

IN THE MEDIATION BEFORE MEDIATOR _____

In the matter between:

PRESENTING PARTY

and

OPPOSING PARTY

MEDIATION AGREEMENT

1. PARTIES

The parties are as set out above.

2. DEFINITIONS

2.1 “the Act” means: _____.

2.2 “BLCM” means the Board of Legal Costs Mediators.

2.3 “the Mediation” means the proceedings commenced in terms of this agreement before the Mediator.

2.4 “the Taxation” means the taxation which was pending under case number _____ of the Court prior to the conclusion of this agreement.

2.5 “this agreement” means the Mediation Agreement embodied in this document.

- 2.6 “the Mediator” means _____.
- 2.7 “the Court” means _____.
- 2.8 “the Rules” means _____.
- 2.9 “the Code of Conduct” means the Code of Conduct as prescribed and adopted by BLCM.

3. RECORDAL

- 3.1 The dispute between the parties is set out in the Notice of Taxation; Bill of Costs; Notice/List of Objections and Replies filed by them, as duly amended (if applicable).
- 3.2 The parties agree to refer the dispute to mediation before the Mediator in accordance with the terms set out in this agreement.

4. MEDIATION

- 4.1 The Parties agree to attempt, in good faith, to settle their dispute by Mediation and to conduct the Mediation in accordance with the terms of this Agreement.

5. APPOINTMENT OF THE MEDIATOR

- 5.1 The parties hereby agree to the appointment of _____ as Mediator for the purposes of this agreement.

6. AUTHORITY AND STATUS

- 6.1 The person(s) signing this Agreement on behalf of each Party warrants having authority to bind that Party and all other persons present on that Party's behalf at the Mediation and to observe the terms of this Agreement, and also having authority to bind that Party to the terms of any settlement.

7. POWERS OF THE MEDIATOR

- 7.1 The Mediator will have all such powers in the conduct of the Mediation as are conferred by the Act, the Rules, the Code of Conduct and this Agreement (as applicable).
- 7.2 The Mediator shall at all times conduct him/herself in accordance with the prescribed Code of Conduct.
- 7.3 The Mediator shall endeavour to assist the Parties to settle the Dispute by agreement. The Mediator shall not adjudicate the Dispute, make any recommendations to the Parties or advise any Party on the merits of the Dispute.
- 7.4 The Mediator shall have the discretion to conduct the Mediation in such a manner as s/he determines.
- 7.5 The Mediator shall be responsible for the administration of the Mediation including the process and conduct of the Mediation, which shall be done in an expeditious and cost effective manner.

8. RESPONSIBILITIES OF THE PARTIES

- 8.1 Prior to and during the scheduled mediation session(s) the parties shall, as appropriate to each party's circumstances, exercise their best efforts to prepare for and engage in a meaningful and productive mediation and not be disruptive or disrespectful in any form.

9. PROCEDURE

- 9.1 The Act, the Rules, the Code of Conduct and the terms of this Agreement will apply to the Mediation (as applicable).
- 9.2 The Mediation shall be held and concluded as expeditiously as possible.

10. VENUE AND DATE OF MEDIATION

10.1 The Mediation will be held in _____ at a venue to be arranged with BLCM or, failing agreement between the parties, at such venue as the Mediator may direct.

10.2 The Mediation is scheduled for _____.

11. SETTLEMENT

11.1 In the event that the Parties settle the dispute or any part thereof; the terms of the settlement will be incorporated into a Settlement Agreement. The Settlement Agreement shall be a final and binding settlement of the Dispute or such part thereof, as applicable.

11.2 The Mediator will as soon as reasonably possible complete the allocatur (as settled) in accordance with the Settlement Agreement.

11.3 The parties agree that the settled allocatur will be final and binding on each of them.

11.4 The parties also agree to have the taxing master sign and stamp the allocatur as settled within 14 days of completion of the allocatur; or as soon as reasonably possible, subject to the availability of the Taxing Master.

12. CONFIDENTIALITY AND WITHOUT PREJUDICE STATUS

12.1 Every person involved in the Mediation:

12.1.1 Will keep confidential all information arising out of or in connection with the Mediation, including the fact and terms of any settlement, the fact that the Mediation is to take place or has taken place unless disclosure is required by law to implement or to enforce terms of settlement; and

- 12.1.2 Acknowledges that all such information passing between the Parties and the Mediator is agreed to be without prejudice to any Party's legal position and may not be produced as evidence or disclosed to any judge, arbitrator or other decision-maker in any legal or other formal process, except where otherwise disclosable in law.
- 12.1.3 Where a Party privately discloses to the Mediator any information in confidence before, during or after the Mediation, the Mediator will not disclose that information to any other Party or person without the consent of the Party disclosing it, unless required by law to make disclosure.
- 12.1.4 The Parties will not call the Mediator as a witness, nor require the Mediator to produce in evidence any records or notes relating to the Mediation, in any litigation, arbitration or other formal process arising from or in connection with their dispute and the Mediation; nor will the Mediator act or agree to act as a witness, expert, arbitrator or consultant in any such process.

13. FEES AND EXPENSES

- 13.1 The fee to the request for mediation is R_____.
- 13.2 The parties shall pay the mediator's fees and administrative costs in equal proportions. All expenses of the mediation, including required traveling and other expenses or charges of the mediator, shall be borne equally by the parties unless they agree otherwise.
- 13.3 The expenses of participants for either side shall be paid by the party requesting the attendance of such participants.

14. TERMINATION

- 14.1 The Mediation of the Dispute shall terminate when:
- 14.1.1 The Mediator receives written notice from a Party stating that the Party

withdraws from the Mediation provided that no Party shall withdraw from the Mediation without first orally notifying the Mediator and giving the Mediator an opportunity to mediate on that Party's continued participation in the Mediation;

14.1.2 The Mediator advises that Parties in writing that the Mediator believes that there is no reasonable prospects of settlement in the Mediation; and

14.1.3 The Parties conclude a written Settlement Agreement provided that they agree to continue the Mediation in the event of any part of the Dispute that remains unsettled after the conclusion of the Settlement Agreement.

DATED AT _____ ON _____ 201__.

PARTY A

DATED AT _____ ON _____ 201__.

PARTY B