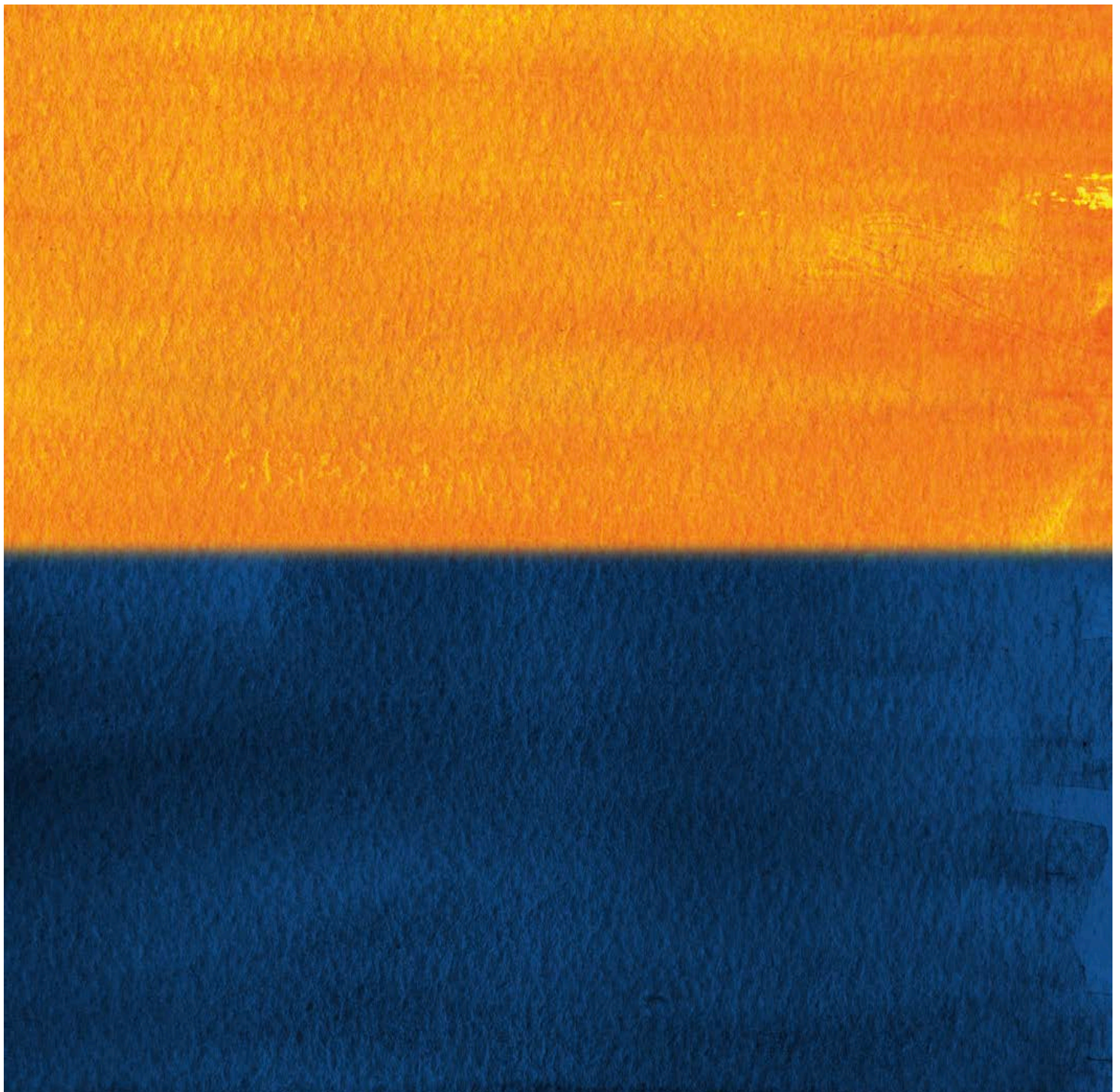


# MEDIATION RULES

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The London Court of International Arbitration



# LCIA Mediation Rules

## Contents

Article	Page
Preamble	3
1. Commencing Mediation – prior existing agreements to mediate	3
2. Commencing Mediation – no prior agreement	3
3. Written Communications	3
4. Appointment of Mediator	4
5. Statements by the Parties	4
6. Conduct of the Mediation	4
7. Conclusion of the Mediation	4
8. Settlement Agreement	4
9. Costs	4
10. Compliance	5
11. Judicial or Arbitral Proceedings	5
12. Confidentiality and Privacy	5
13. Data Protection	5
14. Limitation of Liability and Jurisdiction Clause	6
Recommended Clauses	7

## **Preamble**

Where any agreement provides for mediation of existing or future disputes under the rules of the LCIA, the parties shall be taken to have agreed that the mediation shall be conducted in accordance with the following rules (the "LCIA Rules") or such amended rules as the LCIA may have adopted hereafter to take effect before the commencement of the mediation. The LCIA Rules include the Schedule of Mediation Costs (the "Schedule") in effect at the commencement of the mediation, as separately amended from time to time by the LCIA.

### **Article 1 Commencing Mediation – prior existing agreements to mediate**

- 1.1 Where there is a prior existing agreement to mediate under the LCIA Rules (a "Prior Agreement") any party or parties wishing to commence a mediation shall deliver to the Registrar of the LCIA Court (the "Registrar") a written request for mediation (the "Request for Mediation") which shall briefly state the nature of the dispute and the value of the claim, and should include, or be accompanied by, a copy of the Prior Agreement, the full name, nationality and all contact details (including email address, postal address and telephone number) of the parties to the mediation, and of their authorised representatives (if any) and of the mediator proposed (if any) by the party or parties requesting mediation.
- 1.2 The Request for Mediation (including all accompanying documents) shall be submitted to the Registrar in electronic form in accordance with Article 3.1 of the LCIA Rules.
- 1.3 If the Request for Mediation is not made jointly by all parties to the Prior Agreement, the party requesting mediation shall, at the same time, send a copy of the Request for Mediation to the other party or parties.
- 1.4 The Request for Mediation shall be accompanied by the registration fee prescribed in the Schedule, without which the Request for Mediation shall not be registered.
- 1.5 Where there is a Prior Agreement, the date of commencement of the mediation shall be the date of receipt by the Registrar of the Request for Mediation provided that the LCIA has received the registration fee. Where the registration fee is received subsequently, the mediation shall be treated as having commenced for all purposes on the date of the LCIA's actual receipt of the registration fee.
- 1.6 The LCIA Court shall appoint a mediator as soon as practicable after the commencement of the mediation, with due regard for any nomination, or method or criteria of selection agreed in writing by the parties, and subject always to Article 9 of the LCIA Rules.

### **Article 2 Commencing Mediation – no prior agreement**

- 2.1 Where there is no Prior Agreement, any party or parties wishing to commence a mediation under the LCIA Rules shall deliver to the Registrar a Request for Mediation, which shall briefly state the nature of the dispute and the value of the claim, and should include, or be accompanied by, the full name, nationality and all contact details (including email address, postal address and telephone number) of the parties to the mediation, and of their authorised representatives (if any) and of the mediator proposed (if any) by the party or parties requesting mediation.

- 2.2 The Request for Mediation (including all accompanying documents) shall be submitted to the Registrar in electronic form in accordance with Article 3.1 of the LCIA Rules.
- 2.3 The Request for Mediation shall be accompanied by the registration fee prescribed in the Schedule, without which the Request for Mediation shall not be registered.
- 2.4 If the Request for Mediation is not made jointly by all parties to the dispute:
  - (i) the party wishing to commence the mediation shall, at the same time, send a copy of the Request for Mediation to the other party or parties; and
  - (ii) the other party or parties shall, within 14 days of receiving the Request for Mediation, advise the Registrar in writing whether or not they agree to the mediation of the dispute.
- 2.5 In the event that the other party or parties either declines mediation, or fails to agree to mediation within the 14 days referred to at Article 2.4(ii), there shall be no mediation under the LCIA Rules and the Registrar shall so advise the parties, in writing.
- 2.6 Where there is no Prior Agreement, the date of commencement of the mediation shall, subject to receipt by the LCIA of the registration fee in accordance with Article 2.3, be the date that agreement to mediate is reached in accordance with Article 2.4(ii).
- 2.7 The LCIA Court shall appoint a mediator as soon as practicable after the commencement of the mediation, with due regard for any nomination, or method or criteria of selection agreed in writing by the parties, and subject always to Article 9 of the LCIA Rules.

### **Article 3 Written Communications**

- 3.1 The party requesting the mediation shall submit the Request for Mediation to the Registrar in electronic form under Article 1.2 or 2.2 of the LCIA Rules, either by email or other electronic means including via any electronic filing system operated by the LCIA. Prior written approval should be sought from the Registrar, acting on behalf of the LCIA Court, to submit the Request for Mediation by any alternative method.
- 3.2 Unless otherwise directed by the LCIA Court or by the mediator, all written communications shall be made electronically, subject to the Registrar or the mediator being informed of any reason why the communication will not actually be received by such party including electronic delivery failure notification.
- 3.3 A party shall inform the Registrar, the mediator and all other parties as soon as reasonably practical of any changes to its full name and contact details (including email address, postal address and telephone number) or to those of its authorised representatives.

#### **Article 4 Appointment of Mediator**

- 4.1 Before appointment by the LCIA Court, pursuant to Article 1.6 or Article 2.7, the mediator candidate shall furnish the Registrar with a brief written summary of his or her qualifications and professional positions (past and present); the candidate shall also agree in writing fee rates conforming to the Schedule; the candidate shall sign a written declaration stating: (i) whether there are any circumstances currently known to the candidate which are likely to give rise in the mind of any party to any justifiable doubts as to his or her impartiality or independence and, if so, specifying in full such circumstances in the declaration; and (ii) whether the candidate is ready, willing and able to devote sufficient time, diligence and industry to ensure the expeditious and efficient conduct of the mediation. The candidate shall promptly furnish such agreement and declaration to the Registrar. A copy of the mediator's summary and declaration shall be provided to the parties.
- 4.2 Where the mediator has made a disclosure pursuant to Article 4.1, or where a party independently knows of circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence, a party shall be at liberty to object to his or her appointment; in which case the LCIA Court shall appoint another mediator.

#### **Article 5 Statements by the Parties**

- 5.1 The parties are free to agree how, and in what form, they will inform the mediator of their respective cases, provided that, unless they have agreed otherwise, each party shall submit to the mediator, no later than 7 days before the date agreed between the mediator and the parties for the first scheduled mediation session, a brief written statement summarising its case; the background to the dispute; and the issues to be resolved.
- 5.2 Each written statement should be accompanied by copies of any documents to which it refers.
- 5.3 Each party shall, at the same time, submit a copy of the written statement and supporting documents to the other party or parties.

#### **Article 6 Conduct of the Mediation**

- 6.1 The mediator may conduct the mediation in such manner as he or she sees fit, having in mind at all times the circumstances of the case and the wishes of the parties.
- 6.2 The mediator may communicate with the parties orally or in writing, together or individually, and may convene a meeting or meetings in person at a venue to be determined by the mediator, or virtually by conference call, videoconference or using other communications technology (or in a combined form) after consultation with the parties.
- 6.3 Nothing which is communicated to the mediator in private during the course of the mediation shall be repeated to the other party or parties, without the express consent of the party making the communication.
- 6.4 Each party shall notify the other party and the mediator of the number and identity of those persons who will attend any meeting (whether in person, virtually by conference call, videoconference or using other communications technology, or a combined form) convened by the mediator.

- 6.5 Each party shall identify a representative of that party who is authorised to settle the dispute on behalf of that party, and shall confirm that authority in writing.
- 6.6 Unless otherwise agreed by the parties, the mediator will decide the language(s) in which the mediation will be conducted.

#### **Article 7 Conclusion of the Mediation**

The mediation will be at an end when, either:

- (i) a settlement agreement is signed by the parties, in accordance with Article 8; or
- (ii) the parties advise the mediator that it is their view that a settlement cannot be reached and that it is their wish to terminate the mediation; or
- (iii) the mediator advises the parties that, in his or her judgement, the mediation process will not resolve the issues in dispute; or
- (iv) the time limit for mediation provided in a Prior Agreement has expired and the parties have not agreed to extend that time limit.

#### **Article 8 Settlement Agreement**

- 8.1 If the parties agree terms in settlement of the dispute, the parties, with the assistance of the mediator, shall draw up and sign a settlement agreement setting out such terms, if the parties so request.
- 8.2 By signing the settlement agreement, the parties agree to be bound by its terms.
- 8.3 Unless the parties agree otherwise, the settlement agreement may be signed electronically and/or in counterparts and assembled into a single instrument.

#### **Article 9 Costs**

- 9.1 The costs of the mediation shall include the mediator's fees and expenses, time reserved but not used (if any), and the administrative charges and expenses of the LCIA, as set out in the Schedule (the "Costs"). The parties shall be jointly and severally liable to the LCIA and the mediator for such Costs.
- 9.2 As soon as practicable after commencement of the mediation, the LCIA will request the parties to make a payment to the LCIA (the "Advance Payment for Costs") in order to secure payment of the Costs under Article 9.1, to be paid in equal shares or in such other proportions as the parties have agreed in writing. The Advance Payment for Costs may be applied by the LCIA to pay any item of the Costs (including the LCIA's own administrative charges and expenses) in accordance with the LCIA Rules.
- 9.3 The Advance Payment for Costs shall be the property of the LCIA, to be disbursed or otherwise applied by the LCIA in accordance with the LCIA Rules and invested having regard to the interests of the LCIA. The parties agree that the LCIA shall not act as trustee and its sole duty to the parties in respect of the Advance Payment for Costs shall be to act pursuant to the LCIA Rules.

- 9.4 In the event that a party fails to pay its share of the Advance Payment for Costs, another party may effect a further Advance Payment for Costs in equivalent amount to allow the mediation to proceed.
- 9.5 A mediator shall not be appointed and the mediation shall not proceed unless and until the Advance Payment for Costs has been paid in full, save for exceptional circumstances.
- 9.6 In the event a mediator is not appointed and the mediation does not proceed, and the mediation was commenced pursuant to Article 1.5 or Article 2.6 of the LCIA Rules, the LCIA shall invoice the parties for its administrative fees and expenses for immediate payment by the parties in equal shares, or in such other proportions as the parties have agreed in writing.
- 9.7 In the event a mediator is not appointed, and the mediation does not proceed, by operation of Article 2.5 of the LCIA Rules, the LCIA shall invoice the parties for its administrative charges and expenses for immediate payment by the party or parties which requested mediation.
- 9.8 In the event a mediator is appointed, and the mediation does proceed:
- (i) at the conclusion of the mediation, the LCIA Court shall determine the Costs;
  - (ii) if the Advance Payment for Costs exceeds the Costs, the excess shall be transferred by the LCIA to the parties in such proportions as the parties may agree in writing or, failing such agreement, in the same proportions and to the same parties as the Advance Payment of Costs was paid to the LCIA; and
  - (iii) if the Costs exceed the Advance Payment for Costs, the shortfall will be invoiced for immediate payment by the parties in such proportions as the parties may have agreed in writing, or, absent such agreement, in such proportions as the LCIA Court may determine.
- 9.9 The LCIA will make reasonable attempts to contact the parties in order to arrange for the transfer of the excess amount, using the contact details provided to the LCIA during the mediation. If a response is not received from a party so contacted within 30 days, the LCIA will provide that party with written notice of its intention to retain the excess amount. If no response is received within a further 60 days, the party will be deemed irrevocably to have waived any right to claim and/or receive the excess amount.
- 9.10 Any other costs incurred by the parties, whether in regard to legal fees, experts' fees or expenses of any other nature will not be part of the Costs for the purposes of the LCIA Rules.

#### **Article 10 Compliance**

- 10.1 Any dealings between a party and the LCIA will be subject to any requirements applicable to that party or the LCIA relating to bribery, corruption, terrorist financing, fraud, tax evasion, money laundering and/or economic or trade sanctions ("Prohibited Activity"), and the LCIA will deal with any party on the understanding that it is complying with all such requirements.

- 10.2 The LCIA may refuse to act on any instruction and/or accept or make any payment if the LCIA determines (in its sole discretion and without the need to state any reasons) that doing so may involve Prohibited Activity, or breach any law, regulation, or other legal duty which applies to it, or that doing so might otherwise expose the LCIA to enforcement action or censure from any regulator or law enforcement agency.
- 10.3 The parties agree to provide the LCIA with any information and/or documents reasonably requested by the LCIA for the purpose of compliance with laws relating to Prohibited Activity. The LCIA may take any action it considers appropriate to comply with any applicable obligations relating to Prohibited Activity, including disclosure of any information and documents to courts, law enforcement agencies or regulatory authorities.

#### **Article 11 Judicial or Arbitral Proceedings**

Unless they have agreed otherwise, and notwithstanding the mediation, the parties may initiate or continue any judicial proceedings or arbitration in respect of the dispute which is the subject of the mediation.

#### **Article 12 Confidentiality and Privacy**

- 12.1 All mediation sessions shall be private, and shall be attended only by the mediator, the parties and those individuals identified pursuant to Article 6.4.
- 12.2 The mediation process and all negotiations, and statements and documents prepared for the purposes of the mediation, shall be confidential and covered by "without prejudice" or negotiation privilege.
- 12.3 The mediation shall be confidential. Unless agreed among the parties, or required by law, neither the mediator nor the parties may disclose to any person any information regarding the mediation or any settlement terms, or the outcome of the mediation.
- 12.4 All documents or other information produced for or arising in relation to the mediation will be privileged and will not be admissible in evidence or otherwise discoverable in any litigation or arbitration, except for any documents or other information which would in any event be admissible or discoverable in any such litigation or arbitration.
- 12.5 There shall be no formal record or transcript of the mediation.
- 12.6 The parties shall not rely upon, or introduce as evidence in any judicial or arbitral proceedings, any admissions, proposals or views expressed by the parties or by the mediator during the course of the mediation.

#### **Article 13 Data Protection**

- 13.1 Any processing of personal data by the LCIA is subject to applicable data protection legislation, and the LCIA's data protection notice can be found on the LCIA website.
- 13.2 Following his/her appointment, the mediator shall, in consultation with the parties and where appropriate the LCIA, consider whether it is appropriate to adopt:

- (i) any specific information security measures to protect the physical and electronic information shared in the mediation; and
- (ii) any means to address the processing of personal data produced or exchanged in the mediation in light of applicable data protection or equivalent legislation.

13.3 The LCIA and the mediator may issue directions addressing information security or data protection, which shall be binding on the parties, and in the case of those issued by the LCIA, also on the mediator, subject to the mandatory provisions of any applicable law or rules of law.

#### **Article 14 Limitation of Liability and Jurisdiction Clause**

14.1 None of the LCIA (including its officers, members and employees), the LCIA Court (including its President, Vice Presidents, Honorary Vice Presidents, former Vice Presidents and members), the LCIA Board (including any board member), the Registrar (including any deputy Registrar), and any mediator shall be liable to any party howsoever for any act or omission in connection with any mediation conducted by reference to the LCIA Rules, save: (i) where the act or omission is shown by that party to constitute conscious and deliberate wrongdoing committed by the body or person alleged to be liable to that party; or (ii) the extent to which any part of this provision is prohibited by any applicable law.

14.2 After the mediation has concluded, none of the LCIA (including its officers, members and employees), the LCIA Court (including its President, Vice Presidents, Honorary Vice Presidents, former Vice Presidents and members), the LCIA Board (including any board member), the Registrar (including any deputy Registrar), and the mediator shall be under any legal obligation to make any statement to any person about any matter concerning the mediation; nor shall any party seek to make any of these bodies or persons a witness in any legal or other proceedings arising out of the mediation.

14.3 Any party agreeing to mediation under or in accordance with the LCIA Rules irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to hear and decide any action, suit or proceedings between that party and the LCIA (including its officers, members and employees), the LCIA Court (including its President, Vice Presidents, Honorary Vice Presidents, former Vice Presidents and members), the LCIA Board (including any board member), the Registrar (including any deputy Registrar) and/or any mediator which may arise out of or in connection with any such mediation and, for these purposes, each party irrevocably submits to the jurisdiction of the courts of England and Wales.

## Recommended Clauses

### Future Disputes

For contracting parties who wish to have future disputes referred to mediation and/or arbitration under the auspices of the LCIA, the following clauses are recommended. Words/blanks in square brackets should be deleted/completed as appropriate.

### Mediation only

“In the event of a dispute arising out of or relating to this contract, including any question regarding its existence, validity or termination, the parties shall seek settlement of that dispute by mediation in accordance with the LCIA Mediation Rules, which Rules are deemed to be incorporated by reference into this clause.”

### Arbitration only

“Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the Rules of the LCIA, which Rules are deemed to be incorporated by reference into this clause.

The number of arbitrators shall be [one/three].

The seat, or legal place, of arbitration shall be [City and/or Country].

The language to be used in the arbitration shall be [ ].

The governing law of the contract shall be the substantive law of [ ].”

### Mediation and Arbitration

“In the event of a dispute arising out of or relating to this contract, including any question regarding its existence, validity or termination, the parties shall first seek settlement of that dispute by mediation in accordance with the LCIA Mediation Rules, which Rules are deemed to be incorporated by reference into this clause.

If the dispute is not settled by mediation within [ ] days of the commencement of the mediation, or such further period as the parties shall agree in writing, the dispute shall be referred to and finally resolved by arbitration under the LCIA Rules, which Rules are deemed to be incorporated by reference into this clause.

The language to be used in the mediation and in the arbitration shall be [ ].

The governing law of the contract shall be the substantive law of [ ].

In any arbitration commenced pursuant to this clause,

- (i) the number of arbitrators shall be [one/three]; and
- (ii) the seat, or legal place, of arbitration shall be [City and/or Country].”

### Existing Disputes

If a dispute has already arisen, but there is no agreement between the parties to mediate and/or to arbitrate, the parties may enter into an agreement for those purposes. In such cases, please contact the LCIA Secretariat if recommended wording is required.

### Modifications to Recommended Clauses

The LCIA Secretariat will be pleased to discuss any modifications to these standard clauses. For example, to provide for party nomination of arbitrators or for expedited procedures.

### Expert Determination, Adjudication and other forms of ADR

Recommended clauses and procedures for Expert Determination for Adjudication and other forms of ADR, to be administered by the LCIA, or in which the LCIA is to act as appointing authority, are available on request from the LCIA Secretariat.

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