CC-2022-BHM- ……

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS IN BIRMINGHAM

CIRCUIT COMMERCIAL COURT (QBD)

[HHJ Worster]

Between:

AB

Claimant

and

XY

Defendant

Upon the Costs and Case Management Conference

Upon hearing [Counsel for the Claimant] and [Counsel for the Defendant] at a hearing held [in person/remotely by MS Teams] at Birmingham on [date]

[The parties having agreed the List of Issues appended to this Order]

[any further recital]

**[BY CONSENT] IT IS ORDERED THAT:**

Statements of Case

1. The Claimant has permission to amend the Particulars of Claim in the form produced to the Court. Any such Amended Particulars of Claim shall be filed and served by [\*].

2. The Defendant has permission to serve an Amended Defence [and Counterclaim] in the form produced to the Court [consequential upon the Amended Particulars of Claim]. Any such Amended Defence [and Counterclaim] shall be filed and served by [\*].

3. [The Claimant has permission to file and serve an Amended Reply [and Defence to Counterclaim] in the form produced to the Court [consequential upon the Amended Defence] [and Counterclaim]. Any such Amended Reply [and Defence to Counterclaim] shall be filed and served by [\*].]

4. The costs of, and occasioned by, the amendments to the [ \*] shall be paid by [\*] in any event, such costs to be assessed on the standard basis by way of detailed assessment if not agreed.

5. The [\*] shall file and serve Replies to the Request for Further Information or Clarification made by the [\*] on [date] in relation to the [statement of case] by [\*]. Consolidation/Joint management and trial of cases

6. This action is to be consolidated/managed and tried with action number [ ]. The lead action shall be [ ]. From the date of this Order all directions in the lead action shall apply to both actions, unless otherwise stated.

Disclosure

7. The parties shall comply with Practice Direction 51U – Disclosure Pilot for the Business and Property Courts (“PD51U”).

[7a. This case shall be treated as a Less Complex Claim within the meaning of Appendix 5 to PD51U.]

8. The Disclosure Review Document is approved in the form annexed to this Order and Extended Disclosure is ordered as set out therein.

9. The List of Issues for Disclosure and the Models of Extended Disclosure may be revised and/or supplemented by agreement between all parties following the CMC. Any such modification shall, within 7 days of agreement between the parties, be recorded in a consent order for approval by the Court. A revised Disclosure Review Document reflecting the modification shall be provided with the Consent Order for the Court’s approval.

10. By 4pm on [\*], each party shall exchange by way of service: (i) a Disclosure Certificate substantially in the form set out in Appendix 4 to PD51U (pursuant to paragraph 12 of PD51U); and (ii) an Extended Disclosure List of Documents upon which it relies.

[10A. Each party shall produce the documents it has disclosed in its Extended Disclosure List of Documents (which it does not claim to be entitled to withhold or does not have) to any other party requesting them by no later than 4pm 7 days after such request has been received.]

[Ongoing Review of Evidence]

[10B The parties will obtain advice as necessary as provided for in sub paragraph E5.1 in Section E.5 of the Commercial Court Guide.]

Witnesses

11. Signed statements of witnesses of fact and hearsay notices when required by CPR 33.2, shall be exchanged not later than [\*]. [A summary of the evidence of the following witness, namely [\*] shall be served by [\*].]

12. Unless otherwise ordered, the witness statements shall stand as the evidence in chief of the witnesses at trial.

13. [The evidence of [\*] shall be given by video link at [\*] [date or period]. [The Claimant/Defendant shall be responsible for making the necessary arrangements; but the costs thereof will be in the discretion of the Court.]

Experts - Experts called by each party

14. Each party shall have permission to adduce expert evidence as follows:

(1) [Number]

(2) [Expertise]

(3) [Issue(s) to be covered]

15. Signed reports of experts shall be exchanged [sequentially as follows: by the Claimant’s expert by [\*] and by the Defendant’s expert by [\*]] [simultaneously by [\*].]

16. Experts of like disciplines shall by [\_\_\_\_\_\_\_\_\_\_]:

(1) Hold discussions pursuant to CPR 35.12(3) for the purposes of identifying the issues, if any, between them and, where possible, reaching agreement on those issues (or at least narrowing them); and

(2) Prepare a joint written statement pursuant to CPR 35.12(3), by [\*] stating:

(a) That they have met and discussed the expert issues;

(b) The issue(s) on which they agree;

(c) The issues on which they disagree; and

(d) A brief summary of the reasons for their disagreement.

17. [The parties may serve short supplemental experts’ reports, to be exchanged [sequentially] [simultaneously] by not later than [\*]

18. If the experts’ reports cannot be agreed, the parties shall be at liberty to call expert witnesses at the trial, limited to those experts whose reports have been exchanged under this order.

19. [The experts referred to above shall given their evidence concurrently in accordance with para. 11 of CPD35 In order to assists the Court, both parties shall file with the Court and provide to the experts not later than [ ] clear days before the trial, an agreed agenda consisting of a list of the issues still in dispute between the experts, in a logical order. Such an agenda will be subject to revision by the Court. ]

Single Joint Expert

20. The parties shall have permission to adduce expert evidence in the following field(s) of expertise in the form of a written report by a single joint expert pursuant to CPR 35.7:

(1) [Expertise]

(2) [Issue(s) to be covered].

21. The parties shall identify and shall if possible give joint instruction to the single joint expert by [\*]. In the case of difficulty or disagreement, the matter shall be referred to the Court for directions at the earliest practicable date.

22. The report of the single joint expert shall be produced by [\*].

23. Any questions to the expert shall be put to him by [\*] and answered by [\*].

24. Any party may apply not later than [\*] for an order that the expert witness shall give oral evidence at the trial.]

NDR

25. The parties shall engage in NDR procedures as follows:

(1) On or before [\*] the parties shall exchange lists of 3 neutral individuals who are available to conduct NDR procedures in this case prior to [\*]. Each party may [in addition] [in the alternative] provide a list identifying the constitution of one or more panels of neutral individuals who are available to conduct NDR procedures in this case prior to [\*].

(2) On or before [\*] the parties shall in good faith endeavour to agree a neutral individual or panel from the lists so exchanged and provided.

(3) Failing such agreement by [\*] the parties shall either agree a short list of 3, or shall send to the Court their own lists (limited to 3), so as to enable the Court to select a neutral individual or panel; and all parties shall be bound by that selection.

(4) The parties shall take such serious steps as they may be advised to resolve their disputes by NDR procedures before the neutral individual or panel so chosen by no later than [\*].

(5) If the case is not finally settled, the parties shall inform the Court by letter prior to [disclosure of documents/exchange of witness statements/exchange of experts’ reports] what steps towards NDR have been taken and (without prejudice to matters of privilege) why such steps have failed. If the parties have failed to initiate NDR procedures the Case Management Conference shall be restored for further consideration of the case.

[or “In the period [ ] to [ ] the parties shall take such steps as they may be advised to try to settle the dispute by NDR or other means.” or The case shall be stayed from [\*] until [\*] so as to enable the parties try to settle the dispute by NDR or by other means.]

26. The Claimant/Defendant shall notify the court of the outcome of NDR (i.e. whether or not the case has settled) as soon it is known but in any event by no later than 7 days after [the conclusion of the NDR] [date by reference to end of ADR window].

Trial

27. The trial of this action shall commence on [\_\_\_\_\_\_\_\_\_\_], with a time estimate of [ ] days [inclusive/exclusive of judicial pre reading which shall be [] days. By no later than [6] weeks before trial the parties shall consider with the pre reading time estimate requires revision and if so supply the court with a revised time estimate or (if agreement cannot be reached) each party’s revised time estimate.

Or [Each party] [The Claimant] shall by [\*] apply to the Court for a trial date in a window opening not before [ ] and closing not after [ ] (“Window”). By no later than [\*] days prior to the date by when the application for a trial date is to be made, all parties shall supply to the Claimant its dates to avoid within the Window and the Claimant shall supply with its application for a trial date a single document setting out all parties’ dates to avoid.

28. [The date fixed shall be provisional until payment of the trial fee. The trial fee shall be paid no later than [ ].]

29. The progress monitoring date is [\*]. Not less than 3 clear days before the progress monitoring date each party shall send to the Court (with a copy to all other parties) a progress monitoring information sheet in the form specified in Section D11 of the Commercial Court Guide.

30. Where a party wishes to adduce evidence by video link or other remote means from a location outside England & Wales, that party must obtain any permission required from the local court or other authority in the jurisdiction concerned by no later than the date fixed for the filing of the pre-trial check list and must record therein either that no such permission is required or that any permission required has been obtained.

31. [There will be a pre-trial review on [\*] with a time estimate of [] to be held [in person/remotely].

32. [Pre-Trial Checklists are to be filed no later than 7 days before the date fixed for the PTR] 33. [If the parties consider that the PTR is not necessary they shall inform the Court not less than [3] clear days in advance stating why it is not necessary and enclosing any agreed further directions in relation to the trial. The Judge dealing with the PTR will consider this and inform the parties as soon as practicable thereafter whether the PTR is to go ahead or not and/or make any further appropriate directions in writing.]

34. The following pre trial directions will apply unless varied at a Pre trial Review:

(a) [Electronic (“soft copy”) trial and authorities bundles are to be prepared in accordance with the relevant Practice Directions Protocols and Guides and filed and served in PDF format.]

(b) The Claimant is to serve a trial bundle on the Defendant [prepared in accordance with Paragraph (a) above] no later than 4pm [28] days before trial.

(c) The parties are to use best endeavours to agree and file by no later than 4 pm [21] days before trial:

(i) a [soft copy] trial timetable.

(ii) a [soft copy] chronology cross-referenced to the trial bundle; and

(iii) a [soft copy] cast list.

(d) The Claimant is to file and serve by no later than 4pm [14] days before trial:

(i) a [soft copy] written opening and pre-reading list, both cross-referenced to the trial bundle.

(ii) a [soft copy] chronology, cross-referenced to the trial bundle (if not agreed).

(iii) a [soft copy] proposed trial time table and a cast list (if not agreed).

(e) The Defendant is to file and serve by no later than 4pm [7] days before trial:

(i) a [soft copy] written opening and pre-reading list, both cross-referenced to the trial bundle.

(ii) a [soft copy electronically] amended version of the Claimant’s chronology referred to in paragraph 5(ii) above, cross-referenced to the trial bundle, unless the Claimant’s chronology is agreed;

(iii) [soft copy electronically] amended versions of the Claimant’s proposed trial time table and cast list unless the Claimant’s proposed trial time table and cast list are agreed.

(f) By no later than 4 pm [5] days before trial, the Claimant shall file with the Court Listing Office or Judge’s clerk

(i) a [soft copy] trial bundle and agreed [soft copy] authorities bundle, each prepared in accordance with paragraph (a) above

[and (if requested to do so by either the Court Listing Office or the Judge’s clerk) a hard copy trial bundle and authorities bundle for use by the Trial Judge. If either party considers that any document in the trial bundle may be impractical to use in soft copy by reason of its page size being other than A4, it being oriented otherwise than in portrait format or its print format being less than 10 point then a hard copy should be filed at the same time as the soft copy trial and authorities bundles; and]

(ii) Unless otherwise directed at the CMC or at a PTR (if one takes place) a hard copy trial bundle for use by witnesses at the trial.

Costs

35. Costs in the case [or otherwise].

36. [The Court has made a Costs Management Order in this case, [and has approved the parties’ costs budgets as revised by the Court. The parties shall file and exchange their revised budgets with 7 days of this Order] [and records the parties’ agreement to each other’s budget] ]

DATED