

AGREEMENT

Between

____ (Party 1), represented by _____

- hereinafter referred to as „_____“ -

and

____ (Party 2), represented by _____

- hereinafter referred to as „_____“ -

and

- hereinafter referred to as „Mediator“ -

the following

MEDIATION AGREEMENT

is concluded:

§ 1

MATTER OF CONFLICT RESOLUTION AND MEDIATION PROCEEDINGS

- 1.1 Between the parties, there is a conflict regarding [description of the conflict].
- 1.2 The aim of the mediation proceedings to be conducted on the basis of the present mediation agreement is to provide a resolution of the existing conflict and – with regard to the existing conflict – to come to a binding regulation for the future conduct of the parties. The parties to the conflict will make every effort to discuss the matter in a respectful atmosphere and they promise constructive and open co-operation.

§ 2

PARTICIPANTS OF THE MEDIATION AND POWER OF DECISION

- 2.1 The following persons will participate in the mediation on behalf of the parties:

For party 1: [insert name(s) of participant(s)]

For party 2: [insert name(s) of participant(s)]

With their signatures the parties declare that the persons participating on their behalf have full power of representation in these mediation proceedings and are allowed to conclude a compromise agreement.

- 2.2 During the settlement sessions, each party will be assisted by a legal counsel. It is possible to admit further participants after prior agreement – possibly at the Mediator's proposal.

§ 3

DUTIES AND LIABILITY OF THE MEDIATOR

- 3.1 The duty of the Mediator is to assist the parties in their efforts to come together to a fair and binding resolution of the conflict. It is explicitly understood that the Mediator does not have any final power of decision regarding the conflict as a whole or individual aspects thereof.
- 3.2 It is well-known to the parties that the Mediator provides neither legal nor psychological consultation within the framework of the present mediation proceedings.
- 3.3 The Mediator is to be impartial and neutral. He/She assures that he/she is not related by blood or marriage to any party and that he/she has neither represented nor advised any one of the parties in this matter or another matter prior to the present proceedings.
- 3.4 In case any circumstances arise during the course of the mediation proceedings which affect the Mediator's capacity to act impartially, he/she will resign. In case the mediation does not lead to a result, the Mediator is not allowed to give advice regarding this matter to any one of the parties.

- 3.5 The Mediator is liable for the breach of contractual duty only in case of premeditation and gross negligence up to a maximum amount of EUR [insert amount].
- 3.6 If the Mediator is also a patent attorney, he/she is not allowed to advise any one of the parties in his/her function as a patent attorney during a period of two years after completion of the mediation proceedings. This is not applicable in case the party who wants the Mediator to act in his/her function as a patent attorney had not been the client of another patent attorney during a two-year period prior to signing the present mediation agreement.

§ 4

VENUE, DATE AND CANCELLATION OF MEDIATION MEETINGS

- 4.1 The mediation meetings will take place in _____. The parties may unanimously agree on another venue. The first mediation meeting will take place on _____. If necessary, further meetings will be agreed upon by the parties and the Mediator during the first mediation meeting, insofar as this is possible.
- 4.2 Mediation meetings which have been agreed upon may be canceled by the parties and the Mediator for important reasons only. All participants are informed about the cancellation as early as is possible. Cancellation is to be done in writing giving the reason therefor. In case the meeting is not canceled or not canceled in good time, the non-participating party/parties will bear the costs which have arisen to the other party/parties including the Mediator's fee incurred for this meeting.

§ 5

CONFIDENTIALITY OF THE MEDIATION

- 5.1 With the signature of the present agreement, both the parties and the Mediator agree not to disclose the contents of the present mediation agreement and information in connection therewith to any third party. This obligation continues after the mediation proceedings have been completed.

- 5.2 Further parties participating in the mediation proceedings will sign corresponding agreements of confidentiality before the mediation proceedings or at the beginning of the first mediation meeting.
- 5.3 Statements, documents and information which are given during the mediation orally or in writing may be used by the parties only for the purposes of the mediation. In case the mediation proceedings fail, the parties are not allowed to indirectly or directly introduce and use this information in arbitration or court proceedings, unless the information had been known to the respective party already outside of the mediation proceedings or was given without the obligation of confidentiality.
- 5.4 In particular, the parties agree to not call the Mediator as a witness for facts which became known to the parties only during the mediation proceedings. The Mediator will avail himself/herself of the right to refuse to give evidence ("attorney-client-privilege").

§ 6

STANDSTILL CLAUSE

- 6.1 The parties will not take any court action against each other during the duration of the mediation proceedings. Legal proceedings which have already been initiated will be stayed during the mediation proceedings.
- 6.2 Measures of temporary legal relief are admissible.

§ 7

END OF MEDIATION

- 7.1 Each party has the right to terminate the mediation by one-sided notice any time and without giving any reasons. The notice of termination of mediation has to be given in writing or – during a mediation meeting – orally to the other party/parties and the Mediator.
- 7.2 The Mediator also has the right to terminate the mediation any time by written or oral notice to the parties if he/she regards the mediation as failed or is unwilling to con-

tinue the proceedings for other important reasons. The Mediator does not have to give any reasons for a possible notice of termination of mediation.

- 7.3 Any notice of termination mediation takes effect when it is submitted to its recipients.

§ 8

SUSPENSION OF TIME LIMITS

- 8.1 The parties agree that during the mediation proceedings all legal or contractual limitation periods and periods or preclusion with regard to the conflict under mediation are suspended.
- 8.2 If, for legal reasons, it is not possible to suspend the time limits and if a party has to take legal measures to observe a time limit, said party will inform the other party/parties about said measures. In addition, only those measures are taken which are absolutely necessary in order to observe the time limit. § 5.1. applies accordingly.

§ 9

FEE OF THE MEDIATOR

- 9.1 For becoming active in the present proceedings (incl. preparation and revision of the mediation meetings) the Mediator receives a fee of EUR _____ per hour plus VAT. In addition, the parties reimburse to the Mediator his expenses, such as travel expenses and hotel costs.
- 9.2 The parties are responsible for the Mediator's fee and expenses as overall debtors. As between the parties each party pays an amount equal to the total divided by the number of parties of the Mediator's fees and expenses insofar as no other agreement is concluded, for example in the final compromise agreement. Each party bears its own costs of taking part in the mediation proceedings as well as the costs of its legal counsel.
- 9.3 The Mediator's fees are to be paid within two weeks of the submission of the Mediator's invoice, unless stipulated otherwise by the Mediator.

§ 10
OTHER PROVISIONS

- 10.1 Modifications of and/or supplements to the present agreement have to be done in writing. This applies also in case the clause of written form is changed.
- 10.2 In case one of the above provisions is invalid or unenforceable, this will not affect the validity of the other provisions. Invalid or unenforceable provisions will be replaced by provisions which most closely approximate the intent and economic effect of said provisions.

_____, _____
Place, date

Party 1

_____, _____
Place, date

Party 2

_____, _____
Place, date

Mediator