

Model Mediation Procedure

In force from 1 September 2022

Achieving fast, innovative and cost-effective dispute resolution for businesses

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1. ABOUT US

The London Chamber of Arbitration and Mediation (“LCAM”) is the body responsible for the administration of disputes in accordance with LCAM Model Mediation Procedure.

2. REFERRAL FOR MEDIATION

There are several ways parties may refer a dispute for mediation.

- 2.1. Parties may, at any stage of the dispute (including before legal proceedings have been issued), give written notice to the other side as well as to LCAM that they would like to mediate; or
- 2.2. Parties should mediate if there is an Alternative Dispute Resolution clause in their contract that requires parties to mediate. Written notice that a party wishes to mediate should be sent to the other side as well as to LCAM; or
- 2.3. Parties can mediate where their agreement provides for the mediation of disputes under LCAM procedure and guidelines which may be in force at the time. Written notice to instigate such procedure should be given to the other side as well as to LCAM; or
- 2.4. Parties should consider mediation strongly where required to consider mediation as part of any court Pre-Action Protocol; or
- 2.5. Parties should consider mediation where recommended by a court.

3. MAKING A REFERRAL

Parties wishing to make a referral should send a written notice requesting mediation to LCAM. This does not need to be in a particular format although the following information should be included in the notice:

- 3.1. Parties names
- 3.2. the contact details of the legal representatives or alternative if not represented
- 3.3. brief summary of the dispute
- 3.4. the claim value of the claim (or an estimate)
- 3.5. by when the parties would like to mediate
- 3.6. a venue, if agreed.

4. CHOOSING THE MEDIATOR

The recommendations and appointments made by LCAM will be solely from our panel of mediators. Our panel is by invitation only and is made up of mediators with experience in various sectors and disputes types. The mediators accept instructions under pre agreed fee brackets, services and schemes. LCAM can assist the parties with the appointment of a mediator by:

- 4.1. Provision of a panel list of mediators together with a recommendation of three mediators;
 - 4.2. Providing details of the availability of the recommended mediators;
 - 4.3. Sourcing a venue for the mediation (if required);
 - 4.4. Providing fee quotes; and
 - 4.5. Managing the administrative process
5. Conflict check

Mediators will confirm a conflict check before formal appointment. The parties are also required to inform LCAM immediately if there could be any potential conflict or issue which may prevent the mediator from not complying with the code of conduct of LCAM.

6. FEES

Fees will be negotiated by LCAM and agreed in advance of the mediation. LCAM has a range of fee options available to suit different types of mediation and/ or dispute and/ or value. The parties will be required to make a payment on account (see 7 below). The payment on account covers:

- 6.1. all administrative support provided by LCAM;
- 6.2. the mediator’s fees for a fixed number of hours.

The payment on account does not include the following, and unless agreed otherwise, they will be added to the fees:

- 6.3. the mediator’s travel expenses
- 6.4. additional mediation hours

7. PAYMENT

A payment on account is payable before the mediation day in accordance with LCAM's Booking Terms and Conditions.

Payment arrangements are as follows:

- 7.1. The parties will receive a fee quote from LCAM;
- 7.2. Provided both parties agree to proceed:
- 7.3. The parties will receive invoices for the payment;
- 7.4. All fees will be split equally unless agreed otherwise by the parties in writing and notified to LCAM; and

At the conclusion of the mediation the parties will receive confirmation of:

- 7.5. any additional fees for additional mediation hours; and
- 7.6. expenses.

If the total costs of the mediation are more than the payment on account, the shortfall will be invoiced for immediate payment by the parties, who shall be jointly and severally liable unless agreed otherwise by the parties in writing and communicated to LCAM. Payment will be due upon receiving the post mediation invoices.

All payments are subject to and shall be made in accordance with LCAM's Booking Terms and Conditions.

8. BOOKING THE MEDIATION

The parties need to agree:

- 8.1. the mediator(s);
- 8.2. the date of the mediation;
- 8.3. the venue for the mediation; and
- 8.4. a fee quote together with the LCAM terms and conditions of business.

LCAM will send formal confirmation of the mediation to the parties and the mediator will also receive a confirmation with the parties contact details on receipt of the payment on account.

9. IN PREPARATION FOR THE MEDIATION

LCAM will provide administrative support to the parties during the mediation process and can facilitate the exchange of documents if requested.

10. DOCUMENTATION

The parties agree to provide:

- 10.1. to the mediator and to exchange with the other parties a short commercial mediation paper at least seven days before the mediation date (when possible or later by agreement with the mediator)
- 10.2. to the mediator a brief written statement summarising the background of the dispute
- 10.3. to the mediator key issues in contention between the parties
- 10.4. to the mediator any documents to which the statement refers.

All documentation will be treated as privileged and confidential for the purposes of the mediation. Information which is provided to the mediator in confidence and is not to be shared with the other side should be clearly marked as such.

11. MEDIATION AGREEMENT

The mediation agreement will provide the legal basis for the mediation and is essentially the 'the ground rules for the day'. The signatories to the agreement must have full authority on behalf of the parties to sign the mediation agreement and to bind that party (and all other persons present at the mediation on that party's behalf) to observe the terms of the mediation agreement. The mediator and LCAM will also sign the mediation agreement. Any amendments to the LCAM Mediation Agreement must be agreed by the parties and LCAM prior to the mediation day. The Mediation Agreement must be signed by (or on behalf of) both parties prior to the mediation commencing. At least one attendee for each party should have full and unconditional authority to settle the dispute on behalf of that party and to sign any settlement agreement.

12. THE MEDIATION

It is normal for each of the parties to have a private room for confidential consultations on their own and with the mediator during the mediation. There should also be a further room large enough for all parties to meet with the mediator jointly. The mediator will take responsibility for determining the procedure at the mediation.

The usual procedure will comprise: preliminary meetings with parties, joint meeting(s) with all the parties attending the mediation, oral presentations, a mix of further private meetings and joint meetings throughout the day. The procedure is however entirely flexible and will be discussed with the parties before the mediation day.

No recording or transcript should be made of the mediation (or any part of it) by the parties or the mediator in any form, but participants can make their own private notes which will not be disclosable to anyone else, including in any subsequent litigation, arbitration or other proceedings.

13. CONFIDENTIALITY AND PRIVACY

The LCAM Model Mediation Procedure and Mediation

Agreement provides that:

- 13.1. mediation sessions shall be private and attended only by the mediator, the parties and their representatives.
- 13.2. there shall be no recording or transcript of the mediation (or any part of it) in any form.
- 13.3. the mediation process and all negotiations, statements and documents prepared for the purposes of the mediation shall be confidential and covered by without prejudice privilege and/or any equivalent privilege to the greatest extent permitted by any applicable law.
- 13.4. unless otherwise agreed by the parties in writing or required by law, no such documents shall be disclosable or admissible in evidence in any proceeding unless but for the mediation they would in any event have been disclosable or admissible.
- 13.5. the parties shall not rely upon or introduce into evidence in any proceedings any admissions, proposals or views expressed by the parties or the Mediator during the mediation.
- 13.6. The Mediator will not voluntarily act or agree to act as a witness, expert, consultant or in any other capacity in any litigation, arbitration or other proceedings relating to or arising out of the dispute or the mediation.
- 13.7. The parties will not make any application to call the Mediator as a witness in any such proceedings relating to or arising out of the dispute or the mediation, or require the Mediator to produce into evidence any notes, documents or records relating to the mediation.
- 13.8. Notwithstanding the provisions above, if any party makes an application or request in relation to any of the matters set out above, the party (or parties) making the application or re- quest agree to indemnify and hold the Mediator harmless in respect of all costs and expenses (including reasonable legal costs and the reimbursement of the Mediator's time at their usual hourly rate) incurred in responding to or resisting such an application or request.
- 13.9. the mere fact of the mediation shall not be confidential or privileged.

14. CONCLUSION OF THE MEDIATION

The mediation will conclude when:

- 14.1. there is a settlement agreement signed by all parties; or
- 14.2. the parties advise the mediator that in their view a settlement cannot be reached, and they wish to conclude the mediation; or
- 14.3. the mediator advises the parties she or he considers that the mediation process will not resolve the dispute; or
- 14.4. the time limit for mediation in an agreement between the parties has expired and the parties have not agreed to extend the time limit.

15. ARTICLE 10 LIMITATION OF LIABILITY

None of LCAM, its officers or employees, or any Mediator shall be liable to any party for any act or omission in connection with the mediation save only where there is proven to have been (i) fraud or (ii) wilful misconduct, or to the extent to which this provision is otherwise prohibited by any applicable law.

16. COMPLAINTS

Any formal complaints about LCAM or the panel of mediators should follow the LCAM Complaints Procedure. Please contact LCAM directly for further guidance.

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