

MfN Mediation Regulations

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Article 1 – Definitions

In these Regulations, the following terms are defined as stated below:

- a Issue: the issue described in the Mediation Agreement;
- b Mediation: a procedure in which the Parties commit themselves, under the supervision of a Mediator, to resolving the Issue in accordance with the Regulations;
- c Mediation Agreement: the written agreement in which the Parties agree to make every effort to resolve the Issue through Mediation and instruct the Mediator to act as Mediator in the Issue and the Mediator accepts this instruction;
- d Mediator: the person who supervises the Mediation and who is listed in the Register;
- e MfN: Dutch Federation of Mediators Foundation;
- f Party (or Parties): the Party (or Parties) who wish(es) to resolve the Issue through Mediation;
- g Register: the MfN register;
- h Regulations: these Regulations.

Article 2 – Selection of the Mediator

- 2.1 The Parties will appoint a Mediator themselves.
- 2.2 If the Parties require assistance in selecting a Mediator, they or their representatives may submit a written request to the MfN. The request contains the names, (email) addresses, telephone numbers of the Parties and their representatives, if any, a general description of the Issue and any preference for a region and/or profile (e.g. gender/occupation/specialisation) of the Mediator.
- 2.3 After receiving the request, the MfN will send the Parties a list of (usually three or five) names of Mediators who are eligible, given the description of the Issue or the relevant criteria specified by the Parties.
- 2.4 The Parties will jointly select a Mediator from the aforementioned list. They can contact the Mediator directly.
- 2.5 If the Parties fail to reach a joint choice, they or their representative(s) may (jointly) request the MfN to make a written proposal for (the appointment of) a Mediator. The MfN informs the Parties and the (appointed) Mediator about this appointment, so the Mediator can then contact the Parties. They can also contact the Mediator directly.

Article 3 – Commencement of Mediation

The Mediation commences on the date on which the Mediation Agreement is signed, unless another date has been expressly agreed on in writing.

Article 4 – Article 4 - Activities of the Mediator

- 4.1 The Mediator's activities include supervising the process and mediation meetings, and may also include reporting, contacting the Parties (in writing or by telephone), reviewing documents, contacting third parties, and drafting agreements.
- 4.2 After consulting the Parties, the Mediator will determine the manner in which the Mediation will be conducted.
- 4.3 The Mediator is permitted to communicate with the Parties individually and confidentially.

- 4.4 If the Mediator so wishes, he¹ may during the Mediation receive secretarial assistance from a person appointed by him² for that purpose.
- 4.5 The Mediator and the Parties will make every effort to ensure that the Mediation proceeds smoothly.

Article 5 – Voluntariness

- 5.1 The Parties join the Mediation on a voluntary basis. Either Party, including the Mediator, may withdraw from the Mediation at any time.
- 5.2 The Parties will not be bound by positions and proposals they have adopted or made during the Mediation.
- 5.3 Interim agreements are only binding on the Parties insofar as they expressly record those agreements and their binding nature in a written agreement. Article 10 of these Regulations applies to this agreement by analogy.

Article 6 – Privacy and representation

- 6.1 If persons other than the Mediator and the Parties are involved in the Mediation, the consent of the Parties is required. The Mediator ensures that all these persons have signed a non-disclosure agreement. If the Mediator obtains secretarial assistance, he will ensure that this person has also signed a non-disclosure agreement.
- 6.2 If a Party is represented during the Mediation, the representative must be authorised to perform the (legal) acts necessary for the Mediation, including entering into an agreement as referred to in Articles 5.3 and 10.1. At the request of the Mediator, a written power of attorney must be presented demonstrating the representative's authority.

Article 7 – Confidentiality

- 7.1 The Parties will not disclose to third parties - including judges or arbitrators - the course and content of the Mediation, including the conduct of the persons involved in the Mediation, the positions they adopt, the proposals they make, the interests they mention, and the information provided verbally or in writing, directly or indirectly, in connection therewith.
- 7.2 The Parties undertake not to disclose, quote, cite, paraphrase or otherwise rely on any documents to third parties - including judges or arbitrators - if such documents have been disclosed, shown or otherwise made known by a party to the Mediation during or in connection with the Mediation. This obligation does not apply if the data subject in question already had or could have had this information independently of the Mediation.
- 7.3 Documents as referred to in Article 7.2 is also taken to mean:
 - the Mediation Agreement;
 - notes of the Parties or the Mediator in the context of the Mediation;
 - reports;
 - audio and video recordings, photographs and digital files in any form;
 - the settlement agreement or other agreement document, taking into account the provisions of Article 10.3.
- 7.4 Articles 7.1, 7.2 and 7.3 also apply to the Mediator.
- 7.5 During the Mediation, it is not permitted to make audio or video recordings in any way whatsoever of the conversation or conversations that take place within the context of the Mediation, unless the Parties and the Mediator expressly agree otherwise. If audio or video recordings are made in violation

¹ Whenever this document refers to 'he', this is also taken to include 'she', 'them' and 'those'.

² Whenever this document refers to 'him', this is also taken to include 'her', 'them' and 'those'.

of this, they are also covered by the confidentiality referred to in this article. Nor may they be used in complaints, disciplinary or other proceedings.

7.6 The Parties waive the right to dispute, in court or otherwise, anything provided or presented during the Mediation:

- to use as evidence against each other;
- to hear the Mediator or other parties involved in the Mediation, as a witness or otherwise, about information that has been provided or has emerged during or in connection with the Mediation, or about the content of the agreement referred to in Articles 5.3 and 10.1, all in the broadest sense of the word.

The provisions of this article also apply to the MfN, persons employed by the MfN or otherwise involved with the MfN.

7.7 The Mediator will treat all information provided to him by one of the Parties without the presence of the other Party (or Parties) as confidential, including in relation to that other Party (or those other Parties). This does not apply if the Party concerned expressly grants consent for such information to be introduced during the Mediation.

7.8 The provisions of Articles 7.1 to 7.4 and Articles 7.6 and 7.7 will not apply in the event of:

- a. information about criminal conduct for which a statutory reporting obligation or a statutory right to report exists;
- b. information about the threat or occurrence of a crime;
- c. complaints, disciplinary or liability proceedings against the Mediator. In that case, the Mediator is released from the duty of confidentiality applicable to him to the extent necessary to defend himself against the complaint or claims or to invoke his³ professional liability insurance. The duty of confidentiality will lapse for all parties involved to the extent necessary to deal with the complaint or those claims or that appeal to the professional liability insurance;
- d. a complaint, disciplinary or liability proceedings against a professional who was or is involved in the Mediation and who is himself subject to his own disciplinary law. In that case, that professional is released from the duty of confidentiality applicable to him to the extent necessary to defend himself against the complaint or claims or to invoke his professional liability insurance. The duty of confidentiality will lapse for all parties involved in the Mediation to the extent necessary to deal with that complaint or those claims or that appeal to the professional liability insurance;
- e. a request from a peer reviewer appointed by the MfN to the Mediator to provide information about the practice if the peer reviewer agrees in writing to maintain confidentiality.

Article 8 – End of Mediation

8.1 The Mediation ends by:

- a. the finality of a settlement agreement or other agreement document signed by the Parties; or
- b. verbal agreement between the Parties on the conclusion of the Mediation; or
- c. a written statement from one Party to the other Party (or Parties) and the Mediator that he withdraws from the Mediation; or
- d. a written statement from the Mediator to the Parties that he withdraws from the Mediation.

8.2 In all cases, the Mediator will confirm the end of the Mediation, stating the end date, by means of a neutral, written final notice to the Parties. This final message from the Mediator, unlike the statements referred to in Article 8.1 under c and d, is not covered by the confidentiality referred to in Article 7.

8.3 After the end of the Mediation, the Parties' duty of confidentiality and payment obligations under the Mediation Agreement will remain in effect.

³ Whenever this document refers to 'his' as a possessive pronoun, this is also taken to include 'her' and 'their'.

Article 9 – Other proceedings

- 9.1 Any legal or related proceedings already pending at the commencement of the Mediation concerning the Issue or parts thereof - with the exception of measures to preserve rights - will be suspended by the Parties for the duration of the Mediation.
- 9.2 The Parties will not, during the duration of the Mediation, institute against each other any proceedings referred to in Article 9.1, with the exception of measures to preserve rights.
- 9.3 If a Party takes a measure to preserve rights or initiates any other proceedings referred to in Article 9.1, it will notify the Mediator and the other Party (or Parties) thereof within 24 hours of taking those measures, or initiating those proceedings.

Article 10 – Recording of the outcome of the Mediation

- 10.1 If the Parties so wish, the Mediator will ensure that their agreements are properly recorded in a settlement agreement or other agreement document as referred to in Article 8.1 under a (hereinafter collectively referred to as the 'Agreement'). The Parties may seek advice from an expert third party in drawing up this document, provided that this expert has signed a non-disclosure agreement. The Parties themselves are and remain responsible for the content of the Agreement.
- 10.2 The Mediator is not liable for the content of the Agreement and any damage resulting from it.
- 10.3 The Parties will jointly determine in writing to what extent (the content of) the Agreement is confidential. Unless they specify this, the Agreement is confidential and falls under the confidentiality of the mediation referred to in Article 7. The content of the Agreement may be submitted to the court if and insofar as this is necessary to enforce compliance thereof.

Article 11 – Limitation of liability

Any liability of the Mediator, in the event of damage resulting from his actions or omissions in or prior to the Mediation, is limited to a maximum of the amount paid out in the relevant insurance agreement by his professional liability insurer, plus the amount of the excess that is borne by the Mediator in the relevant case under that insurance agreement.

Article 12 – Code of conduct and complaints

The Mediator is bound by the Code of Conduct for the MfN registered mediator and is subject to the complaints procedure of the MfN register and the disciplinary law according to the Regulations of the Disciplinary Law Mediators Foundation. A Party may submit a complaint to the MfN within twelve months of the end date of the Mediation in accordance with the MfN Register Complaints Procedure in force at that time.

Article 13 – Unforeseen cases

In situations not provided for by these Regulations, the Mediator decides. In doing so, he acts in accordance with the scope of the Regulations.

Article 14 – Amendment of the Regulations or deviation from the Regulations

- 14.1 The Parties can deviate from the Regulations only through a written agreement with the express consent of the Mediator.
- 14.2 The MfN is always entitled to amend the Regulations. Such amendments will not affect any Mediations already in progress at that time. Only the Regulations in force at the commencement of those Mediations will apply to those Mediations.

Article 15 – Applicable law

Dutch law applies to these Regulations, the Mediation Agreement, the agreement referred to in Article 5.3 and the Agreement.

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