is signed by all participating in the mediation, unless the parties and the Mediator agree otherwise;
    - manage the process at mediation, in full consultation with the parties;
    - ensure that the parties are aware that they may withdraw from mediation at any time without giving any reason;
    - conduct the mediation in an appropriate manner, taking into account all the circumstances of the matter, including the wishes, needs and priorities of the parties. The parties shall be free to agree with the Mediator, by reference to a set of rules or otherwise, on the manner in which mediation is to be conducted;
    - ensure that all parties have adequate opportunities to be involved in the process. The Mediator, in discussion with the parties, may at any time elect to meet the parties and/or their advisers separately or together;
    - adjourn the mediation if the Mediator and Parties agree;
    - upon request of the parties and within the limits of his or her competence, inform the parties as to how they may formalise any agreement they reach;
    - take all appropriate steps to ensure that the parties understand the terms of any agreement reached by them; and
    - shall not, subject to the exception which follows, decide or give an opinion on the factual or legal issues in the dispute or other differences. In exceptional circumstances, the parties may ask the Mediator to express a view or to make non-binding written recommendations on the resolution of the dispute or other differences. The Mediator shall not be obliged to comply with such a request or any other request to vary his or her role as an independent facilitator of the process of mediation. The Mediator may do so if the Mediator considers that he or she is competent to do so and that to do so would assist in the resolution of the dispute or other differences.
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## The Agreement to Mediate

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- The parties, their representatives and advisors and the Mediator will agree the terms of an Agreement to Mediate prior to or at the commencement of the Mediation Day. The Agreement to Mediate shall, unless otherwise agreed, be drawn up in writing.

- Core will ask the parties, their advisers and others attending to sign the Agreement, as approved, prior to the mediation commencing. The terms of the Agreement to Mediate apply to Core's arrangement with the Parties and their advisers.
- Core would draw the Parties' attention to paragraph 1.2 of the Agreement to Mediate in particular. It is essential that those attending as representative of a party have full authority to resolve the matter on behalf of that party. If there is any doubt or difficulty on this aspect, parties should notify Core as early as possible.
- Parties will be asked to confirm the following details as soon as possible after agreeing a date for the Mediation Day in order to complete the Agreement to Mediate: designation and address of (a) the Party (b) the representatives of the Party attending (c) the legal or other advisers (or others) attending.
- A copy of the signed Agreement to Mediate will be sent electronically to the Parties following the mediation.

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### **Outline Resolution Agreement**

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- Core will provide an Outline Resolution Agreement (read [here](#)) which will be sent to the Parties and their Advisers in advance of the Mediation Day.
- The parties or their legal advisers may use this as a framework for drafting any final agreement which is reached on the Mediation Day.
- Drafting of such an agreement is a matter for the parties and their advisers.

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### **Conflicts of Interest and Withdrawal of Mediator**

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- The Mediator shall be independent of any party to the dispute or other differences, shall have no interest in the outcome and shall at all times act courteously, impartially and fairly, without discriminating on any grounds.
- In the event of the Mediator becoming aware of a conflict of interest or possible conflict of interest of any kind or of any circumstances occurring which give rise to reasonable doubts about the Mediator's impartiality or independence, the Mediator shall immediately disclose this to all parties. The Mediator shall then only continue to act if all the parties to the dispute acknowledge the disclosure and agree in writing to the Mediator continuing to act as Mediator and if the Mediator is satisfied that he or she may properly do so.
- The Mediator shall not act in any capacity for any of the parties in connection with the dispute or other differences which is the subject of mediation. The Mediator will not accept an appointment in relation to any arbitral or judicial proceedings relating to the dispute or other differences.
- The Mediator shall withdraw from mediation if requested to do so by any of the parties, or if the Mediator considers that it is necessary to do so. In particular, the Mediator may withdraw from mediation at the Mediator's own discretion, without giving any reason, if the Mediator considers that a) any of the parties is acting or has acted in breach of the Agreement to Mediate or in an improper, illegal or criminal manner, (b) the Mediator is required to do so by law, or (c) continuing mediation is unlikely to result in resolution.

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### **Fees and Costs**

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- Core does not wish fees to be an impediment to using its service. The fee payable for mediations is always discussed and finalised by agreement in advance with those using our service.
- Most mediations benefit from a tailored approach and we are always pleased to discuss the most appropriate fee in the circumstances. In some matters, mediation will not follow the conventional form set out below. Examples include circumstances where full preparation meetings with one or more of the parties are necessary and/or helpful. In such matters, Core will tailor the fee accordingly, in consultation with the parties.
- The Mediation Fee is dependent on a number of factors including: the value (if any) of the claim, the seniority of the Mediator and the complexity or other special circumstances of the matter.
- The Mediation Fee and costs are payable equally by the parties unless otherwise agreed.
- Unless otherwise agreed, the Mediation Fee includes:
  - Without commitment telephone advisory service or meeting to discuss whether the circumstances of the matter are appropriate for mediation.
  - Guidance throughout the process.
  - Approach to other party or parties, if required or helpful.
  - The making of arrangements for the mediation, in consultation with the parties.
  - A preliminary meeting or telephone conference call prior to the mediation to cover discussion and confirmation of the following:
    - the specific issues to be addressed at mediation and how they will be presented;
    - location, venue, and timings (including convenient starting times for all parties);
    - the content and timeline for circulation of parties' summaries and other relevant documents;
    - details of those attending (to be included in the Agreement to Mediate) and their authority to reach decisions. This includes both advisers to and representatives of the parties;
    - the possible appointment of an assistant mediator; and
    - any other issues of concern to either party.
  - The Mediator's reasonable preparation (up to 4 hours);
  - Assisting the parties to draft and agree the Agreement to Mediate;
  - A Mediation Day up to 10 hours;
  - Assisting the parties to draft a Resolution Agreement;

- Any initial follow up which is required or helpful.
- Additional Time
  - In the event of (a) the Mediation Day extending beyond 10 hours (or other agreed time) and/or (b) a further day or days being required, a fee for each additional hour or part of an hour or each additional day or part of a day shall be due. This will be agreed in advance.
- Additional Costs
  - Venue: It is normally the responsibility of the Parties to arrange a suitable venue for the Mediation Day and agree to allocation of any costs. See Core's "[Organising the Venue](#)" for further guidance.
    - Where appropriate, Core will arrange a neutral venue for the Mediation Day together with refreshments. The cost of this will be met by the parties, in addition to the Mediation Fee. Core will notify the parties of the basis of charging before the date of the mediation.
  - Travel and other expenses: the Mediator's road expenses, air and rail fares and any accommodation and postage or courier costs will be charged in addition.
  - VAT: VAT will be charged at the current rate on all fees and other expenses and costs.
  - Follow up after mediation: Follow up after mediation may be vital to the success of the process. This will be arranged where appropriate, at the discretion of the parties, and at a fee to be agreed in advance of follow up between Core and the parties.
- Fees and costs will be confirmed in a standard arrangements message, sent to the Parties following the conference call or preliminary meeting referred to above, which will also confirm the date, location and other arrangements for mediation.

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### Payment

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- Please note that, where solicitors or other agents are involved, Core's contract is with the instructing solicitor or agent and not with that solicitor's or agent's client.
- The Mediation Fee is payable to Core no later than seven days before the Mediation Day, as a condition of the Mediation Day being held, or prior to the Mediation Day in the event of the date being fixed at short notice.
- Core will be responsible for reimbursing the Mediator.
- Core will issue an invoice directly after the arrangements message, referred to above, is sent to the parties. Wherever possible, this will be at least 3 weeks prior to the Mediation Day.
- In the event that the Mediation Fee is not paid before the Mediation Day, Core will permit the Mediation Day to proceed on receiving an undertaking in advance in writing by the solicitor or agent of the party to pay the invoice within seven days.
- Any additional fees and costs will be invoiced by Core at the conclusion of the Mediation Day and are payable within 14 days of the date of the invoice.
- Core reserves the right to charge interest on unpaid invoices at 3% above the Bank of England base rate from the date payment was due.

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### Cancellation

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- Once a date has been fixed for a mediation, the Mediator is then committed to that day, reserving a period for adequate preparation in advance of the mediation.
- Core's cancellation policy is designed to address such a situation fairly.
- If any party cancels the mediation once a date for the Mediation Day has been fixed, each party then accepts equal liability for any cancellation fees that may be incurred.
- The following proportion of the Mediation Fee will be payable by each party:
  - If the cancellation is made less than 14 days before the scheduled Mediation Day or after any preliminary meeting between Core and the parties or their representatives, a cancellation fee of up to 50% of the Mediation Fee applies.
  - If the cancellation is made less than 7 days before the Mediation Day, a cancellation fee of up to 75% of the Mediation Fee applies.
  - If the cancellation is made less than 48 hours before the Mediation Day, 100% of the Mediation Fee applies.
- In any event, Core will also be entitled to payment of all irrecoverable costs incurred in respect of the mediation.
- In any event, this will not prejudice a party's right to recover such sums from any party it may consider to be at fault for the cancellation.
- In the event that the Mediator is unable to attend the Mediation Day due to unforeseen extraneous circumstances, every effort will be made to reschedule the mediation at a mutually suitable time. If this cannot be agreed, a full refund will be issued to parties who have made payment in respect of the Mediation Day.

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### Confidentiality

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The Mediator and Core shall keep confidential and not disclose to any third party for any purpose:

- the fact that mediation may take place, is to take place or has taken place between the parties.
- any information given to the Mediator, whether orally or in writing, at any stage in mediation, including that given by parties in confidence. (All papers submitted by parties to the Mediator and notes made by the

Mediator will be destroyed as soon as possible and not later than 8 weeks after the mediation process concludes).

unless:

- the Mediator is required by law to make disclosure or report to an appropriate authority;
- the Mediator reasonably considers that there is serious risk of significant harm to the life or safety of any person if the Mediator does not make such a disclosure;
- the Mediator requires assistance in confidence from any senior officer of Core on any ethical or other serious questions arising out of mediation;
- the Mediator is engaged on a confidential basis in Core's process of reviewing the performance of, and maintaining professional standards among, its mediators;
- any action is brought by a party against Core or the Mediator in relation to the mediation and disclosure is necessary for them to defend the action.
- Unless otherwise admissible, all documents, submissions and statements made or produced for the purposes of mediation, whether oral, written or otherwise, shall be privileged and will not be admissible as evidence in any court, adjudication, arbitration or other proceedings. Unless otherwise recoverable, all such documents, submissions and statements shall be treated as confidential in any procedure for recovery by way of Commission and Diligence or other similar proceedings.
- No Party may have access to the Mediator's communications, papers or notes, whether in hard copy or electronic form. The parties may not call the Mediator or Core as a witness in any court, adjudication, arbitration, tribunal or other proceedings relating to the claims, dispute or other differences which are the subject of mediation or in connection with (a) what occurred in or before the mediation at any stage or (b) discussions and arrangements regarding proposals for mediation at any time. In the event of a party calling the Mediator in any such circumstances, that party shall be responsible, and shall indemnify the Mediator, for all expenses and other costs incurred by the Mediator.
- If there are confidential matters which a Party or their advisers wish to disclose to the Mediator in advance of the Mediation Day but do not wish to disclose to the other parties, the parties and their advisers are welcome to send a separate note on confidential matters directly to Core. Confidentiality will be respected throughout the entire process.

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### **Concerns or Complaints Procedure**

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- If you have any concerns about the service provided by Core or by any of its mediators, please contact Core's Business and Mediation Manager in the first instance with details of your concern or complaint and an explanation of what you would like to happen.
- Core undertakes to address your concerns as soon as we reasonably can and to discuss with you any issues which you wish to raise. If it is not possible to resolve matters by discussion, Core undertakes to engage an independent mediator to help to address matters in a constructive way and to explore the most appropriate way to achieve a solution.
- Core will seek to:
  - treat all complaints and concerns (both verbal and written) seriously and confidentially;
  - record all complaints and concerns;
  - resolve complaints and concerns promptly; and
  - learn from complaints and concerns and improve our service delivery as a result.
- Core will acknowledge receipt of a concern or complaint within 7 working days and offer to discuss the matter with you.
- Core will then investigate the concern or complaint thoroughly and carefully and will revert back in writing with a full and detailed response, usually within 14 working days.
- Should you not be satisfied with the response, Core will refer the matter to the Civil Mediation Council's Complaints Resolution Service for a free independent mediation.

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### **Professional Indemnity Insurance**

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- All of Core's mediators will have professional indemnity insurance in an adequate amount with a responsible insurer.
- A copy of the current insurance policy is available upon request.

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### **Acceptance**

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- By appointing a mediator, the parties accept these terms of engagement in full.