



# RULES OF ARBITRATION

IN FORCE AS FROM 1 ~~NOVEMBER 2016~~ JUNE 2018

MODEL CLAUSES .....	2
SEAT AND LANGUAGES SCHEDULES (AS OF 1 <del>JANUARY-JUNE</del> 2018)....	5
RULES OF ARBITRATION (IN FORCE AS FROM 1 <del>NOVEMBER-JUNE</del> <del>2016-2018</del> ).....	6
APPENDIX 1 - MODEL NOTICE OF ARBITRATION .....	16
APPENDIX 2 - MODEL NOTICE OF DEFENCE (AND COUNTERCLAIM) .	18
APPENDIX 3 - MODEL NOTICE OF RESPONSE TO COUNTERCLAIM ....	20
APPENDIX 4 - TIME AND COST SCHEDULES (AS OF 1 <del>NOVEMBER</del> <del>2016-JUNE 2018</del> ).....	21

## MODEL CLAUSES

### Model DELOS arbitration clause

DELOS suggests that the following model arbitration clause be inserted into the contract. It is expressly designed to support the cost-effective and rapid arbitration proceedings of DELOS; it should be inserted into contracts without modification, and parties are invited to choose **one** among the seats, or legal places, of arbitration, listed in Schedule 1.

*1. Any dispute arising out of or in connection with this contract shall be exclusively and finally resolved by arbitration in accordance with the DELOS Rules of Arbitration in force on the date of commencement of the arbitration.*

*2. The seat, ~~or legal place~~, of arbitration shall be [parties to choose **one** of the seats of arbitration listed in Schedule 1], but the parties agree to hold hearings and/or meetings (if any) in any suitable location and/or by any suitable means of simultaneous communication. The language of arbitration is to be [parties to choose **one** of the languages listed in Schedule 2]. The arbitration tribunal shall consist of a sole arbitrator appointed in accordance with the DELOS Rules of Arbitration.*

*3. By submitting their dispute to arbitration under the DELOS Rules of Arbitration, the parties agree to comply with any award without delay and waive their right to any form of recourse insofar as such waiver can validly be made.*

Please note that, if parties agree to DELOS arbitration but use a different arbitration clause (or submission agreement – see below) from the model provided, or if parties modify the wording of the model arbitration clause (or submission agreement), or if parties choose a seat and/or language of arbitration different from any of those proposed in the Schedules, DELOS may exercise its discretion to apply any time and costs scale to the dispute and/or vary the dispute timetable, as necessary. If parties prefer the arbitration tribunal to consist of three arbitrators instead of a sole arbitrator, DELOS draws their attention to Article 2 of Appendix 4 of its Rules of Arbitration.

### Negotiation option before arbitration

If, when negotiating their contract, parties require a period of formal negotiations to be initiated before an arbitration can be commenced, DELOS proposes that they insert the following wording at the beginning of the model arbitration clause. This pre-arbitration time is important for parties carefully to assess their positions and, potentially, settle their dispute. In case of DELOS arbitration, such an assessment

will assist parties with engaging in an active process designed to ensure the efficient resolution of their dispute.

DELOS draws the parties' attention in this regard to Article 4(1) of its Rules of Arbitration, which provides that, "[f]rom day following the date of (deemed) receipt by Respondent of the Notice of Arbitration and of the Filing Fee payment receipt, whichever is latest, Respondent will have ~~seven-7~~ days for Tier 1 disputes, 14 days for Tier 2 disputes, 21 days for Tier 3 disputes or 28 days for Tier 4 disputes to submit a "Notice of Defence" or a "Notice of Defence and Counterclaim [...]".

#### Two parties to the contract

1. *In the event of any dispute arising out of or in ~~relation to~~connection with this contract, either party shall invite the other party to commence negotiations to resolve the dispute. Any invitation to negotiate shall be issued in writing, in the usual manner in which the parties communicate in writing.*

2. *If the parties do not reach a settlement within [14 calendar days – parties to define appropriate time period] of one party having invited the other in writing to negotiate, the dispute shall be exclusively and finally resolved [continue with "~~any dispute arising out of~~by arbitration in accordance with..." in the model arbitration clause above]*

#### Three or more parties to the contract

1. *In the event of any dispute arising out of or in ~~relation to~~connection with this contract, any party may invite the other parties to commence negotiations to resolve the dispute. Any invitation to negotiate shall be issued in writing, in the usual manner in which the parties communicate in writing.*

2. *If the parties do not reach a settlement within [14 calendar days – parties to define appropriate time period] of one or more parties having invited the other parties in writing to negotiate, the dispute shall be exclusively and finally resolved [continue with "~~any dispute arising out of~~by arbitration in accordance with..." in the model arbitration clause above]*

### Model confidentiality clause

Parties may also want to keep their arbitration and its outcome confidential. In this case, DELOS suggests using the following language:

*The parties agree to keep confidential the existence and contents of the arbitration and the written and oral pleadings and all documents produced for or arising from the arbitration, save as may be required by legal duty or to protect or pursue a legal right.*

## Model governing law clause

A contract which does not clearly specify a governing law may complicate the resolution of a dispute arising under the contract. DELOS therefore recommends ~~to~~ inserting a governing law clause into the contract, such as the following:

*This contract ~~is to~~shall be governed by, and construed in accordance with, the substantive laws of [jurisdiction].*

Note: remember to **register your contract** with DELOS (by e-mailing DELOS your contract) once it has been finalised and signed. DELOS will send you a contract registration number (CRN) which will give you access to its reduced costs schedule (see Appendix 4 to the DELOS Rules of Arbitration).

## Model agreement for submitting existing disputes to DELOS arbitration

If a dispute has already arisen and the parties wish to submit it to DELOS arbitration, the parties would generally enter into a submission agreement to this effect. DELOS suggests that the submission agreement contain the following clause:

*1. The parties agree that the following dispute shall be exclusively and finally resolved by arbitration in accordance with the DELOS Rules of Arbitration in force on the date of this agreement: [insert description of the dispute and the parties to the dispute].*

*2. The seat, ~~or legal place,~~ of arbitration shall be [parties to choose **one** of the seats of arbitration listed in Schedule 1], but the parties agree to hold hearings and/or meetings (if any) in any suitable location and/or by any suitable means of simultaneous communication. The language of the arbitration is to be [parties to choose **one** of the languages listed in Schedule 2]. The arbitration tribunal shall consist of a sole arbitrator appointed in accordance with the DELOS Rules of Arbitration.*

*3. By submitting their dispute to arbitration under the DELOS Rules of Arbitration, the parties agree to comply with any award without delay and waive their right to any form of recourse insofar as such waiver can validly be made.*

## SEAT AND LANGUAGES SCHEDULES

(AS OF 1 JANUARY 2018)

### Schedule 1. DELOS seats, ~~or legal places,~~ of arbitration

Parties are invited to choose **one** of the following (ordered alphabetically) as the seat, ~~or legal place,~~ of arbitration designated in their arbitration agreement:

Amsterdam (The Netherlands)  
Auckland (New Zealand)  
Frankfurt (Germany)  
Geneva (Switzerland)  
Hong Kong (PRC)  
Lisbon (Portugal)  
London (UK)  
Miami (USA)  
New York (USA)  
Paris (France)  
Seoul (South Korea)  
Singapore (Singapore)  
Stockholm (Sweden)  
Sydney (Australia)  
Toronto (Canada)  
Vienna (Austria)

### Schedule 2. DELOS language of arbitration

Parties are invited to choose **one** of the following languages (ordered alphabetically) as the language of arbitration designated in their arbitration agreement:

English  
French  
Spanish

# RULES OF ARBITRATION

(IN FORCE AS FROM 1 NOVEMBER 2016)

## Article 1. DELOS arbitration

1. Delos Dispute Resolution (“DELOS”) administers the resolution of disputes by independent and impartial arbitral tribunals (“Tribunals”) in accordance with the DELOS Rules of Arbitration (the “Rules”). DELOS is the only body authorised to constitute Tribunals and to administer arbitrations under the Rules.
2. The principal purpose of the Rules is to enable the Tribunal, the parties to the dispute and DELOS to deal with cases fairly, expeditiously and at proportionate cost. This includes:
  - a. ensuring that the parties’ due process rights are respected, including by giving each party a reasonable opportunity to put its case and deal with that of its opponent; and
  - b. dealing with the dispute efficiently and in a manner proportionate to: (i) the value of the dispute; (ii) the complexity of the issues in dispute; and (iii) the importance of the dispute to any ongoing relationships between the parties.
3. In relation to any matters not expressly provided for herein, the Tribunal, the parties and DELOS shall act in accordance with the principal purpose of the Rules and make every effort to ensure that any Award is enforceable at law.
4. The parties, and all counsel of record, witnesses and experts, are required to act in good faith and assist the Tribunal to further the principal purpose of the Rules.
5. The internal work of DELOS shall be kept confidential.

## Article 2. Notices and communications

1. All notices and communications shall be addressed to the parties, the Tribunal once constituted and to DELOS.
2. Unless DELOS or the Tribunal once constituted determine otherwise, a period of time starts to run from the date following the day when a notice

or communication is deemed to have been received, and “days” shall mean calendar days in accordance with the time zone of the seat of arbitration.

3. DELOS may extend any time-limit under these Rules if it deems appropriate to do so.

### Article 3. Starting a DELOS arbitration - the Notice of Arbitration

1. A party starting an arbitration is a “Claimant”. A party defending an arbitration is a “Respondent”. References herein to Claimant and Respondent shall include one or more “Claimants” and “Respondents” respectively.
2. To start a DELOS arbitration, Claimant must:
  - a. communicate a Notice of Arbitration to Respondent and to DELOS. The “Notice of Arbitration” must be prepared in accordance with Appendix 1; and
  - b. pay the Filing Fee to DELOS in accordance with Article 9.1 and provide Respondent and DELOS with a copy of the payment receipt.
3. The Notice of Arbitration and Filing Fee payment receipt shall be:
  - a. received by Respondent if they are delivered to Respondent’s electronic address specified in the contract(s) containing the arbitration agreement; or
  - b. received if they are physically delivered to Respondent or deemed to be received if they are made (i) at Respondent’s address specified in the contract(s) containing the arbitration agreement, or (ii) at Respondent’s place of business or habitual residence or mailing address, provided in each case that Claimant can provide a record of such delivery, which shall be communicated to DELOS.
4. The arbitration is commenced on the date of receipt by DELOS of the Notice of Arbitration.

### Article 4. The Notice of Defence; counterclaims

1. From the day following the date of (deemed) receipt by Respondent of the Notice of Arbitration and of the Filing Fee payment receipt, whichever is latest, Respondent will have seven-7 days for Tier 1 disputes, 14 days for



Tier 2 disputes, 21 days for Tier 3 disputes or 28 days for Tier 4 disputes to submit a “Notice of Defence” or a “Notice of Defence and Counterclaim”, prepared in accordance with Appendix 2. The “Tiers” are set out in the schedules at Appendix 4 and are based on the value of the dispute. Where the submission of a counterclaim would result in the value of the dispute changing Tier, the original Tier time-limit will apply unless Respondent notifies DELOS and the other party before the expiry of said time-limit that a change in Tier will apply.

2. From the day following the date of receipt by Claimant of any counterclaims, Claimant will have ~~seven-7~~ days for Tier 1 disputes, 14 days for Tier 2 disputes, 21 days for Tier 3 disputes or 28 days for Tier 4 disputes to submit a “Notice of Response to Counterclaim”, prepared in accordance with Appendix 3.
3. The scope of the arbitration and the issues to be determined by the Tribunal shall be set out in the Notice of Arbitration and Notice of Defence and Counterclaim if any and shall also include: (a) any other matter that the parties agree should be within the scope of the arbitration; and (b) any other matter that the Tribunal orders at its absolute discretion must be included so that the proceedings are effective.
4. Failure by either party to submit a Notice of Defence (and Counterclaim) or a Notice of Response to Counterclaim shall not prevent the case from proceeding.

#### Article 5. Place of arbitration

If the parties have not agreed a seat ~~or legal place~~ of arbitration, ~~and neither party has requested~~ the Tribunal ~~to shall~~ determine the same, ~~the place of arbitration shall be Paris, France from among the seats in the then existing Schedule 1 to the DELOS Model Clauses, having regard to all of the circumstances of the case.~~

#### Article 6. Constitution of the Tribunal

1. DELOS shall nominate the member(s) of the Tribunal, subject to paragraphs 5 and 6 below. Where all or part of a Tribunal has already been appointed in relation to another dispute between the parties, DELOS may nominate either the same or a different Tribunal, in whole or in part.
2. The nominated member(s) of the Tribunal shall sign “Statements” addressed to the parties and to DELOS of: (i) ~~acceptance independence and~~

- ~~impartiality, subject to any facts or circumstances disclosed in writing that may, in the eyes of the parties, give rise to reasonable doubts as to that nominee's independence or impartiality; and (ii) availability in accordance with the relevant indicative time in the schedules at Appendix 4; and (iii) independence and impartiality. The nominee(s) shall disclose in writing any circumstances that may, in the mind of any party, give rise to justifiable doubts as to that nominee's independence or impartiality.~~
3. Following the due date for Respondent's Notice of Defence, DELOS shall notify the parties of the names and relevant contact information of the nominated members of the Tribunal and enclose their signed ~~s~~Statements ~~of independence and impartiality, and availability~~. The parties shall then have ~~seven-7~~ days for Tier 1 and Tier 2 disputes or 14 days for Tier 3 and Tier 4 disputes in which to raise any objections to the nominated member(s) of the Tribunal. If no objections are raised, the appointment of the arbitrator(s) shall be deemed to be confirmed and the Tribunal shall become duly constituted. If either party objects to a nomination, the other party shall have ~~seven-7~~ days for Tier 1 and Tier 2 disputes or 14 days for Tier 3 and Tier 4 disputes to respond. DELOS shall determine the objection and shall either confirm the nominated arbitrator and proceed to constitute the Tribunal, or nominate a replacement arbitrator (in which case the process applied for the nomination of the first arbitrator described above shall apply to the replacement arbitrator).
  4. The Tribunal shall be composed of a sole arbitrator, unless either of the following conditions are fulfilled:
    - a. the parties have agreed, either in their arbitration agreement(s) or by informing DELOS in writing within ~~three-3~~ days following the due date for Respondent's Notice of Defence, that a three-member Tribunal shall be nominated; or
    - b. in the absence of agreement by the parties on the number of members of the Tribunal, if the value of the dispute falls within Tiers ~~3~~ or 4 of the schedules at Appendix 4, either party may submit a reasoned request no later than three days following the due date for Respondent's Notice of Defence for the appointment of a three-member Tribunal. The other party may comment on this request within three days. In consideration of the principal purpose of the Rules, DELOS will decide whether the dispute warrants the constitution of a three-member Tribunal.
  5. ~~Subject to the conditions at paragraph 6 below, t~~~~Provided that no later than (i) three days following the due date for Respondent's Notice of Defence or, if applicable, (ii) seven days following the DELOS decision at~~

~~paragraph 4b above, the parties inform DELOS in writing of the name(s) and relevant contact information of their nominated member(s) of the Tribunal, the parties may jointly nominate the sole arbitrator or, in the case of a three-member Tribunal, Claimant and Respondent may each nominate one member of the Tribunal and inform DELOS of their agreed on a procedure for the nomination of the presiding arbitrator, whose nomination shall occur within seven fourteen further days following the communication to Delos of said agreed procedure.~~

~~6. of the presiding arbitrator~~ The parties shall inform DELOS in writing of the name(s) and relevant contact information of their nominated member(s) of the Tribunal and, in the case of a three-member tribunal, of their agreed procedure to nominate the presiding arbitrator, by no later than (i) three days following the due date for Respondent's Notice of Defence or, if applicable, (ii) seven days following the DELOS decision at paragraph 4b above.

a. Any arbitrator nominated pursuant to ~~this~~ Article 6(5) shall have five days from the date of nomination to deliver signed ~~S~~statements of independence and impartiality and of availability directly to the parties and to DELOS.

~~c.b. and t~~ The procedure described at paragraph 3 above shall apply in case of any objection to the ~~nominated~~ arbitrator nominated pursuant to Article 6(5). If no objections are raised, DELOS will consider at its discretion whether to confirm the nominated arbitrator or request a new nomination.

~~7.~~ In the event where:

a. (i) only Claimant or Respondent has nominated a member of a three-member Tribunal or (ii) one or more party-nominated arbitrators fail to deliver their signed ~~s~~Statements of independence and impartiality and of availability in a timely manner, DELOS shall nominate the full Tribunal in accordance with paragraph 1 above.

~~b. In the event where~~ the parties do not agree on a procedure for the nomination of the presiding arbitrator, or the presiding arbitrator is not nominated in a timely manner or fails to deliver their signed ~~S~~statements of independence and impartiality and of availability in a timely manner, DELOS shall nominate the presiding arbitrator in accordance with paragraph 1 above.

~~6.8.~~ An arbitrator shall immediately disclose in writing to the parties and to DELOS any facts or circumstances arising or coming to that arbitrator's or

the Tribunal's attention during the course of the arbitration that may, in the ~~eyes of the parties~~ mind of any party, give rise to justifiable doubts as to ~~call into question~~ an arbitrator's independence or impartiality.

~~7.9.~~ A party shall have ~~seven days f~~From the earlier of either (i) the date of disclosure in paragraph ~~8.7~~ above or (ii) the date on which it ~~becomes into possession~~ aware of any new facts or circumstances arising or coming to its attention during the course of the arbitration that may call into question an arbitrator's independence or impartiality, a party shall have 7 days for Tier 1 and Tier 2 disputes or 14 days for Tier 3 and Tier 4 disputes to make any objection against an arbitrator. The other parties and each member of the Tribunal shall have ~~seven days the same period of time~~ in which to comment upon any such objection. DELOS shall then finally determine whether the arbitrator subject to the objection shall remain as a member of the Tribunal.

~~8.10.~~ DELOS may ~~u~~Upon the application of a party or on its own initiative, DELOS may revoke an arbitrator's appointment if DELOS determines that said arbitrator has become unable or unfit to act.

~~9.11.~~ If DELOS revokes an arbitrator's appointment, DELOS shall determine whether the arbitrator shall be replaced by a new arbitrator. If DELOS determines that the arbitrator shall be replaced, the procedure described at paragraph 1 above shall apply as appropriate

~~10.12.~~ When an objection is made against an arbitrator, the proceedings shall continue until that objection is determined. If an arbitrator is to be replaced for any reason during the proceedings, the proceedings shall be halted temporarily until a replacement arbitrator is appointed and the Tribunal is reconstituted. In the event that an arbitrator is replaced, the reconstituted Tribunal shall have sole discretion to determine whether all or part of the prior proceedings should be repeated.

## Article 7. Powers of the Tribunal

1. The Tribunal shall have the power to determine its own jurisdiction.
2. The Tribunal shall have the power to determine all procedural and evidentiary matters. The parties are encouraged to agree on joint proposals on procedural and evidentiary matters for consideration by the Tribunal.

3. As soon as practicable after the Time Notification Date pursuant to Article 9.5, the Tribunal shall conduct a case management meeting to consult the parties on the procedure and provisional timetable for the arbitration. During or as soon as practicable following such meeting, the Tribunal shall establish the procedure and provisional timetable for the arbitration and inform the parties and DELOS of the same.
4. The Tribunal shall take an active role in the resolution of legal and factual issues on the basis of the parties' submissions. The Tribunal's powers shall include, but are not limited to, the following:
  - a. to apply to the merits of the dispute the law(s) or rules of laws it deems appropriate in the absence of any agreement by the parties, and to take account of any relevant trade usages;
  - b. to identify to the parties issues that it considers may be relevant and material to the determination of the dispute; to require the parties to submit written submissions, and to limit the length of said submissions; to require any party to answer questions and provide additional evidence; to require the delivery of written witness testimony from or on behalf of the parties and/or the attendance at an oral hearing for questioning of any party or employee or agent of any party; to make site visits; to obtain advice from specialist consultants, experts or other third parties, provided that at least one of the parties requests this or consents to this; to render an award with or without holding an oral hearing;
  - c. to order interim or conservatory measures. A request for such measures made by a party to a judicial authority prior to the constitution of the Tribunal, or in exceptional circumstances thereafter, is not incompatible with these Rules; parties shall promptly inform DELOS, and if applicable the Tribunal, of any such request and measures taken by the judicial authority;
  - d. to order the allocation of arbitration costs and costs incurred in connection with the arbitration, and to take account in doing so of the extent to which each party has conducted the arbitration in accordance with the principal purpose of the Rules; to order the payment of interest on any amounts awarded;
  - e. to review and revise any of its previous orders; and
  - f. to proceed with the arbitration if one party does not participate or cooperate with these Rules, the timetable, the procedure or the orders of the Tribunal.

5. Decisions by the Tribunal (including orders and Awards) shall be made at a majority of its members. In the absence of a majority, the decision shall be made by the presiding arbitrator.

### Article 8. Awards of the Tribunal

1. The Tribunal may render interim, partial and final decisions, each of which shall take the form of an "Award". An Award is binding upon the parties.
2. The Award shall be in writing. The Tribunal shall provide written reasons for the outcome in the Award unless the parties have agreed otherwise.
3. The time which DELOS grants to the Tribunal to submit its draft Award (as provided for in the DELOS Time Notice) may only be modified (i) by agreement of the parties, (ii) if it is extended by DELOS of its own motion or (iii) by DELOS upon a reasoned request of the Tribunal and after having considered the parties' comments thereon.
4. The Tribunal shall submit a draft of the Award to DELOS in accordance with the time granted by DELOS to the Tribunal to submit such draft (as provided for in the DELOS Time Notice) and shall inform the parties accordingly. DELOS may provide the Tribunal with any comments it has on the draft Award. Upon receiving any such comments, it is the Tribunal's sole and absolute discretion whether to incorporate the comments into the Award.
5. The Tribunal shall deliver its signed Award to DELOS, which will transmit the Award to the parties, provided that the parties have paid the full and final amount of the costs of the arbitration in accordance with Article 9 below. The award shall be deemed to have been made at the place of arbitration on the date stated therein.
6. The Tribunal may on its own initiative or upon the application of a party correct the Award to remove any clerical or typographical mistake. If on its own initiative, the Tribunal shall make any correction within seven days of the date of delivery of the Award to the parties. If upon the application of a party, such application shall be made within seven days of the date of receipt of the Award by that party. Upon receiving the application, the Tribunal shall invite the other parties to comment on the application within seven days. From the date of expiry of this time limit, the Tribunal shall have seven days within which to make any correction of the Award.
7. At any time prior to the Tribunal delivering its draft Award to DELOS, the parties may jointly notify the Tribunal and DELOS in writing that they have expressly agreed that the Tribunal should (i) provide to the parties a non-

binding indication of its likely decision on all or part of the issues in dispute and (ii) neither deliver its draft Award to DELOS nor finalise and deliver said Award to the parties, provided however that the parties have paid the full and final amount of the costs of the arbitration in accordance with Article 9 below.

8. DELOS may publish Awards or extracts thereof or make such available for research, provided any confidential character of each such Award has been maintained.

### Article 9. Time and costs of the arbitration

1. When submitting a Notice of Arbitration, Claimant must pay the “Filing Fee” set out at Appendix 4. Such payment is non-refundable and shall be credited to Claimant’s share of the arbitration costs.
2. Following the due date for receipt of the Notice of Defence (and Counterclaim), DELOS shall (i) assess the value of the dispute (*i.e.* the sum of the value of the claims and counterclaims) and its complexity and (ii) fix the arbitration costs in accordance with the costs schedules at Appendix 4. The arbitration costs consist of the fees and expenses of the Tribunal and the administrative costs of DELOS. The parties and the Tribunal shall not enter into separate fee arrangements.
3. DELOS will exercise its discretion, as informed by the principal purpose of the Rules, in fixing the arbitration costs where: (i) the parties have not provided any assessment of the value of some or all of their claims; and/or (ii) the parties have agreed to arbitration under the Rules but have used a different arbitration clause from the DELOS model clause or have modified the same.
4. The costs of the arbitration shall be payable in equal shares by Claimant and by Respondent, upon notification by DELOS.
5. Once each party has paid its share of the arbitration costs or instalment thereof, as determined by DELOS, DELOS shall provide the parties and the Tribunal with a confirmation of the same and DELOS shall notify the Tribunal and the parties of the time it grants to the Tribunal to submit its draft Award (the “DELOS Time Notice”; the “Time Notification Date” is the date on which this notice is provided to the parties). Upon the issuance of an interim or partial Award, DELOS shall notify the parties and the Tribunal of the time it grants to the Tribunal to submit any further draft Award (also a “DELOS Time Notice”).

6. Should a party fail to pay its share of the arbitration costs or instalment thereof, as applicable, DELOS may request the other party/parties to make the payment. When a request for payment has not been complied with, DELOS may direct the Tribunal to suspend its work and fix a time limit for payment on the expiry of which the relevant claims shall be considered as withdrawn. A party shall not be prevented, on the ground of such withdrawal, from reintroducing the same claims at a later date in another proceeding.
7. At any stage prior to the issuance of the final Award, DELOS may adjust the arbitration costs to take into account (i) any significant change in the claims of the parties, the complexity of the dispute, the anticipated time and expenses incurred by the Tribunal and/or the conduct of the arbitration, and/or (ii) the termination of the arbitration, including by processing reimbursements to the parties in proportion of their respective payments.
8. In addition to the arbitration costs, parties may be required to pay taxes such as value added tax (VAT) or other taxes or charges that may be applicable to the arbitrator's fees or to DELOS's share of the arbitration costs. Such taxes or charges are payable in addition to the arbitration costs, and the arbitration costs exclude such taxes or charges.

#### Article 10. Waiver

1. A party that proceeds with the arbitration without raising an objection to a failure to comply with the parties' arbitration agreement, the Rules, an order or direction of the Tribunal or any other rules applicable to the proceeding, including as to the constitution of the Tribunal and the conduct of the proceeding, shall have waived its right to object.
2. By submitting their dispute to arbitration under the Rules, the parties agree to comply with any award without delay and waive their right to any form of recourse insofar as such waiver can validly be made.

#### Article 11. Limitation of liability

Neither DELOS nor the arbitrators nor any employee or agent of either of them nor anyone appointed by them shall be liable for anything done or not done in the discharge or purported discharge of their functions in accordance with these Rules, except to the extent that such limitation of liability is prohibited by applicable law.



## APPENDIX 1

# MODEL NOTICE OF ARBITRATION

To start a DELOS arbitration, please complete the model Notice of Arbitration provided below and send it with a copy of the Filing Fee payment receipt to:

secretariat@delosdr.org

and to Respondent, in accordance with Article 3 of the DELOS Rules of Arbitration.

### Notice of Arbitration under the DELOS Rules of Arbitration

[Name of Claimant(s)]

Vs.

[Name of Respondent(s)]

Claimant[s] hereby submit[s] this Notice of Arbitration in accordance with Article 3.2 of the DELOS Rules of Arbitration.

#### 1. Parties to the dispute

Claimant[s] [is/are] [Please set out here the full name and contact details (including e-mail address, postal address, and telephone number) of (i) Claimant and (ii) its legal representative(s) in the arbitration, if any. Please provide a brief description of Claimant's business].

Respondent[s] [is/are] [Please set out here the full name and contact details (including e-mail address, postal address, and telephone number) of Respondent, and a brief description of Respondent's business].

#### 2. The claim(s)

[Please provide a statement of up to a maximum of ten pages, setting out the background and nature of the dispute, and the issues in dispute. As part of this statement, please indicate whether, and for which issues and to what extent, you expect to require witness and/or expert evidence. In addition to the contract(s) to be provided under section 4 below, you may enclose with your Notice of Arbitration up to ten documents to support your claim(s).]

### **3. Relief sought**

[Please state what remedies you are seeking in this arbitration, including the amounts you are claiming or an estimate of the value of your claims. The explanation regarding why you are seeking this remedy is to be provided in your statement about the dispute, in section 2 above.]

### **4. The arbitration agreement**

[Please reference the contract(s) (if any) containing the agreement between the parties to submit the dispute to arbitration, and quote any such arbitration agreements here. Please provide a copy of the contract(s) (if any) with your Notice of Arbitration.]

If the contract(s) provide that, before starting an arbitration, Claimant will first issue Respondent with a written invitation to negotiate or mediate, please provide a copy of this invitation.

If you have a DELOS contract registration number ("CRN") for the contract(s), please indicate the CRN(s) here to take the benefit of the reduced costs schedule.]

### **5. Governing law**

[If the contract(s) contain a governing law clause, please quote that clause here; otherwise, please indicate any proposals you may have as to the applicable rules of law.]

### **6. The Arbitral Tribunal**

[Please indicate here any proposals you wish to make regarding the profile and/or qualifications of the member(s) of the Arbitral Tribunal or, if applicable under Article 6.4a of the DELOS Rules of Arbitration, the full name and contact details (including e-mail address, postal address, and telephone number) of your nominated arbitrator.]

### **7. Other procedural matters, to deal with the dispute fairly, expeditiously and at proportionate cost**

[Please indicate here any proposals you wish to make to achieve the resolution of the dispute in accordance with the principal purpose of the DELOS Rules of Arbitration (see Article 1.2).]

[Please sign and date this Notice of Arbitration.]

## APPENDIX 2

# MODEL NOTICE OF DEFENCE (AND COUNTERCLAIM)

To respond to a Notice of Arbitration (and submit any counterclaims), please complete the model Notice of Defence (and Counterclaim) provided below.

### Notice of Defence [and Counterclaim] under the DELOS Rules of Arbitration

[Name of Claimant(s)]

Vs.

[Name of Respondent(s)]

Respondent[s] hereby submit[s] this Notice of Defence [and Counterclaim] in accordance with Article 4.1 of the DELOS Rules of Arbitration.

#### 1. Parties to the dispute

[Please provide here any comments you may have on section 1 of the Notice of Arbitration and indicate the full name and contact details (including e-mail address, postal address, and telephone number) of your legal representative(s) in the arbitration, if any.]

#### 2. The defence

[Please provide a statement of up to a maximum of ten pages, setting out your position on the dispute and the claims (see sections 2 and 3 of the Notice of Arbitration). If you have any comments on section 4 of the Notice of Arbitration, please provide these in a further statement of up to a maximum of ten pages.

As part of the above, please indicate whether, and for which issues and to what extent, you expect to require witness and/or expert evidence.

You may enclose with your Notice of Defence up to ten documents to support each of the two statements above. For the avoidance of doubt, where a document has already been provided by Claimant, it is not necessary to provide it again.]

#### 3. The counterclaim

[If you have a counterclaim, please set it out in a statement of up to a maximum of ten pages. You may enclose with your Notice of Defence and Counterclaim up to ten documents to support your counterclaim.]

#### **4. Relief sought**

[Please state what remedies you are seeking in this arbitration, including the amounts you are counterclaiming or an estimate of the value of your counterclaims.]

For the avoidance of doubt, any explanation regarding why you are seeking this remedy is to be provided in your statement about the dispute, in sections 2 and 3 above.]

[If you have a DELOS CRN for the contract(s) containing the agreement between the parties to submit the dispute to arbitration and Claimant did not provide this with the Notice of Arbitration, please indicate the CRN(s) here to take the benefit of the reduced costs schedule.]

#### **5. Additional comments**

[Please provide here any comments or proposals you may have in respect of sections 5-7 of the Notice of Arbitration, namely regarding: the governing law; the profile and/or qualifications of the member(s) of the Arbitral Tribunal or, if applicable under Article 6.4a of the DELOS Rules of Arbitration, the full name and contact details (including e-mail address, postal address, and telephone number) of your nominated arbitrator; and any proposals you wish to make to achieve the resolution of the dispute in accordance with the principal purpose of the DELOS Rules of Arbitration (see Article 1(2)).]

[Please sign and date this Notice of Defence.]

## **APPENDIX 3**

# **MODEL NOTICE OF RESPONSE TO COUNTERCLAIM**

To respond to a counterclaim contained in a Notice of Defence and Counterclaim, please complete the model Notice of Response to Counterclaim provided below.

### **Notice of Response to Counterclaim under the DELOS Rules of Arbitration**

[Name of Claimant(s)]

Vs.

[Name of Respondent(s)]

Claimant[s] hereby submit[s] this Notice of Response to Counterclaim in accordance with Article 4.2 of the DELOS Rules of Arbitration.

#### **1. Response to the counterclaim**

[Please provide a statement of up to a maximum of ten pages, setting out your position on the counterclaim only.

Please indicate whether, and for which issues and to what extent, you expect to require witness and/or expert evidence.

You may enclose with your Notice of Response to Counterclaim up to ten documents to support your position. For the avoidance of doubt, where a document has already been provided by you or by Respondent, it is not necessary to provide it again.]

[Please sign and date this Notice of Response to Counterclaim.]

## APPENDIX 4

# TIME AND COST SCHEDULES

(AS OF 1 ~~NOVEMBER 2016~~ JUNE 2018)

1. The Filing Fee referenced at Article 9.1 shall be EUR 450.
2. The time and cost schedules set out overleaf apply where the Tribunal is composed of a sole arbitrator. If the Tribunal is to be composed of a three-member Tribunal, then the costs may be increased by up to double.
3. In accordance with Article 9.4, **the costs of the arbitration set out below shall be payable in equal shares by Claimant and by Respondent.** The costs of the arbitration are based on the value of the dispute (*i.e.* the sum of the value of the claims and counterclaims). The amounts paid by the parties for the costs of the arbitration do not yield interest for the parties or for the Tribunal.
4. The time indication corresponds to the indicative duration of time in calendar days to be granted by DELOS from the Time Notification Date until the submission of the draft of the first or next Award by the Tribunal to DELOS.
5. DELOS may from to time and at its discretion provide for the possibility for parties to register with DELOS their contracts containing a DELOS arbitration clause, including agreements for submitting existing disputes to DELOS arbitration. Where such contracts have been validly registered, DELOS shall issue the parties with a contract registration number ("CRN"), which shall entitle the parties to a reduced costs schedule as set out below.

**TIME AND COSTS SCHEDULE WITH DELOS CRN**

Tier	Value of the dispute (EUR)		Arbitration costs		Indicative time
	From	To	Floor (EUR)	Up to	
1	0	20,000	1,200	16%	60 days
	20,001	50,000	2,000	14%	
	50,001	200,000	4,000	12%	
2	200,001	500,000	6,000	6.8%	120 days
	500,001	2,000,000	12,000	4.8%	
	2,000,001	5,000,000	18,000	3.4%	
3	5,000,001	10,000,000	<del>3638,000</del>	2.4%	180 days
	10,000,001	<del>5020,000,000</del>	<del>4858,000</del>	<del>1.46%</del>	
	<del>5020,000,001</del>	<del>+40,000,000</del>	<del>7078,000</del>	<del>0.61.4%</del>	
<del>34</del>	<del>540,000,001</del>	<del>1070,000,000</del>	<del>36120,000</del>	<del>2.40.9%</del>	<del>180-240</del> days
	<del>1070,000,001</del>	<del>50100,000,000</del>	<del>48180,000</del>	<del>1.40.8%</del>	
	<del>50100,000,001</del>	+	<del>70240,000</del>	0.6%	

**TIME AND COSTS SCHEDULE WITHOUT DELOS CRN**

Tier	Value of the dispute (EUR)		Arbitration costs		Indicative time
	From	To	Floor (EUR)	Up to	
1	0	20,000	1,800	20%	60 days
	20,001	50,000	2,400	18%	
	50,001	200,000	4,800	16%	
2	200,001	500,000	8,000	8.8%	120 days
	500,001	2,000,000	16,000	6.2%	
	2,000,001	5,000,000	24,000	4.4%	
3	5,000,001	10,000,000	<del>3646,000</del>	<del>2.43.2%</del>	180 days
	10,000,001	<del>5020,000,000</del>	<del>4870,000</del>	<del>1.42.1%</del>	
	<del>5020,000,001</del>	<del>+40,000,000</del>	<del>7094,000</del>	<del>0.61.7%</del>	
<del>34</del>	<del>540,000,001</del>	<del>1070,000,000</del>	<del>48160,000</del>	<del>3.21.1%</del>	<del>180-240</del> days
	<del>1070,000,001</del>	<del>50100,000,000</del>	<del>64220,000</del>	<del>1.80.9%</del>	
	<del>50100,000,001</del>	+	<del>96280,000</del>	<del>0.87%</del>	



© Delos Dispute Resolution 2018

All rights reserved. Delos Dispute Resolution holds all copyright and other intellectual property rights in this collective work. No part of it may be reproduced or transmitted in any form or by any means except as permitted by law without the prior written permission of Delos Dispute Resolution. Permission can be requested from Delos Dispute Resolution at [secretariat@Delosdr.org](mailto:secretariat@Delosdr.org).