

SPECIMEN MEDIATION APPOINTMENT LETTER

Mediation Between:

DATE

I have received instructions from _____ which inform me that you have agreed to my appointment as mediator in this matter. My thanks for that.

The purpose of this letter is to:

- 1 Seek agreement as to the venue for the mediation.
- 2 Suggest dates on which the mediation might take place.
- 3 Indicate, in general terms, what I suggest each of you do by way of preparation.
- 4 Let you see the form of Mediation Agreement that I would like you to sign before we _____ start.

1 Venue

I find that more often than not the parties to a mediation require the mediation to take place on neutral territory, such as a hotel or conference centre. Three rooms are required, one as a general meeting room and two separate bases for each party. Perhaps you could confer and let me have your suggestions.

2 Date

The parties usually wish that the mediation should take place as soon as possible. Currently the following dates are free over the four weeks commencing

I cannot hold any of these dates for you. The quicker you get back with an agreed date (or preferably two) the more likely it is that the date(s) that you select will still be available.

3. Preparation

Could I ask that each of you prepares a two to four page document giving me some detail as to the background and issues? I would like to see these Position Statements at least a week before the date agreed for the mediation.

I have no particular preference as to whether the position statements are exchanged, as there does not appear to be any correlation between exchange and settlement. The guiding principle is that you should prepare the case in a way which you are most comfortable with.

If there are any documents which either of you thinks that it is essential I should pre-read then if they could be sent to me at the same time as the Position Statement then that would be helpful. I would like to stress the word "essential". Please bear in mind that such reading takes my time, and therefore costs you money!

The format for the mediation will be that on the day I will speak to each of you in turn privately before we come together for the joint session. At the joint session I will need each party to confirm that they have full authority to settle. If this is likely to cause difficulty then I need to be told in advance.

The joint session will begin with a short introduction from me and then presentations from each of you or representatives (as you prefer).

You will also need to think about your negotiating strategy and what it is that you want out of the mediation. It might be as well to bear in mind that settlements at mediation tend to take place when both parties realise that they cannot actually get what they want and have to focus on what they need.

4. The Mediation Agreement

Attached is a copy of a standard form of Mediation Agreement, which I trust will not prove controversial, and I hope that you will feel able to sign it without amendment. There are some blanks to be filled in but I imagine that we will have no difficulty in agreeing what material needs to be inserted. Perhaps you would like to let me have your suggestions for how we should describe the issue in dispute?

If either of you have any questions arising from this letter or generally with regard to mediation please do not hesitate to ask.

Yours sincerely

Jeffrey C. Rosenthal, FCI Arb, FCCA
CEDR Accredited Mediator

SPECIMEN MEDIATION AGREEMENT

This Agreement is between:

1

2

3 Jeffrey Charles Rosenthal ("the Mediator"), of 5th Floor, Humberstone House,
Humberstone Gate, Leicester LE1 1WB

The issue(s) in dispute are - e.g. claims and cross-claims that have arisen out at or in relation to

1 Agreement to Submit the Dispute to Mediation

(Hereinafter jointly referred to as 'the Parties') agree to use their best endeavours to resolve the dispute by mediation and to the appointment of Jeffrey Charles Rosenthal as Mediator.

2 Representation

The representatives of the Parties at the Mediation will be:

a.

b.

The representatives (or such other representatives as the parties may from time to time appoint) will represent the respective parties at the Mediation and will have full authority to settle the dispute.

3 Mediation Arrangements

The Mediation will take place at am on the day of at

4 Adjournment

If the issues are unresolved at the end of the meeting then with the unanimous agreement of the Parties and the Mediator, the Mediation may be adjourned to such time and place as may be agreed.

5 Summary of Cases

Prior to the Mediation both parties will have submitted to the Mediator a written summary of their case and relevant background documentation.

6 Procedure

Procedure at the mediation will be determined by the Mediator, in consultation with the Parties.

7 Termination

The Mediation will continue during the day agreed until agreement is reached, but may be terminated if one of the Parties withdraws from the Mediation, or if the Mediator is of the view that further efforts at Mediation would not be worthwhile

8 Settlement

8.1 If an agreement is reached between the Parties Heads of Agreement will if appropriate and required by the Parties be prepared and signed by the Parties. No agreement as to the terms of any settlement reached during the Mediation shall be legally binding unless and until it is reduced to writing and signed by the representatives for and on behalf of the Parties. The Parties shall however be legally bound by any settlement so reduced to writing and signed and undertake to give effect to such settlement in accordance with its terms.

8.2 The parties reserve their respective rights should the Mediation not result in a Settlement Agreement being reached between them.

9 Confidentiality

- 9.1 By taking part in the Mediation the Parties undertake to each other and agree that:
- 9.1.1 The entire proceedings of the Mediation are and will be kept confidential;
 - 9.1.2 The Parties, the representatives and their advisers and the Mediator shall keep all statements and other matters whether oral or written including any Settlement Agreement relating to the Mediation confidential, except in so far as disclosure is necessary to implement and enforce such Settlement Agreement;
 - 9.1.3 The entire process of the Mediation shall be treated as privileged and will be conducted on the same basis as Without Prejudice negotiation in an action in the Courts (or similar proceedings).
 - 9.1.4 All documents, submissions and statements made or produced for the purposes of the Mediation whether oral or written shall be inadmissible and not subject to discovery in any arbitration, legal or other similar proceedings, except that evidence which is otherwise admissible or discoverable shall not become inadmissible or non-discoverable by reason of its use in connection with this mediation.
- 9.2 The Mediator may not act for either party individually in any capacity with regard to the subject matter of the Mediation, and the parties acknowledge that in acting under this Agreement, the Mediator is not representing or giving legal advice to, nor assessing, upholding or protecting (or attempting to assess, uphold or protect) any rights of any at the Parties. The Parties are encouraged to take legal advice in respect of all matters pertaining to the Mediation and any Settlement Agreement reached.
- 9.3 Neither Party may have access to the Mediators notes or call the Mediator as a witness in any proceedings relating to any of the issues between them.

10 Costs

Unless the Parties otherwise agree, the fees and expenses of the Mediator will be borne by the Parties in equal shares. Each Party will also pay its own expenses of individual representation in the Mediation. The fees and expenses of the mediator are payable in advance.

11 Exclusion of Liability

The Mediator shall not be liable to the Parties or either of them for any act or omission whatsoever in connection with the services to be provided by him.

12 Legal Jurisdiction

This Agreement shall be governed by and construed in accordance with English law under the jurisdiction of the English Courts.

Dated this day of

Signed
For and on behalf of

Signed
For and on behalf of

Signed

By the Mediator