

Phoenix Mediation Training Program

Terms and Conditions

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1. Definitions and Interpretation

a. The following terms shall have the meanings set out below:

"Agreement"	has the meaning given to it at Clause 2.a.
"Applicable Data Protection Law"	means any and all applicable federal or state data protection laws.
"Background IPR"	means all Intellectual Property Rights or other proprietary rights owned by the Company, its subcontractors or any third party, the use of which is necessary for or incidental to the provision of the Services.
"On Line Booking Form" or "OLBF"	means a booking form executed by the parties with respect to the Services.
"Participant"	means the legal or natural person procuring the Services as specified in the Agreement.
"Company"	Phoenix Dispute Solutions with registered office at 1390 Market Street, Suite 200, San Francisco, 94102 .

"Company's Confidential Information"	means any commercial information of the Company, any information contained within instruction manuals or other documents provided to the Participant by the Company, any information related to the Services, and any other information provided to the Participant by or on behalf of the Company which is marked as confidential.
"Data"	means personal data processed by the Company under this Agreement.
"Foreground IPR"	means all Intellectual Property Rights arising, or which subsist in materials created, in relation to an Agreement.
"Intellectual Property Rights"	means all patents, petty patents, utility models, trade marks, design rights, applications for any of the foregoing, copyright, moral rights, database rights, trade or business names, domain names, website addresses whether registrable or otherwise (including applications for and the right to apply for registration of any such rights), and any similar rights in any country whether currently existing or created in the future, in each case for their full term together with any renewals or extensions.
"Joining Instructions" or "JI"	means such joining instructions as are provided to the Participant in relation to the Services, which are generally in the form set out at <u>sample JI</u> .
"Security Incident"	means the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Data.
"Services"	means those services to be provided by the Company to the Participant as specified in the Agreement, which may include public scheduled courses; on-site training courses; consultancy services; training development; project management and administration; provision of equipment or systems; conduct of examinations; venue hire; and/or courseware.
"Terms"	means these general terms and conditions of business.

"Working Day"	means a day other than Saturday, Sunday, and statutory holidays in the location where the Services are to be provided.
"VAT"	means any applicable federal or state value added tax, or any similar sales tax in any relevant jurisdiction.

- b. Use of words 'includes', 'including', or similar expression will be construed as illustrative and without limitation to the generality of related words.
- c. No provision of an Agreement shall be construed adversely to a party solely on ground that such party was responsible for preparation of that Agreement.

2. Composition of Agreement

- a. Each **"Agreement"** shall comprise and incorporate:
 - i. the relevant document executed by a director of the Company and an authorized signatory of the Participant;
 - ii. any of the Company's web portal access terms and conditions applicable to the Services; and
 - iii. any Joining Instructions provided by the Company.
- b. If there is any inconsistency between any of the constituents of an Agreement, the order of priority in descending order for the purposes of resolving such ambiguity shall be the order in which the constituents appear in Clause 2.a.
- c. In relation to Clause 2.a.i, no other document relating to the Services shall be deemed incorporated into the relevant Agreement except where such incorporation is unambiguously confirmed in writing by each party.
- d. Each Agreement constitutes the entire agreement and understanding between the parties relating to the transactions contemplated by or in connection with that Agreement and the other matters referred to in that Agreement, and supersedes and extinguishes any other agreement or understanding (written or oral) between the parties or any of them relating to the same.
- e. The Company's catalogues, brochures, leaflets, correspondence and information published on the Company's website are not binding and shall not form part of an Agreement. Each party acknowledges and agrees that it does not rely on, and shall have no remedy in respect of, any promise, assurance, statement, warranty, undertaking or representation made (whether innocently or negligently) by the other party or any other person except as expressly set out in an Agreement in respect of which its sole remedy shall be for breach of contract.

3. Services

- a. In consideration for the payment of the fees by the Participant, the Company shall provide the Services.

4. Fees

- a. The fees shall be exclusive of any amounts incurred in relation to travel, subsistence, or other expenses. Fees are exclusive of VAT. The Participant will pay the Company any VAT properly chargeable on services supplied by the Company pursuant to an Agreement, provided the Company has delivered a correct VAT invoice as required by statute.
- b. Where the Participant's accounting practices require the use of a purchase order number, the Participant shall provide a valid purchase order number to the Company immediately upon signing each Agreement.
- c. Where a third party, including but not limited to vendors, certification bodies and other third party suppliers, materially increases the cost of their courseware, examination fees, courses prices or operating model, the Company reserves the right to increase the fees for the relevant courses either by adjustment to course prices or pre-existing discount rates, notwithstanding any agreed fixed pricing or discount rates given to the Participant for these courses.

5. Terms of Payment

- a. Except where otherwise specified in an Agreement, the fees for Services shall be due and payable by the Participant fifteen (15) Working Days prior to the commencement of training.
- b. The Participant shall not be entitled to exercise any set-off, lien or any similar claim in relation to fees due to the Company. Time of payment shall be of the essence.
- c. Without prejudice to any other rights, the Company shall be entitled to charge interest on overdue payments at the statutory rate, such interest to run from the relevant invoice date until receipt of all outstanding payments in full in cleared funds. The Parties acknowledge that this amounts to a substantial remedy for late payment.

6. Cancellations

- a. The Company reserves the right to cancel, curtail or re-schedule training courses or events, in which case it shall use reasonable endeavors to notify the Participant. In the event of cancellation, the Company shall refund the course fees, which the Participant has already paid in advance in relation to the cancelled course.
- b. Except as provided under Clause 6.b, the cancellation and/or re-scheduling fees set out below shall apply in the event a course (or the Participant's attendance at a course) is cancelled or rescheduled at the Participant's request. The Company may issue a supplementary fee invoice to the Participant for such cancellation and/or re-

scheduling fees and the Participant shall make full payment to the Company within fifteen (15) Working Days of the date of that invoice:

Date of Cancellation/Rescheduling	Cancellation Fee Payable	Rescheduling Fee Payable
60 clear Working Days prior to the start of the course	0%	0%
30 clear Working Days prior to the start of the course	75%	75%
Fewer than (30) Working Days prior to the start of the course	100%	100%

- c. The Participant may substitute course participants by written notification to the Company provided that such substitute participants comply with all course requirements (including pre-requisites and pre-course reading) as notified by the Company to the Participant, or as detailed in the course outline or Joining Instructions.

7. Intellectual Property Rights

- a. Use of the Company's name or logo is prohibited except with the Company's prior written consent except as provided by applicable law.
- b. The Company and its licensors shall retain all right, title and interest in and to all Background IPR. The Participant shall not acquire any rights the Background IPR or to any materials in which Background IPR subsists, including any documents, training guides, instruction manuals, drawings, diagrams, videos or any other materials provided by the Company in connection with Services.
- c. The Company hereby grants to the Participant a license to use the Background IPR in those materials, which the Company provides to the Participant solely to the extent necessary for the Participant to receive the Services. The Participant shall not copy, reproduce, sell, license, distribute, publish or otherwise circulate any Background IPR except with the Company's prior written consent.
- d. All Foreground IPR shall vest in the Company upon creation and the Participant hereby assigns with full title guarantee all Foreground IPR, which relates to the Agreement. Such assignment shall take effect as a present assignment of future rights.
- e. The Company hereby grants to the Participant a worldwide, royalty-free, perpetual license to use the Foreground IPR for the Participant's internal business purposes only, and provided always that the Participant shall not commercialize Foreground IPR and in particular shall not sell, license, distribute, publish or otherwise circulate Foreground IPR to any third party except with the Company's prior written consent.

- f. The Participant shall promptly inform the Company in writing of any infringement or alleged infringement of Background IPR or Foreground IPR, or any allegation coming to the Participant's attention that the Services, Background IPR or Foreground IPR infringe any person's intellectual property rights.
- g. Subject to the exclusions and limitations on liability under Clause 10, the Company shall indemnify the Participant from and against all losses or expenses (including reasonable legal expenses) suffered or incurred by the Participant as a result of a claim that:
 - i. Background IPR;
 - ii. Foreground IPR created by the Company; or
 - iii. the provision of the Services (except in the circumstances set out at Clause 7.h), infringes any person's Intellectual Property Rights.

8. Term and Termination

- a. The term of each Agreement shall be set out in the relevant BF, PA, SLA, or TDPA.
- b. Either party may, in its sole discretion, terminate or suspend any and all Agreements upon ten (10) days prior written notice to the other party if the other party:
 - c. ceases to do business or otherwise suspends business operations; or
 - d. ii. becomes insolvent or seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding or any proceeding is instituted against the Participant.
- e. The Company may, in its sole discretion, terminate or suspend any and all Agreements upon ten (10) days prior written notice to the Participant if the Participant:
 - i. undergoes a change of ownership or similar arrangement; or
 - ii. fails to make timely payments as required under an Agreement.
- d. The Company may, in its sole discretion, immediately terminate or suspend any and all Agreements upon written notice if the Participant commits a material breach of any Agreement, or a series of breaches the combination of which constitutes a material breach of an Agreement, and fails to remedy the breach within ten (10) days after receipt of notice giving particulars of breach and requiring it to be remedied.

9. Liability

- a. Notwithstanding any contrary provision in an Agreement, neither party limits or excludes its liability in respect of:
 - i. any death or personal injury caused by its negligence;
 - ii. any fraud or fraudulent misrepresentation; or
 - iii. any statutory or other liability which cannot be excluded under applicable law.
- b. The Company shall not be liable to the Participant for any loss of profit or loss of revenue arising out of or in connection with

- i. an Agreement; or
 - ii. any breach or non-performance of an Agreement, no matter how fundamental (including by reason of that party's negligence).
- c. The Company shall not be liable to the Participant for:
 - i. any indirect loss;
 - ii. any loss of goodwill, business, reputation or opportunity;
 - iii. any loss caused by supply of inaccurate or incomplete information by the Participant; or
 - iv. any loss of or corruption of data or software, in each case arising out of or in connection with an Agreement or any breach or non-performance of it no matter how fundamental (including by reason of that party's negligence) whether or not that party had been informed of or was aware that there was a serious possibility of such loss.
- d. The Company's total aggregate liability arising under or in connection with an Agreement or any breach or non-performance of it no matter how fundamental (including by reason of that party's negligence) in contract, tort or otherwise shall be limited to an amount equal to the fees paid by the Participant under that Agreement in the previous twelve (12) months.
- e. The parties agree that each of Clauses 9.b, 9.c, and 9.d are separate and independent terms.

10. Warranties and Representations

- a. Each party warrants and represents that, as at date of each Agreement, it has full capacity and authority to enter into that Agreement.
- b. If requested, the Company may help the Participant to choose training or other Services but the Company does not provide any warranties that such Services will be fit for the Participant's purpose and assessment and selection of Services remains the Participant's ultimate responsibility.
- c. The Company warrants that it will provide the Services with reasonable skill and care.
- d. All other warranties (express or implied) are hereby excluded to maximum extent permitted by applicable law.

11. Modifications and Third Party Terms

- a. The Company reserves the right to modify these Terms without prior notice on the following basis:
 - i. When changes are made, the Company shall inform the Participant that such changes have been made.
 - ii. Such changes shall apply to each Agreement entered into prior to such publication unless the Participant notifies the Company within thirty (30) days of their publication on the Company's website that it does not accept the changes.

- iii. Where notification under Clause 12.a.ii is given, the previous Terms shall remain in full force and effect for the remaining term of each Agreement entered into prior to publication of the new Terms.
- iv. The new (modified) Terms shall apply to any Agreement entered into on or after the date of publication of those Terms.
- b. Upon the Participant's request and in order to meet the Participant's requirements, the Company may from time to time book courses (and / or accommodation) provided by third parties on the Participant's behalf. In such instances, the third party contractual terms shall govern the booking of those third party courses (and / or accommodation) and in particular, the third party payment and cancellation terms shall prevail over terms of this Agreement with respect to those third party courses (and / or accommodation). The Company will provide to the Participant a copy of relevant third party contractual terms upon the Participant's request. In the event that the Participant wishes to reschedule or cancel such third party course (and / or accommodation) booking(s) the Participant will be required to pay any cancellation or rescheduling fees levied by the third party along with an administration fee (minimum £25). The Participant shall indemnify the Company for all costs incurred in booking such courses (and / or accommodation), and for any loss or expense suffered or incurred by the Company as a result of the Participant's acts or omissions in relation to such third party courses (and / or accommodation).

12. Confidentiality

- a. Each party will keep confidential all of the other party's Confidential Information which is disclosed to it.
- b. Subject to the other provisions of this Clause 12, a party may not disclose the other party's Confidential Information to any third party without the other party's prior written consent.
- c. A party may share the other party's Confidential Information with only those of its employees (and, in the case of the Company, its subcontractors) who have a need to know the information and who are subject to legally binding obligations to keep such information confidential.
- d. Confidential information disclosed by the Participant to the Company in relation to this Agreement shall be clearly labelled and identified as confidential by the Participant at the time of disclosure ("**Participant's Confidential Information**"). When concurrent written identification of a party's Confidential Information is not feasible at the time of such disclosure, the Participant shall provide such identification in writing promptly thereafter.
- e. Oral communications pertaining to the Services shall be presumed to be confidential unless otherwise indicated by the disclosing party.
- f. Subject to Clause 13.g, a party shall not disclose the other party's Confidential Information, to any person except to those persons who need access to such confidential information to ensure proper performance or receipt of the Services.
- g. Neither party shall be liable for disclosure or use of confidential information which is:
 - i. generally available to the public without breach of this Agreement;
 - ii. disclosed with the prior written approval of the disclosing party; or

- iii. required to be disclosed by applicable law or court order.
- h. If a party is required by a government body or court of law to disclose any the other party's Confidential Information, the party shall give such other party reasonable advance notice so that such other party has an opportunity to contest disclosure (to the extent the party is not prohibited from doing so by law).
- i. The Company shall be entitled to retain a copy of the Participant's Confidential Information for its internal records subject to on-going compliance with the restrictions set out in this Agreement.
- j. This Clause 12 shall survive termination or expiry of each Agreement.

13. Data Protection

- a. The parties acknowledge that the Company is a separate and independent controller of Data it processes in connection with the Services. Both parties shall process Data in accordance with Applicable Data Protection Law.
- b. The Company shall implement and maintain appropriate technical and organizational measures to protect the Data against Security Incidents. If it becomes aware of a confirmed Security Incident, the Company shall inform the Participant without undue delay and shall provide reasonable information and cooperation to the Participant so that the Participant can fulfil any data breach reporting obligations it may have under (and in accordance with the timescales required by) Applicable Data Protection Law in connection with the Security Incident.
- c. The Company's privacy notice (which sets out information about how the Company processes Data) is available at on request.

14. Governing Law and Dispute Resolution

Each Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding its conflict of laws provisions. The parties hereby submit to the exclusive jurisdiction of federal or state courts in San Francisco County, CA in relation to all matters arising out of the Agreement.

15. Miscellaneous Provisions

- a. **Force majeure:** The Company shall be entitled to delay or cancel delivery of Services, or to reduce the amount of Services delivered, if it is prevented from or hindered in or delayed in the provision of Services through any circumstances beyond its reasonable control including strike, lock-out, accident, war, government action, national emergency, act of terrorism, protest, riot, civil commotion, explosion, flood, epidemic, or fire. The Company shall not be liable for any delayed or non-performance of its obligations caused by circumstances beyond its reasonable control.
- b. **Relationship of parties:** The parties are independent contractors. Nothing in this Agreement shall give rise to a partnership, joint venture, agency or any such other relationship between the parties. Neither party shall claim to be a legal representative, partner, agent, franchisee or employee of the other party.
- c. **Modern slavery and human trafficking:** each party shall comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes of practice in force from time to time. Each party warrants that, so far as it is aware, having undertaken reasonable enquiries, slavery and human trafficking is not taking place in any part of its own business and in any part of its supply chains.
- d. **Assignment:** The Company may assign or sub-contract its obligations or rights under each Agreement to a competent third party in whole or in part. The Participant may not assign an Agreement in whole or in part except with the Company's express written consent.
- e. **Export and compliance with laws:** The Participant acknowledges that Services provided under each Agreement may be subject to export control laws and regulations in the European Union, United States or other jurisdictions. The Participant shall comply with all applicable laws, orders and regulations of any governmental authority in connection with receipt of Services and shall bind its employees or other users of Services accordingly.
- f. **Waiver:** The failure or neglect of a party to enforce any provision of an Agreement shall not be construed as a waiver of that party's rights, nor in any way affect the validity of the whole or any part of any Agreement.
- g. **Severability:** If any provision of an Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that the affected Agreement otherwise remains in full force and effect.
- h. **Third party rights:** This Agreement is not intended to be for benefit of and shall not be enforceable by any person other than a party..
- i. **Survival:** Clauses 1 (Definitions and Interpretation), 2 (Composition of Agreement), 5 (Fees), 6 (Terms of Payment), 8 (Intellectual property rights), 10 (Liability), 12 (Modifications and Third Party Terms), 13 (Confidentiality), 16 (Governing law and Dispute Resolution), and 17 (Miscellaneous Provisions) shall survive any termination or expiration of this Agreement to the extent necessary to give effect to its terms.

- j. **Non-solicitation:** During term of the Agreement, and for a period of one (1) year following its termination or expiry, each party shall not directly or indirectly employ or solicit for employment any members of the other party's then current personnel. If a party breaches this Clause 17.k, in addition to any other remedies available whether under an Agreement or at law, the other party shall be entitled to recover from such party liquidated damages of 35% of gross annual salary of the member of the other party's personnel employed or solicited for employment (as at the date their employment with the other party ended). The parties agree that such amount is a genuine pre- estimate of the other party's loss and not a penalty. This Clause 17.k shall not restrict such party from employing any members of the other party's personnel who apply unsolicited in response to a general advertising or other general recruitment campaign.