

**NETHERLANDS
ARBITRATION INSTITUTE**

MEDIATION RULES
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NAI MEDIATION CLAUSE – ENGLISH

“For the purposes of resolution of each and any dispute that has arisen or might arise further to the present agreement, or any further agreements resulting from the same, the parties shall – or a party shall – file a request for mediation with the NAI secretariat in accordance with the NAI Mediation Rules. If such request fails to result in a comprehensive resolution of the dispute by conclusion of a contract of settlement as referred to in Article 7(1) (a) of the NAI Mediation Rules, by an arbitral award on agreed terms as referred to in Article 8 of said Rules, or by a combination of both, the dispute – or any part thereof not resolved in any of the aforesaid manners – shall be resolved exclusively in accordance with the NAI Arbitration Rules.”

*

* If the parties agree on arbitration as well, in case mediation does not lead to a solution, they may make provisions for certain matters with regard to such arbitration. Reference is made to the provisions under the heading “Recommended arbitration clause” as laid down in the Arbitration Rules of the Netherlands Arbitration Institute (NAI Arbitragereglement).

NAI MEDIATIONBEDING – NEDERLANDS

“Ten behoeve van de oplossing van elk geschil dat is of mocht ontstaan naar aanleiding van de onderhavige overeenkomst, dan wel van nadere overeenkomsten die daarvan het gevolg mochten zijn, zullen de partijen, respectievelijk zal de meest gerede partij, een aanvraag tot mediation indienen bij het secretariaat van het NAI volgens het NAI Mediationreglement. Leidt die aanvraag niet tot een algehele oplossing van het geschil door ondertekening van een vaststellingsovereenkomst als bedoeld in artikel 7(1) sub (a) van het NAI Mediationreglement, door een arbitraal schikkingvonnis als bedoeld in artikel 8 van dat reglement, of door een combinatie van deze beide, dan wordt het geschil, althans dat gedeelte daarvan dat niet op één der zo-even genoemde wijzen is opgelost, uitsluitend beslecht overeenkomstig het NAI Arbitragereglement.” *

* Wanneer partijen ook arbitrage overeenkomen, voor het geval de mediation niet tot een oplossing heeft geleid, kunnen zij met betrekking tot die arbitrage een aantal zaken regelen. Zie hiervoor de bepalingen onder “aanbevolen tekst arbitraal beding”, zoals opgenomen in het NAI Arbitragereglement.

CLAUSE DE MÉDIATION DU NAI – FRANÇAIS

« En vue de la solution de tout litige né ou susceptible de naître du présent contrat ou de contrats ultérieurs pouvant en découler, les parties introduiront –ou la partie la plus diligente introduira– une demande de médiation auprès du secrétariat du NAI conformément au Règlement de médiation du NAI. Si ladite demande ne résulte pas dans une solution exhaustive du litige par signature d'un protocole d'accord tel que visé à l'Article 7(1) (a) du Règlement de médiation du NAI, par sentence d'amiable composition telle que visée à l'Article 8 du dit règlement, ou par une combinaison des deux, le litige, du moins sa partie non résolue de l'une des deux manières susvisées, sera exclusivement résolu conformément aux dispositions du Règlement d'arbitrage du NAI. » *

* En ce qui concerne l'arbitrage, qui a été convenu en cas où le médiation ne résulterait pas dans un règlement à l'amiable, d'autres matières peuvent être réglées dans la clause. Voir les dispositions sous le titre Clause compromissoire recommandée, comme prévues dans le Règlement d'Arbitrage de l'Institute Néerlandais d'Arbitrage (NAI Arbitragereglement).

NAI MEDIATIONSKLAUSEL – DEUTSCH

„Zur Lösung aller Streitigkeiten, die sich aus dem vorliegenden Vertrag oder den Nachfolgeverträgen jetzt oder künftig ergeben, stellen die Parteien beziehungsweise stellt die zuerst handelnde Partei einen Mediationsantrag beim Sekretariat des NAI gemäß der NAI-Mediationsordnung. Führt dieser Antrag nicht zur einvernehmlichen Lösung der Streitigkeit mit der Unterzeichnung eines Feststellungsvertrages gemäß Artikel 7(1) (a) der NAI-Mediationsordnung, mit einem Vergleich in Form eines Schiedsspruchs gemäß Artikel 8 dieser Mediationsordnung oder mit einer Kombination aus diesen beiden Schlichtungsmöglichkeiten, so ist die Streitigkeit, jedenfalls deren Teil, der nicht auf eine der vorstehenden Weisen beigelegt wurde, ausschließlich gemäß der NAI-Schiedsgerichtsordnung zu schlichten.“ *

* Wird zwischen den Parteien für den Fall ein Mediation nicht zu einem Lösung führt, ebenfalls ein Schiedsverfahren vereinbart, können diese miteinander zusätzlich mehrere Vereinbarungen treffen. Diesbezüglich wird auf das Bestimmte im “empfohlener Text der Schiedsklausel” der Schiedsgerichtsordnung des Niederländischen Instituts für Schiedsgerichtswesen (NAI Arbitragereglement) hingewiesen.

NAI MEDIATION RULES

Article 1 - Applicability

These Rules govern Requests for Mediation filed with NAI's Secretariat (the 'Secretariat') and the handling of such requests.

Article 2 - Mediation

1. 'Mediation' is taken to mean a procedure in which two or more parties to a dispute endeavour to resolve their dispute with the aid of a mediator on a voluntary basis.
2. 'NAI Mediation' is taken to mean: mediation in accordance with these Rules.

Article 3 - Request for Mediation

1. Every NAI Mediation will be preceded by the filing of a Request for Mediation with the Secretariat.
2. A request may be filed by all the parties to the dispute jointly or by one or more of them.
3. Every request shall contain at least the following information:
 - (a) a brief description of the subject of the dispute;
 - (b) the name, the address, the place of residence, the telephone number, the e-mail address and, as applicable, the VAT number of each of the parties involved; and
 - (c) a brief description of the matters in dispute to be resolved and the related mutual interests of the parties involved.
4. If a request is not filed by all the parties involved jointly, the Secretariat will forward copies of the request to the other party or parties involved and will request them to notify the Secretariat in writing within 14 days whether they are willing to conclude an agreement pertaining to the resolution of the reported dispute by means of mediation in accordance with these Rules.
5. If the other party or parties involved give notice that they are not willing to conclude an agreement as referred to in Article 3(4), the Secretariat will notify the other parties in this respect.

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6. The Secretariat is authorised to request the applicant and the other parties to make translations available of the documents filed with the Secretariat in a language to be indicated by the Secretariat.

Article 4 - Appointment of the mediator

1. The mediator will be appointed as soon as all the parties involved have stated that they are willing to have the dispute resolved by means of NAI Mediation and the administration costs determined in accordance with Article 9(2) have been paid.

2. The mediator will be appointed by the parties jointly unless the parties have agreed otherwise. The parties will immediately inform the Secretariat of such appointment; the Secretariat will then confirm the appointment and the applicable conditions to the mediator and will send a copy of that confirmation to the parties involved.

3. If it is not possible to appoint a mediator in the manner referred to in Article 4(2) within a term of 14 days after the Secretariat has received the joint request or after the Secretariat has received the notification or notifications referred to in Article 3(4) within the term stipulated in that Article, the parties may request the Secretariat to appoint the mediator, in which case the following procedure will apply:

- (a) The Secretariat will send all the parties a list containing three names of persons who are eligible to be appointed mediator and will request each of the parties to inform it within two weeks of receiving the list which of the persons named in the list they would not accept as the mediator; the Secretariat will then appoint a mediator from the remaining persons;
- (b) If none of the persons named in the list is acceptable to all the parties as the mediator, the process indicated under (a) will be repeated;
- (c) If it once again appears that none of the persons named in the list is acceptable to all the parties as the mediator, the Secretariat will appoint a person whose name was not contained in any of the above-mentioned lists as the mediator.

4. The Secretariat will take into consideration the parties' justified wishes when drawing up the list referred to in Article 4(3)

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(a). The list will preferably contain the names of mediators who have been registered by the MfN.

5. Two or more mediators may be appointed if all the parties so desire. In such cases the provisions contained in Articles 4(2), 4(3) and 4(4) will apply correspondingly in respect of the appointment of each of the mediators.

6. References below to the mediator will be deemed to include references to a panel of mediators.

Article 5 - The Mediation Agreement; commencement of the mediation

1. After the mediator has been appointed and the deposit referred to in Article 9 below has been determined and paid, the Secretariat will schedule a meeting between the mediator and the parties in the shortest possible term for the purpose of laying down a contract for services between the mediator and each of the parties (the 'Mediation Agreement'), pursuant to which the mediator will conduct the NAI Mediation. The Mediation Agreement will be signed at that meeting.

2. The mediation will commence when the Mediation Agreement has been signed.

3. Immediately after the meeting the mediator will notify the Secretariat whether the Mediation Agreement has been concluded. If the Mediation Agreement has been concluded the mediator will send a copy of the Agreement to the Secretariat.

4. If the Mediation Agreement is not signed at the meeting referred to in Article 5(1) and as a result no Mediation Agreement is concluded, the Secretariat will confirm to the parties and the mediator that the request cannot lead to mediation.

Article 6 - Applicable procedural rules

1. The applicable procedural rules will be laid down by the mediator in consultation with the parties at the meeting referred to in Article 5.1 and thereafter. They will be laid down in the Agreement referred to in Article 5(1) and in (written) notifications from the mediator to the parties.

2. The parties may be assisted by counsel, experts and other advisors during the mediation, in each case after notifying the

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mediator and the other party or parties in advance and provided that each of them has confirmed to the mediator and the Secretariat that they will comply with the provisions contained in the Mediation Agreement and the provisions contained in these Rules, in particular the provisions governing confidentiality contained in Article 10.

3. Unless any of the parties objects no later than the time at which the Mediation Agreement is signed, the mediator may be assisted by a secretary during the mediation, provided that the secretary has confirmed in writing to the mediator and the Secretariat that he or she will comply with the provisions contained in the Mediation Agreement and the provisions contained in these Rules, in particular the provisions governing confidentiality contained in Article 10.

4. The mediator will be permitted to speak with or correspond with each of the parties separately or to receive information from one or more of the parties in another manner, after the proposal for that purpose has been discussed with and agreed to by all the parties.

5. The parties will suspend any ongoing proceedings between them, will continue to suspend such proceedings and will not commence any new proceedings unless suspension would lead to the expiry of a statutory limitation period or expiry period, new proceedings are necessary to prevent such expiration or they jointly agree otherwise in the presence of the mediator.

6. If the parties wish to terminate ongoing mediation in whole or in part in order to have all or part of their dispute resolved by means of arbitration or binding advice, the mediator will not be permitted to act as the arbitrator, the binding advisor or the secretary in such arbitral proceedings or binding advice proceedings unless all the parties explicitly accept the mediator's intended role in the arbitral proceedings or binding advice proceedings, without prejudice to the provisions contained in Article 8.

7. The mediator will keep the Secretariat informed about the progress of the mediation, both on request and unsolicited. The Secretariat will ensure that the mediation proceeds expeditiously.

8. The parties and the mediator will agree on the language in which the mediation will be conducted. If the Secretariat does not understand that language, the Secretariat may request that translations be provided of one or more of the documents that are made available to the Secretariat in the context of the mediation, in a language to be indicated by the Secretariat.

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Article 7 - The end of the mediation

1. The mediation will end in one of the following ways:
 - (a) by execution of a settlement agreement, followed by the mediator's notification thereof to the Secretariat;
 - (b) by written notification by the mediator to the parties, with a copy to the Secretariat, that the Mediation has been terminated without a settlement agreement being concluded;
or
 - (c) by any one of the parties giving the other party or parties written notice of termination of the Mediation Agreement, with a copy to the Secretariat.
2. The Secretariat will confirm the termination of the mediation to the parties and the mediator.
3. At the end of the mediation the Secretariat will determine the mediator's costs and fee and will set them off to the fullest extent possible against the deposit that has been paid in accordance with Article 9(5). Termination of the mediation shall not affect the parties' duty of confidentiality and payment obligations pursuant to the Mediation Agreement.

Article 8 - Arbitral award

The parties and the mediator may agree that the settlement agreement referred to in Article 7(1)(a) will be laid down in an arbitral settlement award within the meaning of Article 1069 of the Dutch Code of Civil Procedure (*Wetboek van Burgerlijke Rechtsvordering*) and with due observance of Article 50 of the NAI Arbitration Rules. The agreement concluded for that purpose will also apply as an arbitration agreement, pursuant to which the mediator or an odd number of members of a panel of mediators will be appointed as the arbitrator(s) and Rotterdam, the Netherlands, will be the place of arbitration.

Article 9 - Costs

1. The costs related to the mediation consist of (i) NAI's administration costs and (ii) the mediator's costs and fee. Unless agreed otherwise, the costs of counsel, experts and other advisors

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retained by or for a party in accordance with Article 6(2), shall be borne by that party.

2. The administration costs will be determined by the Secretariat after the request has been filed. The administration costs will be determined on the basis of the scale that is included as Appendix 2 to these Rules, which forms part of these Rules. The Secretariat will decide on the administration costs if they cannot be calculated on the basis of that scale.

3. If the request has been filed jointly by all the parties involved, the administration costs will be charged to the party or parties that filed the request, if necessary taking into consideration each of their shares. If the request was not filed by all the parties involved, the Secretariat will determine the portion of the administration costs to be paid by the applicant or applicants and will charge that party or those parties those costs, if necessary taking into consideration each of their shares. The remainder will be charged to the other party or parties involved, after a notification is received from that party or those parties within the meaning of Article 3(4). No refund will be made of any administration costs that have been paid in full or in part.

4. The Secretariat will suspend the performance of its duties as long as any administration costs that are due and payable have not been paid in full. If, after a second reminder from the Secretariat, the administration costs owed by a party are not received by the NAI within fourteen days, the mediation will not take place, unless the administration costs owed are paid by the other party or parties.

5. As soon as the mediator has or the mediators have been appointed, the Secretariat will determine the amount and each party's share of the deposit that the parties must make available to the Secretariat to secure payment of the fee to be charged by the mediator and his costs. No interest will be paid on any amount that is placed on deposit. Any negative interest may be deducted from the deposit by the NAI. If, after a second reminder from the Secretariat, the deposit to be paid by a party is not received by the NAI within fourteen days, that party will be deemed to have given notice of termination of the Mediation Agreement in accordance with Article 7(1)(c).

6. The Secretariat will be entitled to request a supplementary deposit from one or more of the parties, either at the mediator's request or otherwise.

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Article 10 - Confidentiality

The parties, the mediator, the Secretariat and any and all other persons who are involved in the mediation in accordance with these Rules are obliged to observe a duty of confidentiality in respect of all the documents that are disclosed, exchanged or otherwise made available in the context of the mediation and of any and all other information that becomes known in any other manner in the context of the mediation. In particular they are not entitled to use any information that has come to their attention in the context of the mediation as evidence, either in or out of court, or to call the persons involved in the mediation or have them called as witnesses, except insofar as:

- (a) the information in question was already known to the persons or parties referred to in this provision other than in the context of the mediation;
- (b) all the parties approve the disclosure of the information that has become known in the context of the mediation;
- (c) it concerns evidence brought into the mediation for discussion that, without the mediation, would also have been submitted to the court or the arbitrator in court proceedings or arbitration;
- (d) the information relates to actual or impending crimes in respect of which there is a statutory obligation to disclose;
- (e) the information is needed in a grievance procedure, disciplinary proceedings or liability proceedings against the mediator, either for the benefit of the mediator himself with a view to his defence or for the benefit of another party involved in the mediation in order to substantiate a complaint or claim for liability;
- (f) the information that has become known in the context of the mediation must be revealed in connection with urgent reasons relating to public order; or
- (g) it concerns the settlement agreement, unless the parties have agreed that one or more parts thereof are subject to the confidentiality.

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Article 11 - Limitation of liability

The NAI, its board members and staff members, the members of its Advisory Board, the mediator and any secretary that may have been appointed, and any other persons that one or more of them involve in this case are not liable contractually or otherwise for any damage caused by their own or any other person's acts or omissions or as a result of the use of any supporting materials in or in connection with the mediation, unless and only insofar as mandatory rules of Dutch law would preclude exoneration. The NAI, the members of its Governing Board and its staff members are not liable for the payment of any amount that is not covered by the deposit.

Article 12 - Amendments of these Rules

These Rules may be amended only by the Governing Board of the Netherlands Arbitration Institute Foundation (*Stichting Nederlands Arbitrage Instituut*). Regardless of the time at which an amendment enters into effect, any particular mediation will be governed only by the version of these Rules that applied at the time at which the Secretariat received the Request for Mediation.

Article 13 - Extension of terms

The terms referred to in Articles 3(4), 4(3), 5(4), 9(4) and 9(5) may be extended by the Secretariat, either at the request of any of the parties or otherwise.

Article 14 - Communications

1. Requests and communications shall be made or confirmed in writing in the manner provided for in this article.
2. Unless the sender is unable to do so, all requests, communications and other documents to the NAI shall only be sent electronically by e-mail to the address secretariaat@nai-nl.org or to any other address to be specified by the NAI.
3. The time at which a request or communication is received electronically by the NAI shall be the time at which the request or communication has reached a data processing system for which the NAI bears responsibility.
4. The NAI will send a request or communication addressed to one or more addressees electronically by e-mail if the addressee¹³

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by providing its e-mail address, has communicated that it may be reached for these purposes by such means.

5. After signing the Mediation Agreement, the parties shall send their requests, communications and other documents directly to the mediator.

6. Unless the mediator decides otherwise, all requests, communications or other instruments in writing between the parties and the mediator shall be sent in electronic form by e-mail if the parties, by providing their e-mail addresses, have communicated that they may be reached for these purposes by such means.

7. The time at which a request, communication or other document is received electronically by the mediator shall be the time at which the request, the communication and/or the other document has reached a data processing system for which the mediator bears responsibility.

8. The time at which a request, communication or other document is sent electronically by the mediator and/or the NAI shall be the time at which the message has reached a data processing system for which the mediator or the NAI does not bear responsibility.

Article 15 - Applicable law and disputes

1. These Rules, and anything done in accordance with them, are governed by Dutch law. The settlement agreement referred to in Article 7(1)(a) will be governed by Dutch law unless the parties agree otherwise.

2. In order to resolve any dispute that has arisen or that may arise in the future further to or in connection with these Rules, a Mediation Agreement ensuing therefrom or from further agreements that may be concluded in the context of the mediation or further to these Rules, the parties or the most diligent party, respectively, will file a Request for Mediation with the Secretariat of the NAI in accordance with the NAI Mediation Rules.

Article 16 - Replacement of the NAI Minitrial Rules

As from the date on which they are adopted by the board of the NAI these Rules shall supersede the NAI Minitrial Rules. As from that

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date all references to the latter rules shall be deemed to be references to these Rules.