

**The Centre for Mediation at
The Hague Court of Arbitration for Aviation**

MEDIATION RULES

In force as of 31 August 2022



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HAGUE CAA MEDIATION RULES

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MODEL CLAUSE

1. The suggested variations of the model optional mediation clause, which in each instance should only be included in supplement to the applicable jurisdiction (including arbitration) clause, are as follows:

Notwithstanding the commencement of any [judicial / arbitration] proceedings and without any prejudice thereto, the parties agree [to consider and discuss whether to / that any party may] refer any [aforementioned dispute / dispute relating to or arising out of _____] for settlement through mediation proceedings in accordance with the Mediation Rules of The Centre for Mediation at The Hague Court of Arbitration for Aviation for the time being in force. The commencement of such mediation proceedings shall not prevent the commencement or continuation of any [judicial / arbitration] proceedings except where the parties agree otherwise in writing.

2. The above variations primarily serve to put mediation on the agenda and collective memory of the parties at the time that a dispute arises. They do not, however, provide any hard obligation upon them to engage in mediation. The above also contains the most critical elements that any general optional mediation clause should address, namely: (i) the parties' agreement to have or at least discuss the option to mediate; (ii) the scope of the disputes submitted to mediation; and (iii) the choice of the institution and mediation rules.

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MEDIATION RULES

Article 1- Definitions

1. In these Rules, the following terms and expressions shall have the following meanings:
- (a) “Administrator”: the designated NAI – employee as elected by the Executive Board of the NAI; the Executive Board of the NAI also appoints one or more acting administrators;
 - (b) “Day”: a calendar day;
 - (c) “Executive Board”: the Executive Board of the Hague CAA;
 - (d) “Hague CAA”: the Hague Court of Arbitration for Aviation;
 - (e) “NAI”: the Netherlands Arbitration Institute (Stichting Nederlands Arbitrage Instituut);
 - (f) “Secretariat”: the secretariat of the Foundation Netherlands Arbitration Institute, registered in Rotterdam;
 - (g) “Mediation Agreement”: the agreement laying down a contract for services between the mediator and each of the parties pursuant to which the mediator will conduct the Hague CAA Mediation;
 - (h) “Mediator”: a neutral third person or persons who assists the parties in their attempt to reach a consensual settlement of their dispute. Wherein infra the word “mediator” is used, it may also refer to mediators;
 - (i) “Mediator Pool”: the list of mediators compiled by the Hague CAA Executive Board and NAI for possible appointments under these rules;
 - (j) “Presiding Mediator”: the presiding mediator of a panel of mediators appointed in accordance with Article 5, paragraph 6, subparagraphs d and e;
 - (j) “Expert Pool”: the list of experts compiled by the Hague CAA Executive Board and NAI for possible appointments under these rules;
 - (j) “Rules”: these mediation rules of the Hague CAA.

Article 2 - Application of the Rules

1. These Rules shall apply where parties have agreed that disputes between them shall be submitted to mediation under the Hague CAA Mediation Rules or where a court of competent jurisdiction has ordered the same. The Rules may apply irrespective of the basis, whether contractual or not, upon which the mediation is carried out.

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2. Mediation under these Rules is a *process*, whether referred to by the term mediation, conciliation or a similar expression, whereby the Mediator assists the parties in their attempt to reach a consensual settlement of their dispute. The mediator shall not have the authority to impose upon the parties a solution to the dispute, unless all parties agree to the contrary.
3. The parties to a mediation shall be presumed to have referred to the Rules in effect on the date of commencement of the mediation, unless the parties have agreed to apply another particular version of the Rules or to incorporate revisions as per their promulgation.
4. The parties may agree to exclude or vary any provision of the Rules at any time.
5. Where any provision of these Rules is in conflict with a provision of the law applicable to the mediation from which the parties cannot derogate, including any applicable instrument or court order, that provision of law shall prevail.

Article 3 - Communications

1. Transmission of all written communications and documents directed to the Hague CAA shall be sent by e-mail to the address haguecaa@nai-nl.org or to any other address to be specified by the Secretariat.
2. The parties agree to electronic receipt of all written communications and documents from the Hague CAA, NAI, and the Mediator.
3. After signing the Mediation Agreement, the parties shall send their communications and other documents directly to the mediator, with the Secretariat in copy.

Article 4 - Prerequisites to Mediation

1. Any party may call for a mediation by filing a request for mediation with the Secretariat.
2. The request for mediation shall include the following:
 - a. A description of the dispute in question,
 - b. The names and contact details of the parties to the dispute and their representatives,
 - c. The names and contact details of any counsel that will represent the parties.
 - d. The agreement containing a mediation mandate/option (specifying the paragraph or section containing the same) or substantiation of other authority being invoked in requesting mediation, should the same exist
 - e. The Mediator candidate qualifications considered to be particularly important and relevant to the case at hand.
3. Should the request for mediation not be filed by all parties jointly, the Secretariat will forward copies of the Request to the parties not filing. The Secretariat will request that the non-filing party/parties notify the Secretariat in writing, within fourteen days, if it/they are

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willing to engage in mediation of the indicated dispute, according to these Rules, notwithstanding the extent to which the same may be superseded as per agreement or other authority.

4. Should the Secretariat fail to receive confirmation of such a party's intention to proceed with mediation within fourteen days, the Secretariat will notify the requesting party thereof, and the requesting party may elect to treat this as a rejection of the invitation to mediate.

Article 5 - Choice and Appointment of the Mediator

1. There will be a single mediator, unless the parties agree that there will be more than one mediator. Where there is more than one mediator, the mediators shall act jointly, with each maintaining neutrality.
2. Where a sole mediator will be used, that mediator shall be chosen from the Mediator Pool.
3. Where more than one mediator will be used, at least one of these shall be chosen from the Mediator Pool. Any additional Mediators named shall be taken from either the Mediator Pool or the Expert Pool.
4. Notwithstanding the forgoing, the parties, the mediator, or the Secretariat may appoint, under compelling circumstances, mediator(s) not included in the Mediator Pool or Expert Pool. In so doing, they are advised to choose individuals with qualifications comparable to those of the members of the mediator and expert pools.
5. The parties, together, maintain the principle and first right to select the mediator, as they also may agree to replace a mediator at any time.
6. Should the parties inform the Secretariat that they have been unable to agree upon a mediator or should the parties have failed to present a mediator nomination to the Secretariat within fourteen days of submission of a joint Request for Mediation or fourteen days after the receipt of confirmation of the mediation by all parties, the following procedure will apply:
 - a. Based on the input received from the parties regarding Article 4, paragraph 2, subparagraph e, the Secretariat will compile lists, as prescribed below, of mediator candidates that best represent the requirements expressed by the parties.
 - b. *In the case of a single mediator*, the Secretariat will circulate a list of three names from the Mediator Pool among the parties, soliciting input by the parties on the acceptability of each of the candidates. The Secretariat will appoint a mediator from the circulated list, based on the feedback of the parties.
 - c. *In the case of two mediators*, the Secretariat will circulate a list of six names taken from the Mediator Pool and/or Expert Pool, soliciting the feedback of the parties. The Secretariat then will choose two mediators, at least one of whom will be taken from the Mediator Pool.
 - d. *In the case of three mediators*, the same procedure outlined for the case of two mediators will be followed, as a first step. The two mediators chosen, then, will indicate a third mediator from the Mediator Pool, who will act as the Presiding Mediator. Should the

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two mediators be unable to agree on the presiding mediator within seven days of their charge, the Secretariat will appoint one from the Mediator Pool.

- e. In the case of more than three mediators, the same procedure as above will be followed to designate the first three mediators. Any additional mediator appointments shall be made by the Presiding Mediator from the Mediator Pool and/or Expert Pool, in consultation with the non-presiding mediators.*
7. If it appears that none of the persons named in the lists, as prescribed above, are acceptable to all the parties as the Mediator, the Secretariat will appoint (a) person(s) whose name(s) was/were not contained in any of the above-mentioned lists, from the Mediator Pool or Expert Pool as the mediator.
8. In confirming the appointment of the mediator, the Secretariat shall consider:
 - i. The mediator's filing of a disclosure statement, including any circumstances that may give rise to justifiable doubts as to his or her impartiality or independence or declaration that no such circumstances exist.
 - ii. The parties' acceptance of the mediator statement as non-objectionable, or the parties' failure to manifest any objection thereto within seven days of disclosure.
 - iii. The mediator's attestation of availability to conduct the mediation diligently and efficiently.
 - iv. Receipt of payment of the administration costs determined, in accordance with Article 14, paragraph 2.

Article 6 - Commencement of Mediation and the Mediation Agreement

1. The mediation shall be deemed to have been commenced upon:
 - i. the Secretariat's confirmation of the mediator's appointment
 - ii. the receipt of the deposit, in accordance with Article 14, paragraphs 5 and 6.
 - iii. Execution of the Mediation Agreement
2. The parties may agree on the manner in which the mediation is to be conducted. Otherwise, the mediator may determine the conduct of the mediation in consultation with the parties, taking into account the circumstances of the case, any wishes that the parties may express and the need for a speedy settlement of the dispute.
3. All parameters supplemental to or departing from the otherwise controlling document/documents/order that govern the mediation should be included in the Mediation Agreement. The Mediation Agreement should include, but should not necessarily be limited to, the mediator's schedule of fees and expense reimbursement.

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Article 7 - Communication Between the Parties and the Mediator

1. The mediator may meet or communicate with the parties together or separately. After the parties have agreed to this, *ex parte communications are condoned and encouraged.*
2. At any stage of the mediation, the parties may submit, with or without solicitation by the mediator:
 - a. information concerning the dispute, such as statements describing the general nature of the dispute, the points at issue, and any supporting document or additional information deemed appropriate.
 - b. a description of the goals, interests, needs, and motivations of the parties as well as any relevant documents.
3. The mediator shall keep information concerning the dispute shared with him/her by any of the parties confidential, in the absence of an understanding, partially or wholly, to the contrary.

Article 8 - Conduct of Mediation

1. The mediator, in consultation with the parties, may choose to conduct, in whole or in part, the mediation proceedings in person or remotely.
2. To the extent that these proceedings are to be held in person, the mediator reserves the right to utilize any technical means that he or she considers appropriate to communicate with the parties and to conduct select portions of the mediation remotely.
3. The parties may be assisted by counsel, experts, and other advisors during the mediation, provided, in each instance,
 - a. That the mediator and the other party or parties be notified in advance, and
 - b. That each individual so assisting has confirmed to the mediator and the Secretariat that they will comply with the provisions contained in the mediation mandate, the Mediation Agreement and the provisions contained in these Rules, in particular the provisions governing confidentiality.
4. 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. This secretary will be required to confirm compliance with the terms governing the mediation in the same manner as outlined above for individuals assisting the parties. The confirmation of the appointment of the secretary is conditional to the requirements laid down in Article 5, paragraph 8.
5. 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.

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6. The parties and the mediator will agree on the language in which the mediation will be conducted. To the extent required, and at the request of the Secretariat translations will be provided by the parties 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.

Article 9 - Confidentiality

Unless otherwise agreed by the parties, all information relating to the mediation, including, if relevant, the settlement agreement, shall be kept confidential by those involved in the mediation, 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. disclosure of this information be required by applicable law;
- 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. As referred to under Article 11, paragraph 3.

Article 10 - Termination of Mediation

The mediation shall terminate:

- a. By the signing of the settlement agreement by the parties, on the date of the agreement or such other date as agreed by the parties in the settlement agreement,
- b. By a declaration of the parties to the mediator to the effect that the mediation is terminated, on the date of the declaration,
- c. By a declaration of a party to the other party and the mediator, if appointed, to the effect that it no longer wishes to pursue mediation, on the date of the declaration,

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- d. By a declaration of the mediator, after consultation with the parties, to the effect that further efforts at mediation are no longer justified, on the date of the declaration,
- e. By a declaration of the Secretariat, in the situation referred to in Article 14, paragraph 4, on the date of the declaration, or
- f. At the expiration of any mandatory period in the applicable international instrument, court order, or mandatory statutory provision, or as agreed upon by the parties.

Article 11 - Settlement Agreement

- 1. Once the parties agree on the terms of a settlement to resolve all or part of the dispute through mediation, they should prepare and sign a settlement agreement. If requested by the parties and if the mediator deems it appropriate, the mediator may provide support to the parties in preparing the settlement agreement.
- 2. Unless otherwise agreed by the parties, the mediator shall sign the settlement agreement. At the request of any of the parties involved, a certified copy of the settlement agreement may be provided by the Secretariat.
- 3. By signing the settlement agreement, the parties agree that the settlement agreement can be used as evidence that it resulted from mediation, and that it can be relied upon for seeking relief under the applicable law.

Article 12 - Arbitral, Judicial, or other Dispute Resolution Proceedings

- 1. Mediation may take place under the Rules at any time regardless of whether arbitral, judicial, or other dispute resolution proceedings have been already initiated.
- 2. Where the parties have agreed to mediate and have also expressly undertaken not to initiate, during a specified period of time or until a specified event has occurred, arbitral, judicial or other dispute resolution proceedings with respect to an existing or future dispute, such an undertaking shall be complied with, except to the extent necessary for a party in its opinion, to preserve its rights. Initiation of such proceedings is not of itself to be regarded as waiver of the agreement to mediate or as a termination of the mediation.

Article 13 - Arbitral Award

Should it be agreed to between all signatories to the settlement agreement, the settlement agreement may be issued in the form of an arbitral consent award.

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Article 14 - Mediation 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 retained by or for a party in accordance with Article 8, paragraph 3, shall be borne by that party.
2. The administration costs will be determined by the Administrator after the request has been filed. The administration costs will be determined on the basis of the scale determined by the NAI Executive Board as included in Appendix A to these Rules. The Administrator will decide on the administration costs if they cannot be calculated on the basis of that scale. The hourly fee of the mediator is determined by the Administrator on the basis of the scale determined by the NAI Executive Board as included in Appendix B to these Rules.
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 Administrator 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 4, paragraph 3. 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 Secretariat 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 Administrator 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 or her 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 Secretariat. If, after a second reminder from the Secretariat, the deposit to be paid by a party is not received by the Secretariat within fourteen days, that party will be deemed to have given notice of termination of the Mediation Agreement in accordance with Article 10, subparagraph c.
6. The deposit referred to in this Article 14 shall be calculated to cover all the estimated Mediator fees and costs, using the hourly rate provided by the Mediator.
7. The Administrator 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 15 - 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. The foregoing shall apply *mutatis mutandis* to the Hague CAA, its board members, secretary to the board, officers, staff members, the members of its Advisory Board, members of its committees, and any expert that may have been appointed by the Mediator, and any other persons that one or more of them involve in the case.

Article 16 - Amendments of these Rules

The Hague CAA Mediation Rules can only be amended jointly by the Hague CAA Executive Board and the NAI Executive Board. The amendments shall have no effect on mediations already pending.

Article 17 - Applicable Law

These Rules, and anything done in accordance with them, are governed by Dutch law. The settlement agreement referred to in Article 11 will be governed by Dutch law unless the parties agree otherwise.

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Appendix A - Administration Costs

The following scale applies with respect to administration costs exclusive of VAT (see Article 14 of the Hague CAA Mediation Rules):

| | | | | | | | | |
|---------|---|---------------|-----|----------|---------------|---|----------|----------|
| up to | | | € | 50,000.- | : | € | 400.- | |
| from | € | 50,000.- | tot | € | 100,000.- | : | € | 500.- |
| from | € | 100,000.- | tot | € | 150,000.- | : | € | 750.- |
| from | € | 150,000.- | tot | € | 200,000.- | : | € | 1,000.- |
| from | € | 200,000.- | tot | € | 500,000.- | : | € | 1,750.- |
| from | € | 500,000.- | tot | € | 1,000,000.- | : | € | 2,500.- |
| from | € | 1,000,000.- | tot | € | 2,000,000.- | : | € | 3,000.- |
| from | € | 2,000,000.- | tot | € | 5,000,000.- | : | € | 6,000.- |
| from | € | 5,000,000.- | tot | € | 10,000,000.- | : | € | 7,500.- |
| from | € | 10,000,000.- | tot | € | 20,000,000.- | : | € | 9,000.- |
| from | € | 20,000,000.- | tot | € | 30,000,000.- | : | € | 10,500.- |
| from | € | 30,000,000.- | tot | € | 40,000,000.- | : | € | 12,500.- |
| from | € | 40,000,000.- | tot | € | 50,000,000.- | : | € | 15,000.- |
| from | € | 50,000,000.- | tot | € | 75,000,000.- | : | € | 20,000.- |
| from | € | 75,000,000.- | tot | € | 100,000,000.- | : | € | 25,000.- |
| from | € | 100,000,000.- | tot | € | 250,000,000.- | : | € | 30,000.- |
| as from | € | 250,000,000.- | | | : | € | 35,000.- | |

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Appendix B - Hourly Rates Mediator(s) / Secretaries

Hourly rates mediators/secretaries (in €)

| Category | Financial interest | Hourly rate mediator | Hourly rate secretary | |
|----------|---------------------------|----------------------|-----------------------|--------|
| | | | Junior | Senior |
| 1 | 0 - 50.000 | 150 | 65 | 80 |
| 2 | 50.001 - 100.000 | 175 | 65 | 80 |
| 3 | 100.001 - 200.000 | 200 | 75 | 100 |
| 4 | 200.001 - 500.000 | 200 | 75 | 100 |
| 5 | 500.001 - 1.000.000 | 225 | 75 | 100 |
| 6 | 1.000.001 - 2.000.000 | 250 | 75 | 100 |
| 7 | 2.000.001 - 5.000.000 | 300 | 75 | 100 |
| 8 | 5.000.001 - 10.000.000 | 325 | 85 | 125 |
| 9 | 10.000.001 - 20.000.000 | 350 | 85 | 125 |
| 10 | 20.000.001 - 30.000.000 | 400 | 85 | 125 |
| 11 | 30.000.001 - 40.000.000 | 450 | 85 | 125 |
| 12 | 40.000.001 - 50.000.000 | 500 | 100 | 140 |
| 13 | 50.000.001 - 75.000.000 | 550 | 100 | 140 |
| 14 | 75.000.001 - 100.000.000 | 600 | 115 | 150 |
| 15 | 100.000.001 - 250.000.000 | 700 | 115 | 150 |
| 16 | more than 250.000.000 | 800 | 115 | 150 |