

Swiss Arbitration Centre

Rules of Mediation Procedure for Financial Services Disputes

Rules of Mediation Procedure for Financial Services Disputes

June 2021

Languages

This English version of the Rules of Mediation Procedure for Financial Services shall take precedence in the event of any discrepancies between it and any translation thereof.

Table of Contents

Model Financial Mediation Clause	4		
Introduction	4	VII. Exclusion of Liability	11
		Article 19 Exclusion of Liability	1
I. Introductory Rules	5	VIII. Costs	11
Article 1 Scope of Application	5	Article 20 Mediation Costs	11
Article 2 Request for Mediation	5	Article 21 Apportionment of the Mediation Costs	11
		Article 22 Costs and Fees of the Swiss Arbitration Centre	11
II. Selection and Replacement of the Ombudsperson	6	Article 23 The Ombudsperson's Fees and Expenses	11
Article 3 Selection and Replacement of the Ombudsperson	6	Article 24 Deposit for the Ombudsperson's Fees and Expenses	12
		Article 25 Statement of the Ombudsperson's Fees and Expenses	12
III. The Ombudsperson	6	Appendices	13
Article 4 Independence, Impartiality and Disclosures of the Ombudsperson	6	Appendix A Offices and Bank Account of the Secretariat	13
Article 5 Transmission of the File to the Ombudsperson	6	Appendix B Schedule of Costs of Mediation	14
Article 6 Scope of Competence of the Ombudsperson	6		
Article 7 Role of the Ombudsperson	7		
IV. Procedural Rules	7		
Article 8 Conduct of the Mediation	7		
Article 9 Mass Disputes	8		
Article 10 Representation	8		
Article 11 Confidentiality	8		
Article 12 Seat of the Mediation	9		
Article 13 Applicable Law	9		
V. End of the Mediation and Certification thereof	9		
Article 14 End of the Mediation and Certification thereof	9		
Article 15 Settlement Agreement and Certification thereof	10		
VI. Mediation, Litigation and Arbitration	10		
Article 16 Recourse to Litigation	10		
Article 17 Recourse to Arbitration	10		
Article 18 Mediation during the Course of Arbitration Proceedings	11		

Rules of Mediation Procedure for Financial Service Disputes

Model Financial Mediation Clause

For cases subject to FinSA, the Customer does not need to have signed a contract including such a clause to benefit from the Rules of Mediation Procedure for Financial Services Disputes of the Swiss Arbitration Centre. It is sufficient that the Financial Service Provider is affiliated with the Mediation Organ of the Swiss Arbitration Centre.

Any dispute, controversy or claim arising out of, or in relation to, this contract, including regarding the validity, invalidity, breach or termination thereof, shall be submitted to mediation in accordance with the Rules of Mediation Procedure for Financial Services Disputes of the Swiss Arbitration Centre in force on the date when the request for mediation is submitted in accordance with those Rules.

The seat of the mediation shall be... (name a city in Switzerland, unless the parties agree on a city in another country).

The mediation shall be conducted in ... (insert desired language).

For further model mediation clauses, including if parties wish to combine mediation with arbitration, please refer to our website: www.swissarbitration.org/centre/ombudsfin.

Introduction

- (a) The Rules of Mediation Procedure for Financial Services Disputes (the “Mediation Rules” or the “Rules”) were first made available to users of mediation services in 2020, when the Federal Department of Finance (the “FDF”) granted the Swiss Chambers’ Arbitration Institution (“SCAI”) authorisation to be a Mediation Organ providing ombudsperson services to investors and financial service providers (the “Financial Service Provider”) as per the requirement of the Swiss Financial Services Act (the “FinSA”) and Swiss Financial Services Ordinance (the “FinSO”).
- (b) In 2021, the Chambers of Commerce of Basel, Bern, Central Switzerland, Geneva, Neuchâtel, Ticino, and Zurich (the “Chambers of Commerce”) strengthened and formalised their cooperation with the Swiss Arbitration Association (“ASA”) for the further development of SCAI. SCAI was converted into a Swiss company, Swiss Arbitration Centre Ltd. (the “Swiss Arbitration Centre”). Mediation clauses referring to SCAI or the Chambers of Commerce remain valid and binding and will be recognised and applied by the Swiss Arbitration Centre as legal successor of SCAI.
- (c) The administration of cases under the Mediation Rules is exclusively carried out by the Secretariat of the Swiss Arbitration Centre (the “Secretariat”) and by the ombudspersons designated by the Secretariat.
- (d) The Swiss Arbitration Centre provides domestic and international mediation and arbitration services, as well as other dispute resolution services, relating to disputes arising under any applicable law, in Switzerland or elsewhere.

Section I. Introductory Rules

SCOPE OF APPLICATION

Article 1

1. These Rules shall govern all mediations where a mediation clause or an agreement to mediate (the “Mediation Agreement”) refers to these Rules administered by the Swiss Arbitration Centre, or previously by SCAI, or where the FinSA applies and the Financial Service Provider is affiliated with the Swiss Arbitration Centre ombudsperson services, either directly or through an association of financial services providers or of a surveillance organ.

2. This version of the Rules, in force as from 1 June 2021, shall apply to all mediations in which the Request for Mediation is submitted on or after that date, unless the parties have agreed otherwise.

REQUEST FOR MEDIATION

Article 2

1. The party or parties requesting a mediation (the “Requesting Party”) shall submit a Request for Mediation to the Secretariat at any of the addresses, postal or electronic, listed in Appendix A. No hard copies of the Request for Mediation shall be required, unless the Secretariat requests otherwise or the Requesting Party requests that the Secretariat notify a hard copy to the other party or parties (the “Responding Party”) in lieu of or in addition to an electronic copy. In case of hard copies, the Requesting Party shall provide the Secretariat with a sufficient number of copies of the Request for Mediation for each Responding Party, the ombudsperson and the Secretariat.

2. For mediations subject to the FinSA, unless otherwise agreed between the parties and with the Secretariat, the language of the Request for Mediation and of the mediation shall be the Swiss national language chosen by the client of the Financial Service Provider (the “Client”).¹

3. The mediation shall be deemed to commence on the date on which the Request for Mediation is received by the Secretariat.

4. The Request for Mediation shall include the following:

- (a) the names, addresses, telephone numbers, and e-mail addresses of each of the parties and, where applicable, of their representatives;
- (b) the name of the Financial Service Provider Association through which the Financial Service Provider is affiliated with the Swiss Arbitration Centre (if any);

¹ Art. 75(5) FinSA.

- (c) identification of the Mediation Agreement that is invoked (if any);
- (d) all further information and documents that are relevant for the initial case assessment by the ombudsperson;
- (e) a short description of the dispute and an estimate of the amount in dispute (if any);
- (f) a description of any desired qualifications of the ombudsperson (if any);
- (g) a confirmation that the Requesting Party (provided that it is the Client) has already put all his or her questions and complaints to the Financial Service Provider and attempted to find a solution;
- (h) a proposal as to the language of the mediation if the parties have not previously agreed thereon;
- (i) a confirmation of payment to the relevant account listed in Appendix A of the Registration Fee as required by Appendix B in force on the date the Request for Mediation is submitted.

The Requesting Party may enclose any other document deemed relevant for the mediation.

5. If the Request for Mediation is incomplete or the Registration Fee is not paid, the Secretariat may set an appropriate time limit within which this may be remedied. The Secretariat may also request the Requesting Party to submit a translation of the Request for Mediation within the same time limit if it is not submitted in English, German, French, or Italian. If the Requesting Party complies with such directions within the applicable time limit, the Request for Mediation shall be deemed to have been validly filed on the date on which the initial version was received by the Secretariat. If the Requesting Party fails to comply with such directions within the applicable time limit, the Request for Mediation will be deemed to be withdrawn, without prejudice to the Requesting Party's right to resubmit it at a later date.

6. Upon receipt of a validly submitted Request for Mediation, the Secretariat shall notify the Request for Mediation together with any exhibits to the Responding Party and set a 15-day time limit to inform the Secretariat whether it agrees to mediate under the Rules.²

7. If the Secretariat does not receive an answer or if the Responding Party informs the Secretariat that it does not agree to mediate under the Rules, the mediation shall not proceed.³ The Secretariat shall promptly inform the parties in writing.

8. If the Requesting Party and some but not all of the Responding Parties wish to mediate under the Rules, the mediation shall continue between the parties in agreement.

² Swiss Financial Service Providers are required to participate in the mediation in accordance with article 78 FinSA.

³ Swiss Financial Service Providers who do not participate in a mediation despite being legally required to do so under the FinSA may be excluded from the affiliation register of the Swiss Arbitration Centre and will be reported to the surveillance organs as per articles 82 and 83 FinSA.

Section II. Selection and Replacement of the Ombudsperson

SELECTION AND REPLACEMENT OF THE OMBUDSPERSON

Article 3

1. If the parties have not agreed on an ombudsperson, the Secretariat shall direct the parties to an ombudsperson with sufficient knowledge of the relevant financial industry and appropriate professional competencies.

2. The function of the ombudsperson is entrusted to him or her personally. If the ombudsperson is no longer in a position to fulfil his or her duties or is no longer accepted by the parties, the Secretariat shall direct the parties to another ombudsperson, provided one is available.

Section III. The Ombudsperson

INDEPENDENCE, IMPARTIALITY AND DISCLOSURES OF THE OMBUDSPERSON

Article 4

1. Any ombudsperson conducting a mediation under these Rules shall be and shall remain impartial and independent throughout the mediation.

2. Prior to his or her confirmation of appointment by the Secretariat, the prospective ombudsperson shall:

- (a) return to the Secretariat, duly dated and signed: (i) the agreement to serve as an ombudsperson; and (ii) the declaration of independence, impartiality, and availability;
- (b) state in writing that he or she complies with the present Rules and with the European Code of Conduct for Mediators in force on the date on which the ombudsperson is appointed; in the event of a discrepancy between the Rules and the Code, the Rules shall take precedence; and,
- (c) disclose to the Secretariat any circumstances, including those listed in the European Code of Conduct for Mediators, likely to give rise to justifiable doubts as to his or her independence or impartiality, or regarding his or her availability. The Secretariat shall provide such information to the parties and set a time limit within which they may comment.

3. If, in the course of the mediation, the ombudsperson discovers the existence of any circumstances likely to affect his or her impartiality or independence towards the parties, or his or her availability, he or she shall promptly inform the parties. Upon their mutual consent, the ombudsperson may continue to serve. If the parties disagree, the ombudsperson shall stay the mediation and inform the Secretariat, which shall proceed to replace the ombudsperson in accordance with Article 3(2).

TRANSMISSION OF THE FILE TO THE OMBUDSPERSON

Article 5

Once the Registration Fee and, if applicable, the Administrative Costs have been paid in accordance with Appendix B, the Secretariat will decide on whether it confirms the ombudsperson, in which case it shall transmit the file to the ombudsperson without delay.

SCOPE OF COMPETENCE OF THE OMBUDSPERSON

Article 6

1. The ombudsperson shall consult the documents provided by the Requesting Party and collect from it and the other parties any further relevant information and document for an initial case assessment. The ombudsperson may convene the parties, and in particular the Financial Service Providers subject to FinSA, to separate or joint meetings, require them to provide information and documents, as well as ask them to provide their opinion on the issue at stake.

2. The ombudsperson is also authorised by all the parties to obtain from the relevant bank(s) all necessary information relating to the case submitted to him or her and to inspect the bank file. The parties must specifically release the bank(s) of their confidentiality obligations with respect to the subject matter in dispute and require them to provide the ombudsperson with the information and documents requested.

3. The ombudsperson shall address in particular disputes concerning purchase and sale of securities, execution of orders, discretionary and collective asset management, investment advice and margin accounts (crédit Lombard), as well as the rendering of accounts.

4. The ombudsperson may decline his or her competence or the admissibility of the Request for Mediation in:

- (a) questions of general business and fee policy;
- (b) abstract business and legal questions;
- (c) cases where the Client has not yet informed the Financial Service Provider of its point of view or attempted to reach a settlement, unless the Financial Service Provider accepts to proceed nonetheless;
- (d) manifestly abusive cases;

- (e) if a mediation was already conducted with the same subject matter between the same parties, unless the parties accept to proceed nonetheless;
- (f) if another mediation/conciliation/ombudsperson or entity, a judicial or arbitral court or an administrative entity has been seized with the same subject matter between the same parties, unless the parties agree to proceed nonetheless.

ROLE OF THE OMBUDSPERSON

Article 7

1. The ombudsperson shall assist the parties in their negotiations, with a view to reaching a mutually acceptable and satisfactory resolution of their dispute. The ombudsperson has no authority or power to impose a settlement on the parties.

2. The ombudsperson and the parties shall be guided by the principles of fairness, party autonomy and mutual respect. The ombudsperson shall ensure that the procedure remains pragmatic as well as cost and time efficient.

3. The ombudsperson shall neither provide legal advice to the parties, nor act as their representative. Since applying for mediation under the Rules does not, in principle, suspend or limit legal deadlines such as those relating to limitation, forfeiture or court or administrative proceedings, parties are responsible for ensuring that such deadlines are met.

Section IV. Procedural Rules

CONDUCT OF THE MEDIATION

Article 8

1. The mediation shall be conducted as agreed upon with the parties. In the absence of such an agreement, the ombudsperson shall proceed as he or she considers appropriate, taking into account the circumstances of the case, the wishes of the parties, their budgets and timelines, and the need for a prompt settlement of the dispute.

2. The ombudsperson deals with simple enquiries orally. He or she provides information to the Requesting Party and advises it on how to proceed.

3. For FinSA cases, if the Requesting Party is a Client, the ombudsperson will check that it has first put its questions or complaints to the Financial Service Provider and/or bank directly and demanded a written response.

4. Where investigations are necessary, the ombudsperson may encourage the Client to submit its enquiries in writing and provide him or her with copies of the relevant documen-

tation. The ombudsperson's response in such cases is also in writing.

5. As soon as practicable after receiving the file from the Secretariat, the ombudsperson shall hold an initial conference with the parties to discuss the manner in which the mediation will proceed. A short note summarising the agreement of the parties with respect to the conduct and the organisation of the mediation (language, time and place of meetings, submissions, participants, etc.) shall then be drafted by the ombudsperson and provided to the parties, with a copy to the Secretariat.

6. In FinSA cases, Financial Service Providers are obliged to participate in the procedure and must comply with the deadlines, invitations to attend meetings, as well as provide the information, documentation and positions requested by the Secretariat and the ombudsperson.⁴ Financial Service Providers who do not comply on more than one occasion with the requests of the Secretariat and ombudsperson, may be excluded from the Mediation Organ.⁵

7. The ombudsperson hears all sides.

8. The ombudsperson may hold separate meetings with the parties. The ombudsperson shall maintain strict confidentiality regarding any information exchanged during those separate meetings vis-à-vis each party, unless the ombudsperson is expressly authorised to disclose such information by all participants in the separate meetings.

9. The ombudsperson may decline or suspend the handling of Requests for Mediation where he or she considers that the ombudsperson procedure is not a suitable way of providing a solution, for instance on grounds of complexity, or where there appears to be no prospect of the ombudsperson procedure providing a solution.

10. For complex cases, the ombudsperson may invite the parties to consider the opportunity of holding a co-mediation and deciding on the allocation of costs for such a procedure.

11. The ombudsperson may assist the parties with all questions and complaints that he or she is comfortable answering, on the basis of the information provided to him or her, without specific legal or technical research and without any responsibility for such *prima facie* assessment.

12. The ombudsperson acts as a facilitator and submits proposed solutions to the parties. The parties are not bound by these proposals and remain free to make decisions at their own discretion.

4. Article 78 FinSA.

5. Article 82 FinSA.

13. If no settlement is reached after 90 days since the filing of the Request for Mediation, or after the ombudsperson spent a reasonable number of hours assisting the parties without success in their attempt to reach an agreement, or if the ombudsperson considers that no settlement will be reached, the ombudsperson may put an end to the proceedings and, if so requested by a party, provide the parties with a written assessment in summary form, based on the information available to him or her, together with a notice of closure.

14. The ombudsperson has the final word in making and drafting any assessment of the case and proposal to the parties.

15. The ombudsperson may revisit assessments where there are grounds for doing so, notably when new facts emerge.

16. The ombudsperson shall always provide to the Secretariat copies of all written communication to the parties. At the end of the mediation, the ombudsperson shall provide the Secretariat with the complete file for archiving purposes.

MASS DISPUTES

Article 9

1. In addition to, or deviation from, the general procedural provisions of these Rules, the following provisions apply to mass disputes:

2. Mass disputes are complaints where:

- (a) a large number of disputes have occurred or are expected to occur in a short period of time, and
- (b) they involve the same or similar products, services, parties or circumstances, or
- (c) a Requesting Party is using the same or similar (legal) arguments.

3. Treating some complaints as mass disputes aims at helping to ensure that identical or similar cases are dealt with consistently, efficiently and promptly.

4. Financial Service Providers must inform the ombudsperson at an early stage if they are aware of any situation that may result in complaints which might meet the criteria for being treated as mass disputes.

5. Where the Secretariat or an ombudsperson becomes aware of possible mass disputes as a result of complaints received or information provided by third parties such as regulators, consumer protection organisations or the media, the Secretariat may request the ombudsperson to carry out further investigations where necessary and request a response from the Financial Service Provider(s) and bank(s) concerned.

6. Should the Secretariat conclude, based on the response from the Financial Service Providers and bank(s), that the criteria to treat the relevant complaints as a mass dispute are met, the Financial Service Provider(s) and bank(s) are informed to this effect in order to open a dialogue aimed at reaching agreement on the following points:

- (a) acknowledgement that there is a mass dispute;
- (b) the criteria for including individual complaints in the mass dispute;
- (c) the criteria for setting up dispute groups (if applicable);
- (d) how complaints might be dealt with collectively, if applicable;
- (e) the criteria for deciding on complaints in individual disputes/dispute groups;
- (f) communication with the Clients concerned, interest groups and the general public.

7. If agreement cannot be reached on whether or not there is a mass dispute, the criteria for including complaints in it and the formal treatment and material consideration of the complaints, the Secretariat submits the unresolved or disputed points to the Swiss Arbitration Centre Management which will make the final decision.

8. The procedure for establishing that there is a mass dispute, determining the criteria for including complaints in it and the formal treatment and material consideration of the complaints is confidential.

REPRESENTATION

Article 10

The parties shall appear at all mediation sessions in person or, for legal entities, through duly authorised and empowered representatives of the entity, whose complete contact details shall be communicated in writing to the ombudsperson, to the other party or parties and to the Secretariat. The parties may be represented, assisted and accompanied by persons of their choice. Proof of authority of a representative may be requested at any time.

CONFIDENTIALITY

Article 11

1. The mediation is confidential. No observation, statement or proposition made during the mediation or documents prepared for the purposes of the mediation may be disclosed outside of the mediation or subsequently used without the prior written consent of all persons involved in the mediation, even in the event of litigation or arbitration, except to the extent necessary to enforce a written settlement agreement that concludes the mediation or if otherwise required by law.

2. The mediation sessions are private. With the consent of the ombudsperson, the parties may agree that persons

other than the parties themselves, their representatives, legal counsel or advisors may attend the sessions.

3. Unless the parties expressly agree otherwise, an ombudsperson cannot act as an arbitrator, judge, expert, or as a representative, legal counsel or advisor of one party in any subsequent proceedings relating to the same dispute or involving any of the parties to the mediation after the Request for Mediation has been validly submitted to the Secretariat.

4. The Secretariat shall retain the main documents of the file for a period of at least 10 years after the end of the mediation.

5. During and after the settlement of the dispute or the end of the mediation, neither the Swiss Arbitration Centre, nor the Chambers of Commerce, nor their staff, executives and board members, nor the ombudspersons, mediators, arbitrators, members of the Advisory Council, nor any experts appointed by them shall be under any obligation to make statements to any person or tribunal about any matter concerning the mediation, nor shall a party seek to make any of these persons a witness, or otherwise provide testimony or evidence, in any legal or other proceedings arising out of or in relation to the mediation, except to the extent necessary to enforce a written settlement agreement that concludes the mediation.

6. The ombudsperson and the Swiss Arbitration Centre personnel are subject to the duty of confidentiality that applies to agents. The ombudsperson is entitled to decline to take part in civil proceedings in accordance with Article 166 (1) (d) of the Swiss Code of Civil Procedure (ZPO/CPC).⁶

7. The parties' right to inspect files is restricted to their own correspondence with the Secretariat and ombudsperson.⁷

8. The Secretariat informs the relevant supervisory authorities and the relevant registration body for Financial Service Providers about the names of Financial Services Providers who are subject to the FinSA and affiliated with the Swiss Arbitration Centre, those who have been refused and those who have been excluded.⁸

9. The Swiss Arbitration Centre informs the Swiss Federal Department of Finance of its activities at least once a year in the form of an annual report and a press release. The Swiss Arbitration Centre issues statistics broken down by enquiries, mediations and issues. The Swiss Arbitration Centre does not comment publicly on individual cases or disclose any names.

10. The Swiss Arbitration Centre may provide the Financial Service Providers organisations, banks, mediators, counsel and arbitrators with general information about its activities and the activities of the ombudspersons.

11. The Swiss Arbitration Centre may exchange non-public information about FinSA cases and FinSA Financial Service Providers with the Swiss Federal Department of Finance (the "FINMA") the relevant Surveillance Organ, the relevant Adviser Register and the relevant Control Organ in order to allow each Organ to perform its duties.⁹

SEAT OF THE MEDIATION

Article 12

If the parties have not determined the seat of the mediation or if the designation of the seat is unclear or incomplete, the seat of the mediation shall be deemed to be at the place of the Secretariat's office where the Request for Mediation was submitted. Meetings may be held at any other place.

APPLICABLE LAW

Article 13

1. Unless otherwise agreed by the parties, the conduct of the mediation is subject to Swiss law.

2. The relationship between the Swiss Arbitration Centre and any person participating in the mediation (parties, parties' representatives, legal counsel, advisors, ombudspersons, experts, etc.) is subject to Swiss law.

Section V. End of the Mediation and Certification thereof

END OF THE MEDIATION AND CERTIFICATION THEREOF

Article 14

1. A mediation shall be deemed to have ended:

- (a) upon the signing by all parties of a settlement agreement putting an end to the dispute;
- (b) at any time after the ombudsperson has provided the parties with a written note, pursuant to Article 8(5), if a party notifies the ombudsperson and the Secretariat in writing of its decision to terminate the mediation and the remaining parties do not wish to continue. Financial Service Providers subject to the FinSA are not allowed to terminate the mediation with their Client;
- (c) at any time after the ombudsperson has provided the parties with a written note, pursuant to Article 8(5), if, in the opinion of the ombudsperson, further efforts would

6. RS 272.

7. Article 75(3) FinSA.

8. Article 83 FinSA.

9. Article 88 FinSA.

not contribute to a resolution of the dispute and he or she notifies the parties and the Secretariat in writing of his or her decision to terminate the mediation;

- (d) upon expiration of any time limit set by the parties or the ombudsperson for the resolution of the dispute, if not extended by agreement of all parties and the ombudsperson;
- (e) in the event of non-payment, by the parties, of the Deposit according to Article 24, or of the Administrative Costs according to Section 2 of Appendix B, within the time limit set respectively by the ombudsperson or by the Secretariat;
- (f) as soon as a conciliation authority, a court, an arbitral tribunal or an administrative authority has been seised, unless the parties agree otherwise.

2. The ombudsperson shall promptly inform the Secretariat of the end of the mediation in a written note indicating the date of termination and whether the mediation resulted in full, partial, or no settlement.

3. In multi-party mediations, if one party or some of the parties decide to withdraw from the mediation:

- (a) the remaining parties shall promptly inform the Secretariat in writing whether they wish to continue the mediation and, if so, with the appointed ombudsperson;
- (b) the ombudsperson shall promptly inform the Secretariat in writing of the withdrawal of the party or parties from the mediation, and indicate whether he or she agrees to continue the mediation with the remaining party or parties.

4. The Secretariat shall confirm in writing to the parties and the ombudsperson the end of the mediation.

5. When a Responding Party defaults or does not agree to mediate with the Requesting Party within the time limit set by the Secretariat, the mediation shall be deemed to have ended. The Requesting Party shall, however, be deemed to have validly fulfilled its obligation to submit the dispute, controversy or claim to mediation in accordance with the Rules, and shall be allowed to proceed with the subsequent procedural steps available to it, notably arbitration or litigation.

6. Upon request of the parties or the ombudsperson, the Secretariat shall provide the parties and the ombudsperson with a mediation certificate confirming that the mediation took place between the parties and stating whether it led to a settlement. The Secretariat may also provide a certificate stating that a mediation could not take place, with reasons. The Secretariat may request the parties or the ombudsperson to submit any document deemed relevant for the certification of the mediation. Such documents shall be provided in English, German, French or Italian, or officially translated into one of these languages.

SETTLEMENT AGREEMENT AND CERTIFICATION THEREOF

Article 15

1. Unless otherwise agreed by the parties in writing, no settlement is reached until it has been made in writing and signed by the relevant parties.

2. Upon request by one or more signatory parties, and if provided by the ombudsperson with a signed original hard copy of the settlement agreement, the Secretariat may issue certified copies of the settlement agreement to the requesting signatory parties.

3. Upon request by one or more signatory parties and if the ombudsperson confirms in writing that he or she witnessed the parties signing the settlement agreement, or if the parties sign the settlement agreement at the Secretariat's office, the Secretariat may provide the requesting signatory parties with a certificate of authenticity of the settlement agreement.

4. The Secretariat may request the parties or the ombudsperson to submit any document deemed relevant for the certification of the settlement agreement. Such documents shall be provided in English, German, French or Italian, or officially translated into one of these languages.

Section VI. Mediation, Litigation and Arbitration

RECOURSE TO LITIGATION

Article 16

1. The parties may jointly agree in writing at any time to submit their dispute or any part of it to litigation. For FinSA cases, either party may then initiate proceedings by submitting a request to the competent Court.¹⁰

2. FinSA mediation procedures will be closed as soon as a conciliation authority, a court, or an administrative authority has been seised,¹¹ unless the parties agree otherwise.

RECOURSE TO ARBITRATION

Article 17

1. The parties may agree in writing at any time to submit their dispute or any part of it to the Swiss Arbitration Centre for arbitration in accordance with the Swiss Rules of International Arbitration. Either party may then initiate arbitration proceedings by submitting a Notice of Arbitration pursuant to Article 3 of the Swiss Rules of International Arbitration. If the parties settle the dispute during the arbitration proceedings, Article

10. Article 76(2) FinSA.

11. Article 76(3) FinSA.

36 of the Swiss Rules of International Arbitration shall apply to any award on agreed terms.

2. The parties may agree in writing at any time to refer their dispute or any part of it to arbitration in accordance with other arbitration rules.

3. FinSA mediation procedures will be closed as soon as an arbitral tribunal has been seised,¹² unless the parties agree otherwise.

MEDIATION DURING THE COURSE OF ARBITRATION PROCEEDINGS

Article 18

1. In all arbitration proceedings pending before the Swiss Arbitration Centre, a party or the arbitrator(s) may suggest that the parties seek to amicably resolve the dispute, or any part of it, by recourse to mediation.

2. If the parties to an arbitration agree to mediation under the Rules, the Secretariat, upon receipt of the Request for Mediation and the Registration Fee, shall proceed with the selection of the ombudsperson pursuant to Section II.

Section VII. Exclusion of Liability

EXCLUSION OF LIABILITY

Article 19

Neither the Swiss Arbitration Centre, nor the Swiss Chambers of Commerce, nor their staff, executives and board members, nor the mediators, arbitrators, members of the Advisory Council, nor any experts appointed by them shall be liable for any act or omission in connection with any mediation conducted under the Rules, except if the act or omission is shown to constitute their own intentional wrongdoing or gross negligence.

Section VIII. Costs

MEDIATION COSTS

Article 20

The costs, fees and expenses of the Swiss Arbitration Centre and the ombudsperson (the “Mediation Costs”) are determined pursuant to the Schedule of Costs (Appendix B) in force on the date the Request for Mediation is submitted to the Secretariat.

APPORTIONMENT OF THE MEDIATION COSTS

Article 21

1. Unless otherwise agreed by the parties, all Mediation Costs shall be borne as prescribed in Appendix B.

2. In the event a case involves several Requesting Parties or several Responding Parties, the Requesting Parties, or as the case may be the Responding Parties, are jointly and severally liable with the other parties of their group for the payment of all the Mediation Costs attributed to them as prescribed in Appendix B.

3. Unless otherwise agreed by the parties, all personal expenses incurred by a party in relation to the mediation (for example its legal fees, hotel, travel, etc.) are borne by that party and are not included in the Mediation Costs.

COSTS AND FEES OF THE SWISS ARBITRATION CENTRE

Article 22

1. The costs and fees of the Swiss Arbitration Centre according to Appendix B include:

- (a) the non-refundable Registration Fee;
- (b) Administrative Costs;
- (c) Certification and Authentication Fees and expenses pursuant to Articles 14(5) and 15(2) and (3), respectively.

2. All costs and fees of the Swiss Arbitration Centre shall be paid to, or deposited with, the Swiss Arbitration Centre as indicated by the Secretariat.

3. If the Registration Fee or the requested Administrative Costs, including their possible increase, are not paid in full and within the specified time limit (if applicable), the mediation shall not proceed. The Secretariat shall instruct the ombudsperson in writing to stay or terminate the mediation.

THE OMBUDSPERSON'S FEES AND EXPENSES

Article 23

1. The parties are responsible for paying the fees and expenses of the ombudsperson. Unless otherwise agreed by the parties and the ombudsperson, the ombudsperson's fees are calculated on the basis of the time spent by the ombudsperson in the mediation including his or her preparation time and the drafting of his or her written assessment of the case, if any.

2. The ombudsperson shall request the parties to pay a Deposit in order to cover, at a minimum, the ombudsperson's initial fees and expenses.

3. At any later time during the mediation, the ombudsperson may request each party to deposit an equal amount as

¹² Article 76(3) FinSA.

advance payment towards the fees and expenses of the ombudsperson for the mediation. The ombudsperson shall inform the Secretariat in writing accordingly. For mediations subject to the FinSA, the advance payment shall be borne by the Financial Service Provider.

4. Any disagreement regarding the ombudsperson's fees and/or expenses shall be submitted to the Secretariat.

DEPOSIT FOR THE OMBUDSPERSON'S FEES AND EXPENSES

Article 24

1. The ombudsperson shall hold the Deposit to be paid by the parties in his or her professional bank account.

2. If the required Deposit is not received in full by the ombudsperson within the specified time limit, the ombudsperson may stay or terminate the mediation and shall promptly inform the Secretariat in writing accordingly.

3. Upon request by the ombudsperson, the Secretariat may hold the Deposit to be paid by the parties in a dedicated bank account.

STATEMENT OF THE OMBUDSPERSON'S FEES AND EXPENSES

Article 25

1. At the end of the mediation, the ombudsperson shall provide an invoice for his or her fees and expenses to the parties, with a copy to the Secretariat.

2. The invoice shall include the details of the expenses incurred in the course of the mediation, the time spent by the ombudsperson, any applicable tax, and all payments received from the parties.

3. Any payment in excess will be reimbursed to the parties in proportion to their respective payments.

Appendix A: Offices and Bank Account of the Secretariat

BANK ACCOUNT

For updated information on our bank account details please visit our website (www.swissarbitration.org) on the following page:

www.swissarbitration.org/centre/mediation/mediation-logistics/

All payments must be made in Swiss francs (CHF) and received net of any banking fees.

ADDRESSES OF THE SECRETARIAT:

Swiss Arbitration Centre

Boulevard du Théâtre 4

1204 Geneva

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Phone: +41 22 819 91 57

E-mail: centre@swissarbitration.org

Swiss Arbitration Centre

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Swiss Arbitration Centre

Corso Elvezia 16 - P.O. Box

6901 Lugano

Switzerland

Phone: +41 91 911 51 11

E-mail: centre@swissarbitration.org

Appendix B: Schedule of Costs of Mediation

(effective as of 1 June 2021 and applicable to all mediations commenced on or after that date)

For possible amendments to this Appendix B, please visit our website: www.swissarbitration.org/centre/mediation.

(All amounts in this Appendix B are in Swiss francs, hereinafter “CHF” and payable net of any bank charges)

1. REGISTRATION FEE

1. A non-refundable Registration Fee of CHF 1,000 is due for each party to the mediation.

2. The Registration Fee shall be paid by the Requesting Party, or by the parties in equal shares if the Request for Mediation is submitted jointly, unless the parties have agreed otherwise.

3. For mediations subject to the FinSA, the Registration Fee due by the Client shall be of CHF 100, and the Registration Fee to be paid by the Financial Service Provider shall be of CHF 1,900.

4. If the number of parties increases during the mediation, additional Registration Fees will be charged accordingly. If the mediation involves more than two parties, for instance for mass claims, the Registration Fee to be paid by each additional Client is CHF 100, and the additional Registration Fee to be paid by the Financial Service Provider is CHF 900 per additional Client. If the joinder of other Financial Service Providers is agreed, a Registration Fee of CHF 1,000 per additional party shall be paid.

5. If the subject matter described in the Request for Mediation is already the subject of a Notice of Arbitration under the Swiss Rules of International Arbitration filed with Swiss Arbitration Centre, the Registration Fee for the mediation shall be divided by two.

2. ADMINISTRATIVE COSTS

1. Administrative Costs fixed by the Secretariat shall be payable to the Swiss Arbitration Centre, in addition to the Registration Fee, as follows. Mediations that are subject to the FinSA are charged half of the below Administrative Costs, to be borne by the Financial Service Provider:

- CHF 2,500, if the amount in dispute is between CHF 50,000 and CHF 2,000,000;
- CHF 8,000, if the amount in dispute is between CHF 2,000,001 and CHF 5,000,000;
- CHF 13,000, if the amount in dispute is between CHF 5,000,001 and CHF 10,000,000;
- CHF 17,000, if the amount in dispute is between CHF 10,000,001 and CHF 20,000,000;

- CHF 20,000, if the amount in dispute is between CHF 20,000,001 and 50,000,000;
- CHF 23,000, if the amount in dispute is above CHF 50,000,000.
- CHF 8,000, if the amount in dispute is not, or cannot, be quantified, unless the Secretariat determines that another amount is appropriate in view of the nature of the dispute and the complexity of the case.

2. If the amount in dispute is quantified or increases during the mediation, the ombudsperson shall inform the Secretariat, which adjusts the Administrative Costs accordingly.

3. In addition to the Administrative Costs computed on the basis of the scale in Section 2.1 of this Appendix B, the following items form part of the Administrative Costs:

- (a) an additional non-refundable fee of CHF 1,000 payable by the parties in equal shares in the event that the parties request the Secretariat to appoint or confirm more than one mediator, or to replace a mediator;
- (b) an annual fee of CHF 2,000 payable by the parties in equal shares in the event of an agreed stay of proceedings or, as the case may be, by the party which requested the stay of proceedings, if a mediation is in abeyance for more than three months.

3. CERTIFICATION AND AUTHENTICATION FEES

1. The party requesting a mediation certificate shall pay a Certification Fee of CHF 500 per certificate and will be invoiced for any costs incurred by the Swiss Arbitration Centre.

2. A party requesting a certified copy of the settlement agreement shall pay a Certification Fee of CHF 300 per certified copy and will be invoiced for any costs incurred by the Swiss Arbitration Centre.

3. The party requesting a certificate of authenticity of the settlement agreement shall pay an Authentication Fee of CHF 1,000 per certificate and will be invoiced for any costs incurred by the Swiss Arbitration Centre.

4. OMBUDSPERSON'S FEES AND EXPENSES

1. For FinSA cases, the ombudsperson will charge fees of CHF 250.- to CHF 500.- per hour, depending on the complexity of the case and the amount in dispute, to be borne exclusively by the Financial Service Provider. The ombudsperson will inform the Financial Service Provider in advance of the fees that he or she intends to charge.

2. If the Financial Service Provider and the ombudsperson cannot agree on the hourly rate to be charged, the Secretariat will decide.

3. For FinSA cases, unless otherwise agreed by the parties, a maximum of 40 hours can be charged.

4. For other cases, the ombudsperson may charge hourly rates and numbers of hours as agreed upon between him or her and the parties at the outset of the procedure or as revised during the procedure.

5. Unless otherwise agreed by the parties and when travels are agreed, the ombudsperson will be entitled to the reimbursement of 1st class train tickets. When a taxi can reasonably be deemed more practicable than public transports, the ombudsperson will be entitled to reimbursement of taxi courses of maximum CHF 50.- each way. Air travel and meeting room rentals may be agreed upon when necessary, upon prior approval of the Secretariat. For FinSA cases, the ombudsperson's expenses will be borne exclusively by the Financial Service Provider.