

# Mediation Rules EQUANIM

## **Article 1 – Preliminary provisions**

Mediation, whether judicial or conventional, is a structured process based on the responsibility and autonomy of the participants who, voluntarily, with the help of a third party, the Mediator, who is neutral, impartial, independent and without decision-making power, promotes through confidential interviews the establishment and/or re-establishment of links, the prevention and/or resolution of conflicts.

Mediation can be used in the following contexts:

- conventional, at the request of one or more persons concerned, acting individually or jointly,
- legal proceedings, at the request of the judge, lawyers or persons concerned.

All of the above-mentioned Mediation services will hereinafter be referred to as the Mediation or together the Mediations to which these Mediation Rules apply (hereinafter "*the Rules*").

EQUANIM is a private company offering a mediation platform dedicated to the amicable resolution of complex disputes with foreign elements, favouring consensualism, from the choice of the mediator to the solutions found, the speed of the mediation process and the support of the parties and the mediators working within it.

## **Article 2 – Scope of application - referral to EQUANIM**

The Rules apply when legal and/or natural persons (hereinafter the "*Parties*") have agreed to submit their present or future dispute(s) to Mediation under the aegis of EQUANIM or one of the Mediators linked to EQUANIM by a Mediator agreement.

Mediation can be implemented under the aegis of EQUANIM:

- where the parties to a dispute have so agreed;
- following a judicial, administrative or arbitral decision;
- when one or more parties to a dispute have transmitted a request for mediation to EQUANIM and the other party or parties to the dispute have accepted it.

Any mediation entrusted to EQUANIM is subject to these Rules and entails the acceptance of all the Parties.

The Mediator(s) appointed under these Rules are all chosen from the list of EQUANIM Mediators, who are bound to EQUANIM by a mediation agreement.



EQUANIM favours co-mediation by two Mediators.

If the parties to a dispute wish to agree to waive or modify the application of any provision of the Rules, they may do so only with the prior agreement of EQUANIM. Any agreement to waive or modify the application of the Rules must also be submitted to the approval of the Mediator whose appointment has already been accepted by the Parties to the Mediation.

EQUANIM SAS has sole authority to administer any Mediation subject to the Rules.

### **Article 3 – Request for mediation**

#### Article 3-1 - Request for mediation with the prior agreement of all parties to the dispute

Where the Parties have agreed to submit the settlement of their dispute to the Rules, one or more of them shall submit to EQUANIM a written request for mediation ("*the Request for Mediation*") comprising:

- a) The names, addresses, telephone numbers, email addresses and other contact details of the Parties, the identity of the persons duly authorised to represent each of them in the envisaged Mediation and, where appropriate, the names, addresses, telephone numbers, email addresses and other contact details of their lawyer(s);
- b) A copy of any document or extract from a document showing the consent of the Parties, undertaken by duly authorised persons, to submit the settlement of their dispute to the Rules and, where applicable, their agreement on the identity of one or more Mediators bound by contract to EQUANIM and on the arrangements for holding the Mediation (language, place, time frame, etc.);
- c) A summary description of the dispute and the positions of each of the Parties;
- d) an estimate of the value of what is at stake in the dispute;
- e) All documents relating to completed or pending judicial or administrative proceedings relating to the subject matter of the dispute;

EQUANIM shall acknowledge receipt of the Request for Mediation in writing and shall inform the Party or Parties making the request of the deadline before which EQUANIM shall send them a Mediation offer ("*Mediation Offer*").

#### Article 3-2 - Request for mediation in the absence of prior agreement of all parties to the dispute

In the absence of prior agreement by the Parties to submit their dispute to the Rules, any Party wishing to propose to another Party to submit their dispute to the Rules may do so by sending EQUANIM a Request for Mediation containing the information required in Article 3-1, excluding (b).

EQUANIM shall acknowledge receipt of the Request for Mediation in writing and inform the Party or Parties making the request of the list of parties that EQUANIM shall notify of the existence of said request.



EQUANIM shall promptly inform all other parties to the dispute of the existence of the Request for Mediation. They shall have a time limit previously set by EQUANIM to accept or refuse the principle of a Mediation subject to the Rules.

If all parties agree in principle to submit their dispute to the Rules, EQUANIM shall inform them in writing of the deadline before which EQUANIM shall send them a Mediation Offer.

When the Parties fail to reach an agreement in principle to submit their dispute to the Rules within the time limit set, EQUANIM shall inform all Parties in writing of the lack of agreement on the referral and close the file.

#### **Article 4 - Mediation Offer**

EQUANIM shall send the Parties a Mediation Offer including:

- one or more proposals of persons, with whom it is bound by a mediator agreement, who could act as mediator;
- The language of the Mediation;
- The process, initial elements of the timetable and the stages of the mediation process;
- The maximum duration of the Mediation, which may be extended if necessary;
- Where applicable, the duration of the mediation meetings;
- The possibility of exchanging documents;
- One or more proposals for the venue of the Mediation, which may also include a proposal for a Mediation to be held solely by dematerialised means;
- A logistical proposal including the possibility of using tools that allow remote meetings to be held;
- If applicable and necessary, the identity of one or more experts who could assist the appointed Mediator in his/her mission;
- A confidentiality undertaking to be returned dated and signed by a duly authorised person for each of the Parties;
- A provisional proposal of the costs and fees relating to the Mediation and, where applicable, the amount to be paid to EQUANIM as a provision.

Within the time limit indicated in the Mediation Offer, each Party shall inform EQUANIM if it consents to the Mediation Offer, validate, if applicable, the multiple choices contained in the Mediation Offer and in particular the identity of the Mediator and the use of one or more experts, return the confidentiality undertaking transmitted and, if applicable, pay EQUANIM the amount of the provision provided for.



Failing this, EQUANIM shall inform all Parties in writing of the lack of agreement on the Mediation Offer and close the file.

The Mediation can only validly start once the Mediation Offer has been accepted by the Parties.

### **Article 5 – place and language of the Mediation**

EQUANIM makes proposals for the venue of any meeting to be held in the physical presence of the Mediator and the Parties. These proposals must be agreed upon by the Parties and, where appropriate, by the Mediator whose appointment has already been accepted by the Parties.

EQUANIM proposes the language(s) in which the Mediation will be conducted. These proposals must be agreed upon by the Parties and, where appropriate, by the Mediator whose appointment has already been accepted by the Parties.

The Parties definitively agree on the choice of the place(s) and language(s) of Mediation when they accept the Mediation Offer.

### **Article 6 – Appointment of the Mediator**

EQUANIM proposes one or more Mediators to the Parties. These proposals must be agreed upon by the Parties and, where appropriate, by the Mediator whose appointment has already been accepted by the Parties.

The Parties definitively agree on the choice of the Mediator(s) when they accept the Mediation Offer.

### **Article 7 – Missions and obligations of the Mediator**

#### **Article 7-1 – Respect for the law and for people**

The Mediator acts within the framework of the law and respect for people.

The Mediator must maintain his/her position as a third party and constantly check that the ethical conditions and professional standards, particularly those set by EQUANIM, are respected throughout the Mediation. In the event of difficulties, the Mediator may always - subject to the agreement of the Parties to the Mediation and in compliance with confidentiality obligations - refer the matter to the EQUANIM Scientific Council and, after consultation, advise on the follow-up to be given to the Mediation.

#### **Article 7-2 – Independence**

The Mediator must be totally independent of each of the Parties to the Mediation and undertakes to be neutral in that the outcome of the dispute or disagreement submitted to him/her for Mediation may in no way affect his/her interests apart from the fee for his/her Mediation services.



The Mediator must in all circumstances be detached from any pressure from within and/or outside the Mediation. Even when in a subordinate and/or institutional relationship, the Mediator undertakes, in particular, to refuse, suspend or interrupt the Mediation whenever the conditions of this independence are no longer met and, in the first instance, to refer the matter to EQUANIM in the event of difficulties.

The Mediator must disclose to EQUANIM and to the Parties to the Mediation as soon as they appear, all circumstances that are likely to affect his/her independence or lead to a conflict of interest or that are likely to be considered as such with regard to the Parties to the Mediation and must refuse, suspend or interrupt the Mediation whenever the conditions of his/her independence are not met and refer the matter to EQUANIM when such circumstances arise.

These circumstances include:

1. any financial or other interest, direct or indirect, in the outcome of the Mediation, or
2. any previous private or professional relationship with one of the parties, or
3. the fact that the Mediator, or any company, administration, local authority, public or private legal entity or grouping of any kind to which he or she is linked, has acted in a capacity other than that of mediator for one of the parties.

When circumstance 1. arises, the Mediator cannot continue his/her mission.

When circumstances 2. or 3. arise, the Mediator may accept or continue the Mediation only with the agreement of EQUANIM and, where appropriate, of the Parties, and only if he/she is certain that he/she can conduct the Mediation in complete independence and neutrality in order to guarantee total impartiality and provided that the Parties give their express consent.

### **Article 7-3 – Impartiality**

The Mediator undertakes to act in a completely impartial manner between the Parties to the Mediation. The action of the Mediator must at all times be impartial and must be seen as such by, in particular, the Parties to the Mediation.

The Mediator undertakes not to take sides or favour any of the Parties to the Mediation. He/she shall refrain from accepting a Mediation with persons with whom he/she has private, professional, economic, advisory or other links, except after disclosure of said links to EQUANIM and with the express agreement of the Parties to the Mediation.

The Mediator shall refrain from having any direct or indirect financial interest in the outcome of the Mediation other than the remuneration of his/her service by EQUANIM.

### **Article 7-4 – Neutrality**

The Mediator assists the Parties to the Mediation in their proposals without giving priority to his/her own and without acting in their stead.



## **Article 7-5 – Loyalty**

The Mediator may not be an arbitrator or advisor to one of the Parties to the Mediation in the dispute which is the subject of his/her mission as Mediator.

The Mediator is ethically prohibited from acting as a representative or advisor to any of the participants in the Mediation process for a period of [eighteen (18)] months from the date of the end of his/her mission as Mediator, unless he/she notifies EQUANIM, which must ensure that the Parties to the Mediation agree, which agreement shall not be unreasonably delayed or withheld.

## **Article 8 – Confidentiality**

EQUANIM, the Mediator and the Parties are bound by the strictest confidentiality, whether with regard to the content, the very existence, or any other aspect of the Mediation. Confidentiality extends to all interviews, notes, exchanges, documents exchanged in the framework of a Mediation mission and in its preparation.

The obligation of confidentiality is absolute except in the relationship with EQUANIM and its various bodies and under its control, particularly in the event of an ethical difficulty and subject to the agreement of the Parties to the communication by the Mediator of confidential information concerning the Parties.

Neither EQUANIM, the Mediator, nor the Parties may report to third parties or in the context of a lawsuit, any statements made, documents exchanged or proposals made. The obligation of confidentiality also relates to the fact that a Mediation has taken place and the place where it took place.

No information disclosed by one of the Parties to the Mediation to the Mediator on a confidential basis may be communicated to the other Parties to the Mediation without authorisation.

Unless the Parties to the Mediation decide otherwise, or under the conditions provided by law, the Mediation shall remain confidential. The Mediator shall inform EQUANIM prior to any disclosure.

Exchanges, information and documents transmitted between the Mediator and EQUANIM are also covered by the obligation of confidentiality.

The obligation of confidentiality extends to the Parties to the Mediation and the Mediator shall ensure that it is scrupulously respected, except that the purpose of the Mediation shall be, under the aegis of the Mediator, to organise the communication desired by the Parties to the Mediation and resulting from an agreement between the Parties to the Mediation.

## **Article 9 – Conduct of the Mediation**

The Mediator acts as a facilitator for the Parties to the Mediation: he/she helps them to dialogue, reconcile their points of view, negotiate and seek a solution among themselves, without being able to compel them to do so, with a view to the conclusion of a Memorandum of Understanding constituting a settlement by the Parties to the dispute.



The Mediator shall have no authority other than that resulting from the trust placed in him by the Parties.

The Mediator and the Parties shall come together as soon as possible to agree on the way in which the Mediation will be conducted. At the end of their initial exchanges, the Mediator shall send the Parties a written Roadmap including a detailed timetable of the different stages of the Mediation.

If he/she considers it useful, and at any time, the Mediator may hear the Parties separately.

The Mediator shall ensure a balanced treatment of all Parties and that the confidentiality of the Mediation is respected.

The Parties undertake to interact actively and in good faith with each other and with the Mediator throughout the mediation.

The EQUANIM Scientific Council is seized by EQUANIM, itself seized by the Mediator of any deontological, legal or ethical difficulty that may arise during or at the end of the Mediation when the difficulty is directly related to the Mediation.

#### **Article 10 – Duration of the Mediation**

The duration of the Mediation must correspond to the need for speed and remain reasonable.

#### **Article 11 – End of the Mediation**

The Mediation shall end by written confirmation by EQUANIM to the Parties of the end of the Mediation, following the occurrence of the first of the following events:

1. the signing by the Parties of a Memorandum of Understanding ending the dispute;
2. written notification by a Party to the Mediator, at any time, of its decision not to proceed with the Mediation;
3. written notification by the Mediator to the Parties of the completion of the Mediation which did not result in a Memorandum of Understanding despite the best efforts of the Mediator;
4. written notification by EQUANIM to the Parties of the expiry of any time limit set for the Mediation, including any extension of such time limit;
5. notification by EQUANIM to the Parties in writing within a period of not less than seven [7] calendar days from the due date of any payment due by the Parties or one of them which has not been made;

The Mediator shall inform EQUANIM as soon as possible of the signing by the Parties of a Memorandum of Understanding ending the dispute or any notification he/she has received of the occurrence of one of the events ending the Mediation.



## **Article 12 – Suspension of the Mediation**

If, in the course of the Mediation, the Mediator considers that he/she is unable to continue his/her mission, he/she shall suspend his/her mission and promptly inform EQUANIM and the Parties in writing. EQUANIM shall inform the Parties of the identity of one or more Mediators likely to replace the Mediator initially appointed. The Parties shall inform EQUANIM of the proposal to which they agree within a period of time previously set by EQUANIM. Failing this, EQUANIM shall inform all Parties in writing of the lack of agreement on the Mediation Offer and close the file.

## **Article 13 - Costs and fees**

EQUANIM shall invoice the Parties to the Mediation for all costs and expenses inherent to the Mediation, including the remuneration and expenses of the Mediator, which shall be collected by EQUANIM, and it shall be the responsibility of the latter to pay the sums due to the Mediator.

The costs and fees payable by the Parties to EQUANIM are determined in the Mediation Offer accepted by the Parties. It may provide for the payment by the Parties of one or more provisions covering the costs inherent to the Mediation and its logistics, the fees and expenses of the Mediator, as well as, where applicable, those of the expert(s) called upon to intervene in accordance with the Mediation Offer accepted by the Parties.

In the event of non-payment of an amount on its due date, EQUANIM may suspend or terminate the Mediation.

At the end of the Mediation, EQUANIM shall fix the total cost of the Mediation and, if necessary, reimburse any excess to the Parties or invoice them for any outstanding balance.

As a matter of principle, the requested costs, fees and provisions and all fixed costs shall be borne equally by the Parties, unless otherwise agreed in writing. Any Party shall nevertheless have the option of settling the outstanding balance of such provisions and costs in the event that another Party fails to pay its share.

All other expenses of a Party shall be borne by that Party, unless otherwise agreed by the Parties.

## **Article 14 – General provisions**

The request for Mediation and its consequences shall be dealt with in accordance with the Rules in force on the day it is submitted.

The Mediation shall be conducted in accordance with the Rules in force on the day of acceptance by the Parties of the Mediation Offer.

In all cases not expressly referred to in the Rules, EQUANIM and the Mediator shall proceed on the basis of the Rules under the aegis of the Scientific Council of EQUANIM.

