

# RICS Model Mediation Settlement Agreement

Date

.....

Parties

.....

('Party A')

.....

('Party B')

.....

('Party C')

.....

[add more as necessary]

(jointly 'the Parties')

The Parties having agreed to settle 'the Dispute', which:

- is being litigated/arbitrated [court/arbitration reference] ('the Action')<sup>1</sup>
- has been the subject of an RICS mediation procedure today ('the Mediation') on the following terms and conditions:

## Terms

It is agreed as follows:

1. .... will deliver .....  
to ..... at ..... by not later than 4pm on .....<sup>2</sup>
2. .... will pay £..... to .....  
by not later than 4pm on ..... (by direct bank transfer to ..... bank sort  
code ..... account number .....<sup>3</sup>)

**OR**

..... will pay £ ..... to ..... per week/calendar month/ in ..... tranches by cheque/cash/bank transfer commencing on or before .....and thereafter until finishing on or before .....

3. In default of such payment all outstanding sums shall fall due and payable forthwith/or ..... shall pay interest on the balance outstanding at the rate of ..... % above ..... base rate for the time being to payment]<sup>4</sup>

4.

5

5. The Action will be stayed and the parties will consent to an order in the terms of the attached Tomlin Order precedent [see attachment].

**OR**

The Action will be dismissed with no order as to costs.

6. This Agreement is in full and final settlement of any causes of action whatsoever that the Parties [and any subsidiaries..... of the Parties] have against each other.

7. This Agreement is the entire agreement between the Parties and supersedes all previous agreements between the parties [in respect of matters the subject of the Mediation].<sup>6</sup>

8. If any dispute arises out of this Agreement, the Parties will attempt to settle it by mediation<sup>7</sup> before resorting to any other means of dispute resolution. To institute any such mediation a party must give notice to the mediator of the Mediation.

Insofar as possible, the terms of the Mediation Agreement will apply to any such further mediation. If no legally binding settlement of this dispute is reached within [28] days from the date of the notice to the Mediator, either party may [institute court proceedings/refer the dispute to arbitration under the rules of.....<sup>8</sup>].

9. The Parties will keep confidential to themselves, their legal advisers [and by agreement] and not use for any collateral or ulterior purpose the terms of this Agreement [except insofar as is necessary to implement and enforce any of its terms].

10. This Agreement shall be governed by, construed and take effect in accordance with [English] law. The courts of [England and Wales] shall have exclusive jurisdiction to settle any claim, dispute or matter of difference which may arise out of, or in connection with this agreement.<sup>9</sup>

Signed

.....

for and on behalf of<sup>10</sup> .....

for and on behalf of<sup>11</sup> .....

**Note:** This Model Agreement and attached precedent of a Tomlin (stay) order is for guidance only. Any agreement based on it will need to be adapted to the particular circumstances and legal requirements of the settlement to which it relates. Wherever possible, any such agreement should be drafted/approved by each party's lawyer. Although the RICS Mediator is likely to be involved in helping the parties to draft acceptable terms, they are not responsible for the drafting of the agreement and do not need to be a party to it.

### **Attachment to Model Settlement Agreement**

#### **Tomlin (stay) Order Precedent**

[Action heading]

UPON hearing from the solicitors to the parties in correspondence.....

#### **And by consent**

**IT IS ORDERED** that all further proceedings in this case be stayed upon the terms set out in the Settlement Agreement between Parties dated ....., an original of which is held by each of the Parties' solicitors except for the purpose of enforcing the terms of that Agreement as set out below.

**AND IT IS FURTHER ORDERED** that either Party/any of the Parties may apply to the Court to enforce the terms of the said Agreement [or to claim for breach of it] without the need to commence new proceedings.

[**AND IT IS FURTHER ORDERED** that [each Party bear its own costs].]

**WE CONSENT** to an order in these terms

.....

Claimant's Solicitors

.....

Defendant's Solicitors

## Notes

- 1 Omit this wording and paragraph 5 if there are no court proceedings.
- 2 Omit as necessary but otherwise be as specific as possible in respect of any act positively required to be performed, for example, how, by when, etc. or alternatively to be refrained from.
- 3 Or any other tranche of payments or currency agreed.
- 4 Optional. Many mediators dislike putting in any default provision.
- 5 Any additional positive or negative performance obligations.
- 6 Only necessary if there have been previous agreements.
- 7 Alternatively, negotiation at Chief Executive level, followed by mediation if negotiations do not result in settlement within a specified time.
- 8 Reference to the appropriate arbitration body.
- 9 Usually not necessary where parties are located in same country and subject matter of agreement relates to one country. If the Parties elect for their agreement to be governed by the laws of another jurisdiction they should take legal advice on the implications for enforcement.
- 10 Not necessary where the party signing is an individual.
- 11 Not necessary where the party signing is an individual.