



## **CONTRACT FOR THE APPOINTMENT OF A MEDIATOR**

The parties named in the Letter of Appointment (a copy of which is attached) (the “**Parties**” and each “**Party**”) have contacted Mediation4Construction Limited (“**M4C**”) and themselves chosen and agreed to appoint the Mediator named in the Letter of Appointment from the M4C Panel listed on [www.mediation4construction.com](http://www.mediation4construction.com) as Mediator (the “**Mediator**”) and the Parties now by signing (either themselves or via someone each Party warrants as being a person fully authorised to sign on their behalf) enter into this contract with M4C and the Mediator for the appointment of the Mediator (the “**Contract**”) and agree to be bound by its terms as set out below:

### **SECTION A: APPOINTMENT**

#### **Parties, Mediator, Date and Venue**

1. The Parties agree to appoint the Mediator for a mediation on the date recorded in the Letter of Appointment (the “**Mediation**”).
2. The venue for the Mediation (the “**Venue**”) is recorded in the Letter of Appointment. If any charge is made to M4C for or by this Venue, the Parties shall be jointly and severally liable for any such charge and for all expenses incurred.

#### **Role of Mediator**

3. The Parties appoint the Mediator to use his or her skills, knowledge and personal experience to test the parties’ positions (but not to decide upon the merits of the dispute between the Parties) in order to facilitate a settlement.
4. Neither M4C nor the Mediator, in performing their functions, will represent or give legal advice or uphold or protect (or attempt to uphold or protect) any rights of any Party to the Mediation whether that Party is legally represented or not and the Parties accept that no comments made by the Mediator during the Mediation should be construed as legal advice.

#### **Conflicts of Interest**

5. Except in the case of Mr Christopher Reeves, the Mediator is an independent contractor and is not an employee or agent of M4C and communications from that Mediator will come from their usual place of business set out on their profile at [www.mediation4construction.com/our-mediators](http://www.mediation4construction.com/our-mediators). All mediators on the M4C Panel are independent of each other.
6. Prior to appointment, M4C and/or the Mediator will carry out a conflict check (including at their usual place of business) and, on the basis of the information given by the Parties

about the case at that date, the Mediator will confirm if he or she can accept the appointment.

7. If, following the appointment of the Mediator, the Mediator becomes aware of any circumstances that may create a conflict of interest (or be perceived to do so), the Mediator will (always preserving confidentiality) disclose that fact to the Parties.
8. By signing this Contract, each Party agrees that it knows of nothing that would prevent the Mediator accepting this appointment and further agrees to immediately disclose to M4C and/or the Mediator anything they discover that may prevent the Mediator continuing with his or her appointment.
9. On disclosure of any information referred to above, each Party may or may not object to the Mediator continuing with his or her appointment. Any objection must be made in writing to the Mediator and/or M4C within 48 hours of notice of such information.
10. This appointment as Mediator will not prevent the Mediator from acting in any capacity in other disputes where the Parties or the representatives for the Parties are involved, unless there is a direct conflict of interest.

#### The Mediation Agreement

11. Prior to the commencement of the Mediation, the Parties shall enter into a separate agreement (the “**Mediation Agreement**”) with M4C and the Mediator.
12. M4C will provide a Mediation Agreement for use by the Parties and the Parties must satisfy themselves as to the form and terms of any agreement they enter into.

#### Papers and Mediator’s Notes

13. Any notes of the Mediator are confidential to the Mediator and shall not be available to the Parties at any time, nor subject to a summons for production as evidence in any proceedings in court, arbitration, adjudication or other form of dispute resolution.
14. No documents sent to M4C and/or the Mediator by the Parties (including Position Papers and Mediation Bundles) will be returned to the Parties and the Mediator and/or M4C shall be entitled to dispose of them.

#### M4C and the Mediator not Witnesses

15. The Parties to the Mediation will not seek evidence from and/or seek to call the Mediator or any employee or consultant of M4C as a witness or expert in any litigation, arbitration, adjudication or other form of dispute resolution in relation to and/or connected with the Mediation or arising out of the dispute the subject of the Mediation.
16. If, notwithstanding the above, any Party does so seek evidence and/or seek to call the Mediator or any employee, agent or consultant of M4C as a witness or expert, then that Party (or Parties if more than one) shall fully indemnify and hold the Mediator and M4C harmless from and against all legal costs, expenses and disbursements that the Mediator and/or M4C incurs and shall pay to the Mediator and/or M4C all sums due in respect of that full indemnity, together with the cost of the time thereby spent by the Mediator and M4C.

#### Exclusion of liability

17. Neither M4C, any of its employees, agents or consultants nor the Mediator shall be liable to any of the Parties (and/or their representatives or others attending the Mediation for or

on their behalf) 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 proved to have been fraudulent, dishonest, or involved wilful misconduct.

## **SECTION B: FEES AND PAYMENT**

### Mediation Fees

18. The Parties shall pay the fee for the Mediation recorded in the Letter of Appointment which includes for the Mediator spending up to 4 hours preparing and up to 8 hours on the Mediation date (the “**Fee**”).
19. If the Mediator spends more than 4 hours preparing for the Mediation or more than 8 hours at the Mediation, that additional time shall be charged to the Parties at the rate of 10% of the Fee per hour plus VAT (the “**Hourly Rate**”).
20. If no settlement is reached on the Mediation date and the Mediator, at the request of any Party, spends time working on the Mediation after the Mediation date, that additional time shall be charged to the Parties at the Hourly Rate.
21. The Parties shall pay all reasonable travel and accommodation expenses incurred by the Mediator in reaching the Venue at cost.
22. The Parties shall pay any charge by the Mediator for his or her travel time recorded in the Letter of Appointment.

### Venue Charge and other Expenses

23. The Parties shall pay any charges by the Venue and other additional expenses recorded in the Letter of Appointment.

### Fee split between Parties

24. Unless otherwise agreed, all fees and expenses shall be paid by the Parties in equal shares.

### Invoicing

25. Pursuant to paragraph 24 above, M4C will invoice each Party for an equal share of the Fee, together with any charges by the Venue and other additional expenses (referred to in paragraphs 18, 21, 22 and 23 above) which shall be payable no later than 14 days before the Mediation date with the payer bearing all and any charges.
26. Further pursuant to paragraph 24 above, M4C will separately invoice each Party for an equal share of any additional fees and expenses (referred to in paragraphs 19, 20, 21 and 23 above), which shall be payable within 14 days of the date of the invoice with the payer bearing all and any charges.

## **SECTION C: CANCELLATION FOR CONSUMERS**

### **Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (the "Regulations")**

#### **THIS SECTION APPLIES TO INDIVIDUAL CONSUMERS ONLY**

27. If the Regulations apply to you, you have the right to cancel the appointment of the Mediator on any new matter within 14 days, unless this Contract appointing the Mediator was made or confirmed by you at a meeting, or unless you have in the meantime agreed that M4C can begin work in making arrangements for the Mediation and/or that the Mediator can begin work.
28. The cancellation period will expire 14 days from the date all Parties to the Mediation agree this Contract.
29. To exercise the right to cancel, you must inform M4C of your decision to cancel this Contract by a clear statement (e.g. a letter sent by post, fax or e-mail) to the contact details provided at the end of this Contract. You may use the attached model cancellation form, but it is not obligatory.
30. To meet the cancellation deadline, it is sufficient for you to send your communication exercising your exercise of the right to cancel before the cancellation period has expired.
31. If you cancel this Contract, you will be reimbursed all payments received from you in connection with your appointment of the Mediator.
32. The reimbursement will be made without undue delay, and not later than 14 days after the day on which M4C was informed about your decision to cancel this Contract appointing the Mediator.
33. The reimbursement will be made using the same means of payment as you used for the initial transaction, unless you have expressly agreed otherwise; in any event, you will not incur any fees as a result of the reimbursement.
34. If you requested M4C to begin work in making arrangements for the Mediation or the Mediator to begin the performance of services during the cancellation period and then subsequently exercise your right of cancellation during the cancellation period, you shall pay an amount which is in proportion to what work has been performed by the Mediator until you have communicated to M4C your cancellation of this Contract, in comparison with the full contracted service.
35. You have no right to cancel this Contract once it has been fully performed, provided you have expressly requested that the supply of the service should begin during the cancellation period and acknowledged that your cancellation rights will be lost once the Mediator has fully performed the service.

## **SECTION D: CANCELLATION & RESCHEDULING**

### **Commencement of Work**

36. Each Party requests immediate performance of this Contract and acknowledges they will lose any right of withdrawal from this Contract once this Contract is fully performed.

## Cancellation

37. Subject to Section C above, any cancellation by any Party must be notified immediately by email to admin@m4c.org.uk.
38. Subject to Section C above, if either Party cancels the Mediation, the Parties will pay in equal shares:
- (a) As to the Fee, if notice of cancellation is given in accordance with paragraph 37 above:
    - (i) more than 7 days before the Mediation: 50% of the Fee; or
    - (ii) less than 7 days before the date of the Mediation: 100% of the Fee.
  - (b) All non-refundable travel or accommodation expenses incurred by M4C and/or the Mediator; and
  - (c) All venue charges arranged by M4C for which M4C has incurred a liability to the venue.  
(the “**Cancellation Charges**”)
39. M4C will invoice each Party for their equal share of the Cancellation Charges, which shall be payable within 7 days of the date of the invoice with the payer bearing all and any charges.
40. In the event that a cancellation is made after payment of any fees or expenses by any Party, M4C shall be entitled to set off the value of the invoiced Cancellation Charges before returning the balance to the Parties.
41. Subject to Section C above, in the event of the re-scheduling of the Mediation, whenever and for whatever reason, the Parties shall pay in equal shares a re-scheduling fee amounting to 25% of the Fee, plus any additional charges incurred pursuant to Section B above within 7 days of invoicing of the same.

## **SECTION E: OTHER TERMS**

### Interest

42. Interest will be charged to the Parties on overdue fees, expenses and/or other charges set out in this Contract at 5% above the Bank of England base rate and levied on a monthly basis.

### Language

43. The language of the Mediation shall be English. Any Party producing documents or participating in the Mediation in any language other than English shall, at that Party's own expense, provide the necessary translations and interpreters.

### Signature in Counterpart

44. This Contract may be signed in counterpart and therefore separately by each Party.

Governing Law

45. This Contract shall be governed by, construed and take effect in accordance with the law of England and Wales.

**SIGNED:**

	<b>NAME OF PERSON FULLY AUTHORISED TO SIGN AND THEIR SIGNATURE</b>
<b>Mediation4Construction Limited</b>	
<b>Claimant</b>	
<b>Claimant's Solicitors*</b>	
<p>*I have advised my client of the meaning and effect of this agreement, undertake to ensure that my client's fees are paid to M4C in accordance with the terms of this agreement, and acknowledge and agree that my firm is liable for the costs of the mediation in the same way as it is liable for disbursements incurred in the course of litigation and shall be responsible to and shall indemnify M4C for payment of the fees set out herein in the event of my client's failure to pay pursuant to the terms of this agreement.</p>	
<b>Defendant</b>	
<b>Defendant's Solicitors*</b>	
<p>*I have advised my client of the meaning and effect of this agreement, undertake to ensure that my client's fees are paid to M4C in accordance with the terms of this agreement, and acknowledge and agree that my firm is liable for the costs of the mediation in the same way as it is liable for disbursements incurred in the course of litigation and shall be responsible to and shall indemnify M4C for payment of the fees set out herein in the event of my client's failure to pay pursuant to the terms of this agreement.</p>	
<b>Mediator</b>	

Cancellation Form under the Consumer Contracts (Information, Cancellation And Additional Charges) Regulations 2013 (the "Regulations")

THIS SECTION APPLIES TO INDIVIDUAL CONSUMERS ONLY

Complete and return this form only if you wish to withdraw from the Contract

To: [INSERT]

I/We hereby give notice that I/We cancel my/our contract for the supply of the following service [INSERT]

Ordered on [INSERT]

Name of consumer(s), [INSERT]

Address of consumer(s), [INSERT]

Signature of consumer (s) (only if this form is notified on paper),

Date [INSERT]