

Stichting Geschillenoplossing Automatisering (SGOA)
(Foundation for the Settlement of Automation Disputes)

Rules of Procedure for ICT-Mediation
by the Foundation for the Settlement of Automation Disputes

The SGOA offers mediation proceedings for ICT disputes.

1. Object

The Board of the Stichting Geschillenoplossing Automatisering (SGOA), hereinafter referred to as the 'Foundation', has laid down the following rules of procedure for amicable mediation in disputes relating to information and communication technology.

2. Definitions

In these ICT Mediation Rules of Procedure the following words are understood to have the following meaning:

- a. Applicant: the party that submits or the parties that submit the ICT Mediation; if parties submit a joint application as referred to in article 3.1, then each of them is an Applicant in the sense of these rules of procedure;
- b. Board: the board of the Foundation;
- c. Bureau: the Bureau of the Foundation as referred to in the Foundation's articles;
- d. ICT: information and communication technology;
- e. ICT Mediation: the procedure in which the Mediation Participants make the effort to resolve business Issues within the ICT scope of application under the guidance of two specialised SGOA Mediators, as meant sub g below, subject to these ICT Mediation Rules of Procedure;
- f. Issue: the problem(s), different view(s), dispute(s) or conflict(s) described in the application and the participation statement (as referred to in article 3) and in the Mediation Agreement;
- g. Mediator: the Foundation makes two types of mediators available:
a lawyer mediator experienced in ICT mediations and specialised in legal questions in the field of ICT and an ICT expert mediator experienced in ICT mediations and specialised in the technical and/or organisational and/or management questions (in the widest sense of the word) in the field of ICT;
- h. Mediation Participant: the natural or legal person that participates in the ICT Mediation;
- i. Mediation Agreement: the written agreement in which the Mediation Participants and the Mediator(s) confirm once more, in writing, the instruction given for ICT Mediation and their acceptance of it and in which the application of these ICT Mediation Rules of Procedure and any arrangements deviating from these ICT Mediation Rules of Procedure between Mediator(s) and Mediation Participants are laid down;
- j. the Foundation: the Foundation for the Settlement of Automation Disputes (*Stichting Geschillenoplossing Automatisering (SGOA)*), having its office in Heemstede and its registered offices in 's Gravenhage;
- k. Other Party: the party or parties that the Applicant(s) wish to involve in the ICT Mediation;

- I. Working Days: Mondays to Fridays, except for public holidays recognised in the Netherlands.

Wherever in these Rules of Procedure words import the male gender, they will include the female gender where necessary.

3. Application

Joint application

3.1 The Mediation Participants should preferably submit a joint application at the Foundation's Bureau. This application may be addressed by email to info@sgoa.eu or info@sgoa.org or be sent by post to the Foundation's Bureau's postal address.

3.2 The application must in any case include:

- name, address and place of residence or place of business of the Mediation Participants and, where applicable, of their representatives who will participate in the ICT Mediation and of their advisers or authorised persons that will accompany them during the ICT Mediation, and the telephone numbers and email addresses of all these person mentioned;
- a general description and the Issue's presumptive total financial interest (one total sum for all Applicants together or the added total sum of the various interests if the Applicants should have different interests);
- in the event the Applicants have already reached agreement in the matter, the Applicants' shared preference for two Mediators (one lawyer mediator and one ICT expert mediator) from the Mediators' list published on the Foundation's website (please refer to www.sgoa.eu); the shared preference does not give the Applicants the right to expect that the relevant Mediators are willing and available for the ICT Mediation.

Unilateral application by one of the intended Mediation Participants

3.3 A unilateral application will be submitted by the Applicant(s) in four copies, unless the application is sent to the Bureau by email; upon receipt, the Bureau will immediately send one (1) copy to the Other Party (Parties). The ICT Mediation Rules of Procedure will be enclosed. The application must include in any case:

- name, address and place of residence or place of business of the Applicant(s) and of the representatives that will participate in the ICT Mediation and of the advisers or authorised persons that will accompany the Applicant(s), if the Applicant(s) should wish so, during the ICT Mediation;
- the telephone numbers and email addresses of all these person mentioned;
- the name and contact details of the intended Other Party (Parties);
- a general description of the Issue and the Issue's presumptive total financial interest (if there are more Applicants: one total sum for all Applicants together or the added total sum of the various financial interests if the Applicants should have different financial interests in respect of the Issue).

3.4 Within seven (7) Working Days after the application has been sent on as referred to in article 3.3, the Other Party (Parties) will inform the Bureau, by email or by post, whether the Other Party (Parties) wishes (wish) to participate in the ICT Mediation. If the Bureau has not received the written consent from the Other Party (Parties) within this term, the application for participation in the ICT Mediation will be deemed to have been rejected by the Other Party who failed to react, unless the Applicant(s) has (have) indicated, in writing, within this seven (7) Working Days' term that they agree to postponement of the ICT Mediation and specified how many Working Days the postponement may last.

Any consent on conditions posed by the Other Party (Parties) will be deemed to be a refusal of that Other Party to participate in the in the ICT Mediation proposed, unless the Applicant(s) should agree to these conditions in writing within seven (7) Working Days after the Bureau has sent the conditional participation statement of the Other Party (Parties).

- 3.5 The Other Party who has declared itself willing to participate in ICT Mediation, must include in its response in any case:
- each Other Party's own name, address and place of residence or place of business and those of the representative(s) that will participate in the ICT Mediation and of the advisers or authorised persons that will accompany them, if the Other Party should wish so, during the ICT Mediation; the telephone numbers and email addresses of all person mentioned;
 - a general description of and the Issue's presumptive total financial interest (if there are more Other Parties: one total sum for all Other Parties together or the added total sum of the various financial interests if the Other Parties should have different financial interests in respect of the Issue).

4. Notices

- 4.1 Any notice referred to in these ICT Mediation Rules of Procedure must be given in writing or by an electronic means of communication. Any notice given by email to an email address designated for that purpose by the Bureau will be deemed to have been received only if the Bureau acknowledges its receipt to the sender by email.

5. Appointment of the Mediators

- 5.1 The Foundation appoints Mediators who are impartial and independent and who do not have, or had in the past, any close personal or business ties with any of the Mediation Participants. They will not have any direct or indirect interest in the outcome of the ICT Mediation. The Board may at any time withdraw the appointment of a Mediator if the Mediator does not comply with the provisions of this article. In that case the Board will appoint, as soon as possible and after consultation with the Mediation Participants, another Mediator whose name is listed in the relevant category of mediators on the Foundation's website (please refer to www.sgoa.eu).
- 5.2 In the event a joint application is made as referred to in article 3.1 and both Mediators possibly proposed by the Applicants in this application have declared themselves willing to accept their appointment by the Foundation as Mediators, the list procedure referred to in article 5.3 will not take place.
- 5.3 After the joint application has been received or the confirmation of the Other Party (Parties) as referred to in article 3.5, the Bureau will send each of the Mediation Participants, without delay, an identical name list including persons who are eligible for appointment as independent Mediators. This list will include at least three names of ICT lawyer mediators and three names of ICT expert mediators and will be drawn up by the Bureau on behalf of the Board. At the request of a Mediation Participant, the Bureau will send this Mediation Participant and the other Mediation Participant(s) a personal profile of the persons on the list, which profile is more comprehensive than the profile of these persons published on the Foundation's website.
- 5.4 Each Mediation Participant may cross off from the name list the person the Mediation Participant objects to and number the remaining names in the order of the Mediation Participant's preference. Each Mediation Participant will return this rewritten list to the Bureau within seven (7) Working Days.

- 5.5 The Bureau will compare the Mediation Participants' preferences and appoint two Mediators, on behalf of the Board and with due observance of said preferences, namely a lawyer mediator and an ICT expert mediator.
- 5.6 In the event the Mediation Participants are not found to have an identical preference for the two Mediators, or if the Bureau has not received the rewritten list of names within seven (7) Working Days, the Bureau itself may appoint, on behalf of the Board, two Mediators from the list.
- 5.7 If a person is unwilling or unable to accept the Bureau's invitation to act as an independent Mediator or is found to be unable to act as an independent Mediator for any other reasons, and if not enough persons acceptable to each of the Mediation Participants remain on the lists returned, the Bureau will directly appoint, on behalf of the Board, two other independent Mediators.
- 5.8 After the appointment of the Mediators, the Bureau will inform the Mediation Participants who the appointed Mediators are; furthermore it will inform which persons will attend the ICT Mediation on behalf of the Mediation Participants and provide the names – in so far as applicable – of the advisers that will support and/or accompany them.
- 5.9 A Mediator's tasks are related to the ICT Mediation meeting(s) and could also include other matters, such as maintaining contact with the Mediation Participants in preparation of the ICT Mediation meeting, studying documents and drafting a settlement agreement.
- 6. Venue and time**
- 6.1 Following consultations with the Mediation Participants and the Mediators, the Bureau will decide where and when the ICT Mediation meeting will be held. The (first) ICT Mediation meeting will possibly be held within thirty (30) days following the date of the Mediators' appointment.
- 7. Preparation of the Mediation meeting**
- 7.1 Both the Mediators and the Mediation Participants will properly prepare the ICT Mediation meeting.
- 7.2 The Mediation Participants may disclose which documents they want to show or use during the ICT Mediation meeting. At the latest fourteen (14) calendar days prior to the ICT Mediation meeting each Mediation Participant may either forward a joint notification, through the Bureau's intervention, to the Mediators including a list of documents they would like to show or use, or forward, each separately and through the Bureau's intervention, a copy of such list both to the Mediators and to the other Mediation Participant. The Mediators will then inform the Mediation Participants – in so far as necessary following consultation with them – which documents may be submitted. All other documents may be taken to the ICT Mediation meeting and may be consulted where required.
- 7.3 Prior to the ICT Mediation meeting the Bureau will send the Mediation Participants a draft Mediation Agreement and a copy of these ICT Mediation Rules of Procedure.
- 7.4 The ICT Mediation can be conducted in the Dutch or in the English language. The Mediation Participants may submit a request to that effect at the Bureau when filing the application or the response to a unilateral application. If the Mediation Participants should differ on this, the Mediators will decide. Should one of the Mediation Participants so demand, any documents to be used in the ICT Mediation will be translated, at the expense of the party asking for a translation, by a translator designated by the Bureau.

8. ICT Mediation procedure

- 8.1 In the ICT Mediation meeting the Mediation Participants are represented by a duly authorised representative who has a mandate to take decisions with respect to the Issue. They may be accompanied by advisers if this has been agreed on with the other Mediation Participant(s) and the Mediators.
- 8.2 The ICT Mediation meeting starts with discussing and signing the Mediation Agreement.
- 8.3 In consultation with the Mediation Participants, the Mediators will determine how the Mediation will take place. With the Mediation Participants' consent the Mediators may involve third-party experts in the ICT Mediation.
- 8.4 The Mediators will be permitted to discuss matters with each of the Mediation Participants separately and confidentially.
- 8.5 The Mediation Participants and the Mediators will make the effort to have the ICT Mediation proceed expeditiously.
- 8.6 Interim arrangements will only be binding on the Mediation Participants in so far as these arrangements and their binding effect are explicitly laid down in an agreement signed by the Mediation Participants. The Mediation Participants will not be bound by the positions taken and proposals put forward by them or by the Mediators during the Mediation. The Mediation Participants will be exclusively bound by the provisions laid down in the settlement agreement, as meant in article 10, that is signed by them.

9 . End of ICT Mediation

- 9.1 The Mediation Participants participate in the ICT Mediation on a voluntary basis. However, the Mediation Participants are held to participate in at least one (1) joint ICT Mediation meeting; this obligation is a statutory obligation.
- 9.2 The ICT Mediation ends 1) if, in the event there are two Mediation Participants, one of them does not pay, or does not fully pay the costs due as referred to in articles 12, 13 and 14; ii) if, in the event there are more than two Mediation Participants none of them pay, partially or fully, the costs due as referred to in articles 12, 13 and 14; iii) when the settlement agreement as referred to in article 10 is signed by the Mediation Participants or iv) if one of the Mediation Participants is a natural person, upon his demise.
- 9.3 Once the ICT Mediation has ended, the Bureau will inform the Mediation Participants thereof in writing.

10. Laying down the ICT Mediation outcome

- 10.1 The Mediators will see to it that everything the Mediation Participants have agreed on is properly laid down in a draft settlement agreement. The Mediation Participants themselves are and will be exclusively and fully responsible for the content of the settlement agreement, even if the Mediators should co-sign the settlement agreement. The Mediation Participants are entitled to request the support of an adviser; the adviser is bound by the same confidentiality as the Mediation Participants.
- 10.2 Neither the Foundation nor the Mediators can be held liable, on whatever legal ground, for the content of the settlement agreement entered into by the Mediation Participants and any damage possibly arising from incorrect, incomplete or otherwise inadequate recording of the arrangements, even if the Mediators should have co-signed the settlement agreement.
- 10.3 The Mediation Participants together determine in how far the content of the settlement agreement to be entered into will remain confidential. The content may at any time be submitted to the court (or an arbitrator if the Mediation

Participants agree or have agreed on arbitration) in so far as this is necessary to claim performance.

11. Other proceedings and Confidentiality

- 11.1 From the receipt of the application until the end of the ICT Mediation, the Mediation Participants will refrain from initiating or pursuing judicial or arbitral proceedings, including any preliminary relief proceedings or summary arbitral proceedings, except where it is absolutely necessary, in their opinion, for the preservation of rights, such as the expiry of terms or by reason of taking provisional measures. If a Mediation Participant should take any measures for the purpose of preserving a right, or should initiate legal proceedings, this Mediation Participant will be obliged to inform the Mediators and the other Mediation Participant(s) thereof within twenty four (24) hours of the measure taken or the proceedings initiated.
- 11.2 During judicial or arbitral proceedings as meant in the previous paragraph, the Mediation Participants undertake to refrain from invoking the course of the ICT Mediation or on any statements, proposals or points of view or any other information, provided by any of the other persons present, either verbally or in writing, during the ICT Mediation.
- 11.3 Furthermore, the Mediation Participants undertake to refrain from disclosing to third parties any documents or other information on image or sound carriers or digital files used on the ICT Mediation, in whatever form, and from using these in judicial or arbitral proceedings. This does not apply where the Mediation Participants had this information at their disposal or could have had it at their disposal prior to the ICT Mediation.
- 11.4 The obligation to observe confidentiality as referred to in articles 11.1 to 11.3 also applies for the Mediators and any third party involved in the ICT Mediation.
- 11.5 Unless otherwise agreed between the Mediation Participants, the Mediators will not act either as judge, arbitrator, attorney-at-law or adviser in any judicial or arbitral proceedings relating to the dispute under consideration in the ICT Mediation.

12. Costs in General

- 12.1 The ICT Mediation costs include any expenses involved in the ICT Mediation which, in the opinion of the Bureau, were necessary, as well as the administrative charges, registration fee and the fees of the Mediators and any third parties that may be involved in the work of the Mediators.
- 12.2 The Mediation Participants will each bear their own costs, unless agreed upon otherwise.
- 12.3 In all other respects, each Mediation Participant will bear their own costs, such as any adviser's fees and expenses, expenses made and time spent by the Mediation Participants, unless the Mediation Participants have agreed otherwise.

13. Administrative charges

- 13.1 As soon as the ICT Mediation is commenced, each Mediation Participant will pay a fixed amount, calculated in accordance with the provisions of article 13 paragraph 3, to cover administrative expenses, which amount will be payable to the Foundation. The Bureau informs the Applicant(s) of this sum after receipt of the application referred to in article 3.1 or 3.3.
- 13.2 As soon as written consent concerning participation in the ICT Mediation in accordance with Article 3 has been received from the Other Party (Parties), administrative charges will also be payable by the Other Party (Parties),

calculated in accordance with Article 3.3, on the basis of the financial interest indicated by the Other Party (Parties). The Bureau will inform the Other Party (Parties) of the amount of the administrative charges payable within seven (7) calendar days following receipt of the consent.

- 13.3 The administrative charges will be calculated on the total (the total financial interest as referred to in article 3.2, second dash, or in article 3.3, fifth dash, plus the total financial interest as referred to in article 3.5, second dash) of the financial interests indicated by the Applicant(s) and by the Other Party (Parties), on the basis of the scale set by the Board; this scale is included in the appendix to these ICT Mediation Rules of Procedure. The scale of administrative charges may be changed by the Board in the interim. If the administrative charges cannot be calculated on the basis of the appendix, the Bureau will decide on behalf of the Board. If the aggregate financial interest as referred to in this paragraph is increased during the ICT Mediation, additional administrative charges will be payable on the basis of and in conformity with the scale that applies to the increased financial interest; if the financial interest decreases, no adjustment will be made.
- 13.4 The Bureau will invoice the administrative charges payable, plus the turnover tax due, in accordance with the provisions of article 12.2. If, after the Bureau's second written demand, one of the Mediation Participants has still failed to pay the administrative charges plus the turnover tax due, in full or in part and within fourteen (14) calendar days, this Mediation Participant will be deemed to have withdrawn its application or consent, as the case may be, to participate in the ICT Mediation referred to in Article 3.4 of these Rules of Procedure. In the event there are more than two Mediation Participants, the ICT Mediation will be continued with the remaining Mediation Participants, unless they agree otherwise.
- 13.5 The Mediators and the Bureau may suspend their work at any time as long as one of the Mediation Participants concerned has failed to pay, in full or in part, the administrative charges due, plus turnover tax.

14. Fees and Disbursements of the Mediators

- 14.1 The fee for the Mediators will be set by the Bureau on behalf of the Board, in accordance with the fee determined by the Board on the basis of the scale determined by the Board; the scales and the fees are included in the appendix to these ICT Mediation Rules of Procedure. The scale may be changed by the Board in the interim. When determining the amounts, the Board will take into consideration the time that the Mediators have spent on a case. If the aggregate financial interest referred to in article 13.3 is increased during the ICT Mediation, the fee will be reset on the basis of and in accordance with the scale applicable to the increased financial interest; if the financial interest decreases, no adjustments will be made.
- 14.2 The disbursements of the Mediators will include, among other things, any reasonable travel and accommodation expenses, costs of assistance, fees of experts, costs of meeting rooms, postage, telephone expenses and cost of photocopies. The disbursements will be invoiced by the Bureau.
- 14.3 The Bureau is entitled to demand an advance payment per Applicant and per Other Party from which the Mediators' fees and the disbursements (including for example the fees charged by experts) will be paid as much as possible. The disbursements will be paid from the advance payment, if and in so far as these expenses have been incurred by the Foundation or by the Mediators. The Bureau may require the Mediation Participants, at any time, to pay a supplementary advance payment.

- 14.4 Upon the Bureau's request, the Mediators will consult with the Bureau about the work already performed and the work still expected to be performed and the costs incurred and still to be incurred by the Mediators in order to set the amount of the first advance payment and a supplementary advance payment.
- 14.5 The Bureau will inform the Mediators when the advance payment has been received. The Mediators will not start their work before that moment.
- 14.5 If, after the Bureau's second written demand, one of the Mediation Participants has still failed to pay the advance payment due, in full or in part and within fourteen (14) calendar days, this Mediation Participant will be deemed to have withdrawn its application or consent, as the case may be, to participate in the ICT Mediation referred to in Article 3.4 of these ICT Mediation Rules of Procedure. In the event there are more than two Mediation Participants, the ICT Mediation will be continued with the remaining Mediation Participants, unless they agree should otherwise.
- 14.7 The Foundation will not be held to pay any costs not secured by an advance payment. No interest will accrue on the amount of the advance payment made.
- 14.8 In the event either Mediation Participant withdraws or all Mediation Participants (if there are more than two Mediation Participants) withdraw from the ICT Mediation, all expenses incurred by the Foundation that are not covered by the advance payment, will be recovered:
- a. from the Applicant(s) if the Applicant(s) should withdraw from the ICT Mediation; or
 - b. from the Other Party (Parties) if the Other Party (Parties) should withdraw from the ICT Mediation; or
 - c. if all Mediation Participants should withdraw from the ICT Mediation: i) from the Mediation Participant that, solely at the discretion of the Bureau, is the more eligible one to pay these expenses, or ii) from all Mediation Participants, in accordance with a division to be determined entirely at the discretion of the Bureau. In these cases the Bureau may also decide to divide the costs equally between the Mediation Participants.
- 14.9 The Mediators and the Bureau may suspend their work at any time with regard to the ICT Mediation for as long as the Mediation Participant concerned has not paid the advance payment requested, either in full or in part.
- 15. Binding Decision**
- 15.1 The Mediation Participants may jointly request the Mediators to give a binding decision on the Issue, or parts thereof, considered during the ICT Mediation. The binding decision will be given as much as possible with due observance of the Foundation's applicable rules of procedure for binding decisions.
- 16. Exclusion of Liability**
- 16.1 Neither the Foundation nor the members of the Board in person, the staff of the Bureau and/or the Mediators will be liable for any damage or loss as a result of any act or omission with regard to any ICT Mediation to which these ICT Mediation Rules of Procedure apply.
- 17. Unforeseen Matters**
- 17.1 In all matters not provided for by these ICT Mediation Rules of Procedure, the Board of the Foundation will decide. The Board may authorise a member of the Board of the Foundation to take such decisions. In the course of an ICT Mediation the decisions will be taken in consultation with the Mediators.

18. Depositing or Filing the ICT Mediation Rules of Procedure

- 18.1 The Bureau will file a copy of the ICT Mediation Rules of Procedure at the court registry of the District Court Noord-Holland in Haarlem.
- 18.2 Whenever these ICT Mediation Rules of Procedure are amended, the Bureau will file a copy of the amended Rules of Procedure with the court registry of said District Court. The Bureau will ensure that every copy of the ICT Mediation Rules of Procedure will state the date on which the text laid down therein was filed with the court registry of said District Court.

19. Amendments

- 19.1 The Board may make amendments to these ICT Mediation Rules of Procedure at any time.
- 19.2 The amended ICT Mediation Rules of Procedure will take effect on the day after they are filed with the court registry of the District Court Noord-Holland in Haarlem. The amended ICT Mediation Rules of Procedure will not apply to any ICT Mediations already pending on the day on which the amended Rules take effect.

These ICT Mediation Rules of Procedure were adopted by the Board of the Foundation (*Stichting Geschillenoplossing Automatisering*), having its office in Heemstede, on 8 December 2015 and filed with the registry of the District Court Noor-Holland in Haarlem on 18 December 2015 under number 49/2015.