

## NON-DISCLOSURE AGREEMENT

Between:

International Chamber of Commerce (“ICC”), a French not-for-profit association established under the law of 1901 (*association loi 1901*) relating to the contract of association, domiciled at 33-43 avenue du Président Wilson, 75116 Paris, France, acting on behalf of its working body, the International Court of Arbitration (the “ICC Court”),

and

*(tick the box/es related to your role on the Nominations Commission and add your name)*

- .....: ICC Court member
- .....: Member of National Committee Nominations Commission
- .....: Contact Person (paragraph 18 of the Note to National Committees and Groups of ICC on the Proposal of Arbitrators)
- .....: Other person affiliated or employed by a National Committee (but not the Contact Person)

hereinafter referred to as “Party” or “Parties” respectively.

**Whereas** the work of the ICC Court, including the work of the offices of its Secretariat, is of a confidential nature which must be respected by everyone who participates in that work in whatever capacity, in particular by ICC Court members and individuals involved in the selection and proposal of arbitrators to the ICC Court within an ICC National Committee or Group (the “Members”);

**Whereas** the ICC Court wishes to ensure that the information, which may become known to Members while performing their function in the course of their term of office as member of the ICC Court or when in charge of selecting or proposing arbitrators to the ICC Court within an ICC National Committee or Group, is used in compliance with the ICC Arbitration Rules and their Appendices and protected from any disclosure;

**Whereas** the Parties are aware of their obligation to preserve confidentiality, trade secret, and privacy of information and data that may be brought to their attention in the course of their term of office;

**Whereas** the Members acknowledge that any breach of their obligation mentioned hereto would be detrimental to ICC, its management and staff, the ICC Court and the reputation of ICC arbitration thus leaving no option to ICC but to take all appropriate action to remedy this breach;

The Parties enter into the following agreement (“Agreement”):

## Article 1 – Definition of Confidential and Proprietary Information

“Confidential Information” means any information or data, or both, communicated by or on behalf of the ICC Court to the Member, including, but not limited to, any kind of business, commercial, technical, legal, financial information and data in connection with the arbitral proceedings, the activities and image of the ICC Court, except for information that is demonstrably non-confidential in nature. The information shall be Confidential Information, irrespective of the medium in which that information or data is embedded, and whether the Confidential Information is disclosed orally, visually or otherwise.

“Proprietary Information” means information or data, or both, belonging to ICC, which may be Confidential Information or not.

## Article 2 – Obligation to keep Confidential and Restrictive Use

The Member shall:

- a) not disclose any Confidential Information or Proprietary Information unless expressly authorised by the ICC Court;
- b) use any Confidential Information or Proprietary Information exclusively for the purpose of its collaboration with the ICC Court and not for its own or anyone else’s benefit;
- c) keep secure, confidential and hold all Confidential Information and Proprietary Information with no less a degree of care as is used for the Member’s own confidential or Proprietary Information and at least with reasonable care; and
- d) not amend, vary, develop, improve, enhance (“Derivation”) the Confidential Information or Proprietary Information except as otherwise approved in writing by the ICC Court.

In addition, ICC Court members are only permitted to disclose Confidential information or Proprietary information for the sole purpose of conflict checks. They must only disclose such information to the person duly authorized to run conflict checks within their respective law firm or company. ICC Court members undertake that their firm or company will not use the Confidential information or Proprietary information for any other purpose and remain responsible for ensuring that such information is immediately destroyed upon conclusion of the conflict check.

## Article 3 – Exclusions from Obligation to keep Confidential and Restrictive Use

The obligations under Article 2 to keep confidential all Confidential Information or Proprietary Information shall not apply to the extent that the Member can prove that any of that information:

- a) was in the Member’s possession without an obligation of confidentiality prior to receipt from the ICC Court;
- b) is lawfully obtained by the Member from a third party without an obligation of confidentiality, provided that third party is not, to the ICC Court’s best knowledge, in breach of any obligation of confidentiality to the ICC Court relating to that information; or
- c) is developed by the Member independent of any Confidential Information or Proprietary Information.

## Article 4 – Copies

Unless otherwise specified by the ICC Court at the time of disclosure, the Member may make copies of the Confidential Information and of Proprietary Information to the extent necessary for the purpose of performing the Member’s function.

## Article 5 – Refusal

Nothing in this Agreement shall obligate the ICC Court to disclose any information to the Member. ICC has full discretion to determine which Confidential Information or Proprietary Information can be disclosed to the Member during the term of office of the Member.

## Article 6 – No Licence or Ownership

Nothing in this Agreement shall affect any rights the ICC Court may have in relation to Confidential Information or Proprietary Information, neither shall this Agreement provide the Member with any right or licence under any patents, copyrights, trade secrets, or the like in relation to the Confidential Information or Proprietary Information.

## Article 7 – No Warranty

The ICC Court makes available the Confidential Information or Proprietary Information as is and only warrants that, it has done its best efforts to ensure to the best possible extent that the information disclosed is complete, accurate, free from defects or third party rights, and useful for the purposes of the Member.

## Article 8 – No Further Obligations

This Agreement does not:

- a) create any other relationship; or
- b) oblige a Party to enter into any other contract.

## Article 9 – Term and Termination

This Agreement enters into force by signing of all Parties and can be terminated by either Party with immediate effect by giving a written notice to the other Party.

This Agreement ends automatically upon expiry of the Member's term of office.

## Article 10 – Survival of Obligations

Upon termination of this Agreement, the Member shall stop making use of Confidential Information or Proprietary Information. The Parties' obligations under this Agreement shall survive indefinitely or to the longest extent permitted by the applicable laws.

## Article 11 – Breach and Remedies

The Parties agree that Confidential Information or Proprietary Information may relate to highly sensitive aspects of ICC Court's activities or arbitral proceedings and that loss, misuse or unauthorised Derivation or disclosure of the Confidential Information or Proprietary Information may be highly prejudicial to the interests of ICC and the ICC Court, and that financial compensation may not adequately compensate ICC for any such damage. ICC therefore reserves the right to take whatever injunctive or other action it deems necessary, at law, in equity or otherwise to protect its interests in the event of any actual and/or alleged breach of this Agreement by the Member.

## Article 12 – Disposal

Within ninety (90) days of termination of this Agreement, the ICC Court may request the disposal of the Confidential Information or Proprietary Information disclosed to the Member. Disposal means execution of reasonable measures to return or destroy all materials and copies including electronic data. Destruction shall be confirmed in writing. Disposal shall be effected within thirty (30) days of the request being made.

## Article 13 – Good Faith and Fair Dealing

In carrying out their obligations under this Agreement, the Parties will act in accordance with the principles of good faith and fair dealing. The provisions of this Agreement, as well as any statements made by the Parties in connection with this Agreement, shall be interpreted in accordance with the principles of good faith and fair dealing.

## Article 14 – Dispute Resolution

This Agreement is governed by, and shall be construed in accordance with the laws of France.

Any dispute arising from or in connection with this Agreement shall be resolved by both Parties or their representatives, if any, through consultation and negotiations at the request of either Party by written notice to the other Party.

Failing a resolution within three weeks following the notice mentioned in the above paragraph, the *Tribunal de Grande Instance de Paris* shall have exclusive jurisdiction to hear and decide any suit, action or proceedings, and to settle any disputes arising out of or in connection with this Agreement.

## Article 15 – No Assignment

This Agreement may not be assigned by either Party without the prior written consent of the other Party. No assignment shall relieve a Party of its obligations under this Agreement with respect to Confidential Information or Proprietary Information disclosed to that Party prior to the agreed assignment.

## Article 16 – Written Form

This Agreement may not be modified or amended except in writing, signed by the Parties or their authorised representatives.

In witness whereof the Parties or their duly authorised representatives have executed this Agreement on the day and year written below.

Date (Day/Month/Year): .....

ICC	Signatory
Emmanuel Jolivet	Name .....
General Counsel	Title .....
International Chamber of Commerce	Firm/Company .....
Signature	Signature .....