

MEDIATION AGREEMENT

This Mediation Agreement (the “**Agreement**”) is entered into effective as of ____, 201_ (the “**Effective Date**”) by and between:

The Requesting Party:

XXX LTD (“**XXX**”)
ADDRESS LINE 1
ADDRESS LINE 2
COUNTRY
Tel : + _____
E-mail: _____
Represented by _____ (Director)

Assisted by:

Me AAA (“**Me AAA**”)
NAME OF LAW FIRM
ADDRESS LINE 1
ADDRESS LINE 2
COUNTRY
Tel : + _____
E-mail: _____

and

The Responding Party:

YYY LTD (“**YYY**”)
ADDRESS LINE 1
ADDRESS LINE 2
COUNTRY
Tel : + _____
E-mail: _____
Represented by Mr. _____ (Director)

Assisted by:

Me BBB (“**Me BBB**”)
NAME OF LAW FIRM
ADDRESS LINE 1
ADDRESS LINE 2
COUNTRY
Tel : + _____
E-mail: _____

(jointly referred to as “the Parties”)

and

Mr. Jeremy LACK (the “**Mediator**”)
23 Ave de Beau-Séjour
CH-1206 Geneva, Switzerland
Tel: +41 79 247 1519
E-mail: jack@lawtech.ch

WHEREAS

- A. A dispute (as more fully particularized in **Schedule 1** to this Agreement and called the "**Dispute**") has arisen between the Parties, and
- B. The Parties have requested the Mediator to assist them to resolve the Dispute by way of mediation (the "**Mediation**") on the date(s) and at the venue specified in **Schedule 1** to this Agreement or, if not so specified, on date(s) and at a venue to be agreed between the Parties and the Mediator.

IN CONSIDERATION OF THE MUTUAL AGREEMENTS SET OUT BELOW

IT IS AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. THE MEDIATOR AND THE MEDIATION DATES

- 1.1 The Parties hereby appoint the Mediator to assist them to resolve the Dispute in accordance with this Agreement.
- 1.2 In the event that the date or dates for the Mediation and its venue are agreed by the Effective Date, they are set out in **Schedule 1**. If the date or dates and venue are not so agreed by the Effective Date or are modified, they shall be agreed in writing between the Parties and the Mediator.
- 1.3 If the Parties are unable to reach a settlement in the negotiations at the Mediation, and only if all the Parties so request and the Mediator agrees, the Mediator may provide the Parties with a non-binding suggestion regarding possible terms of settlement. This will not be restricted to an attempt to anticipate what a court or arbitrator might order or award but may contain what the Mediator suggests may be appropriate settlement terms or further procedural options in view of all of the circumstances of the Dispute.

2. MEDIATION RULES

- 2.1 The **Swiss Rules of Commercial Mediation in effect on the Effective Date** (the "**Mediation Rules**", a copy of which are available via the Internet at the website https://www.swissarbitration.org/files/50/Mediation%20Rules/English%20mediation_20-06-2016_webversion_englisch.pdf are incorporated into and form part of this Agreement, save as otherwise provided by amendments in writing (if any) to the Mediation Rules as set out in **Schedule 2** hereto. **[DELETE IF AD-HOC: A request for mediation pursuant to Article 2 of the Mediation Rules has been submitted to the Secretariat of the Swiss Chambers' Arbitration Institution ("SCAI"), and the Mediator has been appointed accordingly under SCAI Mediation Case No. _____.]**

3. CONFIDENTIALITY, WITHOUT PREJUDICE AND PRIVILEGE

- 3.1 The Mediation proceedings and any statements made in any Mediation sessions are confidential, without prejudice and privileged. They may not be adduced as evidence before any court or tribunal. The Parties agree that the Mediator may require as a pre-condition for

attendance at any Mediation sessions that all persons attending such sessions shall sign the agreement set out in **Schedule 3** below confirming that they shall personally comply with the confidentiality provisions of this Agreement and the Mediation Rules.

- 3.2 In the event that the Mediation does not result in a settlement agreement, the Parties and the participants may not refer in any other proceedings to any statements made during any Mediation sessions.
- 3.3 The Mediator shall be under no obligation whatsoever to retain any documents or electronic records made or obtained for the purposes of the Mediation. The Mediator may destroy or delete such documents or records at any time after termination of the Mediation.

4. PAYMENT

- 4.1 Each Party shall pay the Mediator's upfront retainers, fees and expenses set out in **Schedule 4** in accordance with the payment terms of **Schedule 4** and in an amount equal to the total divided equally by the Requesting Party and the Responding Party unless otherwise agreed and set out in **Schedule 4**. The Parties' lawyers agree to pay these retainers, fees and expenses on behalf of their clients in the event that they are late in making any payments due by them.

5. EXCLUSION OF EVIDENCE, LIABILITY AND INDEMNITY

- 5.1 None of the Parties may call the Mediator as a witness in any litigation and/or arbitration and/or adjudication in relation to or arising out of the Dispute and/or the Mediation. In the event that any Party, in breach of this provision, so calls the Mediator as a witness, that Party shall indemnify and hold harmless the Mediator from and against all and any legal costs that the Mediator may thereby incur in refusing to testify, and the Party shall pay the Mediator a fee commensurate with the fees set forth in **Schedule 4** for all of his time spent in contesting or attending such proceedings. The Mediator shall not bear any liability or responsibility for the breach of any of the provisions of this Agreement, save for willful or gross negligence.

6. LANGUAGE OF THE MEDIATION, APPLICABLE LAW AND JURISDICTION

- 6.1 This Agreement shall be governed and construed in accordance with Swiss law.
- 6.2 The legal seat of the Mediation agreed to pursuant to this Agreement shall be , **Switzerland**, although meetings may be held by Internet conference calls (e.g., ZOOM) or be held in other physical locations (e.g., the Venue set forth in **Schedule 1**) if agreed to by the Parties and the Mediator. The languages for the Mediation shall be English. Any Party producing documents or participating in the Mediation in any language other than English shall, at that Party's own expense, provide necessary translations and interpreters into English.
- 6.3 Any dispute, controversy or claim arising out of or in relation to this Agreement, including its validity, invalidity, breach or termination as well as non-contractual claims between the Parties and the Mediator shall be submitted to mediation in accordance with the Swiss Rules of Commercial Mediation of the Swiss Chambers' Arbitration Institution in force on the date when

SCHEDULE 1

Brief description of the Dispute:

Commercial Mediation Case No. [INSERT] (“MED-__-__”) [OPTIONAL: administered by the Chamber of Commerce and Industry of _____ (the “Chambers”).] The dispute involves allegations of breach of contract pursuant to an agreement dated _____, and events relating to or arising from this agreement.

Date(s) of the Mediation:

_____, 201_ (18h00 CET) to _____, 201_ (12h00 CET)

Venue for the Mediation:

[TO BE DETERMINED]

Specific requirements for the mediation:

- [None]

SCHEDULE 2

The amendments to the Mediation Rules referred to in Clause 2.1 of this Agreement are as follows:

[None]

[CONSIDER ADDING THE FOLLOWING, IF AD-HOC: The Mediation shall be conducted as *ad-hoc* proceedings, without involving any Swiss Chambers. The provisions of Article 2 are thus deleted to the extent that no request for mediation shall be filed, and the Mediation Rules shall be construed and applied such that no involvement from any Chambers shall be required, unless on a case-by-case basis by mutual agreement of the Parties.]

No other amendments are made to the Mediation Rules.

(If no amendments are agreed, please leave in "None" above)

SCHEDULE 3

ATTENDANCE AND CONFIDENTIALITY AGREEMENT FORM

Note: The Mediator may request that all persons attending a Mediation session sign this attendance and confidentiality agreement form. This includes the Parties' representatives, their lawyers, experts, and any additional advisors to the Parties, as well as any persons subsequently attending any Mediation sessions.

In consideration of my being permitted to attend the Mediation taking place under the provisions of the Mediation Agreement to which this Schedule 3 is part of, I hereby agree to be personally bound by the provisions regarding Confidentiality, Without Prejudice and Privilege set forth in Article 3 of the Mediation Agreement, as well as the Mediation Rules, including but not limited to Article 18 of the Mediation Rules regarding Confidentiality, and to abide by the terms of the Mediation Agreement entered into by the Parties and the Mediator, a copy of which has been shown to me.

Name	Date and Signature
Jeremy LACK (Mediator)	Date: Signature:
Mr. aaa	Date: Signature:
Mr. bbb	Date: Signature:
Me AAA	Date: Signature:
Me BBB	Date: Signature:
Mr. ccc	Date: Signature:
Mr. ddd	Date: Signature:
	Date: Signature:

Date:.....

[Note: The Mediator, or any Party, may request that this Schedule be re-signed at any and all subsequent joint meetings, or whenever new participants attend any Mediation session]

Schedule 4

The Mediator's upfront retainer, fees and expenses (including payment terms) referred to in Clause 4.1 are to be paid equally by the Parties or their counsel by wire transfer to the bank account indicated as follows:

Account Holder: Jeremy LACK

Account No.: _____

IBAN: _____

BIC: _____

Bank: UBS SA, Rue de la Confédération 2, CH-1204 Geneva, Switzerland

Ref: _____: [PLEASE INSERT NAME OF PARTY]

The Parties shall be jointly and severally responsible for sharing and paying all of the Mediator's fees and expenses, and all costs in accordance with Art. 27 of the Mediation Rules. They shall pay their respective share of all fees and costs of the Mediation directly to the Mediator or to the service provider having invoiced such fees or costs.

Mediator's Hourly Rate: Six Hundred and Fifty Swiss Francs per hour (CHF 650/hour), not including VAT (if applicable). Travel time shall be invoiced at 50% of the Mediator's Hourly Rate.

Upfront Retainer: The Parties shall each pay an upfront retainer of Five Thousand Swiss Francs (CHF 5'000) to be received by the Mediator by wire transfer prior to _____, 201_, which may be used by the Mediator as an advance on his fees and to cover his expenses for this Mediation.

Chambers' Fees and Additional Administrative Fees: If Swiss Chambers have been involved, the Mediator may increase his fees by ten percent (10%), in which case the Mediator shall pay the Chambers ten percent (10%) of his net hourly invoiced fees in accordance with Appendix B of the Mediation Rules (the "**Chambers' Fees**"). The Mediator shall be entitled to add an additional three percent (3%) to his hourly invoiced fees (the "**Additional Administrative Fees**") to cover his office, phone and secretarial expenses. These Additional Administrative Fees shall not be included when calculating the Chambers' Fees.

If an apportionment of fees or costs other than an amount equal to the total divided by the number of Parties has been agreed, that apportionment is:

[NOT APPLICABLE]

(Note: If no different apportionment is agreed, please leave in "Not applicable" above)