**RICS Model Settlement Agreement**

**Date**

**Parties**

 (“Party A”)

 (“Party B”)

[ (“Party C”) and 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")[[1]](#footnote-1)
* has been the subject of an RICS mediation procedure today ("the Mediation")

upon the following terms and conditions:

**Terms**

It is agreed as follows:

1. [ will deliver……… to at ……… by not later than 4 o’clock on …][[2]](#footnote-2)

2. [ will pay £……… to by not later than 4 o’clock on … (by direct bank transfer to …. bank sort code … account number …) …][[3]](#footnote-3)

**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][[4]](#footnote-4)

4. [ ][[5]](#footnote-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 which 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].[[6]](#footnote-6)

8. If any dispute arises out of this Agreement, the Parties will attempt to settle it by mediation[[7]](#footnote-7) 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 … [[8]](#footnote-8)].

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.[[9]](#footnote-9)

**Signed**

[for and on behalf of[[10]](#footnote-10) ]

[for and on behalf of[[11]](#footnote-11) ]

Note: This Model Agreement and attached precedent of a Tomlin (stay) order is for guidance only. Any agreement based on it will need to 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, he or she is not responsible for the drafting of the agreement and does 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

**Explanatory notes for the Mediator concerning the settlement agreement**

**The Settlement Agreement**

1. Mediators are not encouraged to participate in assisting the parties to draft their settlement agreement. This is even more true of the RICS Accredited Mediator who may not have a legal background, even though he or she may be experienced in the type of dispute being mediated. In particular the drafting of a settlement agreement by the Mediator is likely to be the one activity in respect of which an action in negligence may lie if he or she gets it wrong. Mediators should therefore generally not participate in drafting the settlement where the parties have legal representation, or at least one side has a lawyer competent to draft the agreement. If that is not the case the Mediator should encourage the parties either to settle the agreement themselves, at least as heads of agreement, and have a lawyer provide such additional detail as is necessary. If unrepresented parties require you to help draft the agreement the following general principles apply.

2. It is essential that the parties secure a concluded agreement that is workable, comprehensive, (both as to the dispute and any wider issues which have been introduced,) and enforceable. It is vital that the parties, usually through their lawyers, get the form of the agreement right, to ensure that the settlement is enforceable. The terms must be certain, specific, effective, practical and complete, in particular dealing with who is to do what, when, and with what precise consequences.

3. Consider whether a provision will need to be inserted detailing with what to do if one side or the other fails to adhere to the agreement or if it proves to be unworkable. While such clarity is desirable, it may deflate the atmosphere of successful compromise, and care needs to be taken.

4. The Mediator may suggest in advance that the lead representative on each side should take a draft containing the likely heads of agreement with him or her, and, if litigation is running, a general form of Tomlin order. If the compromise contains terms found in a recognised standard form or precedent it needs to be brought with otherwise a party will be forced to locate it, possibly out of business hours, and probably at a highly inconvenient time for doing so.

5. As settlement nears the representative should begin to draft the proposed agreement in the caucus room. The Mediator will encourage a discussion of the structure, form and contents with the client as early as possible, since this can be done as the mediation progresses and will help focus on the details. It places the client’s personal agenda in context and gives focus to the practicalities of its implementation.

6. If you are asked to draft the settlement agreement by unrepresented parties be careful to strike a balance between too little, and too much detail. Do not be overly pedantic. Remember it is likely to be either quite late or very late, at the end of a long day. While the document is being settled you should ask the decision maker in each party precisely who should be the signatory, and whether they have authority.

You may wish to consider the introduction of certain standard clauses irrespective of the nature of the settlement. These should deal with:-

* confidentiality
* any relevant choice of law or jurisdiction
* that this is the entire agreement between the parties
* a default mechanism to deal with future disputes
* whether, if there is a breach of this agreement, the original cause of action should be reinstated (the opposite of the standard Tomlin order).

The settlement-specific clauses need to be certain as to:-

* payment: who pays, to whom is payment made, and how much
* the form in which payment is to be made
* whether payment is to be immediate or in stages
* the mechanism for default of payment
* the provision of interest
* the costs of the litigation
* the costs of the mediation
* any public statements
* the discontinuance or withdrawal of proceedings
* any special clauses dealing with enforceability
* who is the signatory, his or her status or authority.

7. There will be occasions when the parties can do no more than agree outline heads of agreement, but this should be avoided wherever possible. Saving an hour at the end of the mediation by agreeing only outline heads of agreement exposes the parties to the risk of further disputes in which the argument shifts from its original subject matter to contesting what has been agreed. It is essential that the intention of the parties is made plain, and there is at least sufficient detail to ensure that an impartial reader would have a clear idea of precisely what has been agreed. If there is no time to put in the complexity of the mechanics of the transaction, or, for example, the tax implications have not been advised upon or worked out, at least draw a distinction between the agreement itself and the mechanics for performing it.

1. Omit this wording and paragraph 5 if there are no court proceedings [↑](#footnote-ref-1)
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. [↑](#footnote-ref-2)
3. Or any other tranche of payments or currency agreed [↑](#footnote-ref-3)
4. Optional. Many mediators dislike putting in any default provision. [↑](#footnote-ref-4)
5. Any additional positive or negative performance obligations [↑](#footnote-ref-5)
6. Only necessary if there have been previous agreements [↑](#footnote-ref-6)
7. Alternatively, negotiation at Chief Executive level, followed by mediation if negotiations do not result in settlement within a specified time [↑](#footnote-ref-7)
8. Reference to the appropriate arbitration body [↑](#footnote-ref-8)
9. Usually not necessary where parties are located in same country and subject mater 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. [↑](#footnote-ref-9)
10. Not necessary where the party signing is an individual [↑](#footnote-ref-10)
11. Not necessary where the party signing is an individual [↑](#footnote-ref-11)