

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

Rules for ICT conflict prevention

General

ICT conflict prevention is a tool to enable actual and potential irritations, friction, conflicts and disputes in the area of information and communication technology to be prevented and resolved at as early a stage as possible so as to avoid the risk of potential escalation. ICT conflict prevention is carried out according to an approach that is based on tailor-made agreements to be reached between the parties involved and the Conflict Moderator, which with the support of the Conflict Moderator focus on creating a climate, even while the ICT project is being implemented, within which existing or potential irritations, friction, conflicts, disputes and suchlike can be identified and resolved. The aim of ICT conflict prevention is not for the Conflict Moderator to make a judgement which is binding to both parties, unless the parties and the Conflict Moderator agree otherwise in a written, binding advisory agreement.

1. Aim

The Board of Stichting Geschillenoplossing Automatisering, hereinafter referred to as 'the Foundation', has laid down the following Rules for providing supporting services by means of ICT conflict prevention when endeavouring to prevent potential or impending irritations, conflicts and disputes in the area of information and communication technology from escalating.

2. Definitions

In these Rules the terms below have the following meanings:

- a. 'the Foundation': Stichting Geschillenoplossing Automatisering, with its registered office in The Hague and with offices in Haarlem;
- b. 'Bureau': the Bureau of the Foundation as provided for in the Foundation's articles;
- c. 'Conflict Moderator': an ICT expert and/or ICT lawyer appointed by the Foundation, who is charged with carrying out work to be agreed with the parties in the area of ICT conflict prevention.

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

3. Application for ICT conflict prevention

- 3.1 If any interested party wishes to make use of ICT conflict prevention, such party must submit a written application to the Bureau of the Foundation. This application must be sent by email to the email address designated for that purpose by the Bureau. More than one interested party may submit a joint application.

- 3.2 The application for ICT conflict prevention will contain at least the name, address and place of business of the applicant or applicants, as well as the names and telephone number, fax number and email address of relevant contact persons in the case. If the application is not a joint application which also involves the opposite party, the application must also contain the name, address, place of business, telephone number, fax number and email address of the opposite party. The application will also contain details or a short description of the ICT project for which ICT conflict prevention is desired. The application will also state if possible whether, and if so which, structure, provisions and/or schemes for conflict management are already in place with the ICT project and/or with the parties, such as a dispute review board, an escalation scheme, a conflict prevention scheme and suchlike.
- 3.3 Once the application has been received by the Bureau it will be sent on immediately to the opposite party, unless the opposite party concerned is already a co-applicant in a joint application. The ICT Conflict Prevention Rules will also be enclosed.
- 3.4 The opposite party will inform the Foundation by email within fourteen calendar days of the application being sent as referred to in Article 3.3 whether it agrees to the application for conflict prevention as referred to in Article 3.1. If the Foundation has received no assent from the opposite party within fourteen calendar days, it will be assumed that the opposite party does not wish to make use of ICT conflict prevention. Following receipt of the written reply, the Bureau will send a copy to the applicant forthwith.
- 3.5 If the opposite party has not given its assent as referred to in Article 3.4, the Foundation will not provide support merely for the benefit of the applicant in the area of ICT conflict prevention.
- 4. Notices**
Any notices referred to in these Rules must preferably be given by email. A notice given by email to the 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. ICT conflict prevention procedure**
- 5.1 Support in the area of ICT conflict prevention will be provided by a single Conflict Moderator, unless the parties have explicitly agreed otherwise in writing and the Foundation can agree to such an alternative agreement.
- 5.2 Following an application as referred to in Article 3.1, followed by assent from the opposite party or following a joint application involving the opposite party, the Foundation will nominate a person and propose this person to the applicant and the opposite party as soon as possible as a potential Conflict Moderator. A short personal profile of the person concerned will be sent to the parties by the Foundation on request.
- 5.3 Each of the parties must inform the Bureau in writing within fourteen calendar days whether or not they can agree to the person proposed by the Foundation. If no assent is received in time, this will be taken as a rejection of the proposal.

- 5.4 Following the unanimous assent of the parties to the person of the Conflict Moderator the Bureau will inform the parties that agreement has been reached on the person to be appointed. The Conflict Moderator will consult the parties in order to make further written agreements on the method of approach and procedure for ICT conflict prevention. Any further agreements must be submitted to the Foundation for its information.
- 5.5 When preparing and holding ICT conflict prevention proceedings the Conflict Moderator is permitted to communicate individually and confidentially with each of the parties.
- 5.6 The parties and the Conflict Moderator will make every effort to ensure that the ICT conflict prevention proceedings progress expeditiously.
- 5.7 If third parties are involved in existing or potential irritations, frictions, conflicts, disputes and suchlike, any interested party may ensure that these third parties are involved in the ICT conflict prevention proceedings in a form to be decided on in consultation with the Conflict Moderator.
- 5.8 Each decision or recommendation by the Conflict Moderator has the character of advice that is non-binding on the parties. ICT conflict prevention does not aim to provide the parties with a binding decision, unless agreed otherwise by the parties in writing in a binding advisory agreement.
- 5.9 The Conflict Moderator is entitled at all times to encourage an amicable settlement between the parties, and may make specific proposals for that purpose.
- 5.10 The Conflict Moderator may ask the parties for further information, either orally or in writing, at any time. The Conflict Moderator may decide at any time to obtain advice from expert third parties.
- 5.11 The Foundation and/or the Conflict Moderator are entitled at all times to terminate ICT conflict prevention proceedings, for any reason whatsoever, in particular if ICT conflict prevention is no longer considered to be effective. If the ICT conflict prevention proceedings are broken off or terminated, the Bureau will inform the parties of this in writing.
- 6. The Conflict Moderator**
The Conflict Moderator will be impartial and independent and must not have or have had (i.e. less than five years ago) any close personal or business ties with either of the parties. He will not have any direct or indirect interest in the outcome of the ICT conflict prevention proceedings. The Foundation may at any time withdraw the appointment of the Conflict Moderator if he does not comply with the provisions of this article.

7. Confidentiality

- 7.1 The parties will not disclose any information to third parties, including judges or arbitrators, concerning the progress of the ICT conflict prevention proceedings, the positions adopted or proposals made by the persons participating in the ICT conflict prevention proceedings, as well as the information provided orally or in writing, directly or indirectly.
- 7.2 The parties undertake not to disclose, cite from, refer to, paraphrase or otherwise rely on any documents to third parties, including judges or arbitrators, if these documents have been disclosed, shown or otherwise made known by a party involved in ICT conflict prevention during or in relation to the ICT conflict prevention proceedings. This obligation does not apply in so far as the party concerned already had or could have had this information at its disposal independently from the ICT conflict prevention. Documents as referred to here include: notes drawn up by the parties or the Conflict Moderator, further agreements reached as referred to in Article 5.4, as well as other data carriers such as audiotapes, videotapes, photos and digital files in any form whatsoever.
- 7.3 Articles 7.1 and 7.2 also apply to the Conflict Moderator.
- 7.4 The parties hereby waive the right, at law or otherwise, to use as evidence against each other any information that becomes known during the ICT conflict prevention proceedings, and/or to interview the Conflict Moderator or other persons involved in the ICT conflict prevention proceedings as a witness or otherwise about information that has been provided and/or laid down during or in connection with the ICT conflict prevention proceedings. The parties are deemed to have concluded an agreement as to burden of proof for that purpose.
- 7.5 The Conflict Moderator will treat in confidence all information made available to him from one of the parties without the other party being present, except in so far as the party concerned gives its explicit permission for this information to be contributed during the ICT conflict prevention proceedings.
- 7.6 The provisions of Articles 7.1 to 7.5 do not apply in case of:
- a. information concerning criminal conduct, for which there is a statutory duty or right of disclosure;
 - b. information concerning the threat of a crime;
 - c. complaint, disciplinary or liability proceedings against the Foundation and/or Conflict Moderator.

8. Costs - general

- 8.1 The costs of ICT conflict prevention include the costs which in the opinion of the Foundation were necessarily entailed by the ICT conflict prevention, as well as the administrative expenses and the fee of the Conflict Moderator, and any third parties consulted by the Conflict Moderator in performing his work.

- 8.2 The fee of the Conflict Moderator and the other costs of ICT conflict prevention, including the costs of any third parties to be consulted, will be borne equally by the parties. The parties are jointly and severally bound vis-à-vis the Foundation.
- 9. Administrative expenses**
- 9.1 The applicant, when submitting the application for ICT conflict prevention, will be required to pay a fixed sum in administrative expenses to the Foundation, irrespective of whether the opposite party has given its assent to the application. The amount of these charges is laid down in the Appendix to these Rules. The Bureau will inform the applicant of this amount after receiving the application.
- 9.2 If written assent for ICT conflict prevention has been received from the opposite party, as well as in the case of a joint application as referred to in Article 3.1, administrative expenses and a registration fee will be due by the opposite party as well, calculated in accordance with the Appendix to these Rules. The Bureau will inform the opposite party of the amount of the administrative expenses fee within seven calendar days following receipt of the assent.
- 9.3 The Bureau will be responsible for the collection of the administrative expenses, plus the turnover tax due. If after the second demand in writing by the Bureau either party has failed to pay within fourteen calendar days the administrative expenses it owes, plus the turnover tax due, such party will be deemed to have withdrawn its application for or assent to ICT conflict prevention. In that case each of the parties will remain obliged to pay the administrative expenses due.
- 9.4 The Foundation and the Conflict Moderator have the right to wait before commencing their work or to suspend their work at any time as long as either party or both the parties concerned has or have failed to pay the administrative expenses due, plus turnover tax.
- 10. Fee and disbursements of the Conflict Moderator**
- 10.1 The fee and disbursements of the Conflict Moderator will be fixed by the Foundation. In fixing such amounts the time spent on the case by the Conflict Moderator will be taken into account.
- 10.2 The disbursements of the Conflict Moderator will include any reasonable travel and accommodation expenses, costs of assistance, costs of experts, costs of meeting rooms, postage, telephone charges and cost of photocopies.
- 10.3 The Bureau will be responsible for the collection of the fees and disbursements due, plus the turnover tax due. If after the second demand in writing by the Bureau any party has failed to pay within fourteen calendar days the fees and disbursements it owes, plus the turnover tax due, the Conflict Moderator and the Bureau have the right to wait before commencing their work or suspend their work as long as one or both of the parties concerned have failed to pay the fee and/or the disbursements plus turnover tax.

11. Advances

- 11.1 The Bureau is entitled to request an advance or additional advance from the applicant and the opposite party, from which the fee and disbursements of the Conflict Moderator will be paid as far as possible. The amounts to be charged by the Bureau will be increased each time by the applicable turnover tax.
- 11.2 The Bureau will inform the Conflict Moderator of receipt of the advance. Only then may the Conflict Moderator begin with his work.
- 11.3 The Foundation and the Conflict Moderator are entitled at all times to suspend their work with respect to ICT conflict prevention as long as the party concerned has not paid the advance or additional advance required of it.
- 11.4 The Foundation will not be liable to pay any costs not secured by an advance. No interest will accrue on the amount of the advance paid.

12. Exclusion of liability

Neither the Foundation nor the members of the Board in person, the staff of the Bureau and the Conflict Moderator will be liable for any act or omission relating to ICT conflict prevention to which these Rules apply.

13. Unforeseen matters

In all matters not provided for by these Rules, the Board of the Foundation will decide.

14. Amendments

- 14.1 The Board may make amendments to these Rules at any time.
- 14.2 The amended rules will enter into force on the day after they have been filed with the Registry of the District Court of The Hague.

These Rules were laid down by the Board of Stichting Geschillenoplossing Automatisering in The Hague on 10 June 2013 and filed with the Registry of the District Court of The Hague on 12 June 2013 under number 41/2013.