



## SWISS EXPERTS

Chambre suisse des experts judiciaires techniques et scientifiques  
Schweizerische Kammer technischer und wissenschaftlicher Gerichtsexperten  
Camera svizzera degli esperti giudiziari tecnici e scientifici  
Swiss Chamber of Technical and Scientific Forensic Experts

### DISPUTE ADJUDICATION AGREEMENT

between

and

hereinafter, «the Parties»

and

1

Member of the Swiss Chamber of Technical and Scientific Forensic Experts hereinafter, «the Adjudicator» <sup>2</sup>

#### 1. PREAMBLE

The Parties affirm that there is a dispute between them in the following matter:

They have agreed to request a response from the Expert to the questions submitted to him. They do so in the expectation that the Adjudication will allow them to resolve their dispute; failing this, said Adjudication may be produced in evidence in any future judicial or arbitral proceedings.

The Adjudicator warrants that he<sup>2</sup> is able to perform his function with complete impartiality. He represents that he has verified that there exist no grounds for his recusal. In particular:

- a. he has no personal interest in the matter;
- b. he has not acted in the same matter in any other capacity, including, in particular, as a member of a public authority, as legal counsel to any of the Parties, as an expert, as a witness, as an adjudicator or as a mediator;
- c. he is not the spouse, former spouse, registered partner, or former registered partner, of any of the Parties or of any individual who acted in the same matter as a member of the lower authority, nor is he the de facto partner or former de facto partner of any such individual;
- d. he is not related, by blood or by marriage, lineally, or collaterally up to the third degree, to any of the Parties;
- e. he is not related, by blood or by marriage, lineally, or collaterally up to the second degree, to any representative of any of the Parties, or to any person who has acted in the same matter as a member of the lower authority;
- f. he may not be deemed partial for any other reason, including, in particular, a relationship of friendship or enmity with any of the Parties or their representatives.

<sup>1</sup> Where the Expert is a legal person (e.g., a limited liability company), the name of the individual employee to be placed in charge of the procedure is also to be indicated.

<sup>2</sup> All masculine pronouns in this document are used generically, and are understood to refer to both men and women.

## **WHEREFORE, THE PARTIES AGREE AS FOLLOWS:**

### **1. SUBJECT-MATTER OF THE ADJUDICATION**

The Parties appoint the Adjudicator to the task of preparing an Adjudication. The Adjudicator accepts this appointment.

The Adjudication will bear upon questions of which the definitive List shall be drawn up with the accord of the Parties and which will be contained in a separate document annexed to the present Agreement. The annexed List of Questions shall constitute an integral part of the Agreement (see sect. 4). In the course of preparing the Adjudication, and with the accord of the Parties, the Adjudicator may make modifications to said List; the document attached in annex shall be amended accordingly.

The final report by the Adjudicator on his Determination shall be submitted to the Parties no later than [REDACTED]. That report shall be used by the Parties solely in their dealings with each other; it may be transmitted to third Parties or published only with the prior consent of the Adjudicator and accompanied by a statement indicating the precise circumstances under which it was prepared.

### **2. SCOPE OF THE ADJUDICATION**

The Adjudicator shall make a final determination on the questions submitted to him, and his findings shall be binding upon the Parties, subject to the condition that they may freely dispose in matter in dispute, that the rules on recusal have been respected, and that the Adjudication was prepared with impartiality and is not manifestly erroneous.

In the event that, notwithstanding the Adjudication, the Parties fail to resolve their dispute:

- ☐ the Adjudication may be used by the Parties in connection with the litigation pending between them (court or arbitral tribunal – docket number: [REDACTED]).
- ☐ the Adjudication may be used by the Parties in subsequent litigation between them, in both judicial and arbitral proceedings.

In either event, the deciding (public or arbitral) instance shall be bound by the facts established in the Adjudication, subject to the conditions set forth in Art. 189 of the Swiss Code of Civil Procedure.

### **3. COOPERATION OF THE PARTIES**

The Parties undertake to cooperate in good faith, to respond accurately and truthfully to questions from the Adjudicator, to permit on-site visits and the taking of measurements (including in cases where the object in question is in the hands of a third party), and to produce, of their own accord or at the request of the Adjudicator, all documents in their possession and to solicit the necessary documents from third Parties.

In the event that any of the Parties violate their duty to cooperate, the Adjudicator may take this into account, as appropriate, in the preparation of his Adjudication.

#### **4. PROCEDURE**

Barring exceptions, the Parties shall submit a draft version of their questions to the Adjudicator prior to the signing of the Adjudication Agreement.

In order to ensure transparency, equal treatment of the Parties, and the independence and objectivity of the Adjudicator, the Parties agree that the Adjudicator is to apply the following procedure:

- a. Definitive version of the List of Questions: the Adjudicator shall convoke a working meeting with the Parties, at which their draft versions shall be consolidated; the Adjudicator may also pose questions of his own and establish thereupon the definitive version of the List of Questions (to be attached in annex to the present agreement). The Adjudicator shall request the documents he requires and decide upon the conduct of any on-site visits or hearings of third Parties.
- b. The Adjudicator shall grant the Parties access to any documents they (or third Parties) may submit to him; he shall inform simultaneously each of the Parties as to any actions taken by him; in the event that he conducts any on-site visits or hearings of third Parties, he shall inform the Parties of the possibility of their being in attendance; he shall maintain a written record of all actions he takes.
- c. The Adjudicator shall prepare a draft report of the Adjudication, which he shall submit to the Parties for comment, fixing a time limit for the submission of their responses.
- d. The Adjudicator shall then prepare his final report and deliver it to the Parties.
- e. Subject to a time limit of 10 days from the date of receipt of the report, the Parties may submit to the Adjudicator a grounded request seeking his response to additional questions. Barring exceptions, the preparation of such response shall be subject to an additional fee.

The Adjudicator may, in the course of the procedure, decide that additional arrangements are required for the proper accomplishment of his task; he shall inform the Parties thereof in writing.

#### **5. USE OF OUTSIDE EXPERTS**

The Adjudicator may call upon the services of outside experts. He may choose them at his own discretion after having verified in advance that there do not exist any grounds for the recusal of the outside experts in question (see Preamble). The Adjudicator shall inform the Parties thereof as expeditiously as possible.

In the event that the Adjudicator wishes to call upon the services of a legal expert, he shall seek from the Parties their prior consent thereto.

Under all circumstances, the final report is to be drafted and signed solely by the Adjudicator; that report alone shall be validly considered as the Adjudication.

## 6. FEES

Fees for services performed by the Adjudicator shall be paid at the following hourly rate (excl. VAT):

Adjudicator:	CHF	
Assistant:	CHF	
Secretarial staff:	CHF	
Outside experts (sect. 5):	CHF	

The estimated total cost for the Adjudication will be in the amount of CHF (excl. VAT).

The Parties shall make instalment payments on account, in equal amounts, to the Adjudicator at the various stages in the expert-determination procedure; the amount of the instalments shall be determined by the Adjudicator in such manner that his total fee for services performed is paid in full.

Upon concluding the Adjudication, the Adjudicator shall prepare a final invoice, in which the charges are to be divided as follows:

- ☐ equal division between the Parties.
- ☐ division based on the findings of the Adjudication.
- ☐ equitable division.

The Parties undertake to arrange directly between themselves the settlement, by payment or by compensation, of the amount set forth in the final invoice, in keeping with the division of charges determined by the Adjudicator. In no event may the Adjudicator be constrained to make any payments or reimbursements.

Further, any legal representation fees incurred by the Parties shall be borne by the Parties themselves.

## 7. APPLICABLE LAW AND JURISDICTION

The present Agreement is subject to Swiss law.

In the event that the present Agreement gives rise to any dispute to which the Adjudicator is a party, jurisdiction shall lie with the courts of the place where the Adjudicator has his domicile.

Executed in , on , in original copies.

Signatures:

Annex: List of Questions submitted to the Adjudicator