

## MEDIATION EVALUATION AGREEMENT

In Consideration of the Evaluation Fee pf €1000 per party (referred to in the First Schedule) the **The House of International f Mediation EWIV**, a European Economic Interest Group registered in the State of Lower Saxony, whose place of business is at Hannover, Germany, trading as the IHM and “www.the-ihm.com” (“**IHM**” which expression includes any member, officer or employee of IHM or of its members) agrees to:-

1. Consider the Summary provided by each of the Parties and evaluate the Dispute and introduce the Mediator and Assistant Mediator to the Parties.
2. If the Mediation Agreement set below is entered into and the Mediator (or a member of the Mediation Team) is unable to continue to act as such, due to illness or any other reason, then IHM will use its reasonable endeavours to provide a substitute.
3. IHM shall have no other responsibilities, obligations or liabilities in respect of the Mediation or the Dispute.

**THIS MEDIATION AGREEMENT** is dated

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### **WHEREBY THE PARTIES AGREE TO MEDIATE**

#### **BETWEEN:**

1. [ ] of [ ] (**First Party**)

represented by [ ] of [ ] [First Party’s lawyers];

2. [ ] of [ ] (**Second Party**)

represented by [ ] of [ ] [Second Party’s lawyers];

3. [ ] of [ ] (**Third Party 3**)

represented by [ ] of [ ] [Third Party’s lawyers],

being the parties to the Dispute, collectively known as the (“the **Parties**”);

4. [ ] of [ ] (“the **Mediator**”);

5. [ ] of [ ] (“the **Assistant Mediator(s)**”),

who are together “the Mediation Team”. Where in this Agreement reference is made to “the Mediator” this expression shall include any officer or employee of the Mediator, Assistant Mediator or of the firm of which the Mediator or Assistant Mediator is part; and

The Parties and the Mediator agree to mediate the issues in dispute between the Parties which has been communicated to the Mediator (“the **Dispute**”) upon the following terms:

### **1. Mediation**

- a. Each Party agrees in good faith to try to settle the Dispute by mediation in accordance with this Agreement (“the **Mediation**”).
- b. Each Party, the Mediator and the Assistant Mediator(s) agree to be bound by the terms of this Agreement.
- c. The Mediator is appointed by this Agreement to conduct the Mediation and the Mediator accepts such appointment.
- d. Each Party may only be represented by legal representatives who are accredited as such by the Mediator.
- e. Each Party shall submit with this Agreement a summary of the Dispute with the other(s) and indicate the documents it seeks to rely upon (each a “**Summary**”).
- f. Each Party shall comply with the reasonable directions of the Mediator in order to achieve a mediated settlement of the Dispute.
- g. Each Party shall comply with any direction made by the Mediator in relation to the Mediation, including (without limitation) a direction to terminate the Mediation.
- h. The Parties intend participate in the Mediation with the objective of entering in to a contract for the final and conclusive settlement of the Dispute (“the **Settlement Contract**”)

### **2. Authority and status**

- a. Each Party warrants that the persons representing them in the Mediation shall have full authority to:
  - i. enter into this Agreement;
  - ii. comply with the directions of the Mediator;

- iii. settle the Dispute (including full power to make all agreements arrangements write-offs credits or other steps or things necessary to achieve a settlement); and
  - iv. sign a Settlement Contract which binds that Party.
- b. Neither the Mediator nor IHM shall have any liability to the Parties for any act, omission or other thing in relation to the Mediation unless such act, omission or thing is proved to have been fraudulent or dishonest.
- c. The Parties accept their respective obligations to prove their identities (and the identities of their respective beneficial owners or controllers) pursuant to applicable money laundering regulations and authorise their duly accredited legal representatives to give full comfort in relation to such obligations as directed by the Mediator.

**3. Confidentiality and without prejudice/off the Court record status.**

- a. The Parties, the Mediator and IHM agree that all information given to them as part of the Mediation is confidential and shall only be used in connection with the Mediation, including (without limitation) the Mediation itself, the terms of this Agreement, any directions given by the Mediator and of any **Settlement Contract** or other form of settlement of the Dispute) except where any disclosure is:
  - i. required by law; or
  - ii. to implement the terms of a **Settlement Contract** or other form of mediated settlement of the Dispute; or
  - iii. is necessary to be disclosed to their own accredited legal representatives or insurers under similar terms of confidentiality.
- b. The confidentiality obligations set out above will last for 6 years from the date of this Agreement.
- c. All information disclosed by one Party to another pursuant to the Mediation shall be on a “without prejudice” and wholly privileged basis and shall not be capable of being used in legal or Court proceedings relating to the Dispute or disclosed in any way other than for the express purposes of the Mediation unless the other Parties, the Mediator and IHM shall have consented to such use or disclosure in writing.
- d. The Parties understand that the Mediator and IHM do not give legal advice or any other advice. No Party shall make any claim against the Mediator or IHM

in connection with the Mediation or the Dispute and will not seek to cause the Mediator or IHM to disclose any information to any third party nor to appear as witness in any legal or other proceedings.

#### 4. **Duties of the Mediator**

- a. The Mediator will provide independent discreet and confidential mediation services with a view to enabling the Parties to find a settlement to the Dispute which will be recorded in a **Settlement Contract**.
- b. Members of the Mediation Team will act in accordance with and will comply with such applicable professional rules of conduct to which they are individually subject but no other rules.
- c. The Mediator will act independently.
- d. Any member of the Mediation Team who is subject to a material conflict of interest shall cease to act as such immediately such a conflict of interest is actually known by the Mediation Team.
- e. The Mediator will have full discretion to set out reasonable directions concerning the Mediation, including (but not limited to) the venue, the language of the Mediation meetings and negotiation process (“the **Mediation Process**”), the language(s) of the Settlement Contract, the proper law of the Settlement Contract and forum for the settlement of any controversy relating to the Settlement Contract.).
- f. The Mediator may recommend independent expert evidence on any issue if the Mediator considers that such independent expert evidence may assist the Mediation, in which case the Mediator will:
  - i. notify the Parties of such recommendation ;
  - ii. indicate which expert(s) are requested and/or willing to act;
  - iii. request that the Parties make any comments on the expert(s) proposed within such time as the Mediator may specify; and
  - iv. request that the Parties to pay an estimated sum on account of the fees and expenses of such independent expert.
- g. The Mediator may, in its absolute discretion, terminate the Mediation upon giving written notice to the Parties, setting out the terms upon which the Mediation shall terminate. The Parties agree that they shall comply in all respects with the requirements of such notice of termination.

#### 5. **Fees and expenses**

- a. Immediately on signing this Agreement the Parties shall each pay to IHM a fee as is set out in the First Schedule in respect of the initial consideration of the Dispute as set out in each Summary (“the **Evaluation Fee**”). IHM will evaluate each Summary. If the Mediator shall decide not to accept the Mediation then it will return to each Party the Summary.
- b. Each Party agrees that within 5 days of receipt of written notice of acceptance of the Mediation from the Mediator each Party shall pay to the Mediator the Mediation Fee as is set out in the First Schedule.
- c. Each Party agrees that within 5 days of receipt of written notice it shall pay to IHM:
  - i. any applicable Daily Fee as set out in the First Schedule; and
  - ii. any applicable Hourly Fee as set out in the First Schedule ;
  - iii. any fees and expenses payable to an independent expert appointed to assist the Mediation; and
  - iv. the Mediator’s expenses (which will include, where appropriate, travel expenses (business class) and reasonable and appropriate accommodation and subsistence expenses).
- d. Unless agreed to the contrary in writing the Parties agree to pay all estimated fees and expenses equally and in advance.
- e. The Mediator shall have the right to estimate fees and expenses and to require payment in advance. In the event that aggregate fees or expenses shall be higher than sums paid in advance then the Parties will pay the difference within 5 days of a written request to do so or, if lower, shall be reimbursed by the Mediator.

## **6. Legal status and effect of the Mediation and Settlement Contract**

- a. No terms of settlement reached at Mediation will be legally binding until set out in writing in the Settlement Contract and signed by or on behalf of each of the Parties. The Parties intend that the Settlement Contract shall be legally enforceable in any jurisdiction anywhere in the world and the parties will execute and perform all things necessary to enforce the Settlement Agreement in any applicable jurisdiction anywhere in the world.
- b. The Parties will be solely responsible for preparing the Settlement Contract on the basis of the agreement reached at the Mediation Process.

- c. The Mediator will sign the Settlement Contract only if so requested by all the Parties, but as a witness only (that is to say to confirm that the Parties have instructed him that they agree to the Settlement Contract as signed by them).
- d. Changes to this Agreement will only be valid if written out in the Second Schedule and signed by all the Parties, the Mediator .
- e. The Mediation is outside any Court or other proceedings and is not part of them and is without prejudice and privileged and confidential.
- f. This Agreement may be signed in two or more copies and will be valid and binding if at least one copy is signed by each of the Parties, the Mediator and IHM (which may include an electronic copy signed remotely and emailed) in which case IHM will send a copy of all executed documents to all the Parties.
- g. This Agreement is governed by the law of [Germany] [England] [France][ ] and will be subject to the non-exclusive jurisdiction of the Courts of [Germany] [England] [France] [ ] .

## **7. Severance**

- a. If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.
- b. If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **8. Interpretation**

- a. Clause headings shall not affect the interpretation of this Agreement.
- b. A Party includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) wherever and however incorporated or established.
- c. The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.

- d. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- e. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- f. This Agreement shall be binding on, and enure to the benefit of, the parties to this Agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.
- g. A reference to writing or written includes fax and email.

SIGNED BY the duly authorised signatories for the Parties and Mediator and IHM.

### **First Schedule**

#### **Fees**

Evaluation Fee [per Party €1000]

Mediation Fee (which covers the Mediators reading into the papers, arranging the Mediation, issuing directions and the first day of the Mediation Process) [minimum €10,000]

Daily Fee for each additional day of the Mediation Process [minimum €5000]

Hourly Fee payable in respect of any hour (or part of an hour) of any day of the Mediation Process which extends beyond six hours: €[ ] (The Mediator)

€[ ] (The Assistant Mediator)

Expert(s)

#### **Expenses**

Estimated expenses

Hire of Mediation venue

Travel

Subsistence

Expert(s)

**Second Schedule**

Changes to this Agreement	Signatures to accept such changes

Signed as follows:

Signed .....  
First Party

Signed .....  
First Party's lawyers

Signed .....  
Second Party

Signed .....  
Second Party's lawyers

Signed .....  
Third Party

Signed .....  
Third Party's lawyers

Mediator .....

Assistant Mediator (s) .....

International House of Mediation .....