

Zero Draft for Consultation:

The European Model Clauses (EMCs) for Responsible and Sustainable Supply Chains

July 2024

Prepared by the European Working Group for Responsible and Sustainable Supply Chains.

Definitions	1
Article 1 Mutual Obligations with Respect to Due Diligence in Supply Chains	3
1.1 Human Rights and Environmental Due Diligence (HREDD)	3
1.2 Sub-suppliers and subcontractors	4
1.3 Buyer’s Obligations to Implement HREDD	5
1.4 Grievance Mechanism	6
Article 2 Remediating Actual Adverse Impacts and Corrective Action	7
Article 3 Remedies	7
3.1 Notice of Default, Cure Period, and Breach	7
3.2 Exercise of Interim Remedies in the Event of a HREDD Default	8
3.3 Remedies Limitations	9
3.4 Indemnification and Comparative Fault	9
3.5 Termination and Responsible Exit	10
Article 4 Monitoring	10
4.1 Regular Monitoring	10
4.2 Monitoring without notice	10
4.3 Cooperation by Supplier	10
4.4 Costs of Monitoring	10
Article 5 Dispute Resolution with Stakeholders	11
5.1 Dialogue	11
5.2 Escalation mechanism	11
5.3 Non-retaliation	11

Definitions

Adverse Impact: means a potential or actual Adverse Environmental Impact and/or Adverse Human Rights Impact which one or both parties have either individually and/or jointly caused, or are directly linked to through their products, services, and business relationships. A company is deemed to cause an adverse impact when its actions or omissions on their own remove or reduce a person’s ability to enjoy their human rights or cause a negative effect to the environment. A company is deemed to jointly cause an adverse impact when its actions or omissions substantially contribute to or increase the likelihood of an adverse impact caused by another entity such as a business partner, which excludes trivial or minor contributions. A company is deemed to be linked to an adverse impact when it has not caused or jointly caused the adverse impact, but the adverse impact is linked to its operations, products of services.

Adverse Environmental Impact: means an actual or potential adverse impact on the environment resulting from the violation of one of the prohibitions and obligations pursuant to the international environmental conventions listed in [the Annex, Part II of the EU Corporate Sustainability Due Diligence Directive][the code of conduct [X] agreed upon by the parties to this Agreement].

Adverse Human Rights Impact: means an actual or potential adverse impact on protected persons resulting from the violation of one of the rights or prohibitions listed in the Annex, Part I Section 1, as enshrined in the international conventions listed in [the Annex, Part I Section 2 of the EU Corporate Sustainability Due Diligence Directive] [[the code of conduct [X] agreed upon by the parties to this Agreement].

Agreement: means the commercial agreement between Buyer and Supplier which include some or all of the sections hereinafter.

Buyer: means Party [X] to the Agreement.

Effective Date: means the date on which obligations set out in the Agreement become effective.

HREDD Obligations: means the Human Rights and Environmental Due Diligence related obligations as set out in Article 1 and Article 2.

Human Rights and Environmental Due Diligence (HREDD): means an on-going, risk based process that is appropriate to the size and circumstances of the parties implementing it to identify, prevent, mitigate, cease, minimize, track and remedy Adverse Impacts as required by the EU Corporate Sustainability Due Diligence Directive. The OECD Guidance and the United Nations Guiding Principles on Business and Human Rights (UNGPs) supply the foundations for the HREDD Obligations set out in the Agreement.

Goods: means the products or materials or services provided by Supplier.

Living Income: means the net annual income required for a household in a particular place to afford a decent standard of living for all members of that household, taking into account country circumstances. Elements of a decent standard of living include food, water, housing, education, healthcare, transportation, clothing, and other essential needs including provisions for unexpected events.

Living Wage: means the wage level necessary to afford a decent standard of living for workers and their families, taking into account country circumstances and calculated for work performed during normal hours. Elements of a decent standard of living include food, water, housing, education, healthcare, transportation, clothing, and other essential needs including provision for unexpected events.

OECD Guidance: means the Organization for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises (2023) and the OECD Due Diligence Guidance for Responsible Business Conduct (2018).

OLGM: means the Operational Level Grievance Mechanism set out in Article 1.

Representatives: means the [officers, directors, employees,] agents and all subcontractors, consultants and any other person providing staffing for Goods to Buyer required by this Agreement.

Severe Adverse Impact: means an actual Adverse Impact that is severe by virtue of its scale or gravity, its scope (the number of individual or environmental interests affected), or its irremediability.

SME: means a micro, small or a medium-sized enterprise, irrespective of its legal form, that is not part of a large group, as those terms are defined in Article 3(1), (2), (3) and (7) of Directive 2013/34/EU.

Stakeholder(s): means the individuals or groups potentially or actually affected by an Adverse Impact, such as workers and/or local communities and/or their representatives (e.g., civil society organisations, non-governmental associations, and trade unions).

Supplier: means Party [Y] to the Agreement.

Article 1: Mutual Obligations with Respect to Due Diligence in Supply Chains

As of the Effective Date of this Agreement, Buyer and Supplier each agree to perform the following HREDD Obligations:

1.1 Human Rights and Environmental Due Diligence (HREDD)

(a) Joint commitment to HREDD: Buyer and Supplier each covenants to establish and cooperate in maintaining a HREDD process in connection with the Goods governed by the Agreement, in accordance with the standards set out in the OECD Guidance. The HREDD process shall be appropriate to each party's size and circumstances. If Supplier is an SME, Supplier can opt to establish its own HREDD process or to participate and cooperate in Buyer's HREDD process as clearly requested and instructed by Buyer.

(b) Stakeholder engagement: Buyer and Supplier must engage Stakeholders at each step of the HREDD process set out in Clause 1.1. Such Stakeholder engagement must be on-going, responsive, effective and conducted in a culturally appropriate format and in a manner that is free of manipulation, discrimination, interference, coercion, and intimidation. The parties shall provide Stakeholders with the information necessary for them to meaningfully engage in the HREDD process. Buyer and Supplier may prioritize types of engagement according to severity and likelihood of Adverse Impacts. Buyer and Supplier shall adequately document the Stakeholder consultation process and outcomes to enable Buyer to comply with the relevant reporting requirements under applicable law.

(c) Prevention action plan: Based on the identification of potential Adverse Impacts, Buyer and Supplier shall cooperate, in consultation with potentially adversely affected Stakeholders, to prepare and implement a prevention action plan (the Prevention Action Plan) to prevent or mitigate the potential Adverse Impact(s) within a reasonable time.

(d) Obligation to provide information:

(i) The parties shall notify one another [within X days] [as soon as reasonably possible] upon becoming aware of a Severe Adverse Impact occurring in connection with the Agreement.

(ii) Buyer and Supplier each shall [yearly][twice a year][regularly, as agreed] provide reports on the implementation of their HREDD process(es). Such reports shall be forward-looking and backward-looking for a period of [X] months and contain both qualitative and quantitative information to the extent allowed by applicable laws.

(iii) Where Buyer seeks to implement HREDD measures such as, for example, questionnaires, audits, certifications and scorecards, Supplier may, to the extent allowed by applicable law, provide Buyer with a recent equivalent document, and Buyer shall accept such equivalent document [or a portion of the equivalent document] to the extent that it meets the Buyer's minimum standards, unless Buyer reasonably considers that such document [entirely] fails to satisfy Buyer's minimum standards.

(iv) Each party may request additional HREDD-related information, so long as such requests are sufficiently defined, limited in scope, and necessary for the requesting party to effectively carry out its own HREDD Obligations under the Agreement and under applicable law. This includes requests by Buyer to Supplier to disclose information concerning the location and identity (including the names) of Supplier's sub-suppliers and subcontractors.

(v) Buyer and Supplier each have the right to refuse requests for HREDD-related information if such requests would compel the disclosure of trade secrets or other protected intellectual property. In such situations, the refusing party must provide alternative sources of assurance, such as a credible third-party certification, regarding matters such as the provenance of the Goods, and other inputs involved in manufacturing the Goods.

(vi) The parties shall use the information obtained under this Section solely for the purpose of meeting their respective HREDD Obligations under the Agreement and to meet the requirements of applicable laws. They shall keep such information confidential except as required by applicable laws.

(e) Independent obligations: For the avoidance of doubt, each party is independently responsible for upholding its HREDD Obligations under this Agreement, and a failure to do so by one party shall not relieve the other party of its HREDD Obligations.

(f) HREDD Contact Points: Supplier and Buyer shall each designate a member of staff as a Human Rights and Environmental Due Diligence contact point ("HREDD Contact Points") to receive HREDD-related information and administer the HREDD Obligations under this Agreement. [The HREDD Contact Points shall collaborate with Stakeholders in order to identify a Stakeholder representative with whom to form a HREDD monitoring committee ("HREDD Monitoring Committee") charged with monitoring, in an on-going and collaborative fashion, the implementation of the HREDD Obligations under this Agreement.]

1.2 Sub-suppliers and subcontractors:

(a) HREDD Responsibilities Across the Supply Chain: As part of meeting its HREDD Obligations, Supplier shall use its best efforts to ensure that each of its sub-suppliers and subcontractors and each of their sub-suppliers and subcontractors acting in connection with the Agreement engage in and support the HREDD process set out in this Article and Article 2. Where appropriate based on the length and scope of the commercial relationship and the HREDD risks involved, the relationship

between Supplier and a sub-supplier or subcontractor shall be materialized in a written contract that includes HREDD obligations appropriate to the size and circumstances of both parties. Supplier shall keep records of such written contracts and of any failed attempts to agree to such contracts and make them available to Buyer upon request, in accordance with Section 1.1(d) (Obligation to provide information).

(b) Subcontracting by Supplier: Supplier may only subcontract to a subcontractor if Supplier has conducted satisfactory HREDD on such subcontractor, such subcontractor has formally agreed to support Supplier's HREDD process, and, if appropriate, such subcontractor has formally agreed to conduct its own HREDD process, in accordance with Section 1.2 (a) (Cascading HREDD responsibilities). [Supplier shall promptly inform Buyer of any subcontracting prior to awarding the subcontract and Buyer may refuse such subcontracting if it has a clear and well-founded HREDD-related concern regarding the subcontractor.]

1.3 Buyer's Obligations to Implement HREDD

(a) Responsible Purchasing Practices: To satisfy its HREDD Obligations, and as part of its HREDD Obligations, Buyer shall engage in responsible purchasing practices and only impose fair, reasonable, and non-discriminatory obligations on Supplier. Such responsible purchasing practices include those indicated in Sections (b) - (g) below. [Buyer shall seek to obtain feedback from Supplier [through the HREDD Contact Point] on its purchasing practices [annually][twice a year].]

(b) Reasonable Assistance: If either party reasonably determines that Supplier requires assistance to meet the parties' respective HREDD Obligations, Buyer shall provide reasonable assistance to the extent that doing so is economically feasible and appropriate in light of the HREDD-related risks at issue. Reasonable assistance may include, among other things, financing and cost-sharing [to the extent legally permitted], assistance to secure financing, Supplier training, upgrading facilities, and strengthening management systems.

(c) Pricing:

(i) Buyer and Supplier shall collaborate to agree on a price that accommodates the costs associated with implementing HREDD and upholding responsible business conduct, including the payment of a Living Wage or a Living Income and health and safety costs. If the payment of a Living Wage or a Living Income is not immediately feasible, then Buyer and Supplier shall commit to a progressive pricing schedule to pay a Living Wage or Living Income within [__months][__years].

(ii) If there is a material increase in input costs that increases the risks of Adverse Impacts, Buyer and Supplier shall collaborate to agree on alternative terms to mitigate such risks and prevent the occurrence of actual Adverse Impacts. Such alternative terms may include, among other things, price and payment term adjustments, advance payments, credit facilities, schedule changes, and extended contract terms. Buyer may require Supplier to provide documentation of the increase in input costs.

(d) Commercial Terms (Payment and Delivery): Buyer shall collaborate with Supplier to agree on commercial terms, including payment, transfer of ownership and risk of loss, and delivery terms, that will support the parties' performance of their HREDD Obligations. Buyer and Supplier each

agree not to vary the commercial terms of the Agreement unilaterally and to avoid retroactive changes to the commercial terms to the extent such changes would undermine the HREDD process.

(e) Order Changes: For any material change of an order requested by Buyer, the parties, including the HREDD Contact Points, shall discuss and consider the potential Adverse Impacts of such change and take action to avoid or mitigate such potential Adverse Impacts. Such action may consist of, for example, adjusting the price or the production timeline for the order. [No changes shall be made to an agreed order after production has begun]. [If the order change results in Buyer using ___% less of Supplier's capacity than originally [projected][agreed], Buyer shall pay Supplier for the unused capacity]

(f) Excused Non-Performance by Supplier: If Supplier['s HREDD Contact Point] provides reasonably satisfactory evidence that an Adverse Impact is likely to occur because of a requested order change or a change of circumstances materially affecting Supplier, and if the parties cannot agree on a solution that avoids this Adverse Impact, then Supplier may elect to cease manufacturing the order or its performance of the Agreement. In such a situation, Supplier's performance shall be excused and it shall not be in default of its obligations under this Agreement.

(g) Positive incentives: Buyer shall establish clear and transparent benchmarks to assess HREDD performance. [Buyer shall seek to obtain feedback from Supplier [through the HREDD Contact Point] on the benchmarks [annually][twice a year].] Where feasible given Buyer's other commercial commitments and market demand, Supplier shall be rewarded for HREDD performance that meets or exceeds the benchmarks, for example by prolongation of contracts or assignment of new orders if Buyer needs to source Goods. When determining whether to continue or expand the commercial relationship, Buyer shall give weight to HREDD performance [equal] [as well as] to criteria such as quality, price, and timely delivery.

1.4 Grievance Mechanism

(a) Operational-Level Grievance Mechanism (OLGM): Buyer shall maintain an accessible, legitimate, and adequately funded and governed non-judicial OLGM to receive and address Stakeholders' concerns and grievances regarding Adverse Impacts. Supplier [may] [shall] establish its own OLGM. Buyer and Supplier shall actively communicate the existence of the OLGM[s] to Stakeholders.

(i) [Buyer][Buyer and Supplier] shall [each] have and uphold an OLGM policy to ensure that the OLGM[s] meet the effectiveness criteria set out in UNGPs 29 and 31 and prevent retaliation against Stakeholders who make use of the OLGM[s]. Stakeholders must be able to safely (and anonymously, if appropriate) report their concerns and grievances at a local level.

(ii) Stakeholders bringing concerns and grievances through the OLGM[s] shall be entitled to appropriate follow-up and, if appropriate, to meet with the HREDD Contact Points and other relevant Buyer and Supplier representative(s) to discuss the Adverse Impacts at issue and a way forward for addressing such Impacts.

(b) OLGM Reporting Requirements: [To the extent allowed by law,] [Buyer shall inform Supplier] [Buyer and Supplier shall inform each other] about the functioning of the OLGM[s] by providing [annual] [semi-annual][monthly][___] written reports, describing, at a minimum, the number and

nature of grievances received and processed over the reporting period, the extent of the consultations with Stakeholders, and all actions taken or planned to address such grievances.

(c) Relationship to Other Mechanisms: [Buyer][Buyer and Supplier] shall ensure that Stakeholders have access to the OLG M[s] regardless of whether they have filed or intend to file a grievance through another grievance mechanism or to commence legal proceedings. Likewise, use of the OLG M[s] shall not be a prerequisite for filing grievances in other mechanisms or for initiating legal proceedings.

Article 2: Remediating Actual Adverse Impacts and Corrective Action

Where an actual Adverse Impact has occurred, the parties each agree to implement corrective measures including a corrective action plan.

(a) Corrective Action Plan: If Supplier caused or jointly caused the actual Adverse Impact, Supplier shall, in consultation with adversely affected Stakeholders, prepare, share with Stakeholders, and implement a corrective action plan, the Corrective Action Plan, to remedy the actual Adverse Impact within a reasonable time. In situations where Supplier did not cause or jointly cause the actual Adverse Impact, Supplier shall cooperate in implementing any Corrective Action Plan that Buyer may develop.

The Corrective Action Plan should:

- (i) ensure that the affected Stakeholders are, to the extent possible, put in the position they would have been in had the actual Adverse Impact not occurred;
- (ii) enable remediation that is proportionate to the actual Adverse Impact, noting that such remediation could take the form of apologies, restitution, rehabilitation, and financial or non-financial compensation;
- (iii) ensure that the actual Adverse Impact in question does not recur and that additional Adverse Impacts are prevented.

(b) Buyer contribution: If Buyer jointly caused the actual Adverse Impact by failing to meet its HREDD Obligations, it shall contribute to remediation by providing adequate financial and non-financial assistance to support the preparation and implementation of the Corrective Action Plan, that is at least proportionate to its contribution.

(c) Buyer obligations: Regardless of whether Buyer jointly caused the actual Adverse Impact, it shall provide adequate assistance, including expertise, financial, and technical assistance to prepare and implement the Corrective Action Plan.

(d) Responsible Exit: In any termination of this Agreement, whether due to a failure by a party to comply with this Agreement, the occurrence of a severe Adverse Impact for which there is no reasonable expectation of prevention or remediation, or the occurrence a force majeure event or any other event that lies beyond the control of the parties, the terminating party shall consider the potential Adverse Impacts of exit and, in collaboration with the other party, as possible and appropriate, take measures to mitigate such Adverse Impacts.

Article 3: Remedies

3.1 Notice of Default, Cure Period, and Breach

(a) Right to Cure and Breach: Failure to satisfy an HREDD Obligation shall constitute a default, “HREDD Default”, which must be cured by an enhanced Prevention Action Plan in the case of a potential Adverse Impact or by an enhanced Corrective Action Plan in the case of an actual Adverse Impact. If the HREDD Default is not cured by the defaulting party within [an appropriate period][X days][Y weeks][a period agreed by the parties in the Agreement] after receipt of a written notice from the other party, such failure to cure shall constitute a breach of this Agreement.

(b) Cooperating in Cure: The parties shall cooperate in good faith to cure the HREDD Default.

(c) HREDD Default with an Actual Adverse Impact: For the avoidance of doubt, if a HREDD Default leads to, or is otherwise associated with, an actual Adverse Impact, curing such HREDD Default will require, at a minimum, preparing and implementing a Corrective Action Plan as indicated in Article 2 on remediating Actual Adverse Impacts.

3.2 Exercise of Interim Remedies in the Event of a HREDD Default

(a) Cumulative Remedies: Remedies shall be cumulative, non-exclusive of, and without prejudice to any other remedies provided hereunder or by applicable law.

(b) Interim remedies: Interim remedies are those remedies that can be exercised by the non-defaulting party during the cure period for a HREDD Default, “Interim Remedies”. A party’s exercise of Interim Remedies shall not be construed as constituting a waiver of its rights. Interim Remedies include, without limitation:

(i) Demanding adequate assurances from the defaulting party of cure or due performance in conformity with this Agreement. Such assurances shall be fair, reasonable, non-discriminatory, and appropriate to the parties’ size and circumstances.

(ii) Demanding that the defaulting party take active measures, such as the immediate cessation of activities that could aggravate existing or create new Adverse Impacts. Such measures may include Supplier’s termination or removal of employees, if permissible under applicable law, and/or other Representatives in accordance with applicable laws, placing its supplier(s) or subcontractor(s) on notice of an Adverse Impact that the parties reasonably believe was caused or jointly caused by such supplier or subcontractor, requiring those entities to take corrective action to remedy the Adverse Impact, and, if it becomes clear that remedy is not forthcoming or that continuing the relationship will aggravate or create additional Adverse Impacts, terminating the contract or affiliation with the sub-supplier(s) or subcontractor(s).

(iii) Suspending payments, whether under the Agreement or other agreements, until the non-defaulting party determines, in its reasonable discretion, that the defaulting party has taken appropriate remedial action, as indicated in Section 3.1 on Breach and Notice of

Breach. [Suspension of payments will not be available to a party that jointly caused the Default by failing to meet its own HREDD Obligations.]

(iv) Obtaining damages caused by the HREDD Default, provided, however, that if the other party caused or jointly caused the Default, damages shall be reduced proportionally to that party's contribution.

(c) Rejection of Nonconforming Goods: In the event of an actual Adverse Impact that Supplier individually or jointly caused that renders the Goods nonconforming goods that cannot be released or sold in the European market because of applicable European regulations, "Nonconforming Goods", Buyer shall have the right to reject such Nonconforming Goods and the costs associated with such rejection, including but not limited to the costs of disposing of the Goods and finding a replacement contract with another supplier, shall be borne by Supplier unless Supplier is an SME or unless both Buyer and Supplier jointly caused the actual Adverse Impact at issue by breaching their respective HREDD Obligations. If Buyer jointly caused the actual Adverse Impact at issue, then the costs associated with rejection must be borne by both parties proportionally to their respective contributions.

(a) Rejected Nonconforming Goods: Rejected Nonconforming Goods must be managed responsibly to avoid waste and, if the Nonconforming Goods are, in whole or in part, sold in another market if appropriate and authorized by the Buyer, the proceeds should be channeled to the adversely impacted Stakeholders or donated to a charity.

(b) Relationship of Rejection to Corrective Action: For the avoidance of doubt, Buyer's right to reject the Nonconforming Goods under this Section operates independently from its HREDD Obligation to cooperate with Supplier to prepare and implement a Corrective Action Plan under Article 2.

(c) Timely Notice: Notwithstanding any provision of this Agreement or applicable law, Buyer's rejection of any Nonconforming Goods shall be deemed timely if Buyer gives notice to Supplier within [8 days][a period agreed by parties] [a reasonable time] after Buyer's discovery of the nonconformity.

3.3 Remedies Limitations

Buyer and Supplier acknowledge that:

(a) No Benefit from Adverse Impacts: Neither Buyer nor Supplier shall benefit from an Adverse Impact. If damages are owed that would result in a benefit to Buyer or Supplier, such amounts should go toward supporting the remediation set out in Article 1 on Grievance Mechanisms and Article 2 on Remediating Actual Adverse Impacts. A "benefit" means being put in a better position than if the Agreement had been performed without an [actual] Adverse Impact.

(b) Priority Use of Funds: If there are insufficient funds to pay damages and complete the remediation processes set out in Article 1 (Grievance Mechanisms) and Article 2 (Remediating Actual Adverse Impacts), remediation shall take priority.

3.4 Indemnification and Comparative Fault

(a) Indemnification: Unless it is an SME, a party shall, in case of a breach of the HREDD Obligations, indemnify, defend and hold harmless the other party and its Representatives, affiliates, successors and assigns (collectively, “Indemnified Party”) against [any and all] losses, costs, and damages[, liabilities, deficiencies, claims, actions, judgments, settlements, interest, and costs or expenses associated with Nonconforming Goods, including, without limitation, the cost of storing, rejecting, returning, and exporting Nonconforming Goods, reasonable attorneys’ fees, and audit fees that would not have been incurred but for the breach.

(b) Comparative Fault: Notwithstanding Section 3.4(a) (Indemnification), a party’s obligation to indemnify shall be reduced in proportion to the degree that the Indemnified Party caused or jointly caused the breach. If the parties[‘HREDD Contact Points] do not agree as to the degree of contribution, they will proceed to resolve the issue through the dispute resolution process set out in Article 5 (Dispute Resolution With Stakeholders).

3.5 Termination and Responsible Exit

(a) Termination: The terminating party may terminate this Agreement after giving reasonable notice to the other party of its intent to terminate because of a [material] breach or uncured Default under Article 3.1 (Notice of Default, Cure Period, and Breach).

(b) Responsible Exit: In the event of termination, Article 2(d) (Responsible Exit) applies. If termination is pursued because of a violation of HREDD Obligations, the terminating party shall evaluate whether termination would either help to prevent additional Adverse Impacts or aggravate such Impacts. If termination would aggravate Adverse Impacts, then Buyer will consider not terminating.

(c) No prejudice to other rights or obligations: Termination of this Agreement shall be without prejudice to any rights or obligations accrued prior to the date of termination, including, without limitation, payment that is due for acceptable or conforming Goods that were partially or completely manufactured by Supplier prior to termination.

Article 4: Monitoring

4.1 Regular Monitoring

The Buyer, or its Representatives, has the right, after providing reasonable written notice to Supplier, to audit or inspect the workplace(s) of Supplier to monitor whether the Supplier is meeting its HREDD Obligations. Supplier has the right to refuse such monitoring if it can provide Buyer with equivalent information, as indicated under Article 1.1(d) (Obligation to provide information), or if it can demonstrate that it is already participating in an effective mechanism for addressing HREDD Obligations.

4.2 Monitoring without notice

Buyer may carry out an inspection without notice if there is credible, reliable information that there are significant risks of Severe Adverse Impacts in Supplier’s workplace(s).

4.3 Cooperation by Supplier

Supplier must cooperate in such monitoring in accordance with applicable laws, including by providing access to its facilities, workers, and documents, as relevant, for Buyer to conduct Human Rights and Environmental Due Diligence. Supplier shall not retaliate in any way against Stakeholders.

4.4 Costs of Monitoring

If Buyer exercises its monitoring rights under the Agreement and Supplier is an SME, Buyer shall bear the cost of the monitoring activities. If Supplier is not an SME, the costs shall be borne by [Buyer][Supplier][jointly, in a measure agreed by the parties]. If an actual Adverse Impact occurs, the procedures set out in Article 2 on Remediating Actual Adverse Impacts shall apply.

Article 5: Dispute Resolution with Stakeholders

5.1 Dialogue

The Corrective Action Plan set out in Article 2 contemplates establishing and, if necessary, using a dialogue-based dispute resolution mechanism that is compliant with UNGP 31 and that involves an independent facilitator and allows adversely affected Stakeholders to file grievances. The mechanism must also allow for representation by civil society organisations and other relevant associations representing the interests of adversely impacted Stakeholders. This dialogue-based dispute resolution mechanism requires the participation of both Buyer and Supplier. It may be established at the time the Corrective Action Plan, as part of that Plan, or it can be a component of the OLG M[s], or of some other dialogue-based mechanism maintained by a third party, provided that such mechanism meets the criteria set out in UNGPs 29 and 31.

5.2 Escalation mechanism

[If national law allows arbitration on human rights issues:] If a grievance is not resolved between one or both parties and the Stakeholders referred to in Section 5.1 in the dialogue based process referred to in Section 5.1 [within a reasonable period proportionate to the nature and the salience of the Adverse Human Rights Impact][within X months], then the grievance shall be settled by arbitration in accordance with [the Hague Rules on Business Human Rights Arbitration][arbitration rules] (the “Arbitration Rules”) in effect on the date of this Agreement. The arbitration shall be administered by [arbitral institute] and the number of arbitrators shall be [one][three]. The seat of arbitration shall be [X]. The language of the proceedings shall be [language]. The award shall include compliance with the Corrective Action Plan as contemplated by Section 2.1.

[If national law does not allow arbitration on (certain) human rights issues, then for these issues:] If a grievance is not resolved between one or both parties and the Stakeholders referred to in Section 5.1 in the dialogue based process referred to in Section 5.1 [within a reasonable period proportionate to the nature and the salience of the Adverse Human Rights Impact][within X months], then the grievance shall be settled by [competent national court of the State in which the Adverse Impact occurred].

5.3 Non-retaliation

Parties shall not take any adverse action against any person on account of such person having spoken to parties' representatives, supplied information or otherwise having cooperated in any fashion with parties or their representatives or with dispute resolution referred to in Section 5.2.