NETHERLANDS ARBITRATION INSTITUTE

NAI MEDIATION RULES

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INHOUDSOPGAVE

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NAI Mediation Model Clauses

Mediation-Arbitration model clause 1 (mandatory mediation first)

1. If disputes arise between the parties as a result of this agreement or any further agreements that may result from it, they will attempt to resolve these together through mediation in accordance with the NAI Mediation Rules. They undertake to cooperate in appointing a mediator and to participate in at least one joint mediation session. Only if the mediation has not led to a solution may they initiate arbitration proceedings, without prejudice to their right to take measures to preserve their rights.
2. Disputes that are not resolved through mediation, as referred to in paragraph 1, will be settled in accordance with the Arbitration Rules of the NAI.

Mediation-Arbitration model clause 2 (mediation first if desired)

1. If disputes arise between the parties as a result of this agreement or any further agreements that may result from it, they will consider trying to resolve these together through mediation in accordance with the NAI Mediation Rules. If they decide to do so, they may initiate arbitration proceedings only if mediation has not led to a solution, without prejudice to their right to take measures to preserve their rights.
2. Disputes that cannot be resolved through mediation as referred to in paragraph 1 will be settled in accordance with the Arbitration Rules of the NAI.

NAI Mediation Rules

Article 1 | Definitions

In these Rules, the following terms shall have the following meanings:
a) **"NAI"**: the Netherlands Arbitration Institute Foundation (Stichting);
b) **"Board"**: the board of the NAI;
c) **"Secretariat"**: the NAI Secretariat;
d) **"NAI Case Management Committee"**: the committee appointed by the Board whose members are responsible for administering mediations as described in the Rules. The composition of the NAI Case Management Committee and the duties of its members are described in more detail in Appendix D)
e) **"Rules"**: these mediation rules of the NAI;
f) **"Mediation"**: a procedure in which the parties undertake to resolve their dispute(s) together under the guidance of a Mediator, in accordance with the Rules;
g) **"Mediation Agreement"**: the agreement between the Mediator and the parties, which regulates the implementation of the NAI mediation;
h) **"Mediator"**: a neutral third party who assists the parties in reaching an amicable solution to their dispute. Where "Mediator" is used, this shall include the plural where appropriate;
i) **"Mediator Pool"**: the list of Mediators compiled by the NAI for appointment under these Rules;

Article 2 | Netherlands Arbitration Institute

1. The NAI is a foundation established under Dutch law.
2. The NAI does not mediate or adjudicate disputes submitted or to be submitted by the parties in mediation.

Article 3 | Applicability of the Rules

1. These Rules apply if the parties have referred their dispute to mediation at the NAI or in accordance with these Rules.
2. The version of the Rules in force on the date of signing the Mediation Agreement shall apply. Amendments to the Rules shall not apply to mediations already pending at the time of amendment of the Rules.
3. The parties may at any time jointly decide to deviate from any provision of these Rules unless mandatory provisions provide otherwise.
4. If the Parties and the Mediator agree that other Rules shall apply in addition to these Rules, these Rules shall prevail in the event of any conflict.

Article 4 | Communication

1. All written communications and documents to the NAI shall be sent by email to: secretariaat@nai.nl or to another address specified by the NAI Secretariat.
2. The Parties agree to receive all communications and documents from the NAI and the Mediator electronically.
3. After the Mediator has accepted the appointment, the parties shall communicate directly with the Mediator.
4. Upon request, the Mediator shall inform the Secretariat in writing of the progress of the Mediation.
5. If desired, the parties and the Mediator may use the NAI platform for the secure electronic exchange of documents.

Article 5 | Request for mediation

1. Either party may request mediation by submitting a written request to the Secretariat.
2. The request shall contain:
a) the name, address, postcode, place of residence, telephone number, email address and, where applicable, VAT number of each of the parties;
b) the name, address, postcode, place of residence, telephone number and email address of the person or persons representing the requesting party in the mediation and of any legal advisers involved;
c) a brief description of the dispute and the claim, stating the monetary interest of each of the claims, including interest, and an estimate of the monetary interest of each and any claims that cannot be quantified in monetary terms;
d) a reference to the mediation clause and any other agreements or documents evidencing the parties` agreement to mediate, accompanied by copies of the relevant agreements and/or documents.
e) a statement as to whether legal or arbitration proceedings are pending between the parties concerned and, if so, whether those proceedings have been suspended or stayed in order to allow the mediation to take place.
3. If the request is made jointly by the parties, they may also have already chosen a Mediator from the Mediator Pool.
4. If not all parties submit the request, the Secretariat shall send a copy of the request to the other party or parties with a request to respond in writing within fourteen days, whether they are willing to participate in mediation.
5. If no confirmation is received within fourteen days, the Secretariat shall notify the requesting party, which may regard this as confirmation of a refusal to participate in mediation. This period may be extended by the Secretariat at the request of the requesting party.

Article 6 | Selection and appointment of the Mediator

1. In any case, at least one Mediator shall be appointed for a mediation, unless the parties agree otherwise in writing. The provisions of Article 1 shall apply mutatis mutandis in the event of multiple Mediators.
2. Subject to the provisions of paragraph 6, the Mediator shall be chosen jointly by the parties from the Mediator Pool, and they shall inform the Secretariat of their choice no later than four weeks after the mediation request.
3. In exceptional cases, the parties may choose a Mediator from outside the Mediator Pool, provided that person has equivalent qualifications.
4. The parties shall notify the Secretariat of their choice in writing. The Mediator shall be appointed on behalf of the parties by the relevant member of the NAI Case Management Committee.
5. If the Mediator jointly selected by the parties does not accept the appointment, the parties shall select another Mediator from the Mediator Pool within fourteen days of being notified by the Secretariat.
6. The following procedure shall be followed if the parties have not succeeded in jointly selecting a Mediator within four weeks of the mediation request or within fourteen days of submitting a joint mediation request, unless the parties concerned inform the Secretariat that they have jointly agreed to extend these periods. This procedure shall also be followed if the parties have failed to select another Mediator within fourteen days of the notification from the Secretariat referred to in the previous paragraph.
a) Based on the information provided by the parties, the Secretariat will compile a list of Mediators who best match the wishes expressed by the parties.
b) The responsible member of the NAI Case Management Committee shall submit a list of three names from the Mediator Pool to the parties and ask them to express their opinion on the acceptability of each of these candidates within fourteen days. The responsible member of the NAI Case Management Committee will then, on the basis of the parties' comments, appoint a Mediator from the list submitted on their behalf.
c) In the event that the parties have agreed on two Mediators, the provisions of (b) shall apply, with the proviso that the parties will be presented with a list of six names from the Mediator Pool and two Mediators will then be appointed.

7. If it appears that none of the persons mentioned on the list, submitted to the parties by the responsible member of the NAI Case Management Committee, is considered acceptable as Mediator by all parties, the responsible member of the NAI Case Management Committee shall appoint one or more persons from the Mediator pool as Mediator on behalf of the parties, whose name or names do not appear on any of the aforementioned lists.
8. For each appointment in accordance with this Article, the responsible member of the NAI Case Management Committee shall take the following into consideration:
a) the willingness of the selected Mediator to accept the assignment;
b) a statement completed and signed by this Mediator, as included in Appendix C, confirming their independence, impartiality and availability.
c) the Mediator`s commitment to ensure the careful and expeditious handling of the Mediation.

Article 7 | The Mediation Agreement

The parties and the Mediator shall sign the Mediation Agreement, which sets out their respective rights and obligations during the Mediation, no later than during their first joint meeting. They shall use the NAI model mediation agreement for this purpose, unless the parties and the Mediator jointly decide to use a different model. The parties and the Mediator are free to jointly adapt the model to their wishes, except for the provisions concerning the confidentiality and voluntary nature of the Mediation. The Mediator shall provide a copy of the signed Mediation Agreement to the Secretariat.

Article 8 | Commencement of the Mediation

1. Once all parties have confirmed their willingness to participate in mediation in writing, a member of the NAI Case Management Committee has appointed the Mediator(s), and the administration fees and an advance on the Mediator(s)' costs have been received in accordance with Article 15(5), the mediation may commence.
2. Mediation commences after the Mediation Agreement has been signed.

Article 9 | Voluntary nature

1. Mediation takes place on a voluntary basis for the parties. Each party and the Mediator may terminate the mediation at any time.
2. Interim agreements are binding on the parties if and only insofar as they have been laid down in writing. The parties shall not be bound by the positions taken or proposals made by them or by the Mediator during the Mediation.

Article 10 | Confidentiality

1. The parties and the Mediator shall not disclose to third parties – including judges or arbitrators – any information relating to the course of the Mediation, the positions taken by the persons involved in the Mediation, the proposals made, and the information provided verbally or in writing, directly or indirectly.
2. The Mediator shall treat all information provided to him or her by one of the parties in the absence of the other party as confidential and shall keep it secret, except if and insofar as the party concerned expressly consents to that information being brought up during the Mediation.
3. The parties and the Mediator undertake not to disclose, quote, cite, paraphrase or otherwise refer to any documents to third parties, including judges or arbitrators, if these documents have been disclosed, shown or otherwise disclosed by a party to the Mediation during or in connection with the Mediation. This obligation does not apply if and insofar as the person concerned already had or could have had access to this information independently of the Mediation or may have access to it at a later date by order of a judge or arbitrator.
4. No audio, video or photo recordings may be made of the Mediation by or on behalf of the parties, their advisers or the Mediator. If the Mediation discussions are conducted remotely by electronic means, the participants must ensure that no other persons are present in the same room or within earshot or eyeshot.
5. Unless otherwise agreed, all Mediation related information, including any agreement referred to in Article 13, shall remain confidential, except if:
a) the information was already known outside the mediation;
b) all parties agree to disclosure;
c) the evidence could also be obtained in legal or arbitration proceedings without Mediation;
d) information must be shared with insurers, provided they sign confidentiality agreements;
e) information must be shared with affiliated companies (such as parent or subsidiary companies), provided that they sign a confidentiality agreement;

f) disclosure is required by law or by an enforceable court or arbitration order;
g) information is required in a complaint or liability proceeding against the Mediator, a solicitor or a party to the Mediation;
h) disclosure is necessary for compelling reasons of public policy.
6. Persons directly or indirectly involved with the NAI are bound to confidentiality, except and insofar as disclosure is required by law or the agreement between the parties.

Article 11 | Course of the Mediation

1. The Mediator shall determine the course of events in consultation with the parties, taking into account the nature and circumstances of the dispute and the wishes of the parties.
2. The Mediator shall treat the parties fairly, equally, neutrally and impartially.
3. If necessary, the Mediator may conduct the Mediation in whole or in part physically or remotely via electronic means, and may use electronic tools at his or her discretion to communicate with the parties and ensure that the Mediation proceeds efficiently.
4. The Mediator does not have the authority to impose a settlement on the parties, but will try to help them find a solution that is acceptable to all parties. If the parties agree, the Mediator may make verbal or written proposals for a settlement, individually or jointly.
5. The parties may be assisted by legal advisors, experts or other advisers, provided that:
a) the Mediator and the other parties are informed of this in advance; and
b) these advisers confirm in writing to the Mediator that they will comply with the confidentiality provisions and other conditions of these Rules.
6. If the parties terminate all or part of an ongoing Mediation in order to resolve the dispute through Arbitration or Binding Advice, the Mediator may not act as arbitrator, binding adviser or secretary in the relevant proceedings.
7. If, during the Mediation, the parties wish to have a point of dispute settled by means of NAI Emergency Arbitration, NAI Expedited Arbitration or NAI Binding Advice, the Mediator may, at their joint request, request the relevant member of the NAI Case Management Committee on their behalf to appoint one or more arbitrators or binding advisors directly in accordance with the applicable NAI Arbitration Rules or the NAI Binding Advice Rules, with a view to continuing or completing the Mediation after a decision has been obtained as soon as possible.

8. The parties and the Mediator shall jointly determine the language of the Mediation. If the Mediator so requires, a translation into the language of the mediation shall be provided of documents submitted in the context of the Mediation.

Article 12 | Termination of the Mediation

The Mediation shall end:
a) on the date on which the parties sign the agreement referred to in Article 13;
b) on the date on which the Mediator declares in writing that the Mediation has been terminated.
c) on the date of a written statement by one party to the other party or parties and the Mediator in which, after having participated in the first joint Mediation session, it states that it will no longer participate in the Mediation; or
d) on the date on which the Mediator informs the parties in writing that he or she is withdrawing.

Article 13 | Settlement agreement and compliance therewith

1. If the parties reach an agreement on a settlement to end their dispute(s), the Mediator shall ensure, if the parties so wish, that their agreement is properly recorded in a written settlement agreement, which the parties will sign. The parties remain solely responsible for the content of the agreement. This agreement is binding on the parties from the date it is signed, unless the settlement agreement states otherwise. The parties are obliged to fully comply with the settlement agreement within the agreed period(s).
2. The parties shall jointly determine and record in the settlement agreement whether and to what extent the agreement is confidential and subject to the confidentiality of the Mediation. The agreement may, however, be submitted to arbitrators or the court if necessary to invoke it in court or to demand compliance with it.
3. Unless otherwise agreed, the parties undertake that any disputes that may arise from the settlement agreement or from further agreements that may result from it will be settled in expedited proceedings in accordance with the Arbitration Rules of the Netherlands Arbitration Institute.

Article 14 | Arbitration, legal or other proceedings

1. If a party requests Mediation while, pursuant to Article 5(2)(e), it appears that legal or arbitration proceedings are pending between the parties, the NAI shall not consider the request unless (i) those proceedings have been suspended or stayed to allow Mediation to take place, or (ii) if the proceedings have not been suspended or stayed to allow Mediation to take place, the parties jointly request that the Mediation take place nonetheless.
2. If Mediation is pending between the parties, they shall take all reasonable steps to suspend or stay any arbitration or legal proceedings already pending until after the Mediation has been completed, unless expressly agreed otherwise and without prejudice to the parties' right to take measures to preserve their rights.

Article 15 | Costs of the Mediation

1. The costs of the Mediation consist of: (i) the administration fees of the NAI and (ii) the Mediator's fee and expenses. Unless otherwise agreed, the parties shall bear their own costs of assistance by solicitors, experts or other advisers.
2. The administration fees shall be determined by a member of the NAI Case Management Committee after receipt of the request for Mediation. The administration fees are determined in accordance with to the scale set out in Appendix A to these Rules. The Mediator's fee is determined by the responsible member of the NAI Case Management Committee, taking into account the rates set out in Appendix B. In exceptional cases, the responsible member of the NAI Case Management Committee may deviate from this hourly rate after consultation with the parties and the Mediator.
3. If the request for Mediation has been submitted jointly, the administration fees shall be charged to the parties jointly, each for an equal share, unless otherwise agreed between them. Otherwise, the administration fees will be charged to the requesting party or parties. Administration fees paid will not be refunded.
4. The Secretariat may suspend its activities until the administration fees due have been paid in full. If no payment has been received within fourteen days of a second reminder, the request referred to in Article 5(1) will not be processed further, unless the other party pays these fees.

5. Once the Mediator has been appointed, the responsible member of the NAI Case Management Committee shall determine the advance on costs that the parties must deposit with the NAI Secretariat to cover the Mediator's fee and expenses. The Mediator's expenses will be divided equally between the parties. No interest will be paid on the advance on costs; the NAI may charge negative interest on the amount held in deposit. If one of the parties to the Mediation has not paid the advance on costs within fourteen days of a first reminder, the other party will be given the opportunity to pay this amount. If not all advance on costs have been paid within fourteen days of a second reminder, the request for Mediation will be deemed withdrawn.
6. The advance on costs referred to in this Article shall be calculated on the basis of an estimate of the Mediator's fees and costs.
7. The Secretariat may require additional payments from the parties, at the request of the Mediator or otherwise.

Article 16 | Limitation of liability

The NAI, its board members and employees, including the members of the NAI Case Management Committee, the members of the Advisory Board, the members of the Challenge Committee, the Mediator, any other persons involved in the case by (one of) them or other persons who play a role under the Rules, are not liable in contract or in tort for any damage caused by their own or another person's acts or omissions or by the use of auxiliary persons or resources in or around the Mediation, unless and insofar as mandatory Dutch law would prevent such exclusion of liability. The NAI, its board members and employees, including the members of the NAI Case Management Committee, shall, insofar as they are already liable on the basis of the above, not be liable for the payment of any amount not covered by the advance on costs.

Article 17 | Processing of personal data and information security

1. The processing of personal data by the NAI is subject to the applicable regulations on the protection of personal data, as well as to the NAI privacy statement, which can be consulted on the NAI website.
2. With due observance of the applicable provisions of mandatory law, the NAI may issue binding instructions regarding the security of information and/or the protection of (personal) data that are binding on the parties and also on the Mediator.

Article 18 | Amendments to these Rules

Amendments to these Rules may only be made by the Board. Such amendments shall not apply to any ongoing Mediation.

Article 19 | Applicable law and choice of forum

Unless otherwise agreed, the legal relationships between the Mediator(s) and the parties, between the Mediator(s) and the NAI, and between the NAI and the parties, as well as the legal relationship between the Mediator(s), parties or the NAI and other persons who play a role under the Rules, shall be governed by Dutch law. The District Court of Amsterdam shall have jurisdiction to hear all disputes arising from or in connection with the aforementioned legal relationships, unless the parties agree otherwise.

Appendix A | Administration fees

Financial interest	Administration fees (€) excl. VAT
€ 0 - € 1,000,000	€ 1,500
€ 1,000,000 - € 5,000,000	€ 3,000
€ 5,000,000 - € 10,000,000	€ 6,000
€ 10,000,000 >	€ 12,000

If not all points of dispute are settled in the Mediation and a party commences Arbitration in accordance with the Arbitration Rules of the NAI, the Secretariat will deduct the administration fees paid in the Mediation from the administration fees due in Arbitration. The same applies if, during the Mediation, the parties wish to have a point of dispute settled by way of NAI Emergency Arbitration, NAI Binding Advice or NAI Expedited Arbitration, or if one of the parties initiates NAI Expedited Arbitration in connection with the settlement agreement concluded in the Mediation.

Appendix B | Mediator rates

The basic hourly rate is € 375 (excluding VAT).

Appendix C | Mediator's declaration of independence, impartiality and availability

NAI [case number]
The undersigned declares:

1a. Independence and impartiality

☐ To the best of my knowledge, there are no circumstances, past or present, that could give rise to reasonable doubts about my impartiality or independence. I will immediately inform the parties of any further relevant relationships or circumstances that come to my attention during this mediation.

OR:

1b. Independence and impartiality with disclosure

☐ Attached you will find a statement of (a) my past and present professional, business and other relationships with the parties and (b) all other relevant circumstances (Appendix). I confirm that these circumstances do not affect my independence and impartiality. I will immediately inform the parties of any further relevant relationships or circumstances that come to my attention during this mediation.

EN:

2. Availability

☐ Based on the information currently available to me, I confirm that I can make the necessary time available to conduct this mediation.

3. Acceptance

☐ To agree to act as mediator in accordance with the Rules. I confirm that I am familiar with the Rules. I will carry out my assignment to the best of my knowledge and ability. I accept that my fee and expenses will be determined by the responsible member of the NAI Case Management Committee. I accept that my hourly rate cannot be renegotiated with the parties.

Place and date:

Name and signature:

Appendix D | The NAI Case Management Committee and the NAI Secretariat

Article D1 – Tasks and composition

1. The members of the NAI Case Management Committee are responsible for administering Mediations as described in the Rules and Appendix A. The NAI Case Management Committee consists of NAI employees appointed as such by the Board. The Board has no insight into or influence on the administration of individual cases. The NAI Case Management Committee consists of at least two members.
2. The Secretariat supports the members of the NAI Case Management Committee in the performance of their duties and powers as set out in the Rules. The Secretariat is also responsible for receiving and sending documents as provided for in the Rules. The Secretariat consists of a Counsel, Legal Counsel and Case Managers.

Article D2 – Working method

1. The members of the NAI Case Management Committee divide among themselves the work that needs to be done in administering the NAI Mediations. The members of the NAI Case Management Committee may, due to absence or other reasons, temporarily or permanently transfer work to each other. Parties and Mediators will be informed which member of the NAI Case Management Committee is responsible for the administration of a specific Mediation.
2. The members of the NAI Case Management Committee may consult with each other about their work relating to the Mediations they administer, including matters concerning individual Mediations.
3. The members of the NAI Case Management Committee are supported in their work by one or more members of the NAI Secretariat. Parties and Mediators can see which member of the NAI Secretariat supports a member of the NAI Case Management Committee in his or her work.

Article D3 – Decision-making by the members of the NAI Case Management Committee

Each member of the NAI Case Management Committee has independent decision-making authority with regard to the administration of a specific Mediation for which the member in question is responsible in accordance with Article D2(1).