



ĒKU SAGLABĀŠANAS UN
ENERGOTAUPĪBAS BIROJS

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MEDIATION RULES

Rīga, 2016

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Article 1. Terms Used in ESEB Mediation Rules

(1) The following terms are used in the ESEB Mediation Rules (the “Rules”):

- a) **ESEB** – means Ēku saglabāšanas un energotaupības birojs, incorporated and operating under Latvian law with Reg. No. 40008198558, VAT No. LV40008198558, with seat and registered address at Baznicas str. 8/22, Riga, LV-1010;
- b) **Fact-Finding Procedure** – a neutral investigation procedure concluding with report with or without a recommendation, used to establish whenever – for the purpose of future or ongoing Mediation, Court or other type of Proceedings – extensive information exchange, discovery and/or evidence is required;
- c) **Fact-Finder** – a leader of the Fact-Finding Procedure, having been jointly appointed by the Parties conducting the Fact-Finding Procedure in a neutral and non-biased way;
- d) **Fact-Finding Report** – a report, which summarizes the facts having been established by the Fact-Finder;
- e) **Mediation** – a structured voluntary cooperation dispute resolution process, facilitated by a third neutral party;
- f) **Mediator** – a third party neutral, who has received the necessary qualification in accordance with the applicable national rules of his/her country of residence providing him/her with the right to be included in the corresponding list of certified mediators;
- g) **Mediation Agreement** – a contract between the Parties and Mediator about the application of Mediation and specific details about the mediation process, which shall be prepared in the form of a separate written document;
- h) **Parties** – any and all of the parties participating in a procedure being conducted under these Rules and arising under a dispute concerning the implementation, operation and repayment of any energy efficiency measures;
- i) **Rules** – the specific terms and conditions as outlined herein stipulating the specific course of development of a fact-finding or mediation procedure regulated hereby;
- j) **Settlement Agreement** – a result of the Mediation, by which the Parties settle their Dispute amicably and out-of-court and which can be shaped by the Parties in the form of a separate written document.

Article 2. Aim of ESEB Mediation Rules and Scope of Application

(1) The aim of these Rules is to facilitate fact-finding or mediation procedures between the Parties by giving procedural provisions for dispute resolution through Mediation in accordance with Latvian laws and international commercial customs.



- (2) Mediation shall be used under these Rules as means for resolving conflict amicably and out-of-court unless, prior to the confirmation or appointment of the Mediator or with the agreement of the Mediator, the Parties agree upon a different settlement procedure or a combination of settlement procedures. All of the Parties may agree on a case-by-case basis to modify any of the provisions of the Rules applicable to the exact procedure they are conducting. Unless this is done and executed in writing, the terms and conditions of these Rules shall apply in full towards the process being conducted. At any time after the confirmation or appointment of the Mediator, any agreement to modify the provisions of the Rules shall also be subject to the approval of the Mediator.
- (3) Mediation for settlement of disputes can be used prior, during or after the completion of any litigation proceedings attempting to resolve the conflict in view.

Article 3. *Place and Language(s) of the Mediation*

- (1) In the absence of a differing agreement between the Parties, Mediation shall take place in the registered office of ESEB.
- (2) In the absence of a differing agreement between the Parties, mediation shall be conducted in the Latvian language.

Article 4. *Selection of the Mediator*

- (1) The Mediator shall be selected and appointed with the unanimous agreement by all Parties
- (2) Each Party can nominate a Mediator for the Mediation Proceedings. ESEB shall provide a list of mediators, which is not binding to any party.
- (3) Before appointment or confirmation, a prospective Mediator shall sign a declaration of acceptance, availability, impartiality and independence. The prospective Mediator shall disclose in writing to the Parties any facts or circumstances which might be of such a nature as to call into question the Mediator's independence in the eyes of the Parties, as well as any circumstances that could give rise to reasonable doubts as to the Mediator's impartiality.
- (4) When confirming or appointing a Mediator, the Parties shall consider the prospective Mediator's attributes, including but not limited to nationality, language skills, training, qualifications and experience, and the prospective Mediator's availability and ability to conduct the mediation in accordance with the Rules.
- (5) Upon agreement of all of the Parties and if deemed necessary, they may nominate more than one Mediator.

Article 5. *Fees and Costs*

- (1) Fees of the Mediator/Fact-finder, including transportation and accommodation costs if necessary, shall be covered by the Parties in equal amounts, unless otherwise stated in the written agreement with which the Fact-Finding Procedure commences or in the Mediation Agreement (whichever of the two applies).



- (2) Fees of the Fact-Finder / Mediator shall be calculated on an hourly basis and shall be agreed upon in advance and stipulated in the written agreement with which the Fact-Finding Procedure commences or in the Mediation Agreement (whichever of the two applies).
- (3) Other expenditures of any of the Parties shall remain the responsibility of the Party having incurred them, unless otherwise agreed by the Parties.⁷

Article 6. *Fact-Finding Procedure*

- (1) A Fact-Finding Procedure may be initiated upon a written agreement of all the Parties or in the cases specifically outlined and provided for in the Energy Performance Contract or any subsequent agreements thereto. Unless the Parties subsequently agree otherwise, this Fact-Finding Procedure leads to a non-binding investigation and Report [with/without a recommendation], being issued by the Fact-Finder.
- (2) The Fact-Finder is independent of the Parties, neutral and impartial, and does not act as an adviser to any of the Parties.
- (3) Upon agreement of all of the Parties and if deemed necessary, they may nominate more than one Fact-Finder.
- (4) Each Party can nominate a Fact-Finder for the Fact-Finding Procedure. ESEB shall provide a list of individuals, which is not binding to any Party.
- (5) No person shall serve as a Fact-Finder in any dispute in which that person has any financial or personal interest in the result of the Fact-Finding, except by the written consent of all Parties. Prior to accepting an appointment, the prospective Fact-Finder shall disclose any circumstance likely to create a presumption of bias or prevent a prompt meeting with the Parties. Upon receipt of such information, all Parties shall unanimously decide whether the Fact-Finder will serve or not.
- (6) The Fact-Finder shall conduct the Fact-Finding in accordance with procedural directions which the Fact-Finder will seek to agree with the Parties. When necessary to certify and evidence conditions of the Building, such measurements shall be conducted with verified and calibrated equipment. For the execution of such measurements all Parties directly involved or affected by the conflict shall be explicitly invited with at least seven day notice in advance of the measurement, unless the Parties have agreed on a shorter timeline or the urgency of the case requires such a shorter notice. Absence of the representatives of any the Parties is not an obstacle for the execution of the measurement by the Fact-finder. The recorded measurements shall be co-signed by all the Parties participating in the procedure. Notwithstanding anything to the contrary, the signing over the recorded established conditions shall not be considered as an acknowledgement of a breach or as a waiver of any of the Parties' rights.
- (7) The Fact-Finder will additionally conduct joint interviews of persons who have information concerning the Dispute. All Parties are expected to cooperate by making themselves and persons over whom they possess influence and control available to answer all questions directed to them fully and accurately. The Fact-Finder shall have access to all relevant information and documents. The investigation and delivery of the Fact-Finding Report will be completed within two weeks after the appointment of the Fact-Finder. The Fact-Finder may request an extension of this time with no more than seven days.
- (8) The Fact-Finding Report shall be concise and written plainly in Latvian or other agreed upon between the Parties language. It will summarize the facts established by the Fact-Finder. It



shall not recommend a remedy, but the Report will include credibility determinations. In the Report, close questions of credibility may be identified and explanations included as to the circumstances that make them close questions. The Fact-Finder shall provide the Report directly to all Parties involved in the procedure.

- (9) The Fact Finder shall not divulge confidential information disclosed to him/her by the Parties or by witnesses in the course of the Fact-Finding. All records, report or other documents received by a Fact-Finder while serving in that capacity shall be confidential. The Fact-Finder shall not be compelled to divulge such records or to testify in regard to the Fact-Finding in any adversary proceeding or judicial forum. The Parties shall maintain the confidentiality of the Fact-Finding and shall not rely on or introduce as evidence in any arbitral, judicial or other proceeding, as follows:
- (a) views expressed or suggestions made by another Party with respect to a possible settlement of the Dispute;
 - (b) admissions made by another Party in the course of the Fact-Finding;
 - (c) proposals made or views expressed by the Fact-Finder; or
 - (d) the fact that another Party had or had not indicated willingness to accept a proposal for settlement made by the Fact-Finder.

Article 7. *Initiation of the Mediation*

- (1) The Mediation process shall be initiated after the receipt by ESEB of the filled out Form for Mediation made available at www.ekubirojs.lv. Following this, ESEB shall contact the opposing party and shall facilitate for the commencement of the Mediation after the signing by the Parties participating in the dispute of the Mediation Agreement.

Article 8. *Conduct of the Mediation*

- (2) The Mediator and the Parties shall promptly discuss the manner in which the Mediation shall be conducted.
- (3) After such discussion, the Mediator shall promptly provide the Parties with a written note informing them of the manner in which the Mediation shall be conducted. Each Party, by agreeing to resolve a dispute through Mediation in accordance with the Rules agrees to participate in the Mediation Proceedings at least until receipt of such note from the Mediator or earlier termination of the Mediation Proceedings.
- (4) In establishing and conducting the mediation, the Mediator shall be guided by the wishes of the Parties and shall treat them with fairness and impartiality. When Fact-Finding Procedure is required as part of the Mediation, the latter shall be conducted in line and pursuant to the terms and conditions as outlined in Art. 6 above.
- (5) Each Party shall act in good faith throughout the Mediation.



Article 9. Settlement Agreement

- (1) An agreement is reached if the Parties settle their dispute.
- (2) A Mediator can participate in the drafting of the Settlement agreement to the extent to which the Parties have requested this and only as means to evidence.
- (3) The Parties shall promptly execute the Settlement Agreement reached voluntarily in the time period specified therein.
- (4) The Settlement Agreement is fully enforceable in the applicable court of law.

Article 10. Termination of the Mediation Proceedings

- (1) Proceedings which have been commenced pursuant to the Rules shall terminate upon written confirmation of termination by ESEB to the Parties after the occurrence of the earliest of:
 - (a) the signing by the Parties of a Settlement Agreement;
 - (b) the notification in writing made to the Mediator by any Party waiving from now on its consent to take part in the Mediation;
 - (c) notification in writing by the Mediator to the Parties that the mediation has been completed;
 - (d) the notification in writing by the Mediator to the parties that, in the Mediator's opinion, the Mediation will not resolve the dispute between the Parties;
 - (e) the notification in writing by the Mediator to the Parties, not less than seven days after the due date for any payment by one or more Parties pursuant to the Mediation Agreement, that such payment has not been made; or
 - (f) the objective impossibility to appoint a Mediator or the failure of the Parties to select a Mediator.

Article 11. Confidentiality. Exclusion of Liability

- (1) In the absence of any agreement of the Parties to the contrary and unless prohibited by the applicable law:
 - (a) the mediation proceedings, but not the fact that they are taking place, have taken place or will take place, are private and confidential;
 - (b) any Settlement Agreement between the Parties shall be kept confidential, except that a Party shall have the right to disclose it to the extent that such disclosure is required by applicable law or necessary for purposes of its implementation or enforcement.
- (2) Unless required to do so by the applicable law and in the absence of any agreement of the Parties to the contrary, a party shall not in any manner produce as evidence in any judicial, arbitral or similar proceedings:
 - (c) any documents, statements or communications which are submitted by another Party or by the Mediator in or for the mediation proceedings, unless they can be obtained independently by the Party seeking to produce them in the judicial, arbitral or similar proceedings;
 - (d) any views expressed or suggestions made by any Party within the mediation proceedings with regard to the dispute or the possible settlement of the dispute;
 - (e) any admissions made by another Party within the mediation proceedings;



- (f) any views or proposals put forward by the Mediator within the mediation proceedings;
- or
- (g) the fact that any Party indicated within the mediation proceedings that it was ready to accept a proposal for a settlement.

(3) The Parties expressly acknowledge that the Fact-Finder and the Mediator shall not be liable to the Parties for any act or omission whatsoever in connection with the Fact-Finding Mediation Proceedings and shall not be allowed to testify orally in court regarding any of the facts or information having been disclosed to them in the course of the procedure.

Article 12. Law

- (1) These Rules are governed by Latvian Law and are in line with best international practices in the field of mediation and fact finding procedures.