

**MEDIATION AGREEMENT**

**BETWEEN:** *[first name, surname and domicile of a physical person]*

*[corporate name, registered seat, authorized representatives and enterprise nr for a legal entity]*

*[+ identity of their respective counsels]*

Hereafter “ ”,

**AND** *[first name, surname and domicile of a physical person]*

*[corporate name, registered seat, authorized representatives and enterprise nr for a legal entity]*

*[+ identity of their respective counsels]*

Hereafter “ ”,

Each of them referred hereafter individually as a “Party” and collectively as the “Parties”,

**AND** *[Astrid de Bandt]*, accredited mediator with the Belgian Federal Mediation Commission, having its offices at 1040 Brussels, IJzerlaan 19,

Hereafter “the Mediator”,

**WHEREAS**

The Parties have a dispute they would like to solve through mediation;

The dispute can be summarized as follows

*[brief description of the dispute]*

**HEREBY AGREE AS FOLLOWS:**

Terms of the mediation

The Parties, hereby agree to submit to mediation in accordance with *[name the institutional rules if any]*

The Parties will personally attend the mediation sessions, and may be accompanied by their counsel(s).

Each Party shall ensure that the representatives selected to participate in the mediation session will have the authority required to settle the dispute but also personal knowledge of relevant facts of the dispute to allow any useful discussion of the issues at stake.

The Mediator may, if it deems necessary, be assisted by a co-mediator of their choice. This co-mediator will sign a confidentiality commitment in accordance with the model in Annex 1.

As part of its mission and for the needs of the latter, the Mediator may, with the agreement of the Parties, hear third parties with their consent when the complexity of the case requires it, or use the services of an expert, specialist in the subject field. They are also required to sign a confidentiality agreement following the model in Annex 1.

The mediation shall be held at \_\_\_\_\_ [specify location] or at \_\_\_\_\_ [specify other location if relevant].

The language to be used in the mediation shall be \_\_\_\_\_ [specify language].

#### Voluntary process

Parties voluntarily attend a mediation in an attempt to resolve a dispute between them without any acknowledgment prejudicial to their interests.

Either Party may terminate the mediation unilaterally if he wishes so, by means of a notification by registered letter to the other Part(y)ies and the Mediator. If the mediation ends without reaching an agreement, the Parties retain and keep their right to resort to judiciary or arbitral proceedings if they consider it appropriate.

During the course of the mediation and until a settlement has been reached or until one of the Parties or the Mediator decides to terminate the mediation, the Parties agree that all proceedings (excepted those which are merely provisional and protective).

#### Role of the Mediator

The Mediator will be neutral and impartial. If, during the course of the mediation, the Mediator becomes aware of any circumstances that might reasonably affect his/her capacity to act impartially, the Mediator will immediately inform the Parties of those circumstances. If the Parties consider it necessary for concerns of impartiality, they can decide by mutual agreement to replace the Mediator by another mediator.

The Mediator will act independently and with professional care and conscious.

The Mediator will not provide legal or technical assistance to Parties. Any advice provided by the Mediator upon Parties' request will not be binding and have no legal consequence.

Without compromising its impartiality and independence, the Mediator is free to caucus with the Parties individually, as he sees fit to improve the chances of a mediated settlement. Parties may also request to caucus with the Mediator. Any confidential information revealed to the Mediator by one Party during such caucusing may only be disclosed to the other Party(ies) with the former Party's formal consent.

### Confidentiality

The Parties undertake on their behalf and on behalf of their counsel(s) and their representative(s) not to invoke or disclose anything under any pending or future judiciary or arbitral proceedings.

All oral or written information exchanged during this mediation shall be regarded as confidential and “without prejudice” communications for the purpose of settlement negotiations. They cannot be used in a judiciary, administrative, arbitral proceedings or any other proceeding to resolve conflicts and are not admissible as evidence. The obligation of secrecy may only be waived with the agreement of the Parties to enable the judge to homologate the settlement agreement.

The Mediator will ensure that all the mediation process will remain confidential and undertakes not to represent nor testify on behalf of any of the Parties in any subsequent legal proceeding between the Parties or in any dispute that might oppose them.

The Mediator may, if necessary, ask any person participating in the mediation process to sign a confidentiality undertaking like in the model provided in Annex 1.

However, evidence that is independently admissible and that Parties could have obtained outside the process of mediation shall not be rendered inadmissible by virtue of its use during the mediation.

### Settlement agreement

If the Parties reach a settlement, it is stated in a written settlement agreement dated and signed by the Parties and the Mediator. If the Mediator is accredited, this is also mentioned. This settlement agreement includes the precise commitments of each Party.

If not executed voluntarily, the Parties or one of them can submit the settlement agreement for homologation to the competent court. Once homologated, the settlement agreement shall be enforceable against a Party, and may be executed as if it were a judgment.

### Term of the contract

Parties undertake to co-operate with each other and the Mediator in order to complete the mediation within \_\_\_\_\_ [*name realistic period*] days of the signing of this mediation agreement.

Provided the Mediator agrees, the Parties may decide to extend the mediation for a renewable period of one month if the chances of achieving an agreement are real.

If prior to the expiration date of the mediation, the Mediator considers that the continuation of the mediation process may cause serious harm to one or the other Party, the Mediator shall inform the Parties, invite them to take the necessary steps to remedy the situation or, if deemed necessary, suspend or terminate the mediation process.

The Mediator may suspend or terminate the mediation if the Mediator finds that the mediation process is not likely to result in a settlement, or if the Mediator determines that s/he can no longer effectively perform his/her facilitative role.

If the Mediator decides to terminate the mediation, he/she shall notify the Parties by registered letter of its decision to terminate.

### Costs & fees

According to standard practice in mediation, Parties agree to bear the costs and fees of the Mediator [*equally by each of them*] or [ \_\_\_\_% for \_\_\_\_\_ and \_\_\_\_ % for \_\_\_\_\_].

Mediator fees are € \_\_\_\_\_ per hour (excluding VAT) and apply to all duties made by the Mediator before, during or after the mediation meeting.

Office expenses charged to clients cover the operating costs of the firm, and are invoiced as a lump sum equal to 6% (exclusive of VAT) of the amount of our fees, but do not cover special disbursements, such as travel or lodging expenses of the Mediator or any costs of renting a meeting room, if the mediation takes place further than 30 km of his/her work place.

The Parties agree that they will each be responsible for the costs of their own legal counsel and personal travel.

In case of using a co-mediator, this will not create excess fees for Parties.

No later than the beginning of the mediation process, a retainer fee of € \_\_\_\_\_ will be given to the Mediator or paid on the account IBAN BE 15 7330 4574 5230, BIC KREDBEBB by each Party.

At the end of the mediation process, whether it has or not resulted in a settlement, the Mediator will give each Party a statement of its costs and fees, that will be need to be honored at the latest within two weeks.

Done at \_\_\_\_\_ , in \_\_\_\_\_ copies, each Party and the Mediator acknowledging receipt of its own copy on \_\_\_\_\_

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**Annex 1 to the mediation agreement**

**CONFIDENTIALITY COMMITMENT**

1. I, undersigned \_\_\_\_\_, acknowledge having been informed that \_\_\_\_\_ decided to use the services of \_\_\_\_\_ as Mediator, whose role is to help settle a dispute between the Parties.

2. Given that the undersigned will participate in the mediation process as \_\_\_\_\_, he/she agrees to keep the mediation process confidential and recognizes that verbal and written statements made in the mediation process are made without prejudice and may not be used in any way or be invoked as evidence in any judiciary or arbitral proceedings.

Made at \_\_\_\_\_ on \_\_\_\_\_