

Model Agreement for Facilitated Contract Renegotiations

In force as from 1 November 2020

2020

IT IS AGREED by the signatories to this Agreement as follows:

About

1. This Agreement has been prepared for parties to an existing contract or contracts who wish to conduct a renegotiation of that contract or contracts with the assistance of a Facilitator. For the purposes of this Agreement this process is referred to as a Facilitated Contract Renegotiation (FCR).

What is a Facilitator

2. A Facilitator is an independent third party selected by the parties to assist them in an impartial manner to achieve their common goal of renegotiating the terms of an existing contract or contracts.

How to start an FCR

3. One party to a contract may invite the other party or parties in writing to participate in an FCR to be conducted in accordance with the terms of this agreement. If the invited party accepts the invitation then an Agreement in this form will be signed by authorised representatives of each party, LCAM and the Facilitator.

Fees and Expenses

4. The parties agree to be jointly responsible for the fees and expenses of LCAM and the Facilitator which will be agreed and paid in advance.

Appointing a Facilitator

5. The proposing party may propose a name or list of names of suitable, experienced and independent third parties who would be prepared to act as the Facilitator, having first checked that any individuals proposed are not aware of any conflict of interest. The parties must also disclose if they are aware of any potential conflict in respect of any names being considered. The receiving party may accept one of those names or make alternative proposals. The parties can either mutually agree the identity of the Facilitator or, if they are unable to agree, jointly agree that LCAM will make the appointment.

Confidentiality

6. It is a fundamental principle of this Agreement that the parties and the Facilitator agree that they will observe and maintain confidentiality in all confidential information shared between the parties and/or the Facilitator during the course of the FCR, whether in writing or otherwise. Further, the Parties agree that information disclosed to the Facilitator by a

party during private conversations with the Facilitator will be confidential to that party unless that party agrees to waive confidentiality in the whole or in part of that information.

Good Faith, Without Prejudice and Subject to Contract

7. The parties agree to conduct the FCR in good faith with a view to finding a mutually acceptable solution and not solely to promote their own interests. The parties accept and understand that this will require an open and frank exchange of information and views from all of them. To assist in that respect, the parties also agree that all information passing between them, the Facilitator and LCAM, whether in writing or otherwise, is to be without prejudice to the parties' legal positions, and may not be used as evidence in any subsequent legal proceedings, and must not be disclosed to anyone except where disclosure is required by law. The parties also agree that the FCR will be conducted subject to contract and no binding agreement will be formed until it is recorded in writing and signed by all the parties.

The Process

8. There is no fixed process for the conduct of an FCR under this Agreement. The process for each FCR will be fixed by the Facilitator according to the particular requirements of the matter after consultation with the parties.

Introductory Briefings

9. On being appointed the Facilitator will contact the parties separately to discuss the issues and the most suitable process to be adopted in the particular case, including the proposed timings, attendees, and locations or electronic platforms to be used for any joint meetings. The Facilitator will then notify the parties of the process designed to meet their requirements including the timetable for completing it in a timely manner.

Documentation

10. During the discussion with the parties detailed in paragraph 8 above the Facilitator will discuss what documentation should be sent to the Facilitator in good time to enable the Facilitator to be fully briefed.

Exclusion of Liability

11. To the extent permitted by law, LCAM including its members, officers and employees and the Facilitator shall have no liability whether in contract, tort (including negligence) or otherwise for any acts or omissions in connection with the performance of their obligations under this Agreement or in connection with the FCR.

Concluding an FCR

- 12. The FCR will conclude when either
 - 12.1. the parties sign an amendment to the contract being renegotiated, or
 - 12.2. a party gives notice in writing that they wish the FCR to end (without the need to give any reasons), or
 - 12.3. the Facilitator gives notice advising the parties that there is currently no prospect of the parties concluding an agreement to vary the terms of their existing contract.

Governing Law and Jurisdiction

13. This Agreement is governed by the law of England and Wales. Any dispute, controversy or claim arising out of or in connection with this agreement, or the existence, breach, termination or invalidity thereof, shall be finally resolved by arbitration in accordance with the LCAM Arbitration Rules [or Expedited Arbitration Rules]. The arbitral tribunal shall be composed of [...] arbitrator(s). The language of any arbitration or mediation shall be [English]. Any hearings will take place in [London]. The seat of any arbitration shall be [London].

This Agreement is dated and made between

Signed for an on behalf of

[Party A]

Signed for and on behalf of

[Party B]

Signed

[Facilitator].....

Signed for and on behalf of

[LCAM]