

APPENDIX 5.4

MODEL ADR/ESCALATION CLAUSES

CEDR Combined Mediation/Arbitration Clause

“If any dispute arises in connection with this agreement, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. The mediation will take place in [city/country of neither/none of the parties] and the language of the mediation will be []. The Mediation Agreement referred to in the Model Procedure shall be governed by, and construed and take effect in accordance with the substantive law of [England and Wales]. The courts of [England] shall have exclusive jurisdiction to settle any claim, dispute or matter of difference which may arise out of, or in connection with, the mediation. If the dispute is not settled by mediation within [] days of commencement of the mediation or within such further period as the parties may agree in writing, the dispute shall be referred to and finally resolved by arbitration. CEDR shall be the appointing body and administer the arbitration. CEDR shall apply the UNCITRAL rules in force at the time arbitration is initiated. In any arbitration commenced pursuant to this clause, the number of arbitrators shall be [1–3] and the seat or legal place of arbitration shall be [London, England].”

DIS Conflict Management

“With respect to all disputes arising out of or in connection with the contract (... description of the contract ...) and for whose resolution the parties have not yet agreed on a dispute resolution procedure, conflict management proceedings pursuant to the Conflict Management Rules of the German Institution of Arbitration (DIS) (DIS-KMO) shall be conducted with the purpose of selecting a dispute resolution procedure.”

World Intellectual Property Organisation Arbitration and Mediation Centre (WIPO)

“Any dispute, controversy or claim arising under, out of or relating to this contract and any subsequent amendments of this contract, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be submitted to mediation in accordance with the WIPO Mediation Rules. The place of mediation shall be [specify place]. The language to be used in the mediation shall be [specify language].”

"If, and to the extent that, any such dispute, controversy or claim has not been settled pursuant to the mediation within [60][90] days of the commencement of the mediation, it shall, upon the filing of a Request for Arbitration by either party, be referred to and finally determined by arbitration in accordance with the WIPO [Expedited] Arbitration Rules. Alternatively, if, before the expiration of the said period of [60][90] days, either party fails to participate or to continue to participate in the mediation, the dispute, controversy or claim shall, upon the filing of a Request for Arbitration by the other party, be referred to and finally determined by arbitration in accordance with the WIPO [Expedited] Arbitration Rules. [The arbitral tribunal shall consist of [a sole arbitrator][three arbitrators].]¹ The place of arbitration shall be [specify place]. The language to be used in the arbitral proceedings shall be [specify language]. The dispute, controversy or claim referred to arbitration shall be decided in accordance with the law of [specify jurisdiction]."

UNCITRAL Conciliation Clause

"Where, in the event of a dispute arising out of or relating to this contract, the parties wish to seek an amicable settlement of that dispute by conciliation, the conciliation shall take place in accordance with the UNCITRAL Conciliation Rules as at present in force."

ICSID Model Clause for Conciliation

"The [Government]/[name of constituent subdivision or agency] of [name of Contracting State] (hereinafter the 'Host State') and name of investor (hereinafter the 'Investor') hereby consent to submit to the International Centre for Settlement of Investment Disputes (hereinafter the 'Centre') any dispute arising out of or relating to this agreement for settlement by conciliation pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (hereinafter the 'Convention')."

¹ The WIPO Expedited Arbitration Rules provide that the arbitral tribunal shall consist of a sole arbitrator.