

**MEDIATION AGREEMENT**

**THE PARTIES**

(Party A)	
Name	
Address	
Main contact person for Party A	
E-Mail Address for Mediation	
Telephone number	
Representative (if applicable)	
E-Mail Address for Mediation	
Telephone number	
(Party B)	
Name	
Address	
Main contact person for Party B	
E-Mail Address for Mediation exchange	
Telephone number	
Representative (if applicable)	
E-Mail Address for Mediation	
Telephone number	

(jointly 'the Parties')

**and the MEDIATOR**

Name of the Mediator	...
- E-Mail Address for Mediation exchange	...
- Telephone number	...

**Agree to proceed to mediation according to the following terms:**

**Clause 1 - EUIPO Mediation Procedure**

- 1 Both Parties are currently in dispute in appeal case(s) R [insert any other proceedings and disputes to be resolved by mediation]

they wish to settle ('the Dispute').

2. The Parties will attempt to settle the Dispute by mediation ('the Mediation'). The present agreement recognizes that the Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters, the European Code of Conduct for Mediators and EUIPO's provisions on mediation procedures, namely Decision No 2013-3 of the Presidium of the Boards of Appeal of 5 July 2013 on the amicable settlement of disputes ("Decision on Mediation") and the "Rules on Mediation" adopted by the Presidium, are all incorporated into this agreement and shall determine the conduct of the Mediation.

**Clause 2 – Participants**

- Each Party shall cooperate in good faith with the Mediator to perform all necessary and useful steps in order to ensure smooth, expedient and constructive mediation talks with a view to reaching an amicable settlement.
- At least one attendee on behalf of each Party will have full authority to settle at the Mediation.
- All Parties undertake that all persons that may need to be consulted during the Mediation are present or available on the Mediation date(s).
- By signing this agreement each Party representative is deemed to be agreeing to the provisions of this agreement on behalf of the Party he/she represents and all other persons present on that Party's behalf at the Mediation.

**Clause 3 - Exchange of information**

- Each Party shall indicate any proceedings it would like to settle during the Mediation.
- Each Party must, in electronic form, prepare for the Mediator:
  - a concise summary ('the Case Summary') of the Dispute, the maximum number of pages of each party's Case Summary will be three sides of A4 (Arial, 12pt);
  - all the documents to which the Case Summary refers and any others to which it may wish to refer in the Mediation ('the Documents'), not to exceed in total 12 sides of A4 (Arial, 12pt where specifically written for the purpose of the Mediation), not including the contested decision.

**CONFIDENTIAL**

3. Each Party will send to the Mediator no later than \_\_\_\_\_ hours on \_\_\_\_\_ the Case Summary and the Documents. The summary and the documents are confidential and will not be communicated to the other party, unless the Parties decide otherwise and expressly authorise the Mediator in that regard.
4. In addition, each Party may send to the Mediator and/or bring to the Mediation further documentation which it wishes to disclose in confidence to the Mediator but not to any other Party, clearly stating in writing that such documentation is confidential and for the Mediator's eyes only.
5. The Mediator shall communicate with the Parties exclusively using the contact details enumerated above. The Parties shall not communicate any mediation-related documents through the general fax number of the EUIPO or similar and shall always use the specially dedicated email address of the Mediator.

#### **Clause 4 - The Mediator**

1. The Mediator has been chosen by free agreement between the Parties. Both Parties accept the Mediator as being impartial and neutral. He/she assists the Parties in reaching a voluntary and mutually satisfactory settlement and guides the mediation process. He/she has no authority to settle the case.
2. The Mediator is authorised, after consultation with the Parties where appropriate and in accordance with Article 3 of the Decision on Mediation and Rule 6 of the Rules on Mediation, to perform following activities:
  - a. confirm receipt of any document, including the present agreement,
  - b. attend any meetings with any or all of the Parties preceding the Mediation, either in person at the EUIPO's premises, by telephone, by video conferences or other means, if requested or if the Mediator decides this is appropriate and the Parties agree;
  - c. read before the Mediation the appealed decision, the Case Summaries (Clause 5(2)(a)) and all the Documents (Clause 5(2)(b)) sent to him/her for the purpose of the present mediation;
  - d. chair and determine the Mediation process;
  - e. abide by the terms of the Decision on Mediation, the Rules on Mediation and the Mediation Agreement.
3. The Parties are aware that Mediator will not act for any of the Parties individually in connection with the Dispute in any capacity either during the currency of this agreement or at any time thereafter. The Parties accept that, in relation to the Dispute, the Mediator is not an agent of, nor acting in any capacity for, any of the Parties .
4. The necessary arrangements for the Mediation will be made by the Mediator including, as necessary:
  - a. drawing up the present Mediation Agreement;
  - b. organizing a suitable venue and dates;
  - c. organizing exchange of the Case Summaries and Documents;
  - d. meeting with any or all of the Parties, either together or separately, to discuss any matters or concerns relating to the Mediation (as specified in the preceding paragraph); and
  - e. general administration in relation to the Mediation process.

#### **Clause 5 - Place and time, language(s)**

1. The Mediation meeting will take place  
remotely [specify the medium]  
at the EUIPO's premises in Alicante / Brussels

on / at a date to be defined by the Mediator in agreement with the Parties.

2. Unless otherwise agreed by the Parties, the Mediation meeting shall be conducted in the language of the appeal proceedings, i.e. in .

### **Clause 6 - Confidentiality**

1. The Parties agree to keep confidential any information obtained during and in connection with the mediation. This includes not disclosing such information in any judicial, arbitration or other proceedings unless there is an overriding legal obligation to do so. Information includes the entire mediation process, the outcome of the mediation and any opinion, suggestion, concession or indication expressed.
2. Confidentiality as set out in para. 1 above does not apply to any documents, statements or communications which are submitted by the other Party/ies or by the Mediator/s in the proceedings which can be obtained independently by the Party seeking to use them in a judicial, arbitration or similar proceedings.
3. The Parties undertake not to call the Mediator/s as a witness, nor require him/them to produce in evidence any records or notes relating to the mediation, in any litigation, arbitration or other formal process arising from or in connection with the dispute and the mediation.
4. All information is agreed to be without prejudice to any Party's legal position.
5. No recording or transcript of the Mediation will be made and the Parties understand that the Mediator will .destroy or delete materials obtained for the purpose of mediation after termination of the Mediation.
6. The Parties shall be responsible for ensuring that all of their colleagues, representatives and advisors are bound by appropriate undertakings of confidentiality and shall take appropriate measures to limit the dissemination of any information relating to the mediation.
7. As a pre-condition to attendance of any person at the Mediation, that person must adhere to the Confidentiality Agreement (Schedule 1).

### **Clause 7 - Settlement agreement**

Any settlement reached in the Mediation will not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties.

### **Clause 8 - Termination of the Mediation**

1. The Mediation shall terminate
  - a. by a settlement agreement signed by the parties, or
  - b. the opting out of one of the parties, or
  - c. by decision of the mediator if, despite undertaking efforts to reach an amicable settlement, mediation is unlikely to succeed, or
  - d. one month after the last date fixed for the Mediation meeting, 'unless jointly extended by the Parties'.
2. Note of the date on which the mediation terminates in accordance with Article 2(2) of the Decision on Mediation and Rule 8(5) of the Rules on Mediation will be taken by the Mediator and communicated to the parties.
3. The Parties authorize the Mediator to adjourn the Mediation in order to allow them to consider specific proposals, get further information or for any other reason, which the Mediator considers helpful in furthering the mediation process. The Mediation will then reconvene with the agreement of the parties.

**Clause 9 - Exclusion of Liability**

1. Both Parties are aware that EUIPO proceedings and the Mediation process are separate. The Parties are responsible for observing any time limits in any proceedings which they may want to settle directly or indirectly in the present Mediation. They declare that they are aware that the regulatory framework does not allow extending or suspending certain time limits, in particular the time limit to file an opposition, an appeal or statement of grounds for the appeal. Whereas the Parties may request the suspension of appeal proceedings before the Boards of Appeal by submitting a joint request in that regard, they must seek the suspension of any other proceedings independently and directly with the appropriate authority. The EUIPO shall not be liable for any loss of rights due to the parties missing any time limits.
2. The Mediator shall not be liable to any Party for the outcome of the mediation.
3. The Mediator shall not be liable for the legality and enforceability of the settlement agreement.

**Clause 10 - Costs**

1. Each Party bears its own costs related to mediation, such as travelling costs, representative's fees, unless otherwise agreed upon. In no case can the EUIPO be made liable for any costs.
2. Where Mediation takes place in Brussels, each Party pays half of the administrative charge payable to the EUIPO, that is EUR 375 each, unless otherwise agreed upon. That charge must be paid in full before the Mediation can take place.
3. The costs are separate from the EUIPO proceedings or any other subsequent court proceedings and may not, in the event that the Dispute is not settled by the Mediation, be recovered from the other Party unless otherwise agreed.

Party A

Party B

Signature

Signature

Name

Name

Signature Date

Signature Date

Mediator(s)

Signature

Name

Signature Date



**CONFIDENTIAL**

3. The Parties undertake not to call the Mediator/s as a witness, nor require him/them to produce in evidence any records or notes relating to the mediation, in any litigation, arbitration or other formal process arising from or in connection with the dispute and the mediation..
4. All information is agreed to be without prejudice to any Party's legal position.
5. No recording or transcript of the Mediation will be made and the Parties understand that the mediator will destroy or delete materials obtained for the purpose of mediation after termination of the Mediation.
7. The Parties shall be responsible for ensuring that all of their colleagues, representatives and advisors are bound by appropriate undertakings of confidentiality and shall take appropriate measures to limit the dissemination of any information relating to the mediation.
8. As a pre-condition to attendance of any person at the Mediation, that person must adhere to the Confidentiality Agreement (Schedule 1).

## **SCHEDULE 2 – DATA PROTECTION STATEMENT ON PROCESSING PERSONAL DATA IN MEDIATION AND OTHER ALTERNATIVE DISPUTE RESOLUTION (ADR) SERVICES PROVIDED BY THE BOARDS OF APPEAL**

Protecting your privacy is of the utmost importance to the European Union Intellectual Property Office ('EUIPO' or 'us' or 'the controller'). The Office is committed to respecting and protecting your personal data and ensuring your rights as a data subject. All data of a personal nature, namely data that can identify you directly or indirectly will be handled fairly, lawfully and with due care.

This processing operation is subject to Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC.

The information in this communication is given pursuant to Articles 15 and 16 of Regulation (EU) 2018/1725.

### **1. What is the nature and purpose of the processing operation?**

The processing operation is necessary to ensure that the Boards of Appeal (BoA) can offer efficient and effective mediation and other ADR services, such as conciliation, assisted negotiation and expert determination.

These services are provided by a pool of mediators/ADR case handlers appointed by BoA, with the administrative support of the BoA Alternative Dispute Resolution Service (ADRS).

The BoA provides these services to parties in proceedings before the Office, in order to resolve disputes in *inter partes* cases. All these procedures focus on the parties' interests, are flexible and based on confidentiality. All documents submitted within the actual mediation proceedings are only accessible to the mediator/ADR case handler and the respective parties. All mediation/ADR related correspondence (incoming and outgoing) is marked as confidential. Parties are asked to communicate with the mediators/ADR case handlers during the proceedings via an email address that has been specifically created for these purposes. In case of an appeal to the Court, mediation/ADR related documents (requests for mediation/ADR, mediation/ADR proposals by the Rapporteur, suspension letters sent due to mediation/ADR, etc.) are not included in the file which will be sent to the Court.

A list of possible mediators/ADR case handlers, together with their CVs, is published on the Office's website. At the end of the mediation/ADR proceedings, a link to a satisfaction survey (using Limesurvey or a similar web-based tool) is sent to the parties. In this regard, please consult the [Limesurvey privacy statement](#).

The purpose of the mediation/ADR services is to help parties involved in an IP dispute to reach a voluntary agreement that is mutually satisfactory.

For more detailed information on the BoA's mediation/ADR services see <https://euipo.europa.eu/ohimportal/en/mediation>.

### **2. What personal data do we process?**

The categories/types of personal data processed are as follows:

- (a) Personal data regarding mediators/ADR case handlers (in particular their CVs, published on the Office's website):
- name, surname;
  - photo;
  - work contact details;
  - information on education and professional background.



## CONFIDENTIAL

- (b) Contact data and electronic communication initiating the mediation process (proposal of mediators, organisation of meeting, etc.) stored by the ADRS regarding the parties who have requested mediation or other ADR services and their employees and/or representatives, which may include:
- names and addresses of contact persons, job positions, phone and fax numbers and email addresses.
- (c) Personal data contained in documents submitted within the mediation/ADR proceedings and stored by the mediator/ADR case handler in a separate file.
- (d) Satisfaction surveys:
- The parties send the survey to BoA through a web-based tool, such as Limesurvey, which does not in principle allow BoA to collect any personal data or establish the identity of the respondent. The surveys are stored by BoA without any information which could allow the identification of the respondents. The surveys are stored by BoA without any information which could allow the identification of the respondents. In this regard, please consult the [Limesurvey privacy statement](#).

### 3. Who is responsible for processing the data?

The processing of the personal data is carried out under the responsibility of the President of the BoA in his or her function as mediation coordinator, acting as the delegated EUIPO data controller.

Personal data is processed by BoA staff, in particular the ADRS and mediators/ADR case handlers.

### 4. Who has access to your personal data and to whom is it disclosed?

Personal data is disclosed to the following recipients:

Personal data regarding mediators/ADR case handlers (in particular their CVs):

- This information is publicly available on the Office's website.

Contact data regarding the parties in the mediation/ADR:

- These are available to both the ADRS and the mediators/ADR case handlers in the course of the mediation/ADR proceedings.

Discussions and negotiations conducted within the framework of the mediation/ADR:

- These are confidential and only available to the persons involved in the mediation (the mediators/ADR case handlers, the ADRS providing administrative support, as well as the parties and their representatives).

Please note that discussions and negotiations may also be conducted via online meeting platforms (such as MS Teams or Zoom), in which case the participants will previously receive the corresponding data protection/privacy statement for these tools, explaining how the platforms in question process their data. In this regard, please consult the [Zoom privacy statement](#) or [MS Teams privacy statement](#).

### 5. How do we protect and safeguard your information?

We take appropriate technical and organisational measures to safeguard and protect your personal data from accidental or unlawful destruction, loss, alteration and unauthorised disclosure or access.

All electronic data are stored in secure IT applications according to the security standards of the Office as well as in specific electronic folders accessible only to the authorised recipients. Any documents exchanged during the mediation process are only accessible to appointed mediator.

**6. How can you access your personal information and, if necessary, correct it? How can you receive your data? How can you request that your personal data be erased, or restrict or object to its processing?**

You have the right to access, rectify, erase and receive your personal data, as well as restrict its processing or object to the same, as provided in Articles 17 to 24 of Regulation (EU) 2018/1725.

If you would like to exercise any of these rights, please send a written query explicitly stating your request to the delegated data controller, the President of the BoA.

Your request will be answered without undue delay, and in any event within 1 month of receipt of the request. However, according to Article 14(3) of Regulation (EU) 2018/1725, this period may be extended by up to 2 months where necessary, taking into account the complexity and number of requests. The Office will inform you of any such extension within 1 month of receipt of the request, together with the reasons for the delay.

**7. What is the legal basis for processing your data?**

Regarding the ADRS services, personal data is processed in accordance with Article 5(1)(a) of the Regulation (EU) 2018/1725, which states that 'processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the Union institution or body'; the relevant tasks of EUIPO are foreseen in:

- Article 151(3) of Regulation (EU) 2017/1001 (EUTMR), which states that 'The Office may provide voluntary mediation services for the purpose of assisting parties in reaching a friendly settlement;
- Article 170 in conjunction with Recital 35 of Regulation (EU) 2017/1001 (EUTMR), which provide for the establishment of a Mediation Centre by the Office for the purposes of Article 151(3) of the same Regulation;
- Article 31(5) of Commission Regulation (EC) No 2245/02 of 21 October 2002 (as amended by Commission Regulation (EC) No 876/2007 of 24 July 2007) implementing the Council Regulation (EC) No 6/2002 on Community designs (as amended by Council Regulation No 1891/2006 of 18 December 2006), which states that 'The Office may call upon the parties to make a friendly settlement;
- Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters.

Regarding the satisfaction surveys, personal data is processed in accordance with Article 5(1)(d) of Regulation (EU) 2018/1725, which states that 'the data subject has given consent to the processing of his or her personal data for one or more specific purposes'. You can withdraw your consent at any time by sending an email at: [BoA-Cabinet-Secretariat@euipo.europa.eu](mailto:BoA-Cabinet-Secretariat@euipo.europa.eu)

**8. How long can data be kept?**

Personal data will be kept only for the time needed to achieve the purpose(s) for which it is processed.

- a) Personal data regarding mediators/ADR case handlers are deleted from the website when the respective data subject is no longer part of the pool of appointed mediators/ADR case handlers.
- b) Contact data and electronic communication initiating the mediation process (proposal of mediators, organisation of meeting, etc.) and the mediation/ADR agreement (an electronic version of which the mediator will send to the ADRS) are kept by the ADRS for an unlimited time in a specific electronic folder to which only ADRS relevant staff will have access. The mediation/ADR agreement is the document signed by the parties and/or their representatives and the mediator/ADR case handler which launches officially the mediation/ADR process. The mediation/ADR agreement need to be kept in case of future challenges as to the legal basis of the mediation/ADR process.
- c) Documents submitted in mediation/ADR proceedings, along with any other materials obtained for the purpose of mediation/ADR, including the agreement on the outcome when applicable, will be deleted by the mediator/ADR case handler immediately after termination of the mediation/ADR process.

**CONFIDENTIAL**

- d) Satisfaction surveys are stored for as long as they are relevant to serve the purposes of illustrating findings of the surveys for a maximum of 5 years.

## **9. Contact information**

Should you have any queries on the processing of your personal data, please address them to the data controller, the President of the BoA, at: [BoA-Cabinet-Secretariat@euipo.europa.eu](mailto:BoA-Cabinet-Secretariat@euipo.europa.eu)

You may also consult the EUIPO data protection officer (DPO) at: [DataProtectionOfficer@euipo.europa.eu](mailto:DataProtectionOfficer@euipo.europa.eu)

## **Forms of recourse**

Complaints, in cases where the conflict is not resolved by the data controller and/or DPO, can be addressed at any time to the European Data Protection Supervisor at: [edps@edps.europa.eu](mailto:edps@edps.europa.eu)