

MEDIATION RULES – 2019 EDITION

1. Interpretation

1.1. In these Rules, the following terms shall have the following meanings:

- (a) “**Mediator**” means Patrick Cannon [and _____], appointed by the Parties as a neutral to conduct the mediation. The Mediator is an independent contractor chosen by or agreed to by the Parties with whom they contract for services rendered. The Mediator is not a person who will provide legal or professional advice to the Parties or their Representatives or who will give a judgment or an award. References to the Mediator include both Mediators where there is a Co-Mediation conducted by two Mediators.
- (b) “**Agreement to Mediate**” means a legally-binding contract to mediate, prepared by Patrick Cannon for the Parties, their Representatives, the Mediator and any Non-Parties attending the Mediation, to be executed prior to the commencement of the Mediation, containing various provisions relating to the process of Mediation, confidentiality, privilege, liability, and the duties and obligations of the Parties to each other and to the Mediator. The Agreement to Mediate requires agreement to and compliance with these Rules.
- (c) “**Party**” means a party to a dispute, controversy, or legal action who is a participant in the mediation or who is represented by a participant in the mediation.
- (d) “**Representative**” means the lawyer, counsel, attorney or other duly authorised representative of the Party.

- (e) “**Evaluative Mediation**” shall mean a process of mediation in which the Parties jointly invite the Mediator to comment on the merits or substance of the case, and/or to provide a non-binding evaluation: the Mediator may in his or her absolute discretion defer accepting, or decline, any such invitation without being asked for, or giving, a reason. Patrick Cannon does not offer Evaluative Mediation.
- (f) “**Facilitative Mediation**” shall mean a process of mediation in which the Mediator offers no comment on the merits or substance of the case, nor provides any evaluation but instead assists the Parties to an agreement using a principled negotiation: the Mediator may in his or her absolute discretion comment on the use of the process of the Mediation if such comment is likely to assist the Parties.
- (e) “**Settlement Agreement**” means a document signed by the Parties or their Representatives before the conclusion of the Mediation, setting forth agreed terms of settlement between the Parties which are intended by them to be legally binding.
- (f) “**Mediation**” means the particular mediation governed by these Rules which have been incorporated by reference into the relevant Agreement to Mediate.

1.2. These Rules shall be interpreted in such a way as to provide the Parties with an efficient and effective Mediation.

2. Agreement of Parties

- 2.1. These Rules, and all amendments to them, shall be deemed to be part of the Agreement to Mediate which provides for Mediation with the Mediator.
- 2.2. Subject to the agreement of the Mediator, these Rules may be varied at any time by written amendment signed by the Parties or their Representatives.

3. Privacy and Confidentiality of Mediation

- 3.1. The Mediation is private and confidential.
- 3.2. A person who is not a Party or a Representative may only attend the Mediation with the consent of all of the Parties and of the Mediator and every such person shall sign the Schedule to these Rules before the Mediation commences.
- 3.3. Each Party and Representative agrees that all offers, promises and proposals, whether oral or written, actions, determinations, representations and statements (including but not limited to admissions) made in the course of the Mediation by any of the Parties, their agents, employees, experts, Representatives and all statements, comments or observations made or relayed, by the Mediator, and all notes, documents and reports prepared or exchanged during the Mediation are “without prejudice” and for the purpose of negotiation only.
- 3.4. The Parties agree that any such offers, promises, proposals, conduct, statements, notes, documents and reports shall not be disclosed to any third party and they shall not be offered as evidence in any arbitration, judicial or other proceeding, at any time.

- 3.5. Notwithstanding Rule 3(4), the Parties acknowledge that evidence that is otherwise admissible shall not be rendered inadmissible because it has been used in this Mediation.
- 3.6. Neither the Mediator, nor any person present observing the Mediation shall be invited or compelled by the Parties, jointly or severally, to appear as a witness in any pending or future adversarial or judicial proceeding involving any one or more of the Parties or relating in any way to the subject matter of the Mediation.
- 3.7. The Parties agree that they shall not jointly or severally seek to summons the mediator or any person observing the Mediation.
- 3.8. Any notes made by the mediator are confidential to the Mediator and shall not be available to the Parties at any time, nor subject to subpoena for production as evidence in any arbitration, judicial or other proceeding. The Mediator undertakes that he shall in any event destroy any notes.

4. Basic Principles

- 4.1. The Parties and their Representatives agree that each Party shall attend the Mediation with full authority to settle.
- 4.2. At the Mediation, the Parties agree that they will be prepared to make a brief oral opening statement explaining what they wish to achieve from the process and acknowledge that they are expected to participate in good faith in the process conducted with the assistance of the Mediator.
- 4.3. The Parties agree where reasonably practicable to make available to the Mediator such copies of documents or materials as are likely to be needed in order effectively to negotiate.

- 4.4. The Parties agree that the Mediator may meet (caucus) privately with each Party and their Representative during the Mediation if he considers that it will assist the process. Any Party and Representative may request a private caucus with the Mediator at any time.
- 4.5. The Parties agree that there shall be no electronic recording by any means of the Mediation, nor any verbatim stenographic record taken of the Mediation. Parties and Representatives may make notes but these must not be shown to any person other than shared between a Party and their Representative and are not admissible in any court, arbitration or other proceedings.

5. Mediation Procedure

- 5.1. The Mediator will conduct the Mediation using Facilitative Mediation as defined in Rule 1.11, (f). The Mediator will conduct the process non-judgmentally by exploring the interests, needs and concerns of the Parties allowing them to generate option for a mutually agreed resolution.
- 5.2. The Mediator will not advise any person, nor comment or offer legal professional opinions. The Parties will rely on their own counsel or Representatives for legal or professional advice.
- 5.3. The Mediator will not propose a settlement, nor draft any offers of settlement. Parties must attend the Mediation, ready, willing and able to write or draft any offers or settlement.
- 5.4. The Mediator will continue to use Facilitative Mediation techniques until a settlement is reached or the Mediation is adjourned or terminated as set out below.

Evaluative Mediation

- 5.5. Evaluative Mediation is not offered by Patrick Cannon. The Mediator shall not evaluate or advise.

Termination of the Mediation

- 5.6. Whatever the process used in the Mediation, the Mediation shall be terminated:

- (a) by agreement between the Parties; or
- (b) if a settlement is reached by the Parties; or
- (c) at any time during the Mediation, if the Mediator in his absolute discretion decides it should be terminated, in which case the Parties agree they shall not challenge that decision, nor shall the Mediator give or be asked for a reason for the termination; or
- (d) no agreement has been reached in the time available and it is either impracticable to take further time, unless the Parties and the Mediator agree to adjourn the Mediation; or
- (e) a Party does not wish to continue in Mediation.

- 5.7. On termination, the Mediator will, as soon as reasonably practicable, destroy all notes and documents, save for the Agreement to Mediate and any Schedules to that Agreement and/or the Rules.

6. Settlement Agreement and Formalities

- 6.1. Any settlement agreed at Mediation will not be deemed to be concluded or to be legally binding until the Parties or their Representatives sign a Settlement Agreement at the Mediation, setting forth the terms thereof.
- 6.2. The Settlement Agreement shall not be drafted or signed by the Mediator.

7. Exclusion of Liability

- 7.1. The Mediator shall not be liable to any Party or Representative for any act or omission howsoever arising in connection with any mediation conducted by the Mediator.
- 7.2. Without prejudice to the Agreement to Mediate and to the exclusions or limitations set out in these Rules, should contrary to the foregoing provisions any liability be found to attach to the Mediator, then the Parties agree that it shall be limited to the maximum sum of £1,000,000.

8. Fees and Costs of the Mediation

- 8.1. The fee payable to the mediator for the Mediation and any applicable overtime payments fees shall be as agreed in writing by the Parties with Mediator.
- 8.2. The Mediator's fee is payable in advance of the Mediation and the Mediation will not proceed unless payment in full has been made before the Mediation commences. No refunds are made. The travel and hotel expenses of the Mediator are payable by the Parties at actual cost with VAT added within 14 days of the Mediator submitting his invoice therefor.
- 8.3. In the event that a Party calls a Mediator as a witness, then that Party shall pay the Mediator £500 plus VAT per hour for each hour in any way engaged in being a witness including preparation with a non-refundable minimum of £5,000, plus VAT, payable in advance.
- 8.4. The Parties are jointly and severally liable for the fees and costs due to the Mediator.
- 8.5. The Parties are jointly and severally liable for the costs of the venue

9. Legal Effect and Status of the Mediation

9.1. The Agreement to Mediate and these Rules are governed by the laws 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 the Agreement to Mediate and the Mediation.

Signature

I have read, understood and agree to these Rules.

Signed: for and on behalf of Party 1 and their
Representatives

Signed: for and on behalf of Party 2 and their
Representatives

Signed: Mediator

Dated this day of 20[]

SCHEDULE TO THE RULES
CONFIDENTIALITY AGREEMENT FOR OBSERVERS / NON-LAWYERS

MEDIATION between:

Party 1

- and -

Party 2

Held on: 20[] ; at

I/We, the undersigned, in consideration of the Participants in the above Mediation agreeing to me/us attending and observing the above Mediation, hereby irrevocably agree to keep confidential all matters that I/we hear, read or see at the above Mediation and shall never disclose what I/we learn, hear, read or see at the above Mediation unless required by a Court in due process of law.

I am/We are:

Name	Address	Email	Tel.	Signature

Signed in the presence of the Mediator(s):

Signed:

Dated: