

Mediation Agreement made this [...] day of [.....] 2011

XYZ Plc  
ABC Limited  
(together a Party)

and

1234 Limited

(each a 'Party' and together the 'Parties')

and

Jon Lang of 68 Lombard Street, London, EC3V 9LJ (the  
'Mediator')

**Dispute**

1. A dispute has arisen between the Parties concerning..../as set out in....](the Dispute).

**Appointment of Mediator**

- 2.1 The Parties have appointed the Mediator to assist them in resolving the Dispute at a meeting or series of meetings (the Mediation).
- 2.2 The Parties and (where retained) their solicitors signing this Agreement agree to pay the Mediator a fee of £[...] plus VAT, such rate to include all preparation time prior to commencement of the Mediation and up to 8 hours on the day of the Mediation. The Mediator shall be paid at an hourly rate of £[...] plus VAT in relation to time spent at the Mediation in excess of 8 hours on each day. Travelling and other expenses, if any, incurred in connection with the Mediation, together with VAT where appropriate, will be charged in addition. Unless agreed otherwise, the Mediation

fee and any expenses shall be shared equally between the Parties.

- 2.3 At the conclusion of the Mediation, the Mediator shall deliver to each Party or, where solicitors have been retained, their solicitors, a VAT invoice in relation to their or their client's share of the total fee (including expenses if any) which will be paid by the Party or their respective solicitors (where retained) within 14 days of receipt.
- 2.4 Unless otherwise agreed, each Party shall bear its own costs and expenses incurred in connection with the Mediation, including the costs and expenses of their own legal advisors and their respective share of the Mediator's fee and expenses, but without prejudice to the rights of any Party to seek to recover such costs and expenses from any other Party (or Parties) in the absence of settlement.

### **Participants**

- 3.1 There shall be at least one representative from each Party present at the Mediation who shall have authority to settle the Dispute.
- 3.2 Each Party shall notify every other Party and the Mediator of every person attending on its behalf.
- 3.3 Every person attending the Mediation, whether an employee, partner or associate of a Party, expert witness, legal advisor or otherwise, shall be bound by the confidentiality provisions of this Agreement contained in paragraph 6 and the person signing this Agreement on behalf of each Party warrants that all others attending on behalf of that Party shall be so bound.

### **Mediation Preparation**

- 4.1 Prior to the Mediation, the Mediator may communicate with the Parties, jointly or separately, as he thinks appropriate, for

the purposes of ensuring a proper understanding of each Party's position, that appropriate arrangements have been made for the Mediation itself and generally to ensure that the best use of the Mediation day is made.

- 4.2 Prior to the Mediation, each Party shall prepare and provide to every other Party and the Mediator, a concise summary of its position (hereafter referred to as a 'Position Statement') together with any supporting documents.
- 4.3 Each Party may also prepare a confidential note to be provided to the Mediator alone, or provide the Mediator with documents or other information not provided to the other Party. The Mediator will not disclose any such confidential note, document or other information to any other Party unless expressly authorised to do so.
- 4.4 The Mediator may suggest to the Parties a timetable for provision of Position Statements and accompanying documents and where he does so the Parties shall use their reasonable endeavours to follow such timetable.

### **The Mediation**

- 5.1 The Mediation shall take place on [.....] 2011 at [.....].
- 5.2 The Mediator shall chair the Mediation and suggest the procedure to be followed with the aim of providing the Parties with the best opportunity of reaching a resolution.
- 5.3 The Mediator may meet with each Party or some or all of their representatives alone in private meetings, or together with the other Party or Parties (or some or all of its or their representatives) in joint meetings.

- 5.4 No transcript or other recording of the Mediation shall be made.
- 5.5 Any Party may terminate its involvement in the Mediation at any time by giving notice to every other Party and the Mediator.
- 5.6 Should at any time the Mediator conclude that continuing the Mediation is unlikely to be beneficial he may, after consultation with each Party, bring it to an end.
- 5.7 Should settlement not be reached but the Parties and Mediator decide to continue to try and resolve the Dispute by way of mediation, the Mediation will be adjourned by agreement to a date and venue convenient to the Parties and the Mediator.

### **Confidentiality**

- 6.1 The Parties, Mediator and anyone else attending or involved in the mediation will keep confidential and treat as privileged all information disclosed to them prior to and during the Mediation and shall not disclose such information to any other person.
- 6.2 Information disclosed by one Party or on its behalf to the Mediator in the absence of any other Party, whether disclosed prior to the Mediation or at the Mediation, shall not be disclosed by the Mediator to any other Party or person without the specific consent of the Party disclosing the information.
- 6.3 The obligations of confidentiality contained in this paragraph 6 extend to the terms of any settlement reached and the fact that a settlement has been reached, unless otherwise agreed.
- 6.4 The obligations of confidentiality shall not apply to any Party or Mediator to the extent that disclosure of information is

required to be made to the Court, professional advisors or is otherwise required by law.

- 6.5 All information disclosed at or prior to the Mediation shall be ‘without prejudice’, privileged and inadmissible in any judicial or arbitral proceedings, unless any such information would otherwise be disclosable therein.
- 6.6 The obligations contained in this paragraph bind all those present at the Mediation.

### **Generally**

- 7.1 Each Party agrees that it will not call or take steps to call the Mediator as a witness in any judicial or arbitral proceedings in any way connected with the Dispute or Mediation, or seek disclosure at any time of any notes taken by the Mediator at or in connection with the Mediation.
- 7.2 No agreement reached at the mediation shall be binding on the Parties unless and until reduced to writing and signed by or on behalf of the Parties.
- 7.3 If the Mediation is cancelled or postponed at short notice, the following proportion of the agreed fee will be payable:

if cancellation or postponement takes place less than 24 hours before the date of mediation, the full agreed fee shall be due and payable

if cancellation takes place less than four working days prior to the mediation, 50% of the agreed fee shall be due and payable

In either case, any Party may seek to recover from any other Party or Parties its share of the fee paid to the extent it considers such other Party or Parties to be responsible for the cancellation or postponement.

7.4 The Mediator shall not be liable to any of the Parties for any act or omission or default of the Mediator in connection with the Mediation and the services rendered to the Parties in connection therewith, unless the act or omission or default is shown to be fraudulent or in bad faith.

7.5 This Agreement shall be subject to English Law and the Courts of England and Wales shall have exclusive jurisdiction to hear and determine all claims, disputes and differences that may arise out of or in connection with this Agreement and the Mediation.

7.6 This Agreement shall be signed by the Parties and each Party's solicitors where retained.

This Agreement has been entered into on the date set out above.

Signed.....  
XYZ Plc

Signed.....  
ABC Limited

Signed.....  
PDQ LLP, solicitors

Signed.....  
1234 Limited

Signed.....  
ASAP LLP, solicitors

Signed.....  
Jon Lang (Mediator)