

AGREEMENT TO MEDIATE

This Agreement dated [date] is made between:

PARTIES:

[NAME] of [ADDRESS] ('Party 1')

[NAME] of [ADDRESS] ('Party 2')

(Together referred to as the 'Parties' and each as the 'Party')

and

Heather Bryan of 20:20 Mediation Ltd of 2 Ashbrook Close, Hesketh Bank, Preston, Lancashire PR4 6LY (the 'Mediator')

THE MEDIATION

1. It has been agreed by both parties that the **Mediation Meeting** will take place at:
 - a. [venue]
 - b. [time]

THE DISPUTE

2. The parties are in dispute. The Dispute relates to [claim, counter claim, court number etc]
3. [Description of the dispute] (the 'Dispute')

4. The 'Parties' have agreed to attempt to resolve the 'Dispute' by mediation, under the terms of this Agreement (the '**Mediation**') and have appointed Heather Bryan as Mediator

Draft

IT IS AGREED by those signing this Agreement THAT:

The Mediation

5. That the mediation will be held and conducted in accordance with this Agreement to Mediate
6. The Parties will attempt in good faith to settle their dispute through mediation
7. The Parties signing this agreement, agree to the provision of the Mediation Procedures
8. The Parties will (unless and/or until one of the Parties withdraws from the Mediation) endeavour to resolve the 'Dispute' by mediation and will take all steps as necessary to participate fully in the mediation process (the '**Mediation**') including taking all preparatory steps for the mediation meeting (the '**Meeting**')

Authority to settle

9. All information shared during the Mediation is confidential and without prejudice. No settlement reached in the Mediation shall be binding until it has been put in writing and signed by the Parties (the '**Settlement Agreement**')
10. The Parties (and/or their respective representatives), by signing this agreement, warrant that they have full authority to negotiate and reach agreement to settle the Dispute

The Mediator

11. The Parties have agreed to appoint Heather Bryan as Mediator in respect of the Mediation
12. The Mediator is independent from, not an employee of, nor has any formal connection with Party 1 or Party 2

13. Prior to the Mediation, the Mediator acknowledges that they have disclosed any prior dealings with either of the Parties to each Party
14. The Parties recognise that the Mediator is both impartial and neutral
15. The Mediator shall not be liable to the Parties or anyone involved in the Mediation for any act or omission in connection to the services provided to them, or in relation to the Mediation, unless the act or omission is proved to have been fraudulent or involved wilful misconduct. This Exclusion Clause applies subject to any applicable law
16. The Mediator will immediately inform the Parties if they consider their capacity to act impartially has been affected due to circumstances that arise during the Mediation
17. The Parties recognise that the Mediator will not offer legal advice or act as a legal advisor to either Party
18. The Mediator will not make decisions for the Parties or impose a solution on them
19. The Parties agree not to call the Mediator as a witness in any legal proceedings relating to this or any other dispute, nor required them to produce in evidence any records or notes relating to the Mediation in any litigation, arbitration or other formal process arising out of or in connection with the dispute. Nor will the Mediator act or agree to act as a witness, expert, arbitrator or consultant in any such proceedings. If any Party does make such an application (as listed above), that Party will fully indemnify the Mediator in respect of any costs incurred in resisting and/or responding to such an application. Reimbursement will be charged at the Mediator's standard hourly rate for time spent resisting and/or responding to such an application
20. All information (whether oral or in the form of documents, tapes, computer discs etc) arising out of, or in connection with, the Mediation will be without prejudice, privileged and not admissible as evidence or disclosable in any current or

subsequent litigation or other proceedings whatsoever. This does not apply to any information, which would in any event have been admissible or disclosable in any such proceedings.

The Representatives

21. The Lead Negotiator and/or the Representatives of the Parties shall be the persons named here:

Representative/s for Party 1 [NAME, POSITION, ADDRESS]

Representative/s for Party 2 [NAME, POSITION, ADDRESS]

22. Each Party will immediately notify the other Party and the Mediator of any change to this information

Before the Mediation Meeting

23. All preliminary steps prior to Mediation, shall be conducted in a manner that the Mediator considers appropriate. This may include:

- a. Not less than 5 days before the agreed date of the Mediation Meeting, the Parties shall provide the Mediator with their Case Summaries and an agreed bundle of key documents. Electronic versions of the bundle can be provided by prior agreement with the Mediator
- b. Preliminary discussions with the Mediator, by telephone or in person

Place and Time of the Mediation

24. The Mediation will take place at the time and venue set out at Point 1 in this Agreement to Mediate

25. The Parties may have one or more persons, including those legally qualified, to assist and advise them in the Mediation

26. The procedure at the Meeting shall be determined by the Mediator in consultation with the Parties or their Representatives. In the event of any disagreement the decision of the Mediator shall be final
27. The Mediation shall be deemed to continue until one of the following occurs:
- a. a written Settlement Agreement is executed and signed by the Parties
 - b. a written notice of withdrawal is given by any Party
 - c. a time set for the mediation has expired without agreement for continuation or resumption
 - d. the Mediator decides, in her absolute discretion, that the continuation of the Mediation is unlikely to result in a settlement or is otherwise undesirable or inappropriate for any reason
 - e. the Mediator decides, in her absolute discretion, that they should withdraw from the Mediation due to their position being compromised for any reason
28. The Parties or the Mediator may at any time, adjourn the Mediation in order to consider further information or specific issues raised during the Mediation, obtain further information or for any other reason which the Parties or the Mediator consider helpful in furthering the Mediation

Mediation Fees, Expenses and Costs

29. The costs and expenses of the Mediator shall be calculated and payable in accordance with the '**Fee Schedule**' supplied by the Mediator prior to the Mediation
30. The fees and any other expenses associated with the Mediation shall be borne equally by the Parties, unless agreed otherwise
31. Each Party will bear its own legal and other costs and expenses in preparing for and attending the Mediation, unless agreed otherwise

32. All fees, costs and charges of the Mediation shall be paid to 20:20 Mediation Ltd. in advance of the agreed Mediation date. The Mediator shall be at liberty to suspend the Mediation until payment in full has been made
33. The parties will be invoiced for any additional costs not paid in advance and such invoice shall be paid within 14 days of its date
34. Each Party agrees that any court or tribunal may treat both (i) the Mediator's costs and expenses and (ii) each Party's legal or other costs incurred in connection with the Mediation, as costs in the case in relation to any litigation or arbitration where the court or tribunal has power to assess or make orders as to costs, whether or not the Mediation results in settlement of the Dispute

Cancellation and Postponement

35. In the event that the Parties settle the Dispute before the Meeting or for any other reason the Mediation does not take place, the Mediator will be entitled to receive:
- a. 50% of the fees payable in advance as per the Fee Schedule, if notification of cancellation is received in writing by either Party seven days or less but more than 24 hours before the Mediation was due to take place
 - b. 75% of the fees payable in advance as per the Fee Schedule if notification of cancellation is received in writing by either Party, 24 hours before the Mediation was due to take place

Terminating the Mediation

36. The Parties or the Mediator may, in their absolute discretion, terminate the Mediation at any time without giving reason
37. The Mediator may continue to assist the Parties to a resolution of the Dispute after termination of the Mediation, subject to the agreement of fees, expenses and costs
38. The Mediation will be terminated on execution of a Settlement Agreement by the Parties

39. Termination of the Mediation does not revoke the Confidentiality clause within this agreement.

Settlement

40. No settlement reached in the Mediation shall be binding until it has been put in writing and signed by the Parties (the '**Settlement Agreement**')

41. Any such agreement shall be legally enforceable by the Parties

42. In the event that no agreement is entered into by the Parties, all Parties' rights remain unaffected by the Mediation. The Confidentiality clause however remains applicable to all Parties

Confidentiality

43. The entire process of mediation, including all communications prior to and during the Mediation, will be kept confidential by all Parties, their Representatives and the Mediator

44. The requirement of confidentiality will not apply where:

- a. The Parties consent in writing to specific disclosures
- b. Disclosure is necessary to implement or enforce this Agreement or any Settlement Agreement
- c. The Parties are required by law to make a disclosure or report to an appropriate authority, or
- d. Disclosure is provided for under the terms of any Settlement Agreement

45. All information (whether oral or in the form of documents, tapes, computer discs etc) arising out of, or in connection with, the Mediation will be without prejudice, privileged and not admissible as evidence or disclosable in any current or subsequent litigation or other proceedings whatsoever. This does not apply to any

information, which would in any event have been admissible or disclosable in any such proceedings.

46. The Parties agree not to request the Mediator or the Assistant Mediator (if any) to disclose to them, see or inspect any notes or papers that are in their 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 their possession relating to the Mediation without reference to the Parties, and the Parties acknowledge that this is the Mediators usual practice to destroy papers following the Meeting

Exclusion of Liability

47. The Mediator shall not be liable to the Parties or anyone involved in the Mediation for any act or omission in connection to the services provided to them, or in relation to the Mediation, unless the act or omission is proved to have been fraudulent or involved wilful misconduct. This Exclusion Clause applies subject to any applicable law

Applicable Law and Jurisdiction

48. This agreement is governed by the law of England and Wales and the courts of England and Wales shall have exclusive jurisdiction to decide any matters arising out of or in connection with this Agreement and the Mediation

Human Rights

49. The referral of this dispute to Mediation does not affect any rights that may exist under Article 6 of the European Convention on Human Rights, and if their dispute does not settle through the Mediation, the Parties' right to a fair trial remains unaffected

Signature of this Agreement to Mediate

50. This Agreement to Mediate is to be signed by each Party

This agreement has been entered into on the [date] 2017

Signed by (Party 1):

Name:

Signed by:

Name:

Legal Representative of Party 1

Signed by (Party 2):

Name:

Signed By:

Name:

Legal Representative of Party 2

Signed by:

Heather Bryan, Mediator