

## 1 Model Clause for SCC Rules (Stockholm seat)

*This arbitration clause is intended for use where:*

- *The underlying agreement is a 2002 Agreement (as defined below) (see footnotes for suggested amendments for use of the 1992 Agreement (as defined below))*
- *The institutional rules are the SCC Rules*
- *The seat of the arbitration is Stockholm*
- *The underlying agreement is governed by English or New York law*

*Where not all of the above conditions are met, this clause may require adaption.*

The following clause is designed for use with the ISDA 2002 Master Agreement (the “2002 Agreement”). Section 13 of the ISDA 1992 Master Agreement (the “1992 Agreement”) is in the same terms as Section 13 of the 2002 Agreement, insofar as is material to the amendments made by this model clause. However, Section 14 of the 1992 Agreement does not contain the term “Proceedings”; please note, therefore, the alternative suggested wording for insertion in Part 5 of the Schedule where using the 1992 Agreement.

**The following provisions should be included in Part 4 of the Schedule.** The Governing Law provision provides for English or New York governing law (a choice of one or the other should be made), save that the arbitration clause is governed by Swedish law.<sup>1</sup> The next clause replaces the Jurisdiction clause (Section 13(b)) of the Master Agreement. In sub-clause (iii), include one of Option 1, 2 or 3. The following provisions amend the Process Agent and Waiver of Immunity clauses (Sections 13(c) and (d)) to reflect the choice of arbitration, rather than court jurisdiction.

( ) **Governing Law.** This Agreement (except Section 13(b) (Arbitration), which shall be governed by Swedish law) and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with [English law/New York law (excluding its conflict of laws principles)].<sup>2</sup>

( ) Section 13(b) shall be deleted in its entirety and replaced with the following:

[“(b) **Arbitration**

- (i) Any dispute, claim, difference or controversy arising out of, relating to or having any connection with this Agreement, including any dispute as to its existence, validity, interpretation, performance, breach or termination or the consequences of its nullity and any dispute relating to any non-contractual

<sup>1</sup> Section 48 of the Swedish Arbitration Act (SFS 1999:116) provides that where the parties have not agreed upon the law governing the *arbitration agreement* (*i.e.*, the arbitration clause) the arbitration agreement shall be governed by the law of the country in which the proceedings have taken place or shall take place (*i.e.*, the law of the country where the arbitration has its seat). The law governing the arbitration clause is of relevance as regards *inter alia* questions of *arbitrability* and questions of formation with respect to the arbitration agreement (clause).

<sup>2</sup> Amend as necessary.

obligations arising out of or in connection with it (a “Dispute”), shall be referred to and finally resolved by arbitration.

(ii) The arbitration shall be conducted in accordance with the Arbitration Rules (“The Rules”) of the Arbitration Institute of the Stockholm Chamber of Commerce (the “SCC”). Capitalised terms used in this Section which are not otherwise defined in this Agreement have the meaning given to them in the Rules.

(iii) [**Option 1:** The arbitral tribunal shall consist of one arbitrator, who shall be appointed in accordance with the Rules.<sup>3]</sup>

[**Option 2:** The arbitral tribunal shall consist of three arbitrators. The members of the arbitral tribunal shall be appointed in accordance with the Rules.<sup>4]</sup>

[**Option 3:** The arbitral tribunal shall consist of three arbitrators. The members of the arbitral tribunal shall be appointed in accordance with the Rules, save that the chairperson of the arbitral tribunal shall be appointed by the two co-arbitrators. If no such appointment is made within 30 days of appointment of the second co-arbitrator, the chairperson shall be appointed in accordance with the Rules.<sup>5]</sup>

(iv) The seat, or legal place of arbitration, shall be Stockholm.

(v) The language used in the arbitral proceedings shall be English.<sup>6</sup>

***The parties may consider to add a Confidentiality provision to any of the above options:***

Confidentiality provision

Each party undertakes to keep confidential (a) all orders and awards in the arbitration, together with (b) all materials submitted in the arbitration

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<sup>3</sup> Article 13(2) of the SCC Rules provides that where the arbitral tribunal is to consist of a sole arbitrator, the parties shall be given 10 days within which to jointly appoint the arbitrator. If the parties fail to make the appointment within this time period, the arbitrator shall be appointed by the Board of the SCC.

<sup>4</sup> Article 13(3) of the SCC Rules provides that where the arbitral tribunal is to consist of more than one arbitrator, each party shall appoint, in the Request for Arbitration and the Answer respectively, an equal number of arbitrators and the chairperson of the arbitral tribunal shall be appointed by the Board of the SCC. Where a party fails to appoint arbitrator(s) within the stipulated time period, the Board of the SCC shall make the appointment.

<sup>5</sup> The purpose of this provision is to exercise the parties’ right under Article 13(1) of the SCC Rules to agree on a different procedure for the appointment of the chairperson and give the two co-arbitrators (appointed by the parties) the right to appoint the chairperson of the tribunal. If they fail to make an appointment within the time period agreed by the parties (30 days), then the chairperson will be appointed by the Board of the SCC under Article 13(1) and (3) of the SCC Rules.

<sup>6</sup> Article 21(1) of the SCC Rules provides that unless agreed upon by the parties, the arbitral tribunal shall determine the language(s) of the arbitration having due regard to all relevant circumstances and shall give the parties an opportunity to submit comments.

proceedings and created for the purpose of the arbitration and (c) all other documents submitted by the other party in the arbitration proceedings unless such documents are already in the public domain. Exceptions to the foregoing shall only apply to the extent that disclosure may be required of a party (i) due to mandatory law, an order of a

competent court or public authority, or (ii) to protect, fulfil or pursue a legitimate legal right or obligation or (iii) to enforce or challenge an award.

( ) Section 13(c) of the Agreement is hereby amended by deleting the word “Proceedings” in the first sentence of that Section and replacing it with the words “suit, action or proceedings before the Swedish courts relating to the arbitration clause set out in Section 13(b) above or any arbitration proceedings contemplated thereby or any arbitral award obtained pursuant to such arbitration proceedings”<sup>7</sup>.

( ) Section 13(d) of the Agreement is hereby amended:

(a) after the words “jurisdiction of any court” in the third line thereof, by adding the words “or arbitral tribunal”;

(b) after the word “judgment” in Sub-Sections (iv) and (v) in the fifth line thereof, by adding the words “or arbitral award”; and

(c) by deleting the words “Proceedings in the courts of any jurisdiction” in the sixth line thereof and replacing them with “suit, action or proceedings relating to any Dispute in the courts of any jurisdiction or before any arbitral tribunal (“Proceedings”)”.

**The following provisions should be included in Part 5 of the Schedule.** These provisions make necessary amendments to other provisions in the Master Agreement to make them reflect the choice of arbitration.

(a) Section 8(b) shall be amended so that each reference in it to “judgement or order” shall be changed to refer to “judgment, arbitral award or order” and the words “or arbitral tribunal” shall be added after the words “another court”.

(b) Section 8(c) shall be amended by adding the words “or arbitral award” after the word “judgment”.

(c) Section 9(h) shall be amended by adding the words “or arbitral award” after the words “before as well as after judgment” each time they appear.<sup>8</sup>

(d) Section 14 of the Agreement shall be amended by:

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<sup>7</sup> Note that in the event that it is necessary to seek interim measures from a court before a tribunal is appointed (or otherwise), it is useful if a process agent has already been appointed. The process agent should be a physical person (*i.e.* not a legal entity) in Sweden. However, a process agent is not necessary for the purpose of the arbitration proceedings themselves.

<sup>8</sup> If using the 1992 Agreement, use the following provision instead of (c): (c) Section 2(e) shall be amended by adding the words “or arbitral award” after the words “before as well as after judgment”.

- (i) adding the following definition of “Dispute”: “Dispute” has the meaning specified in Section 13(b)(i).”; and
- (ii) in the definition of “Proceedings”, deleting the words “Section 13(b)” and replacing them with the words “Section 13(d)”.<sup>9</sup>

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<sup>9</sup> If using the 1992 Agreement, use the following provision instead of (d)(ii): (d)(ii) adding the following definition of “Proceedings”: “Proceedings” has the meaning specified in Section 13(d).