



## **TERMS AND CONDITIONS FOR MEDIATION**

### **Objective of the mediation**

1. The objective of the mediation is to enable the parties to reach a mutually acceptable settlement of the Dispute, on terms they have agreed, recorded in a written signed agreement.
2. The role of the Mediator is purely to facilitate settlement of the Dispute by negotiation between the Parties to be recorded by a written, signed agreement. The Mediator is independent and neutral.
3. The Mediator's role is not to adjudicate the Dispute.
4. The parties expressly agree that any settlement reached in the mediation is without prejudice, is strictly "subject to agreement", and will not be legally binding until reduced to writing in one document and signed by the parties or their authorised representatives. At that point only the agreement will come into effect and become a contract between the parties, and its terms will become enforceable.
5. The mediation is a voluntary process and the Mediator will not, and cannot, compel the parties to settle, or even to continue the mediation. The Parties or the Mediator may end the mediation at any time without giving a reason.
6. The mediation, and all things said or disclosed in the course of the mediation, are and will remain without prejudice.
7. The Parties agree and acknowledge that all documents, statements, information and other material produced for, to or during the course of the mediation, save to the extent that these documents have been disclosed already in the litigation, whether in writing or orally, are without prejudice, will be inadmissible in any subsequent litigation or arbitration of the Dispute, shall further be held in confidence by the Parties, and shall be used solely for the purposes of the mediation.
8. The Parties will keep confidential the fact that the mediation is to take place or has taken place, other than to inform a court and their professional advisers dealing with any litigation relating to the dispute of that fact.

### **How the mediation will be conducted**

9. The Parties should send to the Mediator, and each other, not less than 5 clear working days before the date of the mediation:
  - a. an agreed Position Statement providing the Mediator with a succinct summary of the issues in dispute
  - b. the pertinent evidence, together with the key documents, statements of case and orders to enable the Mediator (and each other) to understand the matters in issue
  - c. a list of the names of all representatives who will attend the mediation
  - d. written confirmation that their representatives will have such authority as may be necessary to settle the Dispute at the mediation

10. The Mediator will:
  - a. before the mediation starts, read the material provided
  - b. after consultation with the Parties, determine the procedure to be followed at the mediation
  - c. not act for either party in relation to any aspect of the Dispute
  - d. respect the confidentiality agreed by the Parties
11. There shall be no sound recording or transcript of the mediation.
12. Any notes of the Mediator are confidential to the Mediator and may be destroyed by the Mediator at the conclusion of the mediation. The Parties agree with one another and the Mediator not to seek to compel by any means the production of any notes of the Mediator or to seek to compel the Mediator to give any evidence whatsoever in relation to the Dispute or what took place upon, at or after the mediation.
13. Each party must make it clear to the Mediator what information the Mediator is free to impart to the other party at a time he considers appropriate, and what information must not be disclosed.
14. No person shall attend the mediation without the consent of the Parties and the Mediator.
15. At the termination of the mediation, all material provided to the Mediator shall be returned to the originating party on request, or will be destroyed by the Mediator.

#### **Limitation of liability and explanation of roles**

16. The Mediator has, and assumes, no duty to the Parties to give legal advice of any nature. The Mediator owes no duty in contract or tort to either party in the conduct of the mediation, or in the drawing up, content, or effect of any settlement agreement reached between the parties at the mediation and will not be a party to such agreement.
17. The Parties agree and acknowledge that neither Law South Group Ltd (trading as Law South Mediation and referred to as "LSM" in this document) nor the Mediator (jointly or severally) shall be liable (either in contract or tort) for any alleged or actual loss or damage arising out of the appointment or nomination of the Mediator, the conduct of the mediation or any agreement reached consequent upon the mediation, and agree that they will not bring any claim (contractual or tortious), or make any demand against LSM or the Mediator. The Mediator is not an agent or employee of LSM.
18. The Parties and the Mediator acknowledge that the role of LSM is limited to proposing a mediator taken from its panel suitable for the mediation proposed and administering the mechanics of mediation (if requested). For these purposes only, LSM is an agent of the Mediator.

#### **Procedural matters**

19. The mediation will take place on the date and time agreed as separately notified by the Mediator.
20. If the mediation is being conducted at the premises of a party or their representatives, then the Parties will make whatever accommodation arrangements are required.

21. LSM will, at the Parties' request, make the arrangements to hold the mediation at one of the offices of its Members.

### **Fees and expenses**

22. The Mediator's fee and the administration fee payable by each party are set out in the letter of appointment.

23. Each party shall pay the fees or deposit in advance of the mediation as set out in the letter of appointment not less than 5 clear working days before the mediation date. If the Mediator is not in receipt of cleared funds, or a solicitor's or accountant's cheque by such date, then he/she has the right to vacate the mediation date, in which case all such fees paid shall be refunded.

24. If the mediation cannot take place due to the unavailability of premises or the Mediator for any reason, all fees paid will be refunded and neither the Mediator nor LSM will have any responsibility or liability to the Parties for any consequential or other losses or expenses incurred.

25. Following the conclusion of the mediation, the balance of the fees, if any, together with any Further Charges, shall be paid by the Parties forthwith upon receipt of invoice from the Mediator.

26. The Parties agree that the fees and Further Charges shall be borne equally between them, each party being severally liable for their share.

27. Further Charges are:

A the additional hourly rates which shall apply once the mediation has exceeded the original time allowed, as set out in the letter of appointment

B Any agreed additional expense of the Mediator

28. VAT is payable on all fees and charges at the rate applicable from time to time.

29. In the event of late payment of any sum, interest shall accrue on the said sum at the rate of 4% above Bank base rate from time to time until payment, and shall be added to the outstanding account.

### **Cancellation**

30. Cancellation of the mediation by or at the request of the Parties, or either of them, less than 4 clear working days before the date agreed for the mediation will incur an agreed cancellation fee, being 50% of the Mediator's fees. That fee will not be payable if the mediation is re-scheduled before the same Mediator within 28 days.

31. Notices of cancellation shall be by e-mail to LSM and the Mediator.

### **Governing law**

32. This agreement shall be governed by, construed and take effect in accordance with English Law and the Courts of England and Wales shall have exclusive jurisdiction to settle any claim or dispute which may arise out of or in connection with the mediation.