

## MfN - Mediation rules

### Article 1 - Definitions

In these rules the following terms have the following meaning:

- a. issue: the issue described in the mediation agreement.
- b. certifying institution: the institution which issues certificates of professional competence to mediators on the basis of a certification schedule recognized or accepted by the MfN.
- c. mediation: procedure in which the parties make an effort to resolve their issue under the supervision of a mediator in accordance with the rules.
- d. mediation agreement: the written agreement in which the parties agree to endeavour to resolve the issue through mediation, and instruct the mediator to act as mediator in respect of the issue and the mediator accepts this instruction.
- e. mediator: the person who conducts the mediation and who is listed in the register.
- f. the SKM: the Quality Foundation for Mediators (Stichting Kwaliteit Mediators), having its registered office in Rotterdam.
- g. MfN: Netherlands Federation of Mediators (Mediatorsfederatie Nederland).
- h. party/parties: the parties who wish to resolve the issue through mediation.
- i. register: the register of mediators kept by the SKM.
- j. the rules: these rules.
- k. secretariat: the secretariat of the SKM.

### Article 2 – Appointment of the mediator

- 2.1. The parties shall themselves appoint a mediator.
- 2.2. If the parties wish to be assisted by the SKM in selecting a mediator, they must file a written request thereto with the secretariat. This request must contain the names, (e-mail) addresses, telephone and fax numbers of the parties and their representatives, if any, as well as a general description of the issue.
- 2.3. Upon receipt of the request, the secretariat will send to the parties:
  - a. a list with the names of the mediators who, on the basis of the description of the issue and/or the relevant criteria stated by the parties, are considered eligible;
  - b. a copy of the rules and a copy of the Code of Conduct for MfN-registered mediators;
  - c. an invoice for administrative charges.
- 2.4. The parties will together select a mediator from the aforementioned list. The parties may then contact the mediator directly. If the parties do not wish to contact the mediator directly, they must inform the secretariat in writing which mediator they have selected.

Upon receipt of this letter the secretariat will inform the mediator concerned of the request and of his having been selected, so that the mediator may then contact the parties.

- 2.5 If the parties fail to jointly agree on the selection of a mediator, they (or either one of them) may request the secretariat to make a written proposal for a mediator who may be appointed by the parties.
- 2.6. On acceptance of the instruction the mediator will draw up a mediation agreement. The parties and the mediator will then sign the mediation agreement.

### **Article 3 – Commencement of mediation**

- 3.1 The mediation will commence as soon as the mediation agreement has been signed by the parties and the mediator, unless a different time is agreed in the mediation agreement.

### **Article 4 – Activities of the mediator and process supervision**

- 4.1 The activities of the mediator relate to the mediation sessions, but may also comprise other activities such as reporting, contacts with the parties (either electronically, in writing or by telephone), studying papers, contacts with third parties, and drawing up agreements, all this from the commencement of the mediation onwards.
- 4.2 The mediator shall decide, after having consulted the parties, on the manner in which the mediation will be conducted.
- 4.3 The mediator may communicate with the parties separately and confidentially.
- 4.4 The parties and the mediator shall do their best to ensure that the mediation proceeds in an expeditious manner.

### **Article 5 - Voluntariness**

- 5.1. The mediation shall take place on the basis of voluntariness of the parties. Each party, as well as the mediator, may put an end to the mediation at any time.
- 5.2. Agreements in the interim shall bind the parties only insofar as the parties explicitly lay down the binding nature of these agreements in a signed agreement. They shall not be bound by the positions adopted or proposals made by them or by the mediator during the mediation. The parties shall be bound only by what has been laid down in the agreement referred to in article 10.1 and signed by them.

### **Article 6 – Privacy**

- 6.1 No persons other than the Mediator and the Parties and/or their representatives are involved in the Mediation. In the event that persons other than those mentioned above are involved in the Mediation, the consent of the Parties is required. If the Mediator so wishes, he may receive secretarial support in the Mediation from a person designated by him for that purpose. In any case, the Mediator ensures that all persons involved in the Mediation sign a confidentiality agreement.

6.2 If a Party makes use of a representative during the Mediation, the representative must be authorized to carry out all (legal) actions that are necessary for the Mediation, including entering into an agreement as referred to in article 10.1. At the Mediator's request, a written power of attorney that demonstrates the representative's authorization must be shown.

## **Article 7 – Confidentiality**

7.1 The Parties shall not disclose to third parties – including judges or arbitrators – any details regarding the progress of the Mediation, the positions taken therein by the persons involved in the Mediation, proposals made or any information provided orally or in writing, directly or indirectly.

7.2 The Parties undertake not to disclose to third parties – including judges or arbitrators – nor cite, quote, paraphrase or otherwise rely on documents if these documents have been revealed, shown or otherwise disclosed by a person involved in the Mediation during or in connection with the Mediation. This obligation does not apply insofar as the person concerned already had or could have had access to this information independently of the Mediation.

Documents as referred to in this article are understood to include:

- the Mediation Agreement;
- notes from the Parties or the Mediator in the context of the Mediation;
- reports;
- the Agreement referred to in article 10.1, except if and insofar as the Parties have agreed that (the content of) that agreement, or a part thereof, is not confidential;
- other data carriers such as audio tapes, video tapes, photos and digital files in any form whatsoever.

7.3 Articles 7.1 and 7.2 also apply to the Mediator.

7.4 The Parties hereby waive the right, in court or otherwise, for anything that has been provided and/or has emerged during the Mediation to be presented as evidence against each other, and/or for the MfN/SKM, (former) board members of the MfN/SKM or persons employed at MfN/SKM or otherwise involved in MfN/SKM, each other, the Mediator or others involved in the Mediation to be heard or proposed to be heard as witnesses or otherwise concerning information that has been provided and/or has emerged during or in connection with the Mediation, or concerning the content of the Agreement as referred to in article 10.1, all in the broadest sense of the word. The Parties are deemed to have concluded an evidence agreement for this purpose.

7.5 The Mediator shall handle all information that is provided to him by one of the Parties in the absence of the other Party as confidential, except insofar as the Party concerned explicitly grants permission for that information to be broached during the Mediation.

- 7.6 The provisions of articles 7.1 to 7.5 do not apply in the event of:
- a. information concerning criminal conduct for which there is a statutory reporting obligation or a statutory right to report.
  - b. information concerning the threat of a crime.
  - c. a complaint, disciplinary or liability proceeding against the Mediator. In that case, the Mediator is released from the confidentiality obligation applicable to him insofar as necessary for him to defend himself against the claims and/or call upon his professional liability insurance. The obligation of confidentiality lapses for all persons involved insofar as necessary to handle the complaint.
  - d. a request from the Certifying Institution to the Mediator to provide anonymized information as evidence of working practice provided that the Certifying Institution commits itself to confidentiality in writing.
  - e. a request from a reviewer appointed by the SKM to the Mediator to provide information as evidence of working practice provided that the reviewer commits himself to confidentiality in writing.

### **Article 8 – End of the mediation**

- 8.1. The mediation shall end:
- a. through a written statement from the mediator to the parties stating that the mediation has ended;  
or
  - b. through a written statement from one party to the other party or parties and to the mediator stating that it withdraws from the mediation.
- 8.2. After termination of the mediation, the confidentiality and payment obligations of the parties under the mediation agreement shall remain intact.

### **Article 9 – Other proceedings**

- 9.1. Any legal or similar proceedings already pending on commencement of the mediation regarding the issue or parts thereof – with the exception of steps to safeguard rights – shall be stayed by the parties for the duration of the mediation.
- 9.2. The parties undertake for the duration of the mediation not to institute any proceedings as referred to in article 9.1 against each other, with the exception of steps to safeguard rights.
- 9.3. If a party takes steps to safeguard rights, or institutes proceedings other than those referred to in article 9.1, that party shall be obliged to notify this to the mediator and to the other party or parties within 24 hours after having taken such steps or after having instituted such proceedings.

### **Article 10 – Recording the result of the Mediation**

- 10.1 The Mediator ensures that everything that the Parties have agreed is properly recorded in an agreement, whether or not by or with the help of an expert third party.

The Parties are and remain responsible for the content of the agreement, to the exclusion of the Mediator. The Parties have the right to be advised by an external expert.

10.2 The Mediator is not liable for the content of the agreement to be concluded by the Parties nor any damage resulting therefrom.

10.3 The Mediator ensures that the Parties determine jointly and in writing the extent to which (the content of) the agreement to be concluded is confidential. In any case, the content of the concluded agreement may be submitted to the court if this is necessary in order to demand compliance.

### **Article 11 – Limitation of liability**

Any liability of the Mediator, in the event of damage as a result of his acts or omissions in the Mediation, is limited to at most the amount paid out by his professional liability insurer in the relevant insurance agreement, plus the amount of the deductible payable by the Mediator in accordance with that insurance agreement in the relevant case.

### **Article 12 – Rules of conduct and complaints**

The mediator shall be bound by the Rules of Conduct for MfN-registered mediators (MfN-registermediator) adopted by the Board of the MfN and shall be subject to the SKM complaints scheme and disciplinary rules in accordance with the rules of the foundation "Stichting Tuchtrechtspraak Mediators". A party may lodge a complaint with the SKM within twelve months from the termination of the mediation in accordance with the SKM Complaints Scheme at that time in force.

### **Article 13 – Cases not provided for by these rules**

In all cases not provided for by these rules the mediator shall decide. In doing so the mediator shall act in accordance with the purport of these rules.

### **Article 14 – Amendments to the rules and/or deviations from the rules**

14.1 If and insofar as the parties wish to deviate from the MfN-Mediation rules, this shall be possible only by means of an agreement in writing with the explicit consent of the mediator.

14.2 The MfN shall have the power to amend the rules at any time. Such amendments shall not affect mediations that are already ongoing at that time. The version of the rules in force at the time of the commencement of such ongoing mediations shall apply to such mediations.

### **Article 15 – Applicable law**

These rules shall be governed by Dutch law.

The same shall apply in respect of the agreement referred to in article 10.1.