

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 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 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 7 days for Tier 1 disputes, 14 days for Tier 2 and Tier 3 disputes or 21 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 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 “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 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 “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 inserting a governing law clause into the contract, such as the following:

This contract shall be governed by, and construed in accordance with, the laws of [jurisdiction].

Note: remember to **register your contract** with DELOS (by e-mailing a copy of it to DELOS at contract-registration@delosdr.org) 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 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

Schedule 1. DELOS seats of arbitration

(as of 14 January 2020)

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)	Munich (Germany)
Auckland (New Zealand)	New York (USA)
Berlin (Germany)	Oslo (Norway)
Brussels (Belgium)	Ottawa (Canada)
Calgary (Canada)	Paris (France)
Copenhagen (Denmark)	Port Louis (Mauritius)
Frankfurt (Germany)	Porto (Portugal)
Geneva (Switzerland)	Rotterdam (The Netherlands)
The Hague (The Netherlands)	San Francisco (USA)
Hamburg (Germany)	Seoul (South Korea)
Helsinki (Finland)	Singapore (Singapore)
Hong Kong (PRC)	Stockholm (Sweden)
Houston (USA)	Sydney (Australia)
Lisbon (Portugal)	Toronto (Canada)
London (UK)	Vancouver (Canada)
Los Angeles (USA)	Vienna (Austria)
Madrid (Spain)	Washington D.C. (USA)
Miami (USA)	Wellington (New Zealand)
Montreal (Canada)	Zurich (Switzerland)

Schedule 2. DELOS language of arbitration

(as of 1 November 2018)

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

English
French
Portuguese
Spanish