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**Scout Legal Limited Trading as Cadogan Mediation**

**MEDIATION RULES - 2019 EDITION**

1. **INTERPRETATION**

1(1) In these Rules, the following terms shall have the following meanings:

(a) "Mediator" means a member of Scout Legal Limited Trading as Cadogan Mediation’s panel of mediators appointed by the Participants as a neutral to conduct the mediation. The Mediator is an independent contractor chosen by or agreed to by the Participants with whom they contract for services rendered. The Mediator is not an employee of Scout Legal Limited Trading as Cadogan Mediation. The Mediator is not a person who will provide legal or professional advice to the Participants or their Representatives or who will give a judgment or an award. References to the Mediator include both Mediators where there is a Co-Mediation conducted by two Mediators.

(b) "Agreement to Mediate" means a legally-binding contract to mediate, prepared by Scout Legal Limited Trading as Cadogan Mediation for the Participants, their Representatives, the Mediator and any Non- Participants attending the Mediation, to be executed prior to the commencement of the Mediation, containing various provisions relating to the process of Mediation, confidentiality, privilege, liability, and the duties and obligations of the Participants to each other, to the Mediator and Scout Legal Limited Trading as Cadogan Mediation. The Agreement to Mediate requires agreement to and compliance with these Rules.

(c) " Participants " means a Participant to a dispute, controversy, or legal action who is a participant in the mediation or who is represented by a participant in the mediation.

(d) "Representative" means the lawyer, counsel, attorney, or other authorised representative of the Participants.

(e) “Evaluative Mediation” shall mean a process of mediation in which the Participants jointly invite the Mediator to comment on the merits or substance of the case, and/or to provide a non-binding evaluation: the Mediator may in his or her absolute discretion defer accepting, or decline, any such invitation without being asked for or giving a reason. Scout Legal Limited Trading as Cadogan Mediation does offer Evaluative Mediation but this mode will be specified with particularity in the mediation agreement.

(f) “Facilitative Mediation” shall mean a process of mediation in which the Mediator offers no comment on the merits or substance of the case, nor provides any evaluation but instead assists the Parties to an agreement using principled negotiation: the Mediator may in his or her absolute discretion comment on the use of the process of the Mediation if such comment is likely to assist the Participants.

(e) "Settlement Agreement" means a document signed by the Participants or their Representatives before the conclusion of the Mediation, setting forth agreed terms of settlement between the Participants which are intended by them to be legally binding. This will not be drafted by Scout Legal Limited Trading as Cadogan Mediation but by the Participants

1(2) These Rules shall be interpreted in such a way as to provide the Participants with an efficient and effective Mediation.

2. **AGREEMENT OF PARTICIPENTS**

2(1) These Rules, and all amendments to them, shall be deemed to be part of the Agreement to Mediate which provides for Mediation with the Mediator.

2(2) Subject to the agreement of the Mediator, these Rules may be varied at any time by written amendment signed by the Participants or their Representatives.

3. **PRIVACY AND CONFIDENTIALITY OF MEDIATION**

3(1) The Mediation is private and confidential.

3(2) A person who is not a Participants or a Representative may only attend the Mediation with the consent of all of the Participants and of the Mediator: every such person shall sign Schedule 1 before the Mediation.

3(3) Every Participants and Representative agrees that all offers, promises and proposals, whether oral or written, actions, determinations, representations and statements (including but not limited to admissions) made in the course of the Mediation by any of the Participants, their agents, employees, experts, Representatives and all statements, comments, or observations made or relayed, by the Mediator, and all notes, documents and reports prepared or exchanged during the Mediation are "without prejudice" and for the purpose of negotiation only. The Mediator undertakes that he/she shall in any event destroy any notes.

3(4) The Participants agree that any such offers, promises, proposals, conduct, statements, notes, documents, and reports shall not be disclosed to any third party and they shall not be offered as evidence in any arbitration, judicial or other proceeding, at any time.

3(5) Notwithstanding Rule 3(4), the parties acknowledge that evidence that is otherwise admissible shall not be rendered inadmissible because it has been used in a Mediation.

3(6) Neither the Mediator, nor any person present observing the Mediation nor any of Scout Legal Limited Trading as Cadogan Mediation staff shall be invited or compelled by the Participants, jointly or severally, to appear as a witness in any pending or future adversarial or judicial proceeding involving any one or more of the Participants or relating in any way to the subject matter of the Mediation.

3(7) The Participants agree that they shall not jointly or severally seek to summons the Mediator or any person observing the mediation or any of Scout Legal Limited Trading as Cadogan Mediation staff.

3(8) Any notes made by the Mediator are confidential to the Mediator and shall not be available to the Participants at any time, nor subject to subpoena for production as evidence in any arbitration, judicial or other proceeding. The Mediator undertakes that he/she shall in any event destroy any notes.

4. **BASIC PRINCIPLES**

4(1) The Participants and their Representatives agree that each Party shall attend the Mediation with full authority to settle.

4(2) At the Mediation, the Participants agree that they will be prepared to make a brief oral statement explaining what they wish to achieve from the process and acknowledge that they are expected to participate in good faith in the process conducted with the assistance of the Mediator.

4(3) The Participants agree where reasonably practicable to make available to the Mediator such copies of documents or materials as are likely to be needed in order effectively to negotiate.

4(4) The Participants agree that the Mediator may meet (caucus) privately with each Participant and its Representative during the Mediation if he or she considers that it will assist the process. Any Participants and Representative may request a private caucus with the Mediator at any time.

4(5) The Participants agree that there shall be no electronic recording by any means of the mediation, nor any verbatim stenographic record taken of the Mediation. Participants may make notes but these must not be shown to any person and are not admissible in any court, arbitration or other proceedings.

5. **MEDIATION PROCEDURE**

5(1) The Mediator will conduct the Mediation using Facilitative Mediation as defined in Rule 1(1)(f). The Mediator will conduct process non-judgmentally by exploring the interests, needs and concerns of the Participants allowing them to generate options for a mutually agreed resolution.

5(2) The Mediator will not advise any person, nor comment or offer legal or professional opinions. The Participants will rely on their own counsel or Representatives for legal or professional advice.

5(3) The Mediator will not propose a settlement nor draft any offers or settlement. Participants must attend the Mediation ready, willing, and able to write or draft any offers or settlement.

5(4) The Mediator will continue to use Facilitative Mediation techniques until a settlement is reached, or the Mediation is adjourned or terminated as set out below unless Evaluative mediation has been specifically agreed.

Evaluative Mediation

5(5) Evaluative Mediation is offered by Scout Legal Limited Trading as Cadogan Mediation. No Mediator shall evaluate or advise unless that this has been specifically agreed in advance.

Termination of the Mediation

5(6) Whatever the process used in Mediation, the Mediation shall be terminated:

(a) by agreement between the Participants; or

(b) if a settlement is reached by the Participants; or

(c) at any time during the Mediation, if the Mediator in his/her absolute discretion decides it should be terminated in which case the Participants agree they shall not challenge that decision nor shall the Mediator give or be asked for a reason for the termination; or

(d) no agreement has been reached in the time available and it is either impracticable to take further time, unless the Participants and the Mediator agree to adjourn the mediation; or

(e) a Participants does not wish to continue in Mediation.

5(7) On termination, the Mediator will as soon as reasonably practicable destroy all notes and documents save for the Agreement to Mediate and any Schedules to that Agreement and/or the Rules.

6. **SETTLEMENT AGREEMENT AND FORMALITIES**

6(1) Any settlement agreed at Mediation will not be deemed to be concluded or to be legally binding until the Participants or their Representatives sign a Settlement Agreement at the mediation setting forth the terms thereof.

6(2) The Settlement Agreement shall not be drafted or signed by the Mediator.

7. **EXCLUSION OF LIABILITY**

7(1) Neither the Mediator nor Scout Legal Limited Trading as Cadogan Mediation or its staff, employees or agents, including shall be liable to any Participants or Representative for any act or omission howsoever arising in connection with any Mediation conducted by the Mediator.

7(2) Without prejudice to the Agreement to Mediate and to the exclusions or limitations set out in these Rules, should contrary to the foregoing provisions any liability be found to attach to the Mediator then the Participants agree that it shall be limited to the maximum sum of £10,000.

8. **FEES AND COSTS OF THE MEDIATION**

8(1) Mediation with Scout Legal Limited Trading as Cadogan Mediation is in accordance with the fee scale set out at www.cadoganmediation.com

8(2) Fees are payable in advance. No refunds are made except in accordance with the notice schedule set out at www.kingsmed.com/refunds. Any agreed overtime payments are set out at and Travel expenses are payable at actual cost with VAT added in accordance with HMRC Rules.

8(3) In the event that a Participants calls a Mediator as a witness then that Participants shall pay the Mediator £500+VAT per hour for each hour in any way engaged in being a witness – with a minimum of £1,000 plus VAT payable in advance.

8(4) No additional administrative fees are payable to Scout Legal Limited Trading as Cadogan Mediation.

8(5) The Participants are jointly and severally liable for the fees due to the Mediator.

8(6) The Participants are jointly and severally liable for the costs of the venue.

**LEGAL EFFECT AND STATUS OF THE MEDIATION**

9(1) The Agreement to mediate and these Rules are governed by the laws of England and Wales and the courts of England and Wales shall have exclusive jurisdiction to decide any matters arising out of or in connection with this Agreement and the Mediation.

**SIGNATURE**

I have read, understand and agree the provisions of this Agreement and the attached Rules.