

LMAA EARLY NEUTRAL EVALUATION AGREEMENT

This Agreement is made on

BETWEEN:

[Party A]

[Party B]

[together the Parties]

AND:

[Evaluator]

1. Preliminary

This Early Neutral Evaluation Agreement (“the Agreement”) shall apply to the Dispute as identified below which the Parties have agreed shall be referred to a non-binding Early Neutral Evaluation pursuant to the Agreement.

2. The Dispute

[Here, set out details of the contract(s) or other legal relationship(s) and brief details of the dispute(s) to be referred to Early Neutral Evaluation.]

3. Appointment of the Evaluator

The Parties have agreed to the appointment of

[Here insert name of the Evaluator]

as the Evaluator and the Evaluator accepts the appointment in accordance with the terms of this Agreement.

The Evaluator shall be neutral and impartial.

4. Procedure

- (a) Unless otherwise agreed by the Parties, each party shall within fourteen days of the appointment of the Evaluator, or of the signing of the Agreement (whichever is later), send to the Evaluator (in copy to the other Party/Parties), by e-mail or other form of communication agreed by the Evaluator, written case summaries setting out their position in relation to the Dispute accompanied by the relevant documents upon which they rely. There shall be no general right of reply but in case the Evaluator considers that further evidence or information is required from one or more of the Parties in order to form a view on the Dispute, the Evaluator shall make a written request for such evidence or information. Any such request shall be copied to the Parties.
- (b) There shall be no right to an oral or virtual hearing.
- (c) The Evaluator shall have the overriding power to determine an appropriate alternative procedure to be adopted in case the standard procedure is considered inappropriate.
- (d) Following consideration of the documents submitted to the Evaluator, the Evaluator shall send to the Parties the Evaluator's evaluation/recommendation in relation

to the Dispute based on the statements of position and documents received from the Parties.

- (e) The evaluation/recommendation shall include the reasons of the Evaluator.
- (f) The Evaluator shall make every effort to publish the evaluation/recommendation within one month from the date of receipt of all case summaries and relevant documents.
- (g) Unless otherwise agreed by the Parties, the evaluation/recommendation of the Evaluator shall not be binding upon the Parties.
- (h) In case the Evaluator concludes, whether through the failure of a Party (or the Parties) to comply with the provisions of the Agreement or requests of the Evaluator for further evidence or information or otherwise, that the evaluation cannot usefully proceed, the Evaluator shall be entitled to terminate the Early Neutral Evaluation. In such case the Evaluator shall retain out of any fees advanced a sum sufficient to compensate the Evaluator for services rendered and return any balance to the Parties in the same proportion as originally advanced by them.

5. Confidentiality

The Early Neutral Evaluation process is without prejudice and private and confidential and no information or documents prepared exclusively for the Evaluation and disclosed during it and/or contained, or referred to, in the evaluation/recommendation of the Evaluator shall be revealed to any tribunal and/or court or in any subsequent or on-going, concurrent or related proceedings except to the extent required under the law and procedure governing the relevant proceedings. The Parties agree not to call or appoint the Evaluator as a witness, consultant or arbitrator in any arbitration or litigation in relation to the Dispute or any concurrent or related dispute and the Evaluator shall not

act in any such capacity without the written agreement of the Parties.

6. Costs

Estimated/Fixed fee:

[Here insert estimated/fixed fee/hourly charge]

- (a) Unless otherwise agreed by the Parties, any fees payable to the Evaluator for the Early Neutral Evaluation process under this Agreement shall be borne equally by the Parties and shall be paid in advance as a condition precedent for the Early Neutral Evaluation to commence.

Unless a fixed fee has been agreed between the Parties and the Evaluator, the fees shall be estimated by the Evaluator at the time of his/her appointment. The Evaluator shall promptly notify the Parties of any change in the estimated fees after receiving the case summaries and documents from the Parties. A final statement of the fees shall be sent to the Parties when the Evaluator's evaluation/ recommendation is ready for publication to the Parties. The evaluation/ recommendation shall be released on payment by the Parties of any further amounts due. If the Parties agree not to proceed with the Early Neutral Evaluation at any stage prior to publication of the Evaluator's evaluation/ recommendation, the Evaluator shall refund a proportionate amount of the fees advanced, depending on the amount of work done by the Evaluator. Liability of the Parties for payment of the Evaluator's fees shall be joint and several.

- (b) (i) Each Party shall bear its own costs of the Evaluation and the costs incurred in the Evaluation

shall not be recoverable in any existing or subsequent proceedings.

(ii) The Parties agree that the Evaluator shall have the power to make directions as to liability for the costs of the Evaluation, including the costs of the Evaluator and other Party/Parties.

[(i) and (ii) are alternatives. If no choice is shown alternative (i) shall apply]

7. Indemnity and Exclusion of Liability

The Evaluator shall not be liable to a Party for any act or omission whatsoever in the performance of the Evaluator's obligations under this Agreement.

The Parties shall jointly and severally indemnify the Evaluator against all claims howsoever arising, whether in contract or tort, out of or in any way connected with any act, error or omission by the Evaluator in the performance of the Evaluator's obligations under this Agreement.

8. Law and Jurisdiction

This Agreement shall be governed by, and construed in accordance with, English law and any claim, dispute or differences arising out of or in connection with this Agreement and/or the Early Neutral Evaluation shall be referred to arbitration in London in accordance with the LMAA Terms in force at the time of commencement of such arbitration.

Signed:

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On behalf of Party A

Print name

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On behalf of Party B

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Print name

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Evaluator

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Print name