

SEAMEDIATION EARLY INTERVENTION TERMS

September 2016 Edition

General

1. These terms, and any subsequent editions that may be posted from time to time on the SeaMediation Chambers' website, shall constitute the SeaMediation Early Intervention Terms.
2. A party to a dispute becomes bound by these terms upon an authorised representative agreeing with the Mediator or another party to the dispute, either in writing (including email) or orally, that the party agrees to be bound by them. A formal signed agreement is not required.

Commencing Early Intervention Process ("EIP")

3. The Mediator may be appointed by any one of the following methods:
 - 3.1. by joint appointment by all parties where they have agreed upon the choice of Mediator; or
 - 3.2. by joint appointment by all parties where they have asked the Senior Clerk at SeaMediation Chambers to nominate a mediator for the purposes of conducting an EIP and the Mediator has then been nominated by the Senior Clerk; or
 - 3.3. upon appointment by one of the parties (either direct or upon a request to the Senior Clerk at SeaMediation Chambers to nominate a mediator) who asks the Mediator to approach one or more other parties to the dispute to invite their participation in an EIP.

Initial Exploration

4. The process by which the Mediator approaches one or more parties as envisaged in clause 3.3 above shall be known as Initial Exploration.
5. During the Initial Exploration, the Mediator will require that any party with whom he makes contact agrees to be bound by these terms before he discloses information (save for the fact that the party who appointed him has initiated an EIP and any other information the appointing party has authorised him to disclose).
6. A party who has asked the Mediator to approach one or more other parties as envisaged in clause 3.3 above is deemed to have agreed that the Mediator is entitled to treat all exchanges

with any of the other parties as strictly confidential to those other parties, and without prejudice in any litigation or arbitration proceedings (whether current or future and whether anticipated or not), and neither the Mediator nor any of those other parties shall be under any obligation to disclose any part of such exchanges to them whether or not any of those other parties agree to be bound by these terms.

7. At the conclusion of the Initial Exploration some or all of the parties approached by the Mediator may have agreed to be bound by these terms and that the Mediator should proceed with the EIP, in which case the Mediator will progress the EIP with such parties and the party who originally appointed him (unless the Mediator concludes that the EIP cannot usefully proceed without any party who may have declined the invitation to participate, in which case the Mediator shall terminate the EIP). If at the end of the Initial Exploration none of the parties approached by the Mediator have accepted the invitation to participate in the EIP, the Mediator shall terminate the EIP.

Conduct of the EIP

8. The aim of Early Intervention is for the Mediator to assist the parties:
 - 8.1. gain a clearer understanding of the key issues and concerns for each party; and/or
 - 8.2. identify what each party needs to do to better inform the other(s) of its position; and/or
 - 8.3. work out an agreed list of information and/or documentation to be provided and/or exchanged by some or all of the parties; and/or
 - 8.4. agree an improved 'roadmap' to take the disputes between them forward; and/or
 - 8.5. identify options for resolving or agreeing how more effectively to contest some or all of the issues; and/or
 - 8.6. to reach a mutually acceptable settlement of some or all of the issues.
9. Early Intervention is a very flexible process and there is no standard procedure. The Mediator has very wide discretion to decide upon the most appropriate procedure in each case. The procedure may include, but is not limited to, the following:
 - 9.1. chaired meetings with some or all of the parties and/or their legal representatives; and/or
 - 9.2. discussions by telephone and/or video conferencing with parties and/or their legal representatives individually and/or collectively; and/or

- 9.3. communications by email with parties and/or their legal representatives individually and/or collectively; and/or
- 9.4. progressing to a formal mediation meeting and/or process.

Privilege

- 10. Except as the parties may otherwise agree in writing, anything said or done by any person during the EIP is said or done without prejudice and no party shall be entitled to call evidence of anything said or done by any person in the EIP.
- 11. All documents or statements produced, used or made in the EIP, not otherwise available or known or subject to other obligations of disclosure, will be privileged and will not be disclosed in or relied upon or be the subject of an application to give evidence, or to produce documents in any arbitral or judicial proceeding or any other formal process in respect of the disputes the subject of the EIP.

Confidentiality

- 12. Any information, whether orally or written, disclosed to the Mediator in private will be treated as confidential by the Mediator unless:
 - 12.1. the party making the disclosure states otherwise;
 - 12.2. the law imposes an obligation of disclosure; or
 - 12.3. the Mediator believes that the life or safety of any person is or may be at serious risk.
- 13. The parties and the Mediator agree in relation to all confidential information disclosed to them during the EIP, including any Initial Exploration:
 - 13.1. to keep that information confidential;
 - 13.2. not to disclose that information except to a party or a representative of that party participating in the EIP or if compelled by law to do so; and
 - 13.3. not to use that information for a purpose other than the EIP.

Subsequent Proceedings

- 14. The Mediator will not accept any appointment nor act or agree to act as expert, arbitrator or consultant in relation to any arbitral or judicial proceeding or any other formal process relating to the disputes the subject of the EIP.

- 15.** No Party will require, call or summons the Mediator to give evidence as witness or to produce documents records or notes in any arbitral or judicial proceeding or any other formal process arising from or in connection with the disputes the subject of the EIP.
- 16.** If any party seeks to call the Mediator to give evidence or produce documents in breach of clause 15 that party shall indemnify the Mediator in respect of any costs the Mediator incurs in dealing with the application. The Mediator will further be entitled to charge that party for any time spent both in dealing with such application(s) and/or giving evidence, at the rate of £400 per hour.

Termination

- 17.** If a party notifies the Mediator in writing that they do not wish to continue the EIP, the Mediator must terminate the EIP in so far as it relates to that party and may terminate the EIP as regards all the parties.
- 18.** The Mediator may terminate the EIP if:
- 18.1. the Mediator considers he is unable to assist the parties further;
 - 18.2. the Mediator considers it appropriate for any other reason, which the Mediator may decline to give the parties.
- 19.** The EIP will be terminated upon execution of a settlement agreement in respect of the disputes the subject of the EIP.
- 20.** Termination of the EIP does not terminate the operation of Clauses 10 to 16 inclusive.

Indemnity and Exclusion of Liability

- 21.** The Mediator will not be liable to any party, except in the case of fraud by the Mediator, for any act or omission (whether negligent or misleading or otherwise) in the performance or purported performance of the Mediator's role under these terms.

Mediator's Fees and Costs of the EIP

- 22.** During any Initial Exploration, whilst any of the parties is still deliberating about whether to participate in the EIP, the Mediator will provide his services for up to one hour per party free of charge (not exceeding three hours in total in multi-party disputes).
- 23.** Other than as provided in clause 22, the Mediator shall charge £400 per hour, plus out of pocket expenses if required, (plus VAT where appropriate) to be shared equally between the parties who have agreed to be bound by these terms irrespective of the amount of time the

Mediator spends communicating with each party. Payment of the Mediator's fees and expenses shall be due 7 days after receipt of the appropriate invoice.

24. Unless otherwise agreed in writing, each party shall bear its own legal and other costs of participating in the EIP.

Governing Law and Jurisdiction

25. These terms and the agreement between the parties and the Mediator shall be governed by and construed in accordance with English law. The Courts of England will have exclusive jurisdiction in relation to any dispute arising out of or in connection with the EIP.

26. Where these terms import the masculine gender they shall, unless otherwise stated, include the feminine gender.

27. Neither SeaMediation nor SeaMediation Chambers has any legal identity of any kind. Each is simply a brand utilised by a number of mediators who work independently of each other and are not in partnership or any other form of collective legal arrangement. Any mediation services are provided by each mediator on their own account.