**AGREEMENT ON PROVISIONAL MEASURES**

The undersigned:

1. [⚫ insert full name], a [⚫ insert type of company] incorporated and existing under the laws of [⚫ insert country], having its registered office at [⚫ insert place, country] and its principal place of business at [⚫ insert street], [⚫ insert zip code], [⚫ insert place], [⚫ insert country] ([⚫ **insert definition for party A**]);

and

1. [⚫ insert full name], a [⚫ insert type of company] incorporated and existing under the laws of [⚫ insert country], having its registered office at [⚫ insert place, country] and its principal place of business at [⚫ insert street], [⚫ insert zip code], [⚫ insert place], [⚫ insert country] ([⚫ **insert definition for party B**]).

[⚫ insert definition for party A] and [⚫ insert definition for party B] are hereinafter collectively referred to as the Parties and each individually as a Party.

**WHEREAS:**

1. [⚫ include a description of the background to the dispute; include details of the legal relationship that exists between the Parties, e.g. prior agreements and legal or arbitral proceedings conducted between the Parties, etc.](the **Existing Legal Relationship**);

[⚫ Example: *“The Parties have entered into a [*⚫ *insert name or type of agreement] dated [*⚫ *insert date of agreement] (the* ***Existing Legal Relationship****)*”].

1. A dispute has arisen between the Parties relating to [⚫ include a description of the dispute] (the **Dispute**);

[⚫ Note: if the Parties cannot agree the scope of the dispute, each Party can give its own description: “*A dispute has arisen between the Parties relating to [⚫ include the description of the dispute according to Party A], according to [⚫ insert definition for party A], and relating to [⚫ include the description of the dispute according to Party B], according to [⚫ insert definition for party B] (the* ***Dispute****)*”].

1. The Parties do not want, or are not able, to settle the Dispute now and do not want to prejudice their legal position with this agreement on provisional measures (the **Agreement**), but understand the need for provisional measures;
2. In view of the Coronavirus disease 2019 (COVID-19), the Parties wish to agree the temporary provisional measures set out in clause 1below, subject to the terms and conditions of this Agreement.

**AGREE AS FOLLOWS:**

I Provisional Measures

1. Subject to the terms and conditions of this Agreement, the Parties agree the following temporary provisional measures (the **Provisional Measures**): [⚫ include a specific description of the actions to be taken, e.g. to make a specific delivery, to complete a work, a temporary suspension of deliveries or work, to make (partial) payments, etc.].
2. The obligation to perform the Provisional Measures starts on the date of this Agreement and shall end on [⚫ insert date] (the **End Date**, and the period between the date of this Agreement and the End Date, the **Provisional Measures Period**)**.** The Provisional Measures Period can only be extended by an explicit agreement between the Parties made in writing, which includes an exchange of emails.
3. Neither the Provisional Measures nor the performance under the Provisional Measures shall in any way affect the Existing Legal Relationship. After the End Date, each Party shall therefore be free to argue that it was not obliged to perform what it has performed under the Provisional Measures on the basis of the Existing Legal Relationship. For that reason, the Provisional Measures shall end on the End Date with retro-active effect as per the date of this Agreement, and what has been performed under the Provisional Measures shall be undone in accordance with Title 4, Part 2 of Book 6 of the Dutch Civil Code. What has been performed under the Provisional Measures shall not be undone if the relevant Party was obliged to perform what it has performed under the Provisional Measures on the basis of the Existing Legal Relationship.
4. If a Party does not comply with, or does not perform under, the Provisional Measures, the other Party is free to file a claim against the non-complying or non-performing Party in summary proceedings to obtain a court order, or if arbitration has been agreed upon, in arbitral summary proceedings to obtain an arbitral award, providing for the same Provisional Measures or other provisional measures.

[⚫ Note: in addition, a penalty provision could be agreed upon: “*Any Party that acts in breach of the Provisional Measures as set forth in clause 1 of this Agreement forfeits an immediately payable penalty which is not subject to set-off, in the amount of EUR [⚫ ] per breach and EUR [⚫ ] for every day that such breach continues, without prejudice to the other Party’s rights under this Agreement or at law, including the right to claim additional damages in case such damages are higher than the penalty incurred. Payment of the penalty referred to in the previous sentence shall not release the breaching Party from its obligations specified in this Agreement.* *Once forfeited during the Provisional Measures Period, the penalty shall remain due and payable, notwithstanding the Provisional Measures ending with retroactive effect on the End Date.*”]

1. This Agreement is not a settlement agreement [⚫ *, except for the suspension of statutory prescription and expiry periods agreed in article II below,*] and does not prejudice the legal position of either Party under the Existing Legal Relationship or in respect of the Dispute. This Agreement does not change the Existing Legal Relationship, except for [⚫ *(i)* ]the Provisional Measures, which will be temporarily in place [⚫ if any of the following is applicable: “*, [ (ii) the choice of jurisdiction in Article III, (iii) the penalty clause above and (iv) the suspension of statutory prescription and expiry periods agreed in Article II”*]. For the avoidance of doubt: neither the Provisional Measures nor the performance under the Provisional Measures shall in any way affect the burden of proof in respect of the Dispute.

IIA No standstill except for the agreed Provisional Measures

1. This Agreement does not provide for a standstill of the Dispute. Each Party shall therefore be free to file any (further) claim against the other Party, and to initiate or continue legal or arbitral proceedings. This Agreement shall neither interrupt or suspend any statutory or contractual subscription period (*verjaringstermijn*) or expiry period (*vervaltermijn*). The Parties explicitly waive their right to argue that this Agreement constitutes knowledge of a claim in respect of the Dispute.

[⚫ OR:]

IIB Standstill

1. This agreement provides for a standstill of the Dispute. In case of legal or arbitral proceedings that are already pending, the Parties shall jointly request the court or the arbitral tribunal to stay these proceedings during the Provisional Measures Period. Neither Party shall file any (further) claim(s) against the other Party, nor initiate any (further) legal or arbitral proceedings during the Provisional Measures Period.
2. This Agreement shall interrupt and suspend any contractual prescription period (*verjaringstermijn*) and expiry period (*vervaltermijn*) for the duration of the Provisional Measures Period, meaning that any such contractual subscription or expiry period shall be extended by a period equal to the Provisional Measures Period, it being understood, however, that any contractual subscription or expiry period that had already expired as at the date of this Agreement, shall not revive.
3. Furthermore, the Parties explicitly waive their right to invoke the expiry of any current statutory subscription period (*verjaringstermijn*) or expiry period (*vervaltermijn*) for the duration of any such statutory subscription or expiry period as extended by a period equal to the Provisional Measures Period, it being understood, however, that the expiry of any statutory prescription or expiry period that had already expired as at the date of this Agreement, may be invoked. This clause 9 is a settlement agreement (*vaststellingsovereenkomst*) as set forth in section 7:900 et seq. of the Dutch Civil Code.

III Miscellaneous

1. Each Party shall bear its own costs and expenses in connection with the negotiation, preparation and conclusion of this Agreement.
2. To the extent permitted under the applicable law, the Parties herewith renounce their rights to terminate (*beëindigen*), rescind (*ontbinden*), nullify (*vernietigen*) or demand in legal proceedings the termination (*beëindiging*), rescission (*ontbinding*), nullification (*vernietiging*) or modification (*wijziging*), in whole or in part, of this Agreement on whatever grounds and for whatever reason, including without limitation termination or rescission based on sections 6:265, 6:228, and/or 6:258 et seq. of the Dutch Civil Code.
3. No Party may assign any or all of its rights and obligations under this Agreement without the prior written approval of the other Party. This provision has property-law effect as set forth in section 3:83 paragraph 2 of the Dutch Civil Code.
4. This Agreement shall be governed by and construed in accordance with the laws of the Netherlands, without regard to its conflict of law provisions.
5. All disputes between the Parties arising under or in connection with this Agreement, or further agreements resulting from this Agreement, will be submitted to the competent court [⚫ arbitral tribunal] referred to in article [⚫] of [⚫ insert name/description of the existing agreement] dated [⚫].

[⚫ OR:]

1. All disputes between the Parties arising under or in connection with this Agreement, the Existing Legal Relationship, or further agreements resulting from this Agreement, will be submitted to the competent court of [⚫ insert place], the Netherlands. This jurisdiction clause shall supersede and replace any jurisdiction clause in the Existing Legal Relationship.

[⚫ OR:]

1. All disputes between the Parties arising in connection with this Agreement, the Existing Legal Relationship, or further agreements resulting from this Agreement, will be finally settled in accordance with the Arbitration Rules of the Netherlands Arbitration Institute (*Nederlands Arbitrage Instituut*). The arbitral tribunal shall be composed of [⚫ choose: one arbitrator / three arbitrators]. The place of arbitration shall be [⚫ insert city], the Netherlands. The arbitral procedure shall be conducted in the [⚫ English] language. This arbitration agreement will be governed by the laws of the Netherlands. This jurisdiction clause shall supersede and replace any jurisdiction clause in the Existing Legal Relationship.

[⚫ OR:]

1. All disputes between the Parties arising under or in connection with this Agreement, the Existing Legal Relationship, or further agreements resulting from this Agreement, will be resolved by the Amsterdam District Court following proceedings in English before the Chamber for International Commercial Matters (Netherlands Commercial Court or NCC). An action for interim measures, including protective measures, available under Dutch law may be brought in the NCC's Court in Summary Proceedings (CSP) in proceedings in English. This jurisdiction clause shall supersede and replace any jurisdiction clause in the Existing Legal Relationship.

As agreed on [⚫ date] [⚫ month] [⚫ year],

|  |  |
| --- | --- |
| [⚫ Party A] | [⚫ Party B] |
|  |  |
|  |  |
|  |  |
|  |  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| By: [⚫ ] | By: [⚫ ] |
| Title: [⚫ ] | Title: [⚫ ] |