**PROMEDIATE Service Level Agreement**

 **CTSI Approved Alternative Dispute Resolution Scheme**



 

Between (“”) and ProMediate (UK) Limited ("ProMediate")

Definitions

In this agreement the following terms have the following meanings:

"” user of the services

"Customer": customer

“The Company” ProMediate (UK) Limited

"Services": the provision of ADR to try to resolve disputes between () and its ()Customers in accordance with the Scheme Rules as approved by the Competent Authority under the ADR Directive Regulations.

"Dispute:" any dispute between ()and its customers which cannot be resolved between them through () internal complaints processes.

“Mediator” The ADR Official allocated to deal with the Dispute by ProMediate from ProMediate’s panel of mediators set out at <http://www.promediate.co.uk/click-2-resolve/who-are-our-adr-officials/>

"Scheme Rules": the procedures for operating the provision of ADR services set out in the Guidance document on the ProMediate website as updated from time to time and approved by the Competent Authority under the ADR Directive Regulations.

"Membership fee": the fee charged by ProMediate annually for the provision of the Services, to be agreed with ()

"Unit fee" the fee charged by ProMediate for each Dispute referred to it by () at a rate to be set by ProMediate from time to time in its discretion, set out at [http://www.promediate.co.uk/](http://www.promediate.co.uk/charges4lawyers/) as updated from time to time and approved by the Competent Authority under ADR Regulations 2015. It has been agreed that the Unit fee will be £50 Plus VAT and for Complaints which are valued by ProMediate at over £10,000, the Unit Fee will be £150 Plus VAT.

Agreement

1. ProMediate agrees to mediate disputes arising between () and its customers regarding its casinos in accordance with the Scheme Rules as approved by the Competent Authority under the ADR Regulations 2015. ProMediate agrees to maintain its approval/certification by the Competent Authority during this agreement.
2. () agrees to pay ProMediate the annual Membership Fee.
3. () will notify ProMediate of the Dispute when, after () internal complaints process has been exhausted without resolution and a “deadlock” letter or email has been sent to the Customer, the Customer has indicated to () or to ProMediate direct, or through the EU ODR Platform, that they wish to use () nominated ADR entity to resolve the dispute.
4. () agrees not to unreasonably refuse to refer a customer’s compliant to ProMediate.
5. ProMediate will contact () Customer and () within 7 days of notification of the dispute in order to arrange the mediation process in accordance with the Scheme Rules and allocate a Mediator to deal with the Dispute.
6. ProMediate agrees to provide the Services to () in accordance with the Scheme Rules conditional upon payment of the Unit fee (within 28 days) for each Dispute referred to it by (), directly from the Customer or via the EU ODR Platform.
7. ProMediate agrees to () using the ProMediate and Click2Resolve logos on () website (should it wish to do so) and in any correspondence with Customers concerning the Services and () agrees to ProMediate using () logo on its website in association with the provision of the Services so that () customers know that they can use ProMediate in the event of a deadlocked complaint.
8. Upon non-payment of the annual fee, () must desist from using the ProMediate or Click2Resolve logos and holding out to Customers that it is entitled to do so or to include reference to Click2Resolve or ProMediate in () terms and conditions, website or correspondence with Customers.
9. ProMediate will use its best endeavours to assist in trying to resolve any disputes between the Customer and () referred to it by (( or via the EU ODR Platform, by mediation, but does not warrant or guarantee that such disputes will be resolved.
10. ProMediate will use reasonable endeavours to keep () informed of legal developments in respect of the ADR Directive and ODR Regulations and to provide () with suitable wording for its deadlock letters and correspondence with customers. () agrees to use ProMediate’s services if a customer requests this.
11. The terms and conditions of each mediation carried out are as follows:
	1. ProMediate will appoint a Mediator from its panel of mediators to mediate between the parties on the terms set out below:
		1. to mediate the Dispute by telephone/email/online as appropriate following the Scheme Rules (“the Mediation”)
		2. the Mediator and the Mediation shall follow the European Mediation Procedure (“the Procedure”) of the International Institute for Conflict Prevention & Resolution (“CPR”) (and when applying or interpreting the Procedure references to be CPR shall be deemed to be references to ProMediate) and the European Code of Conduct for Mediators (“the Code”)
		3. that where the Procedure and the Code conflict the provisions of the Code shall prevail and where the provisions of this Agreement conflict with either the Procedure or the Code this Agreement shall prevail.
	2. The Mediation and the entire mediation process is confidential and it is a voluntary process. The Customer and/or () is free to terminate the mediation process at any stage in the process under the Scheme Rules.
	3. The Mediation and the entire mediation process, and all negotiations, statements and documents expressly prepared for the purposes of the Mediation shall be “without prejudice” unless and until a settlement is reached and reduced to writing (save that it is further agreed that any statement or document prepared for the litigation of the Dispute shall not acquire without prejudice status merely because it was used in the Mediation).
	4. Neither the Parties or the Mediator may (whether by themselves or an agent) disclose to any person other than the Parties any information regarding the mediation process (including pre-process exchanges and agreements and, in cases where a settlement is not reached on the day of the Mediation, continuing discussions and communications between the Mediator and the Parties) or any content (including written and oral information) of the Mediation unless:
		1. it is so agreed in writing among all the Parties and the Mediator
		2. it is required by law and ordered by the Court
		3. the Mediator reasonably considers that there is a serious risk of significant harm to the life or safety of any person if the information in question is not disclosed;
		4. or the Mediator reasonably considers that there is a serious risk of his being subject or the Company being subject to criminal proceedings unless the information in question is disclosed.
	5. The settlement terms or outcome of the Mediation are to remain confidential.
	6. If litigation is pending, the Parties may inform the court of the timing and overall status of the Mediation for purposes of litigation management.
	7. No party shall seek to require the Mediator or the () to give evidence in any subsequent litigation about the Mediation or the Dispute and any party asked by the court either to give evidence about the Mediation or to procure evidence from the Mediator about the Mediation shall bring to the attention of the court the appropriate provisions of this Agreement.
	8. Neither the Mediator or the Company shall be liable for any act or omission in connection with the Mediation, other than as a result of its/his/her own wilful misconduct or gross negligence. Further, the Parties agree that any liability the Mediator or the Company may have in respect of the Mediation shall be capped at £1 million. For the avoidance of doubt this cap is in respect of the total overall liability for all claims arising directly or indirectly out of or connected with the Mediation and “claim” shall include damages, compensation, interest, costs or any other item of claim.
	9. ProMediate must ensure that the Mediator appointed to deal with the dispute has no previous commitments that are likely to significantly delay the expeditious conduct of the Mediation under the Scheme Rules and will ensure that no such commitments are made.

**Conflicts of Interest**

* 1. The Mediator allocated to deal with the Dispute will have appropriate systems in place to identify and upon identification will disclose to the Parties in writing:
		1. all business or professional relationships which the Mediator has/has had with any party within the past five years;
		2. All instances in which the Mediator served as a lawyer for any party or adverse to any party;
		3. any financial interest the Mediator has in any party;
		4. any significant social, law firm or professional relationship the Mediator has/had with an officer or employee of a party or with an individual representing a party in the Mediation; and
		5. any other circumstances that may create doubt regarding the Mediator’s impartiality in the Mediation.
	2. Each party and its lawyer will make a reasonable effort to learn and to disclose to every other party and the Mediator in writing any relationships of a nature described in paragraph j not previously identified and disclosed by the Mediator.
	3. If the Parties are satisfied that any relationships disclosed pursuant to paragraphs k and l will not affect the Mediator’s independence or impartiality, or notwithstanding such relationships or others which the Mediator and the Parties did not discover despite good faith efforts, the Parties wish the Mediator to serve in the Mediation, waiving any claim based on said relationships, and the Mediator agrees to so serve, then the Mediator will continue to act as mediator. Otherwise, ProMediate will allocate another Mediator to deal with the Dispute or refer the Dispute to another certified ADR Provider.
	4. The disclosure obligations in paragraphs j and k are continuing until the Mediation is concluded. The ability of the Mediator to continue serving in this capacity shall be explored with each such disclosure.

**GDPR**

* 1. ProMediate agrees to comply with its obligations as a data controller and to seek customers’ express permission to disclose their personal data when dealing with any dispute on their and () behalf so as to comply with GDPR.

 **The Mediation**

* 1. The Mediator will attempt to resolve the dispute by way of facilitative mediation, with a view to the Parties reaching a mutually agreed resolution of the Dispute.
	2. The Mediator will not evaluate or determine the Dispute but will convey each party’s view to the other. If the matter does not resolve, ProMediate will set out to the customer the reasons given by () for the decision.
	3. The Parties acknowledge that
		1. the Mediator will not provide legal advice and
		2. to the extent that the Mediator might appear to one or more party to hold an opinion, it must not be interpreted as advice, guidance, or an indication as to the outcome of the Dispute.
	4. The Parties agree and acknowledge that they will rely on their own representatives or legal adviser(s) for legal advice.
	5. The Mediator may terminate the Mediation if
		1. after consultation with the Parties, the Mediator feels unable to assist the Parties to achieve resolution of the Dispute
		2. the Mediator receives, from a source outside the Mediation, confidential information relevant to the Dispute or any party
		3. the Mediator receives confidential information relevant to a client during the Mediation or
		4. the Mediator in his/her absolute discretion considers it appropriate for any other reason (which reason the Mediator shall disclose to the Parties).
	6. The Parties are free to terminate the mediation at any stage.
	7. If the mediation is terminated for whatever reason under the terms of this agreement, the Parties are not entitled to a refund of the Unit Fee.
	8. A Mediation shall end if a settlement is reached by the Parties and reduced into writing and signed. No settlement shall be deemed to have been concluded, nor any Settlement Agreement deemed to have been reached unless and until:
		1. it is reduced into writing; and
		2. signed by both Parties and/or their legal representatives.
	9. In cases where a settlement is not reached on the day of the Mediation, or within the allotted time under the Scheme Rules:
		1. any continuing discussions and communications between the Mediator and the Parties shall be governed by the terms of this Agreement so that, in particular, the arrangements concerning confidential and without prejudice communications shall continue to apply.
		2. ProMediate may, with the agreement of the Parties, require payment of a further Unit Fee by () and the Customer.
1. This Agreement, along with any exhibits, appendices, addenda, schedules, and amendments hereto, encompasses the entire agreement of the parties, and supersedes all previous understandings and agreements between the parties, whether oral or written. The parties hereby acknowledge and represent, by affixing their hands and seals hereto, that said parties have not relied on any representation, assertion, guarantee, warranty, collateral contract or other assurance, except those set out in this Agreement, made by or on behalf of any other party or any other person or entity whatsoever, prior to the execution of this Agreement.
2. No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
3. The parties hereby waive all rights and remedies, at law or in equity, arising or which may arise as the result of a party’s reliance on such representation, assertion, guarantee, warranty, collateral contract or other assurance, provided that nothing herein contained shall be construed as a restriction or limitation of said party’s right to remedies associated with the gross negligence, willful misconduct or fraud of any person or party taking place prior to, or contemporaneously with, the execution of this Agreement.
4. ProMediate is not liable for loss of goodwill, business, revenue or profits, anticipated savings or wasted expenditure (whether reasonably foreseeable or not) or indirect or consequential loss.
5. Neither party shall be liable to the other for any indirect or consequential loss (including but not limited to loss of goodwill, loss of law firm, loss of anticipated profits or savings and all other pure economic loss) arising out of or in connection with this Agreement other than for breach of any licence agreement to use ProMediate/Click2Resolve’s logos.
6. ProMediate will not be liable to () or the Customer for any indirect or consequential loss or loss of profit arising out of the performance of the Services under the agreement.
7. Any liability for breach of the agreement will be limited to and will not exceed in any event the value of the Dispute being dealt with by ProMediate.

**Notices**

1. Any notice required to be given under this Agreement, shall be in writing and shall be delivered personally, or sent by pre-paid first class post or recorded delivery or by commercial courier to each Party required to receive the notice at its address as set out below:
	1. ()
	2. ProMediate (UK) Limited Brow Farm Top Road Frodsham Cheshire WA6 6SP

or as otherwise specified by the relevant Party by notice in writing to each other Party.

1. Any notice shall be deemed to have been duly received:
	1. if delivered personally, when left at the address and for the contact referred to in this clause; or
	2. if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second business day after posting;
	3. if delivered by commercial courier, on the date and at the time that the courier’s delivery receipt is signed; or
	4. if delivered by email, on the date and at the time stated on the email.

**Governing Law and Jurisdiction**

1. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
2. The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

**Severability**

1. If any term of this Agreement not being of a fundamental nature shall be held by a court of competent jurisdiction to be invalid, illegal or unenforceable the validity or enforceability of the remainder of this Agreement will not be affected

**Waiver**

1. Failure to exercise, or any delay in exercising, any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy.
2. No single or partial exercise of any right or remedy provided under this Agreement or by law shall preclude or restrict the further exercise of that or any other right or remedy.

**Third Party Rights**

1. Except as provided in this clause, this Agreement is made for the benefit of the Parties to it and their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else.
2. This Agreement is made for the benefit of the Disclosing Party and the Clients and the Clients may enforce this Agreement as if they were the Disclosing Party and a Party to this Agreement.

**Headings**

1. Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.

Signed by …………………………………………………….

for and on behalf of ()

Signed by …………………………………………………….

For and on behalf of ProMediate (UK) Limited