



# ADR

**RULES**  
of CEPANI,  
The Belgian Centre  
for Arbitration and Mediation

- **MEDIATION**
- **MINI-TRIAL**
- **TECHNICAL EXPERTISE**
- **ADAPTATION OF CONTRACTS**



# SECTION I MEDIATION

The numbers of the legal provisions referred to in these Rules, are the provisions in force when the Rules were approved.

## STANDARD MEDIATION CLAUSE

*“The Parties hereby undertake to apply the CEPANI Mediation Rules to all disputes arising out of or in connection with this agreement.”*

The following provisions may be added to this clause:

*“The place of the mediation shall be [\_\_\_]”.*

*The proceedings shall be conducted in the [\_\_\_] language”.*

*“Should the mediation fail, the dispute shall be finally settled under the CEPANI Rules of Arbitration by one or more Arbitrators appointed in accordance with the said Rules. The place of the arbitration shall be [\_\_\_], the arbitration shall be conducted in the [\_\_\_] language”.*

## INTRODUCTION

These Rules shall apply if one or more Parties wish to settle their dispute through mediation organized by CEPANI. It is not required that the Parties have concluded a mediation agreement prior to the dispute nor that a mediation clause be inserted in an agreement between Parties concerning which the dispute has arisen.

These Rules shall also apply to disputes arising out of contracts referring to CEPANI’s Mediation Rules for Information and Communications Technology, which are abrogated and replaced by these Rules.

Mediation is an alternative dispute resolution method whereby Parties Request a Third Person (the Mediator) to assist them in their attempt to reach an amicable settlement of their dispute arising out of, or relating to,

a contractual or other legal relationship of whatsoever nature.

When the nature of the dispute requires complementary specializations (e.g. legal and technical), several Mediators may be appointed. In this case, the word "Mediator" shall be read as Mediators.

When more than two Parties are involved in the dispute, the word "Requesting Party", or "other Party" shall be read and understood as involving several Parties.

## **Article 1. Unilateral or joint Request for mediation**

**1.1** A Party wishing to have recourse to mediation under the CEPANI Rules shall submit its Request for Mediation to the Secretariat, in person or via its authorized Representative or Counsel. The Request must be submitted in electronic form and in one hard copy and must be signed in both cases by the Party wishing to have recourse to mediation or by its authorized Representative or Counsel.

Upon receipt of the Request, CEPANI shall send a copy of the Request by e-mail to the other Party or Parties involved.

If no valid e-mail address is known for the other Party(ies) involved, the unilateral Request submitted shall be supplied in a number of original and signed copies sufficient to provide one copy for the other Party(ies) and one copy for the Secretariat.

**1.2** The Request for Mediation may also be submitted jointly by all Parties involved in the dispute.

The Request and the documents annexed thereto must be submitted in electronic form and in one hard copy. In both cases, it must be signed by all Parties or by their authorized Representative or Counsel.

**1.3** The Request shall contain, *inter alia*, the following information:

- a) name, address, registered office, telephone and fax number, valid e-mail address, and company registration number, if any, of the Requesting Party and the identity of any Representative or Counsel having the capacity to act on behalf of the Requesting Party;
- b) a unique electronic communication method chosen for the exchange of all communications during the proceedings (including the name of the contact person and a valid e-mail address);
- c) in case of a unilateral Request for Mediation in accordance with Article 1.1 : the name of the other Parties, along with all the information the Requesting Party has for contacting the other Parties or their authorized Representatives or Counsel, such as a postal or valid e-mail address, telephone and fax numbers, company registration number and any information obtained from previous contacts;
- d) a brief recital of the dispute;
- e) the proof of payment of the registration costs as fixed under Article 4 of Schedule I.A of these Rules.

**1.4** In the case of a unilateral Request for Mediation, as mentioned in Article 1.1 of these Rules, and if the Request contains a claim to a right, the Requesting Party who introduced the Request shall comply with the formalities set out in Article 1730 of the Belgian Judicial Code in order for the Request to suspend the limitation period and to have the effect of a formal notice.

In the case of a joint Request as mentioned in Article 1.2 of these Rules, the Parties accept that, if their joint Request contains a claim to a right, it shall suspend the limitation period of the claim related to the said right during one month and shall have the effect of a formal notice.

## **Article 2. Answer to the Request for Mediation**

Within two weeks after the Request has been sent as mentioned in Article 1.1, the other Party shall inform the CEPANI Secretariat whether or not it wishes to participate in the mediation. This deadline may be extended with Parties' consent.

If no positive answer is given within the said time limit, the Request for Mediation shall be deemed to have been rejected by the said other Party.

A disagreement on the conditions set out by the Requesting Party is also considered as a refusal to take part in the mediation, unless the Requesting Party accepts in writing the conditions proposed by the other Party or if both Parties inform CEPANI of the conditions they have both agreed on.

## **Article 3. Effect of the mediation agreement**

When the Parties agree to resort to CEPANI for mediation, they thereby submit to these Rules, including the Schedules, in effect on the date of the receipt by the CEPANI Secretariat of the Request for Mediation.

# **THE MEDIATOR**

## **Article 4. Appointment of the Mediator(s)**

**4.1** The CEPANI Appointments Committee or the President of CEPANI shall appoint a Mediator within two weeks following receipt of the positive response as mentioned in Article 2. In doing so, the Mediator(s) availability, qualifications and ability to carry out the mediation in accordance with these Rules shall be taken into account.

The Parties may also propose by mutual consent the name of a Mediator to the Appointments Committee or to the President of CEPANI.

**4.2** When it notifies the identity of the Mediator the CEPANI Secretariat shall also communicate simultaneously to the Parties:

- the administrative expenses of CEPANI;
- the amount of the advance for mediation costs;
- the conditions for the payment of these costs;
- the date and the place of the mediation.

**4.3** Provided that the advance for mediation costs has been fully paid, the CEPANI Secretariat shall transmit the file to the Mediator as soon as the latter has been appointed.

**4.4** When several Mediators are appointed, they will act as a body.

## **Article 5. Independence of the Mediator**

The Mediator shall be independent. Prior to his/her appointment, the Mediator shall sign a statement of acceptance, availability and independence and shall undertake to comply with the Rules of Good Conduct set out in Schedule II.

The Mediator shall disclose in writing to the Secretariat any facts or circumstances which might be of such a nature so as to call into question his/her independence in the eyes of the Parties. The Secretariat shall provide such information to the Parties in writing and fix a time limit for the receipt of their comments.

The Mediator and/or the Parties shall immediately disclose to CEPANI any facts or circumstances which might be of such a nature as to call into question the Mediator's independence and which may occur during the mediation. In such event, CEPANI may, if the Parties or one of them so Requests, replace the Mediator.

## Article 6. Mediation Protocol

**6.1** The Mediator is free to organize the mediation as he/she sees fit in accordance with these Rules.

Before starting the mediation, in accordance with Article 1731 of the Belgian Judicial Code, the Mediator shall sign a Mediation Protocol with the Parties which shall state *inter alia*:

- the scale of fees or the method of determining the fees of the Mediator;
- the way in which the mediation costs will be divided among the Parties and the amount of the advance foreseen to cover these costs, as determined in accordance with Article 12 of these Rules;
- the method(s) of communication, if any, agreed by the Parties and the Mediator.

An original copy of the Mediation Protocol, duly signed by the Mediator and by the Parties or their authorized Representative or Counsel, shall be transmitted to the CEPANI Secretariat.

## Article 7. Powers of the Mediator

**7.1** The Mediator shall ensure that the proceedings are properly conducted. He/She shall create a favourable climate in which Parties themselves can find a solution to their dispute.

**7.2** The Mediator shall ensure that the Parties are always treated on a balanced basis.

**7.3** If Parties agree during a mediation that it would be useful for the Mediator to be made aware of the documentary evidence or of certain documents, or if the Mediator himself/herself finds it useful, they will be communicated accompanied with a list of the documents. This communication must not necessarily be made to the other Party(ies).

**7.4** The Mediator shall not have the power to impose a solution on the Parties.

**7.5** If nothing else is foreseen before or during the mediation, the Mediator's approach will mainly consist in facilitating the search for a settlement between the Parties. On Parties' Request the Mediator may however, insofar he/she judges it appropriate and being exclusively guided by the effectiveness of the procedure, give an opinion and express views regarding the Parties' positions, both from a legal and a factual point of view. This opinion shall not bind the Parties or the Mediator. The opinion shall be construed as exclusively designed to give the Parties an informed analysis provided by a neutral and independent Third Party with the aim of helping them to find a solution to their dispute.

**7.6** In the context of, and for the benefits of, his/her mission, the Mediator may, with the consent of the Parties, hear third Parties if they accept to be heard or, when it appears useful in the search for a solution, consult an Expert in one or more specific fields with a view to aiding the Parties.

**7.7** After having consulted the Parties, the Mediator may decide to hold meetings at any location that he/she considers appropriate.

## **Article 8. Replacement of the Mediator**

**8.1** In the event of the Mediator's death, resignation, if there is a cause preventing him/her from fulfilling his/her duties, or upon Request of all Parties, the Mediator shall be replaced.

**8.2** The Mediator shall also be replaced when the Appointments Committee or the President decides that the Mediator is prevented *de jure* or *de facto* from fulfilling his/her duties in accordance with these Rules or within the allotted time limits.

## **Article 9. Secrecy obligation of the Mediator, the Parties, their authorized Representatives and Counsel.**

The Mediator, the Parties, their authorized Representatives and Counsel, as well as the Experts or third Parties that have been involved in the proceedings, have a duty of secrecy in accordance with Article 1728 of the Belgian Judicial Code.

Save with the approval of the Mediator and the Parties, the meetings held within the context of mediation are not open to persons not involved in the mediation. However, if all Parties agree, other Parties may participate in the mediation.

Parties shall appear in person, as the case may be via one or more Representatives, with or without Counsel. Their Representatives must have a good knowledge of the dispute and the necessary decision-making power to settle it.

## **Article 10. Confidentiality of communications**

All communications between the Parties and/or the Mediator as from his/her appointment or by the latter for the purposes of the mediation, are confidential. The Parties undertake to refrain from making any reference whatsoever to the mediation outside the context of the mediation.

Unless otherwise agreed by the Parties, this shall however not apply to the Mediation Protocol, or to the notification of the end of the mediation as mentioned in Article 11 herein, nor to any settlement reached by the Parties at the end of the mediation.

Pre-existing documents or documents obtained by a Party outside of the context of the mediation and which are communicated in the context and for the purposes of the mediation between the Parties, to the Mediator or by the Mediator to the Parties or to one of the Parties are not

covered by this confidentiality rule. As the case may be, said documents may subsequently be used by the Parties for other purposes than the mediation, unless they were specifically communicated as confidential documents as part of the mediation.

However, unless otherwise agreed by all Parties to the mediation, the Parties undertake to refrain from in any way referring to the fact that the documents have been communicated as a part of the mediation.

## **Article 11. Settlement / Non-settlement and end of the mediation**

### **Settlement / Non-settlement**

**11.1** Should the mediation lead to a settlement between the Parties, the agreement shall be set forth in writing, dated and signed by the Parties and, when Requested by the Parties, by the Mediator. This document shall set out the precise undertakings of each Party as well as the allocation of the mediation costs, if this differs from what was agreed in the Mediation Protocol.

The Mediator shall send an original copy of the settlement to CEPANI.

**11.2** In the event that the mediation fails to produce a settlement, or if the Mediator considers that the mediation should not be pursued, he/she shall inform the CEPANI Secretariat and the Parties thereof.

### **End of the mediation**

**11.3** When an agreement is reached, the mediation shall end when a copy of the settlement, signed by the Parties and, if needed, by the Mediator, is sent to the CEPANI Secretariat. Parties may however agree, by so indicating in their settlement that the mediation will end only later, for example to allow the Mediator to remain in office until the settlement is carried out.

**11.4** At any time, either Party may refuse to continue the mediation. If no agreement is reached, the Parties and the Mediator acknowledge the lack of agreement and the Mediator or one of the Parties notifies the CEPANI Secretariat that no settlement has been reached, with a copy of the said notification to the Parties.

**11.5** In the event that the mediation fails, the Mediator shall not act as an arbitrator, Representative or Counsel of a Party in arbitral or judicial proceedings relating to the dispute which was the subject of mediation, unless otherwise agreed by the Parties.

## **Article 12. Mediation costs**

**12.1** The mediation costs shall include the fees and expenses of the Mediator, as well as the CEPANI administrative expenses and all costs related to the mediation as have been agreed by the Parties. The advance required to cover the mediation costs shall be paid to CEPANI prior to the appointment of the Mediator by the Appointments Committee or the President. The said advance shall be fixed by the Secretariat on the basis of the total value of the sum of the principal claims and counterclaims, in accordance with the scale of fees in force at the time of the commencement of the mediation.

**12. 2.** Other costs and expenses relating to the mediation, such as the expenses incurred by a Party, are not included in the mediation costs and are borne by the said Party, unless otherwise agreed by Parties, such agreement to be in writing.

**12.3.** If CEPANI decides in the course of the mediation, after having consulted the Mediator, that the initial advance for mediation costs must be adjusted, the Parties shall be Requested to make a further advance payment.

Unless otherwise agreed by the Parties, the initial advance on mediation costs, as well as any additional advance(s) on mediation costs, shall be payable in equal shares by the Parties.

When a Request for an additional advance on mediation costs has not been complied with, and after consultation with the Mediator, the Secretariat may direct the Mediator to suspend his/her work until the advance is fully paid.

**12.4** At the end of the mediation, the mediation costs are deducted from the advance on mediation costs received. The outstanding balance, if any, is reimbursed to the Parties, as may be agreed between them.

## **FINAL PROVISION**

### **Article 13. Limitation of liability**

For any act or omission in the course of a mediation, the Mediator, CEPANI and its members and personnel shall not incur any liability except in the case of fraud or gross negligence.





# SECTION II

# MINI-TRIAL

## STANDARD MINI-TRIAL CLAUSE

The Parties who wish to refer to the CEPANI mini-trial Rules are advised to insert the following clause in their contracts:

*“The Parties hereby undertake to apply the CEPANI mini-trial Rules for all disputes arising out of or in relation with this agreement.”*

The following provisions may be added to this clause:

*“The seat of the mini-trial shall be [\_\_\_]”.*

*“The proceedings shall be conducted in the [\_\_\_] language”.*

*“Should the mini-trial fail, the dispute shall be finally settled under the CEPANI Rules of Arbitration by one or more Arbitrators appointed in accordance with those Rules”.*

## PRELIMINARY PROVISIONS

### Article 1. Belgian Centre for Mediation and Arbitration

The Belgian Centre for Arbitration and Mediation (“CEPANI”) is an independent body which administers mini-trial proceedings in accordance with its Rules. It does not itself resolve disputes and it does not act as President of the Mini-trial Committee.

## GENERAL PROVISIONS

### Article 2. Scope

A mini-trial agreement may be set forth in a clause of the contract or entered into after the dispute has arisen.

# COMMENCEMENT OF THE PROCEEDINGS

## Article 3. Request for Mini-trial

1. A Party wishing to have recourse to Mini-trial under the CEPANI Rules shall submit its Request for Mini-trial to the Secretariat.

The Request for Mini-trial shall include, *inter alia*, the following information:

- a) name, first name and the name in full, function, address, telephone and fax numbers, valid e-mail addresses and VAT-number, if any, of each of the Parties;
- b) a succinct recital of the nature and circumstances of the dispute giving rise to the claim;
- c) a statement to the relief sought, a summary of the grounds for the claim, and, if possible, a financial estimate of the amount of the claim;
- d) name, first name and the name in full, function, address and valid e-mail address, telephone and fax numbers of the assessor appointed by Claimant to sit on the Mini-trial Committee;
- e) any comments as to the place of the Mini-trial, the language of the Mini-trial and the applicable Rules of law.

Together with the Request, Claimant shall provide copies of all agreements, in particular the Mini-trial agreement, the correspondence between the Parties and other relevant documents.

The Request for Mini-trial and the documents annexed thereto must be submitted in electronic form and in one hard copy.

2. Claimant shall also attach to the Request for Mini-trial proof of the dispatch to Respondent of the Request and the documents annexed thereto.

3. The date on which the Secretariat receives the Request for Mini-trial and the annexes thereto and the payment of the registration costs such as determined under Article 4 of the annex I.B shall be deemed to be the date of commencement of the Mini-trial proceedings. The Secretariat shall confirm this date to the Parties.

## Article 4. Answer to the Request for Mini-trial and filing of a counterclaim

1. Within twenty-one days from the date of the commencement of the mini-trial proceedings, Respondent shall send its Answer to the Request for Mini-trial to the Secretariat.

The Answer shall include, *inter alia*, the following information:

- a) name, first name and the name in full, function, address, telephone and fax number, valid e-mail address and VAT-number, if any, of Respondent;
- b) its comment on to the nature and circumstances of the dispute that gives rise to the claim;
- c) its response to the relief sought;
- d) name, first name, function, address and valid e-mail address, telephone and fax number of the assessor nominated by the Respondent to sit in the Mini-trial Committee;
- e) any comments as to the place of the Mini-trial, the language of the Mini-trial and the applicable Rules of law.

Together with the Answer, a general or specific grant of authority of the assessor and any other relevant document must be filed.

The Answer and the documents annexed thereto must be submitted in electronic form and in one hard copy.

2. Respondent shall also attach to the Answer proof of the dispatch, within the same time limit of twenty-one days, to Claimant of the Answer and the documents annexed thereto.

3. Any counterclaim made by Respondent shall be filed with its Answer and shall include:

- a) a recital of the nature and circumstances of the dispute that gives rise to the counterclaim;

b) an indication of the object of the counterclaim and, if possible, a financial estimate of the amount of the counterclaim;

4. This time limit may be extended pursuant to a reasoned Request of Respondent, or on its own motion, by the Secretariat.

### **Article 5. Lack of a *prima facie* Mini-trial agreement**

In the event that there is no *prima facie* Mini-trial agreement, the Mini-trial may not proceed should Respondent not answer within the period of twenty-one days mentioned in Article 4, or should Respondent refuse Mini-trial in accordance with the CEPANI Rules.

### **Article 6. Effect of the Mini-trial agreement**

1. When the Parties agree to resort to CEPANI for a Mini-trial, they thereby submit to the Rules, including the annexes which are in effect on the date of the commencement of the mini-trial proceedings, unless they have agreed to submit to the Rules in effect on the date of their Mini-trial agreement.

2. Unless otherwise agreed by the Parties, the Mini-trial shall proceed in accordance with the provisions of these Rules.

3. If necessary, and after having consulted with his/her Assessors, the President of the Mini-trial Committee may depart from the Rules set forth herein.

### **Article 7. Written notifications or communications and time limits**

1. The Request for Mini-trial, the Answer to the Request for Mini-trial, all pleadings and the appointment of the Mini-trial Committee shall be valid if the notification or communication is made in electronic form to a

valid e-mail address, which allows proof of the sending. If no valid e-mail address is known for a Party, the notification or communication shall be validly made if it is remitted by courier service against receipt, sent by registered mail or by fax.

2. If a Party is represented by Counsel, all notifications or communications shall be made to the latter, unless that Party Requests otherwise.

All notifications or communications shall be valid if dispatched to the last address of the Party to whom they are addressed, as notified either by the Party in question or by the other Party.

3. A notification or communication, made in accordance with paragraph 1, shall be deemed to have been made when it is received or should have been received by the Party itself, by its Representative or its Counsel.

4. Periods of time fixed under the present Rules shall start to run on the day following the date a notification or communication is deemed to have been made in accordance with paragraph 1. If the last day of the relevant period of time granted is an official holiday or a non-business day in the country where the notification or communication has to be made, the period of time shall expire at the end of the first following business day.

A notice or communication shall be treated as having been sent timely if it is dispatched in accordance with paragraph 1 prior to, or on the date of, the expiry of the time limit.

## **Article 8. Judicial or arbitral proceedings**

1. During the Mini-trial, the Parties undertake not to initiate or continue any judicial or arbitral proceedings relating to the same dispute or part of it, except as a conservatory measure.

2. Notwithstanding paragraph 1 hereinabove, the Parties may present to the Court or to the Arbitral Tribunal a Request for conservatory or provisional measures. Such a Request shall not entail a waiver of the right to continue with the Mini-trial.

## THE MINI-TRIAL COMMITTEE

### Article 9. General provisions

1. Only those persons who are independent of the Parties and of their Counsel and who comply with the Rules of good conduct for proceedings organized by CEPANI, may serve as President of the Mini-trial Committee in Mini-trials organized by CEPANI.

2. The Appointments Committee or the Chairman shall appoint the President of the Mini-trial Committee. The Parties may nominate the President of the Mini-trial Committee by mutual consent, subject to the approval of the Appointments Committee or the Chairman.

3. Prior to his/her appointment or confirmation, the President of the Mini-trial Committee whose appointment is being proposed shall sign a statement of availability, acceptance and independence. He/she shall disclose in writing to the Secretariat any facts or circumstances which might be of such a nature to call into question the President of the Mini-trial Committee's independence in the eyes of the Parties. The Secretariat shall provide such information to the Parties in writing and fix a time limit for any comments from them.

4. The President of the Mini-trial Committee shall immediately disclose in writing to the Secretariat and to the Parties any facts or circumstances of a similar nature as those mentioned in paragraph 2 which may arise during the Mini-trial.

5. The decisions of the Appointments Committee or the President as to the appointment or replacement of the President of the Mini-trial Committee shall be final. The reasons for the decision shall not be communicated.

6. By accepting to serve, every President of the Mini-trial Committee undertakes to carry out his/her responsibilities until the end in accordance with these Rules.

7. Unless otherwise agreed by the Parties, the President of the Mini-trial Committee shall not act as an arbitrator, Representative or Counsel of a Party in arbitral or judicial proceedings relating to the dispute which was the subject of a Mini-trial.

## **Article 10. Composition and Task of the Mini-trial Committee**

1. The Mini-trial Committee shall be composed of a President of the Mini-trial Committee and two Assessors appointed by and empowered to bind each Party on the basis of a general or specific grant of authority.

2. Should more than two Parties be involved in the mini-trial, then each Party shall appoint one assessor to sit on the Mini-trial Committee, unless otherwise agreed.

3. The Appointments Committee or the President appoints or confirms the President of the Mini-trial Committee after the payment by the Parties, or by one of them, of the advance on Mini-trial costs in accordance with the provisions of Article 21. It will thereby take into account more particularly the availability, the qualifications and the ability of the President of the Mini-trial Committee to conduct the Mini-trial in accordance with these Rules.

4. The President of the Mini-trial Committee is empowered to assist the Parties in their attempt to reach an amicable settlement of their dispute. He/she shall attempt to reach this agreement by consulting with his/her Assessors.

5. The Assessors are senior officials nominated by each Party and whose task is to attempt to reach an amicable settlement on the dispute in the name and on behalf of the Parties who nominated them and under the guidance of the President of the Mini-trial Committee. The assessor may be the chief executive of the company or a senior executive, or he/she may be a Third Party, such as a lawyer or any other person of trust authorized by the Party concerned to enter into commitments on its behalf.

## **Article 11. Replacement of the President of the Mini-trial Committee**

1. In the event of the President of the Mini-trial Committee's death, challenge, accepted withdrawal, or if there is a cause preventing him/her from fulfilling his/her duties, or upon Request of all Parties, the President of the Mini-trial Committee shall be replaced.

2. The President of the Mini-trial Committee shall also be replaced when the Appointments Committee or the President finds that the President of the Mini-trial Committee is prevented *de jure* or *de facto* from fulfilling his/her duties in accordance with these Rules or within the allotted time limits.

In such event, the Appointments Committee or the President shall decide on the matter after having invited the President of the Mini-trial Committee, the Assessors and the Parties to comment in writing to the Secretariat within the time limit allotted by the latter. Such comments shall be communicated to the Parties and to the Mini-trial Committee.

## **THE MINI-TRIAL PROCEEDINGS**

### **Article 12. Transmission of the file to the Mini-trial Committee**

Provided that the advance on Mini-trial costs set out in Article 21 has been fully paid, the Secretariat shall transmit the file to the Mini-trial Committee as soon as the latter has been appointed.

### **Article 13. Language of the Mini-trial**

1. The language of the Mini-trial shall be determined by mutual agreement between the Parties. Failing such an agreement, the language or languages of the Mini-trial shall be determined by the President of the Mini-trial Committee, due regard being given to the circumstances of the case and, in particular, to the language of the contract.

2. The President of the Mini-trial Committee, having consulted with his/her Assessors, shall have full authority to decide which of the Parties shall bear the translation costs, if any, and to what extent.

### **Article 14. Place of the Mini-trial**

1. The Appointments Committee or the President shall determine the place of the Mini-trial, unless the Parties have agreed this.

2. Unless otherwise agreed by the Parties and after having consulted with them, the Mini-trial Committee may decide to hold its hearings and meetings at any other location that it considers appropriate.

3. The Mini-trial Committee may deliberate at any place that it considers appropriate.

### **Article 15. Examination of the case**

1. The President of the Mini-trial Committee, having consulted with his/her Assessors, may ask the Parties to provide additional information and exhibits.

2. After consultation with his/her Assessors, the President of the Mini-trial Committee shall determine the day, time and place of a meeting with the Parties.

3. The President of the Mini-trial Committee shall chair the meeting and offer the Parties an opportunity to put forth their views.
4. The hearings shall not be public. Save with the approval of the Mini-trial Committee and the Parties, persons not involved in the proceedings shall not be admitted.
5. The Parties shall appear in person or through duly authorized Representatives or Counsel.
6. After the meeting, the President of the Mini-trial Committee shall consult with his/her Assessors and attempt to reach a consensus. In this respect, the President of the Mini-trial Committee shall have the broadest powers to undertake whatever, in his/her opinion, may reasonably bring about a settlement. To this end, he/she may consult, *inter alia*, with each of his/her Assessors separately.

### **Article 16. Confidentiality of the Mini-trial Proceedings**

Unless it has been agreed otherwise by the Parties or there is a legal obligation to disclose, the mini-trial proceedings shall be confidential.

### **Article 17. Confidentiality of communications**

All communications between the Parties and/or the President of the Mini-trial Committee as from his/her appointment or by the latter for the purposes of the Mini-trial, are confidential. The Parties undertake to refrain from making any reference whatsoever to the Mini-trial outside the context of the Mini-trial. Unless otherwise agreed by the Parties, this shall however not apply to the notification of the end of the Mini-trial as mentioned in Article 19 herein, nor to any settlement reached by the Parties at the end of the Mini-trial.

Pre-existing documents or documents obtained by a Party outside of the context of the Mini-trial and which are communicated in the context and for the purposes of the Mini-trial between the Parties, to the President of the Mini-trial Committee or by the President of the Mini-trial Committee to the Parties or to one of the Parties are not covered by this confidentiality rule. As the case may be, said documents may subsequently be used by the Parties for other purposes than the Mini-trial, unless they were specifically communicated as confidential documents as part of the Mini-trial.

## **SETTLEMENT AND END OF THE MINI-TRIAL**

### **Article 18. Settlement**

1. Should these consultations lead to a settlement, the agreement shall be set forth in writing and signed by the Assessors in the name and on behalf of the Parties. This document sets out the precise undertakings of each of the Parties.

Subsequently, the President of the Mini-trial Committee shall record in a set of minutes the fact that the Parties have reached an agreement. The said minutes shall be signed by the President of the Mini-trial Committee and the Assessors, in the name and on behalf of the Parties. A copy of the minutes is sent to the Secretariat.

2. In the event that the consultations fail to bring about a settlement, the President of the Mini-trial Committee shall record this fact in the minutes, which he/she shall sign and immediately notify to the Secretariat.

### **Article 19. End of the Mini-trial**

1. When an agreement is reached, the Mini-trial shall end when the Assessors, in the name and on behalf of the Parties and the President of the Mini-trial Committee, the minutes stating that an agreement has been reached.

2. If no agreement is reached, the Mini-trial shall end as soon as the President of the Mini-trial Committee notifies to the Secretariat the minutes stating that no agreement has been reached.
3. Should one of the Parties fail to appear in the proceedings after having been duly summoned, the Mini-trial shall end as soon as the President of the Mini-trial Committee informs the Secretariat in writing of this fact.
4. At any time, either Party may refuse to continue the Mini-trial. In such event, the Mini-trial ends when written notification of that Party's refusal is sent to the President of the Mini-trial Committee, if already constituted, and to the Secretariat.
5. The President of the Mini-trial Committee may also decide, after consultation with his/her Assessors, that there is no further justification for continuing with the Mini-trial. In such event, the Mini-trial ends as soon as the President of the Mini-trial Committee informs the Secretariat in writing of this fact.

## **COSTS OF MINI-TRIAL**

### **Article 20. Nature and amount of the Mini-trial costs**

1. The Mini-trial costs shall include the fees and expenses of the President of the Mini-trial Committee, as well as the administrative expenses of the Secretariat. They shall be fixed by the Secretariat on the basis of the amount of the claims, according to the Scale of Mini-trial costs in effect on the date of the commencement of the mini-trial proceedings.
2. The costs of the assessor nominated by a Party shall be borne by this Party. Other costs and expenses relating to the Mini-trial, such as the expenses incurred by a Party for their defence and the expenses relating to the presentation of evidence by Experts or witnesses, are not included in the Mini-trial costs and are borne by this Party.

3. The Secretariat may fix the Mini-trial costs at a higher or lower figure than that which would result from the application of the Scale of Mini-trial Costs, should this be deemed necessary due to the exceptional circumstances of the case.

4. If the amount in dispute is not specified, totally or partially, the Secretariat, may determine, taking into account all available information, the amount in dispute on the basis of which the Mini-trial costs will be calculated.

5. The Secretariat may adjust the amount of the Mini-trial costs at any time during the proceedings if the circumstances of the case or if new claims reveal that the scope of the dispute is greater than originally considered.

#### **Article 21. Advance on Mini-trial costs**

1. The advance required to cover the Mini-trial costs as determined in accordance with Article 20, paragraph 1 shall be paid to CEPANI prior to the appointment of the President of the Mini-trial Committee by the Appointments Committee or the President.

2. Further advance payments may be required if and when any adjustments are made to the Mini-trial costs in the course of the proceedings.

3. The advance on Mini-trial costs, as well as the additional advance on Mini-trial costs, shall be payable in equal shares by the Parties. However, any Party shall be free to pay the whole of the advance on Mini-trial costs should the other Party fail to pay its share.

4. When the advance on Mini-trial costs exceeds € 50.000,00 a bank guarantee may be posted to cover such payment.

5. When a Request for an additional advance on Mini-trial costs has not been complied with, and after consultation with the Mini-trial Committee, the Secretariat may direct the Mini-trial Committee to suspend its work and set a time limit, which must be not less than fifteen days, on the expiry of which the relevant claims or counterclaims on the basis of which the additional advance was calculated shall be considered as withdrawn. A Party shall not be prevented on the ground of such a withdrawal from reintroducing the same claim or counterclaim at a later date in another proceeding.

## **Article 22. Decision on Mini-trial costs**

1. The Mini-trial costs shall be finally fixed by the Secretariat.
2. Unless otherwise agreed, the Parties shall each bear one half of the costs of the Mini-trial.
3. The minutes that state that the Parties have reached an agreement, set forth the Mini-trial costs, as determined by the Secretariat, and set out the agreement between the Parties, if any, on the allocation of the Mini-trial costs.

## **FINAL PROVISIONS**

### **Article 23. Limitation of liability**

For any act or omission in the course of mini-trial proceedings, the President of the Mini-trial Committee, CEPANI and its members and personnel shall not incur any liability except in the case of fraud or gross negligence.



SECTION III  
TECHNICAL EXPERTISE

## Standard clause for technical Expertise

The Parties who wish to refer to the CEPANI Rules for technical Expertise are advised to insert the following clause in their contracts:

*“The Parties hereby undertake to apply the CEPANI Rules of Technical Expertise for all disputes arising out of or in relation with this Agreement”.*

The following provisions may be added to this clause<sup>1</sup>:

*“The seat of the technical Expertise shall be [\_\_\_]”.*

*“The proceedings shall be conducted in the [\_\_\_] language”.*

*“The technical Expertise shall be carried out by [one] or [three] Experts”.*

*“The findings and conclusions of the Expert(s) shall [not] be binding on the Parties”.*

## PRELIMINARY PROVISIONS

### Article 1. Belgian Centre for Mediation and Arbitration

The Belgian Centre for Arbitration and Mediation (“CEPANI”) is an independent body which administers technical Expertise proceedings in accordance with its Rules. It does not itself resolve disputes and it does not act as technical Expert.

1. Delete as appropriate.

# COMMENCEMENT OF THE PROCEEDINGS

## Article 2. Request for Technical Expertise

1. A Party wishing to have recourse to technical Expertise under the CEPANI Rules shall submit its Request for Technical Expertise to the Secretariat.

The Request for Technical Expertise shall include, *inter alia*, the following information:

- a) name, first name and the name in full, function, address, telephone and fax numbers, valid e-mail addresses and VAT-number, if any, of each of the Parties;
- b) a succinct recital of the nature and circumstances of the dispute giving rise to the claim;
- c) the purpose and the nature of the technical Expertise;
- d) any comments as to the place of the technical Expertise and the language of the technical Expertise.

Together with the Request, Claimant shall provide copies of all agreements, in particular the technical Expertise agreement and other relevant documents.

The Request for Technical Expertise and the documents annexed thereto must be submitted in electronic form and in one hard copy.

2. Claimant shall also attach to the Request for Technical Expertise proof of the dispatch to Respondent of the Request and the documents annexed thereto.

3. The date on which the Secretariat receives the Request for Technical Expertise and the annexes thereto and the payment of the registration costs shall be deemed to be the date of commencement of the technical Expertise. Each Request for technical Expertise must be accompanied by an advance payment of € 750,00 excl. VAT on administrative costs.

Such payment is non-refundable, and shall be credited to the Claimant's portion of the advance on costs for technical Expertise. The Secretariat shall confirm this date to the Parties.

### **Article 3. Answer to the Request for Technical Expertise**

1. Within fifteen days from the date of commencement of the for technical Expertise proceedings, Respondent shall send its Answer to the Request for Technical Expertise to the Secretariat.

The Answer shall include, *inter alia*, the following information:

- a) name, first name and the name in full, function, address, telephone and fax numbers, valid e-mail address and VAT-number, if any, of Respondent;
- b) its comments on the nature and circumstances of the dispute that gives rise to the claim;
- c) its response to the Expert's mission as defined by Claimant;
- d) any comments as to the place of the technical Expertise and the language of the technical Expertise.

The Answer and the documents annexed thereto must be submitted in electronic form and in one hard copy.

2. Respondent shall also attach to the Answer proof of the dispatch, within the same time limit of fifteen days, to Claimant of the Answer and the documents annexed thereto.

3. This time limit may be extended pursuant to a reasoned Request of Respondent, or on its own motion, by the Secretariat.

### **Article 4. Lack of a *prima facie* technical Expertise agreement**

In the event that there is no *prima facie* technical Expertise agreement, the technical Expertise may not proceed should Respondent not answer within

the period of fifteen days mentioned in Article 3, or should Respondent refuse technical Expertise in accordance with the CEPANI Rules.

### **Article 5. Effect of the technical Expertise agreement**

1. When the Parties agree to resort to CEPANI for technical Expertise, they thereby submit to the Rules, including the annexes, in effect on the date of the commencement of the technical Expertise proceedings, unless they have agreed to submit to the Rules in effect on the date of their technical Expertise agreement.

2. If, notwithstanding a *prima facie* technical Expertise agreement, one of the Parties refuses to submit to technical Expertise, or fails to take part in the technical Expertise, the technical Expertise shall nevertheless proceed.

### **Article 6. Written notifications or communications and time limits**

1. The Request for Technical Expertise, the Answer to the Request for Technical Expertise, all pleadings and, the appointment of the Experts, subject to Article 15, paragraph 2 shall be valid if the notification or communicated is made in electronic form to a valid e-mail address, which allows proof of the sending. If no valid e-mail address is known for a Party, the notification or communication shall be validly made if it is remitted by courier service against receipt, sent by registered mail, or by fax.

2. If a Party is represented by Counsel, all notifications or communications shall be made to the latter, unless that Party Requests otherwise.

All notifications or communications shall be valid if dispatched to the last address of the Party to whom they are addressed, as notified either by the Party in question or by the other Party.

3. A notification or communication, made in accordance with paragraph 1, shall be deemed to have been made when it was received or should have been received by the Party itself, by its Representative or its Counsel.

4. Periods of time specified in the present Rules, shall start to run on the day following the date a notification or communication is deemed to have been made in accordance with paragraph 2. If the last day of the relevant period of time granted is an official holiday or a non-business day in the country where the notification or communication has to be made, the period of time shall expire at the end of the first following business day.

A notice or communication shall be treated as having been sent timely if it is dispatched in accordance with paragraph 1 prior to, or on the date of, the expiry of the time limit.

## **THE EXPERT(S)**

### **Article 7. General provisions**

1. Only those persons who are independent of the Parties and of their Counsel and who comply with the Rules of good conduct for proceedings organized by CEPANI, may serve as Experts in technical Expertise proceedings organized by CEPANI.

2. The Appointments Committee or the Chairman shall appoint the Expert(s). The Parties may nominate the Expert(s) by mutual consent, subject to the Appointments Committee or the Chairman.

3. Prior to his appointment or confirmation, the Expert whose appointment is being proposed, shall sign a statement of availability, acceptance and independence. He shall disclose in writing to the Secretariat any facts or circumstances which might be of such a nature so as to call into question the Expert's independence in the eyes of the

Parties. The Secretariat shall provide such information to the Parties in writing and fix a time limit for any comments from them.

4. An Expert shall immediately disclose in writing to the Secretariat and to the Parties any facts or circumstances of a similar nature as those mentioned in paragraph 3 which may arise during the technical Expertise.

5. The decisions of the Appointments Committee or the Chairman as to the appointment, approval or replacement of an Expert shall be final. The reasons for the decision shall not be communicated.

6. By accepting to serve, every Expert undertakes to carry out his responsibilities until the end in accordance with these Rules.

7. Unless otherwise agreed by the Parties, the Expert shall not act as an arbitrator, Representative or Counsel of a Party in arbitral or judicial proceedings relating to the dispute which was the subject of the technical Expertise proceedings.

## **Article 8. Appointment of the Expert**

1. The Appointments Committee or the Chairman shall appoint, or confirm the nomination of, the Expert(s) in accordance with the Rules set out hereafter.

2. The Parties shall define the Expert's mission. If the Expert is appointed in the course of an arbitration procedure, the Arbitral Tribunal shall define the mission of the Expert after having consulted the Parties. If the Expert is appointed in the course of a mediation, the Mediator shall define the mission of the Expert after having consulted the Parties.

3. The Appointments Committee or the Chairman appoints or approves the nomination of the Expert(s) after the payment by the Parties, or by

one of them, of the advance on technical Expertise costs in accordance with the provisions of Article 17. It thereby takes into account more particularly the availability, the qualifications and the ability of the Expert(s) to conduct the technical Expertise in accordance with these Rules.

## **Article 9. Replacement of the Expert**

1. In the event of an Expert's death, challenge, accepted withdrawal, or if there is a cause preventing him from fulfilling his duties, or upon Request of all Parties, the Expert shall be replaced.

2. An Expert shall also be replaced when the Appointments Committee or the Chairman finds that the Expert is prevented *de jure* or *de facto* from fulfilling his duties in accordance with these Rules or within the allotted time limits.

In such event, the Appointments Committee or the Chairman shall decide on the matter after having invited the Expert concerned, the other Experts, if any, and the Parties to comment in writing to the Secretariat within the time limit allotted by the latter. Such comments shall be communicated to the Parties and to the Expert(s).

## **THE TECHNICAL EXPERTISE**

### **Article 10. Transmission of the file to the Expert**

Provided that the advance on technical Expertise costs set out in Article 17 has been fully paid, the Secretariat shall transmit the file to the Expert(s) as soon as the latter has been appointed or his nomination approved.

## **Article 11. Language of the technical Expertise**

1. The language of the technical Expertise shall be determined by mutual agreement between the Parties. Failing such an agreement, the language or languages of the technical Expertise shall be determined by the Expert(s), due regard being given to the circumstances of the case and, in particular, to the language of the contract.
2. The Expert(s) shall have full authority to decide which of the Parties shall bear the translation costs, if any, and to what extent.

## **Article 12. Place of the technical Expertise**

1. The Appointments Committee or the Chairman shall determine the place of the technical Expertise, unless the Parties have agreed this.
2. Unless otherwise agreed by the Parties and after having consulted with them, the Expert(s) may decide to hold his(their) hearings and meetings at any other location that he(they) consider(s) appropriate.

## **Article 13. Examination of the case**

1. After having duly heard the Parties, the Expert(s) shall proceed with his(their) appraisal in accordance with his(their) mission.
2. The Parties shall appear in person or through duly authorized Representatives or Counsel.
3. The Parties shall assist the Expert(s) in every way in carrying out his(their) mission, namely by providing him(them) with the necessary documents and giving access to the sites where he(they) may require verifications and investigations to be carried out.

4. Unless otherwise agreed, the findings and conclusions of the Expert(s) shall be binding on the Parties in the same manner as the terms of their contract.
5. The hearings shall not be public. Save with the approval of the Expert(s) and the Parties, persons not involved in the proceedings shall not be admitted.
6. The Expertise proceedings shall be confidential only if Parties Request so.

## **THE TECHNICAL REPORT**

### **Article 14. The Technical report**

The mission of the Expert(s) shall end when he(they) render(s) his(their) final Technical report describing his(their) findings and conclusions.

### **Article 15. Notification of the Technical report**

1. Once the Technical report has been drawn up, the Expert(s) shall transmit it to the Secretariat in as many original versions as there are Parties involved, plus one original version for the Secretariat.
2. The Secretariat shall notify an original of the signed Technical report to the Parties by registered mail or by courier service against receipt and a copy shall be sent by mail, provided that the technical Expertise costs have been fully paid to the CEPANI by the Parties or by one of them.

## **TECHNICAL EXPERTISE COSTS**

### **Article 16. Nature and amount of the technical Expertise costs**

1. The technical Expertise costs shall include the fees and expenses of the Expert(s), as well as the administrative expenses of the Secretariat. They

shall be fixed by the Secretariat due regard being given to the nature and scope of his (their) mission.

2. The Parties' costs include the expenses of the Parties such as the expenses incurred for their defence and the expenses relating to the presentation of evidence. They are not included in the technical Expertise costs and are borne by this Party.

3. The Secretariat may adjust the amount of the technical Expertise costs at any time during the proceedings if the circumstances of the case or if new missions reveal that the scope of the case is greater than originally considered.

### **Article 17. Advance on technical Expertise costs**

1. The advance required to cover the technical Expertise costs, as determined in accordance with Article 16, paragraph 1 shall be paid to CEPANI prior to the appointment or the approval of the nomination of the Expert(s) by the Appointments Committee or the Chairman.

2. At the time of appointment of the Expert or the determination of his or her mission, the advance on cost of is established in consultation with the Expert.

3. Further advance payments may be required if and when any adjustments are made to the technical Expertise costs in the course of the proceedings.

4. The advance on technical Expertise costs, as well as the additional advance on technical Expertise costs, shall be payable in equal shares by Claimant and Respondent. However, any Party shall be free to pay the whole of the advance on technical Expertise costs should the other Party fail to pay its share.

5. When the advance on technical Expertise costs exceed € 50.000,00, an irrevocable first demand bank guarantee may be posted to cover such payment.

6. When a Request for an additional advance on technical Expertise costs has not been complied with, and after consultation with the Expert(s), the Secretariat may direct the Expert(s) to suspend his(their) work and set a time limit, which must be not less than fifteen days, on the expiry of which the extension of the mission on the basis of which the additional advance was calculated shall be considered as withdrawn. A Party shall not be prevented on the ground of such a withdrawal from reintroducing the same claim or counterclaim at a later date in another proceeding.

### **Article 18. Decisions on technical Expertise costs**

1. The technical Expertise costs shall be finally fixed by the Secretariat.

2. Unless otherwise agreed, the Parties shall each bear one half of the costs of the technical Expertise.

3. The Technical report shall mention the technical Expertise costs, as determined by the Secretariat, and set out the agreement between the Parties, if any, on the allocation of the technical Expertise costs.

## **FINAL PROVISIONS**

### **Article 19. Limitation of liability**

For any act or omission in the course of technical Expertise proceedings, the Expert, CEPANI and its members and personnel shall not incur any liability except in the case of fraud or gross negligence.





SECTION IV  
ADAPTATION  
OF CONTRACTS

## STANDARD ADAPTATION OF CONTRACTS CLAUSE

The Parties who wish to refer to the CEPANI Rules of Adaptation of Contracts are advised to insert the following clause in their contracts:

*“The Parties hereby undertake to apply the CEPANI Rules of Adaptation of Contracts, should either one of them so Request.*

*The opinion of the Third Person appointed in accordance with these Rules shall have the authority of a [recommendation] or [decision]”<sup>1</sup>.*

The following provisions may be added to this clause:

*“The seat of the proceedings shall be [\_\_\_]”.*

*“The proceedings shall be conducted in the [\_\_\_] language”.*

*“The adaptation of contracts proceedings shall be followed by arbitration proceedings under the Rules of CEPANI, if so Requested by one of the Parties”.*

## PRELIMINARY PROVISIONS

### Article 1. Belgian Centre for Mediation and Arbitration

The Belgian Centre for Arbitration and Mediation (“CEPANI”) is an independent body which administers adaptation of contracts proceedings in accordance with its Rules. It does not itself resolve disputes and it does not act as a Third Person.

1. Delete as appropriate.

## GENERAL PROVISIONS

### Article 2. Scope

1. Section VI shall apply if one or more Parties wish to have recourse to a Third Person whose mission shall be to complete the contract on items unforeseen by them, or to adapt their common intent to new situations.
2. Only Parties who have so agreed with a specific clause may have recourse to Section VI. Depending on its scope as determined by the Parties, the mission shall lead to a recommendation or a decision.

## COMMENCEMENT OF THE PROCEEDINGS

### Article 3. Request for Adaptation of Contracts

1. A Party wishing to have recourse to the adaptation of contracts proceedings under the CEPANI Rules shall submit its Request for Adaptation of Contracts to the Secretariat.

The Request for Adaptation of Contracts shall include, *inter alia*, the following information:

- a) name, first name and the name in full, function, address, telephone and fax numbers, valid e-mail addresses and VAT-number, if any, of each of the Parties;
- b) Claimant's position;
- c) any comments as to the place and the language of the adaptation of contracts proceedings and the applicable Rules of law.
- d) Proof of payment of the registration costs.

Together with the Request, Claimant shall provide copies of all agreements, in particular the agreement for the adaptation of contracts, the correspondence between the Parties and other relevant documents.

2. Each Request for adaptation of contracts must be accompanied by an advance payment of € 750,00 excl. VAT on administrative costs. Such payment is non-refundable, and shall be credited to the Claimant's portion of the advance on costs for adaptation of contracts.

3. The Request for Adaptation of Contracts and the documents annexed thereto must be submitted in electronic form and in one hard copy.

Upon receipt of the unilateral Request, CEPANI shall send a copy of the Request and the documents annexed thereto by e-mail to the other Party or Parties involved.

If no valid e-mail address is known for the other part(ies), the Request submitted shall be supplied in a number of original and signed copies sufficient to provide one copy for the other Party(ies) and one for the Secretariat.

#### **Article 4. Answer to the Request for Adaptation of Contracts**

1. Within fifteen days after the Request for Adaptation of Contracts has been sent as mentioned in Article 3, the other Party shall submit to the CEPANI Secretariat its comments with respect to the Request.

If no answer is given within the said time limit, the Request for Adaptation of Contracts shall be deemed to have been rejected by the said other Party.

2. If the Request is submitted by one Party only, the date on which the Secretariat informs the other Party of the Request for Adaptation of Contracts and of the annexes thereto shall be deemed to be the date of commencement of the adaptation of contracts proceedings.

If the Request is submitted by all the Parties, the date on which the Secretariat receives the Request for Adaptation of Contracts and the

annexes thereto and the payment for registration costs mentioned in Article 3.1 d) shall be deemed to be the date of commencement of the adaptation of contract proceedings.

The Secretariat shall confirm the date of commencement of the adaptation of contracts proceedings to the Parties.

3. The time limit mentioned in paragraph 1 may be extended pursuant to a reasoned Request of Respondent, or on its own motion, by the Secretariat.

### **Article 5. Lack of a *prima facie* adaptation of contracts agreement**

In the event that there is no *prima facie* adaptation of contracts agreement, the adaptation of contracts proceedings may not proceed should the absent Party not answer within the period of fifteen days mentioned in Article 4, or should it refuse the adaptation of contracts proceedings in accordance with the CEPANI Rules.

### **Article 6. Effect of the adaptation of contracts agreement**

When the Parties agree to resort to CEPANI for the adaptation of contracts proceedings, they thereby submit to the CEPANI Rules, including the annexes, in effect on the date of the commencement of the adaptation of contracts proceedings, unless they have agreed to submit to the Rules in effect on the date of their adaptation of contracts agreement.

### **Article 7. Written notifications or communications and time limits**

1. The Request for Adaptation of Contracts, the Answer to the Request for Adaptation of Contracts, all pleadings, and the appointment of the Third Person, subject to Article 17, paragraph 2 shall be valid if it is notified or communicated in electronic form to a valid e-mail address, which allows proof of the sending. If no valid e-mail address is known for a Party, the

notification or communication shall be validly made if remitted by courier service against receipt, sent by registered mail or by fax.

2. If a Party is represented by Counsel, all notifications or communications shall be made to the latter, unless that Party Requests otherwise.

All notifications or communications shall be valid if dispatched to the last address of the Party to whom they are addressed or its Counsel who is the addressee, as notified.

3. A notification or communication, made in accordance with paragraph 1, shall be deemed to have been made when it was received or should have been received by the Party itself, by its Representative or its Counsel.

4. Periods of time specified in the present Rules, shall start to run on the day following the date a notification or communication is deemed to have been made in accordance with paragraph 2. If the last day of the relevant period of time granted is an official holiday or a non-business day in the country where the notification or communication has to be made, the period of time shall expire at the end of the first following business day.

A notice or communication shall be treated as having been sent timely if it is dispatched in accordance with paragraph 1 prior to, or on the date of, the expiry of the time limit.

## **THE THIRD PERSON**

### **Article 8. General provisions**

1. Only those persons who are independent of the Parties and of their Counsel and who comply with the Rules of good conduct for proceedings organized by CEPANI, may serve as Third Persons in adaptation of contracts proceedings organized by CEPANI.

2. The Appointments Committee or the Chairman shall appoint the Third Person. The Parties may nominate the Third Person by mutual consent, subject to the approval of the Appointments Committee or the Chairman.

3. Prior to his appointment or confirmation, the Third Person who was appointment is being proposed shall sign a statement of availability, acceptance and independence. He shall disclose in writing to the Secretariat any facts or circumstances which might be of such a nature as to call into question the Third Person's independence in the eyes of the Parties. The Secretariat shall provide such information to the Parties in writing and fix a time limit for any comments from them.

4. The Third Person shall immediately disclose in writing to the Secretariat and to the Parties any facts or circumstances of a similar nature as those mentioned in paragraph 3 which may arise during the adaptation of contracts proceedings.

5. The decisions of the Appointments Committee or the Chairman as to the appointment, approval of the nomination or replacement of the Third Person shall be final. The reasons for the decision shall not be communicated.

6. By accepting to serve, every Third Person undertakes to carry out his responsibilities until the end in accordance with these Rules.

7. Unless otherwise agreed by the Parties, the Third Person shall not act as an arbitrator, Representative or Counsel of a Party in arbitral or judicial proceedings relating to the dispute which was the subject of the adaptation of contracts proceedings.

## **Article 9. Appointment of the Third Person**

1. The Parties may nominate the Third Person by mutual consent, subject to the approval of the Appointments Committee or the Chairman. Should

the Parties fail to agree on his nomination within fifteen days from the notification of the Request for Adaptation of Contracts to the other Party, or within such additional time as may be allowed by the Secretariat, the Third Person shall be automatically appointed by the Appointments Committee or the Chairman. Where the Appointments Committee or the Chairman refuses to approve the nomination of the Third Person, it or he shall proceed with the replacement within a period of fifteen days of the notification of this refusal to the Parties.

2. The Appointments Committee or the Chairman appoints or approves the nomination of the Third Person after the payment by the Parties, or by one of them, of the advance on Adaptation of Contracts costs in accordance with the provisions of Article 19. It thereby takes into account more particularly the availability, the qualifications and the ability of the Third Person to conduct the adaptation of contracts proceedings in accordance with these Rules.

## **Article 10. Replacement of the Third Person**

1. In the event of a Third Person's death, challenge, accepted withdrawal, or if there is a cause preventing him from fulfilling his duties, or upon Request of all Parties, the Third Person shall be replaced.

2. A Third Person shall also be replaced when the Appointments Committee or the Chairman finds that the Third Person is prevented *de jure* or *de facto* from fulfilling his duties in accordance with these Rules or within the allotted time limits.

In such event, the Appointments Committee or the Chairman shall decide on the matter after having invited the Third Person and the Parties to comment in writing to the Secretariat within the time limit allotted by the latter. Such comments shall be communicated to the Parties and to the Third Person.

# THE ADAPTATION OF CONTRACTS PROCEEDINGS

## Article 11. Transmission of the file to the Third Person

Provided that the advance on adaptation of contracts costs set out in Article 19 has been fully paid, the Secretariat shall transmit the file to the Third Person as soon as the latter has been appointed or his nomination approved.

## Article 12. Language of the adaptation of contracts proceedings

1. The language of the adaptation of contracts proceedings shall be determined by mutual agreement between the Parties. Failing such an agreement, the language or languages of the adaptation of contracts proceedings shall be determined by the Third Person, due regard being given to the circumstances of the case and, in particular, to the language of the contract.

2. The Third Person shall have full authority to decide which of the Parties shall bear the translation costs, if any, and to what extent.

## Article 13. Place of the adaptation of contracts proceedings

1. The Appointments Committee or the Chairman shall determine the place of the adaptation of contracts proceedings, unless the Parties have agreed this.

2. Unless otherwise agreed by the Parties and after having consulted with them, the Third Person may decide to hold his hearings and meetings at any other location that he considers appropriate.

## Article 14. Examination of the case

The Third Person is free to organize the proceedings as he/she sees fit.

## **Article 15. Confidentiality of the Adaptation of Contracts Proceedings**

Unless it has been agreed otherwise by the Parties or there is a legal obligation to disclose, the adaptation of contracts proceedings shall be confidential.

## **DECISION OR RECOMMENDATION AND END OF THE ADAPTATION OF CONTRACTS PROCEEDINGS**

### **Article 16. Decision or recommendation of the Third Person**

The mission of the Third Person shall end when he/she draws up his conclusions in a written decision or recommendation.

### **Article 17. Notification of the decision or recommendation**

1. Once the decision or recommendation has been made, the Third Person shall transmit it to the Secretariat in as many original versions as there are Parties involved, plus one original version for the Secretariat

2. The Secretariat shall notify the original signed decision or recommendation to the Parties, by registered mail or by courier service against receipt and a copy shall be sent by mail, provided that the adaptations of contracts costs have been fully paid to the CEPANI by the Parties or by one of them.

## **ADAPTATION OF CONTRACTS COSTS**

### **Article 18. Nature and amount of the costs of the adaptation of contracts proceedings**

1. The costs of the adaptation of contracts proceedings shall include the fees and expenses of the Third Person, as well as the administrative

expenses of CEPANI. They shall be fixed by the Secretariat in consultation with the appointed Third Person and due regard being given to the nature and scope of his mission.

2. The Parties' costs include the expenses of the Parties such as the expenses incurred for their defence and the expenses relating to the presentation of evidence. They are not included in the costs relating to the adaptation of contracts proceedings and are borne by this Party.

### **Article 19. Advance on the costs of the Adaptation of Contracts proceedings**

1. The advance required to cover the costs of the adaptation of contracts proceedings, as determined in accordance with Article 18, paragraph 1 shall be paid to the CEPANI prior to the appointment or the approval of the nomination of the Third Person by the Appointments Committee or the Chairman.

2. Further advance payments may be required if and when any adjustments are made to the costs of the adaptation of contracts proceedings in the course of the proceedings.

3. The advance on adaptation of contracts costs, as well as the additional advance on adaptation of contracts costs, shall be payable in equal shares by the Parties. However, any Party shall be free to pay the whole of the advance on adaptation of contracts costs should the other Party fail to pay its share.

4. When the advance on adaptation of contracts costs exceeds € 50.000,00 a bank guarantee may be posted to cover such payment.

5. When a Request for an additional advance on adaptation of contracts costs has not been complied with, and after consultation with the Third

Person, the Secretariat may direct the Third Person to suspend his work and set a time limit, which must be not less than fifteen days, on the expiry of which the procedure shall be considered as withdrawn. This shall not prevent the Party in question from reintroducing the same procedure at a later date.

## **Article 20. Decision on the Adaptation of Contracts costs**

1. The adaptation of contracts costs shall be finally fixed by the Secretariat.
2. Unless otherwise agreed, the Parties shall each bear one half of the costs of the adaptation of contracts proceedings.
3. The decision or the recommendation of the Third Person set forth the adaptation of contracts costs, as determined by the Secretariat, and set out the agreement between the Parties, if any, on the allocation of the adaptation of contracts costs.

## **FINAL PROVISIONS**

### **Article 21. Limitation of liability**

For any act or omission in the course of the adaptation of contract proceedings, the Third Person, CEPANI and its members and personnel shall not incur any liability except in the case of fraud or gross negligence.

# SCHEDULES

# SCHEDULE I

## A. SCALE OF COSTS FOR MEDIATION

1. The mediation fees include the fees and expenses of the Mediator as well as the expenses of CEPANI.
2. The fees and expenses of the Mediator are determined by the Secretariat according to the amount in dispute in accordance with the following scale:

TOTAL AMOUNT OF CLAIMS (IN €)	ATE PER HOUR	HALF-DAY	DAY
0 - 25.000	180	600	1200
25.001 - 50.000	200	675	1350
50.001 - 100.000	250	850	1700
100.001 - 200.000	275	900	1800
200.001 - 500.000	300	1000	2000
500.001 - 1.000.000	350	1175	2350
1.000.001 - 2.000.000	400	1300	2600
> 2.000.000	450	1400	2800

- (i) The scale of fees shall apply on the basis of all the respective claims as formulated at the time that the file is introduced.
- (ii) The "half-day" fee is for a duration of three and a half hours; any supplementary time shall be payable on the basis of the hourly rate.
- (iii) The "daily fee" is for a duration of seven hours; any supplementary time shall be payable on the basis of the hourly rate.
- (iv) A "results based" fee may be stipulated in the Mediation Protocol. The fee may not be agreed in advance but may be agreed between by common agreement between the Parties and the Mediator after an agreement has been reached between the Parties under the auspices of the Mediator.

Except if otherwise agreed by the Parties, the fee shall not be greater than three times the mediation fee calculated in accordance with the scale of fees.

3. The administrative expenses of CEPANI are fixed on a lump sum basis at 10% of the fees and the expenses of the Mediator, determined as above and subjected to VAT.

4. Every Request for mediation under the CEPANI Rules must be accompanied by the payment of an advance of € 750,00 excl. VAT on administrative expenses. Said amount is not refundable and shall be credited to the Requesting Party's portion of the advance on costs for mediation.

5. If the Mediator is VAT registered, he/she so informs the CEPANI Secretariat, which debits the Parties with the amount of VAT payable on the fees of the Mediator.

6. The Mediator shall only be authorized to deal with claims in respect of which the advance has been paid.

## B. SCALE OF COSTS FOR MINI-TRIAL

1. The mini-trial costs include the fees and expenses of the President of the mini-trial Committee as well as the expenses of CEPANI.
2. The fees and cost of the President of the mini-trial Committee are determined by the Secretariat according to the amount in dispute in accordance with the following scale:

TOTAL AMOUNT OF CLAIMS (IN €)	RATE PER HOUR	HALF-DAY	DAY
0 - 25.000	180	600	1200
25.001 - 50.000	200	675	1350
50.001 - 100.000	250	850	1700
100.001 - 200.000	275	900	1800
200.001 - 500.000	300	1000	2000
500.001 - 1.000.000	350	1175	2350
1.000.001 - 2.000.000	400	1300	2600
> 2.000.000	450	1400	2800

- (i) The scale of fees shall apply on the basis of all the respective claims as formulated at the time that the file is introduced.
- (ii) The "half-day "fee is for a duration of three and a half hours; any supplementary time shall be payable on the basis of the hourly rate.
- (iii) The "daily fee" is for a duration of seven hours; any supplementary time shall be payable on the basis of the hourly rate.

Except if otherwise agreed by the Parties, the fee shall not be greater than three times the fees of the President of the mini-trial Committee calculated in accordance with the scale of fees.

3. The administrative expenses of CEPANI are fixed on a lump sum basis at 10% of the fees and the expenses of the President of the mini-trial Committee, determined as above and subjected to VAT.

4. Every Request for mini-trial under the CEPANI Rules must be accompanied by the payment of an advance of € 750,00 excl. VAT on administrative expenses. Said amount is not refundable and is credited to the Requesting Party's portion of the advance on costs for mini-trial.

5. If the President of the mini-trial Committee is VAT registered, he/she so informs the CEPANI Secretariat, which debits the Parties with the amount of VAT payable on the fees of the President of the mini-trial Committee.

6. The President of the mini-trial Committee shall only be authorized to deal with claims in respect of which the advance has been paid.

## SCHEDULE II

### RULES OF GOOD CONDUCT FOR PROCEEDINGS ORGANIZED BY CEPANI

1. The President and Secretary-General of CEPANI, their associates and employees, shall not participate in any proceedings conducted under the CEPANI Rules, either as an Arbitrator, President of the mini-trial Committee, Mediator, Expert, Third Person appointed to adapt contracts, or Counsel.
2. In accepting his/her appointment by CEPANI, the Arbitrator, President of the mini-trial Committee, Mediator, Expert or Third Person shall agree to apply strictly the CEPANI Rules and to collaborate loyally with the Secretariat. He/she shall regularly inform the Secretariat of his/her work in progress.
3. The prospective Arbitrator, President of the mini-trial Committee, Mediator, Expert or Third Person shall accept his/her appointment only if he/she is independent of the Parties and of their Counsel. If any event should subsequently occur that is likely to call into question this independence in his/her own mind or in the minds of the Parties, he/she shall immediately inform the Secretariat which will then inform the Parties. After having considered the Parties' comments, the Challenge Committee or the President of CEPANI shall decide on his/her possible replacement. The Challenge Committee shall decide without any recourse on the challenge of an arbitrator. The reasons for the decision shall not be communicated.
4. An arbitrator appointed upon the proposal of one of the Parties shall neither represent nor act as that Party's agent.
5. Once nominated by CEPANI, the Arbitrator appointed upon the

proposal of a Party undertakes to have no further relation with that Party, nor with its Counsel, in the course of the arbitration. Any contact with this Party shall take place through the chairman of the Arbitral Tribunal or with his/her explicit permission.

6. In the course of the proceedings, the Arbitrator, President of the mini-trial Committee, Mediator, Expert or Third Person shall, in all circumstances, show the utmost impartiality, and shall refrain from any deeds or words that might be perceived by a Party as bias, especially when asking questions at the hearings.
7. If the circumstances so permit, the Arbitrator may, with due regard to paragraph 6 here above, ask the Parties to seek an amicable settlement and, with the explicit permission of the Secretariat and of the Parties, to suspend the proceedings for whatever period of time is necessary.
8. By accepting his/her appointment by CEPANI, the Arbitrator undertakes to ensure that the Award is rendered as diligently as possible. This means, namely, that he/she shall Request an extension of the time limit, provided by the CEPANI Rules, only if necessary or with the explicit agreement of the Parties.
9. The Arbitrator, President of the mini-trial Committee, Mediator, Expert or Third Person shall obey the Rules of strict confidentiality in each case attributed to him/her by the Secretariat.
10. Awards may only be published anonymously and with the explicit approval of the Parties. The Secretariat shall be informed thereof beforehand. This rule applies to the Arbitrators as well as to the Parties and their Counsel.
11. The signature of the Award by a member of an Arbitral Tribunal of three Arbitrators does not imply necessarily that that the Arbitrator agrees with the content of the Award.

## SCHEDULE III

### Parties' COSTS

#### Recommendations concerning the Parties' costs

1. This recommendation concerns the reimbursement of all the reasonable costs borne by a Party for the defence of its interests, such as the costs of legal assistance and representation, costs related to the production of evidence by Experts or by witness testimony as well as internal costs. These costs also include the travelling and hotel costs of Counsel, Experts and witnesses.
2. Parties are free to agree on the extent to which the Parties' costs are reimbursed as well as the modalities of the reimbursement of these costs by the Arbitral Tribunal, the Mediator, the President of the mini-trial Committee, the Expert or Third Person. Parties are free to determine an upper maximum limit for the reimbursement of these costs.
3. The Arbitrators, the Mediator, the chairman of the mini-trial Committee, the Expert or Third Person shall draw the Parties' attention to the possibility they have of making an agreement on Parties' costs.
4. In its Award/decision relating to Parties' costs the Arbitral Tribunal, the Mediator, the President of the mini-trial Committee, the Expert or Third Person may take account of the circumstances of the case, the financial importance and the degree of difficulty of the case the manner in which the Parties have cooperated in handling the case, the relevance of the arguments presented and the degree to which the claim has been successful.

5. Parties' costs must be duly evidenced taking into account professional Rules as well as professional secrecy.
6. The Arbitral Tribunal, the Mediator, the President of the mini-trial Committee, the Expert or Third Person may not decide on a Party's Request for the reimbursement of costs without offering the other Party(ies) the possibility of contesting the costs.
7. Article 1022 of the Belgian Judicial Code shall not apply unless otherwise agreed by the Parties.
8. The Arbitral Tribunal, the Mediator, the President of the mini-trial Committee, the Expert or Third Person shall rule on the Parties' costs at the latest in its Final Award/decision and shall state the reasons for its decision.

# SCHEDULE IV BELGIAN JUDICIAL CODE

## BELGIAN JUDICIAL CODE PROVISIONS RELATING TO MEDIATION

### CHAPTER 7 – MEDIATION

The translation is a free translation for convenience purposes only and any and all liabilities in respect of any inaccuracy or error in the translation is excluded.

### CHAPTER 1. - GENERAL PRINCIPLES

**Art. 1724** - Any dispute which can be the subject matter of a settlement agreement, may be submitted to mediation. This is also the case for:

- 1° disputes related to the matters referred to in Chapters V and VI of the Fifth Title, in Chapter IV of the Sixth Title and in the Ninth Title of the First Book of the Civil Code;
- 2° disputes related to matters referred to in Title Vbis of the Third Book of the Civil Code;
- 3° disputes introduced in accordance with sections I to IV of Chapter XI of the Fourth Book of the Fourth Part of the Judicial Code;
- 4° disputes arising from de facto cohabitation;

Public legal entities may take part in a mediation in the cases provided for by the law or by a Royal Decree decided by the Council of Ministers.

**Art. 1725** - § 1. Any contract may contain a mediation clause, by which the Parties agree to have recourse to mediation with respect to any dispute relating to the validity, the conclusion, the interpretation, the performance or the breach of the contract before having recourse to any other dispute resolution method.

§ 2. The Court or the Arbitral Tribunal to which a dispute is submitted which is the subject of a mediation clause shall suspend the examination

of the case if Requested by any Party, unless, with regard to the dispute in question, the mediation clause is invalid or has ceased to exist. The plea must be raised before any other plea or defence. The examination of the case may be continued once the Parties, or any one of them, has notified the registry and the other Parties that the mediation has ended.

§ 3. The mediation clause does not prevent Requests for provisional or conservatory measures. The filing of such Requests does not imply any waiver of the mediation.

**Art. 1726 - § 1.** The Commission mentioned in Article 1727 may accredit Mediators who satisfy at least the following conditions:

- (1°) possess, by present or past activity, the qualification required by the nature of the dispute;
- (2°) can demonstrate, as the case may be, training or experience appropriate for the practice of mediation;
- (3°) present the guarantees of independence and of impartiality necessary to practice mediation;
- (4°) have not been convicted to a condemnation registered in a criminal record and held to be incompatible with the function of an accredited Mediator;
- (5°) have not incurred a disciplinary or administrative sanction held to be incompatible with the function of an accredited Mediator; nor to have had the accreditation withdrawn.

§ 2. The accredited Mediators follow a permanent education programme recognised by the Commission mentioned in Article 1727.

§ 3. This Article applies equally when a panel of Mediators is called upon.

**Art. 1727 - § 1.** A Federal Mediation Commission is created, composed of a General Commission and a Special Commissions.

§ 2. The General Commission is composed of six members specialized in mediation, being two notaries, two lawyers and two Representatives of Mediators who do not practice as lawyers or notaries.

In the composition of the General Commission care shall be taken to have all fields of practice represented in a balanced manner. The General Commission is composed of an equal number of Dutch-speaking and French-speaking members. For every effective member an alternate member is appointed. The Rules for the publication of vacancies, the filing of applications and the presentation of the members are set forth in a ministerial decree. The effective and alternate members are appointed by the Minister of Justice, on the basis of a reasoned presentation.

- from the Association of Flemish Bars (Orde van Vlaamse Balies) for any lawyer belonging to the said Association.
- from the Association of French and German speaking Bars (l'Ordre des barreaux francophones et germanophones) for any lawyer belonging to the said Association;
- from the Royal Federation of Notaries, for any notary;
- from the Representative organisations of those Mediators who do not practice as a lawyer or as a notary.
- The term of office as an effective member lasts for four years and is renewable.

§ 3. The General Commission appoints from within its own members and for a period of two years, its chairman and vice-chairman, the vice-chairman replacing the chairman as needed, as well as a secretary, these functions being assigned alternately to a Dutch-speaking and a French-speaking person. In addition, the chairmanship and vice-chairmanship are held alternately by notaries, lawyers and by Mediators who do not practise as a lawyer or as a notary.

The General Commission establishes its internal regulations. In order to deliberate and decide validly, the majority of the members of the

Commission must be present. If an effective member is absent or excused, his alternate replaces him. The decisions are taken by simple majority of votes. If the votes are even, the chairman or the vice-chairman who replaces him has the casting vote.

§ 4. Three Special Commissions are created in order to give advice to the General Commission:

- a Special Commission for Family Matters;
- a Special Commission for Civil and Commercial Matters;
- a Special Commission for Social Matters;

These Special Commissions are composed of specialists and practitioners of each of the said types of mediation, namely:

Two notaries, two lawyers and two Representatives of those Mediators who do not practice as a lawyer or as a notary.

The Special Commissions are composed of as many Dutch-speaking members as French-speaking members.

For each effective member, an alternate member is appointed. The Rules for the publications of vacancies, the filing of applications and the presentation of members are set forth in a Ministerial Decree. The effective and alternate members are appointed by the Minister of Justice, on the basis of a reasoned presentation:

- from the Association of Flemish Bars (Orde van Vlaamse Balies) for any lawyer belonging to the said Association;
- from the Association of French speaking and German speaking Bars (l'Ordre des barreaux francophones et germanophone) for any lawyer belonging to the said Association;
- from the Royal Federation of Notaries, for any notary;
- from the Representative organisation of those Mediators who do not practice as a lawyer or as a notary.

The term of office as effective member lasts for four years and is renewable.

§ 5. Each Special Commission appoints from within its own members and for a period of two years, its chairman and vice-chairman, the vice-chairman replacing the chairman as needed, as well as a secretary, the said functions being assigned alternately to a Dutch-speaking and a French-speaking person. The Special Commission establishes its internal regulations. In order to deliberate and decide validly, the majority of the members of the Special Commission must be present. If an effective member is absent or excused, his alternate replaces him. The decisions are taken by simple majority of votes. If the votes are even, the chairperson or the vice-chairperson who replaces him has the casting vote.

§ 6. The General Commission has the following tasks:

- (1°) to accredit providers of mediation training and the training they provide;
- (2°) to determine the criteria for the accreditation of Mediators by type of mediation;
- (3°) to accredit Mediators;
- (4°) to withdraw, either temporarily or definitely, the accreditation of Mediators who no longer satisfy the conditions set forth in Article 1726;
- (5°) to determine the procedure for accrediting and for withdrawing, temporarily or definitely, the title of Mediator;
- (6°) to establish the list of Mediators and to distribute same to the Courts;
- (7°) to establish a Code of Conduct and to determine the sanctions deriving therefrom.

The decisions of the Commission are reasoned.

§ 7. The Minister of Justice puts at the disposal of the Federal Mediation Commission the personnel and means necessary to operate. The King determines what allowance may be granted to the members of the Federal Mediation Commission.

**Art. 1728 - § 1.** All documents and communications made during and for the purpose of a mediation process are confidential. They may not be used during any judicial, administrative or arbitral procedure or in any other dispute resolution procedure and they are not admissible as evidence, not even as an out-of-court confession. The duty of confidentiality can only be lifted with the consent of the Parties with a view to allowing inter alia a Court to homologate settlement agreements. If this duty of confidentiality is violated by one of the Parties, the Court or Arbitral Tribunal decides whether any damages may be granted. Any confidential documents that are nevertheless communicated or which are relied upon by a Party in violation of the duty of confidentiality are ex officio excluded from the proceedings. Without prejudice to the requirements of the law, the Mediator may not disclose the facts with which he becomes acquainted as a result of his function. He may not be called upon by the Parties as a witness in civil or administrative proceedings relating to the facts with which he has become acquainted in the course of the mediation. Article 458 of the Criminal Code is applicable to the Mediator.

§ 2. During and for the purpose of his office, the Mediator, with the consent of the Parties, may examine third Parties who consent thereto or, if required due to the complexity of the case, may call upon an Expert specializing in the subject matter. The latter are bound by the duty of confidentiality set forth in § 1 (1°). § 1 (3°) is applicable to the Expert.

**Art. 1729 –** Each Party may terminate at any moment the mediation proceedings on a without prejudice basis.

## CHAPTER II – VOLUNTARY MEDIATION

**Art. 1730 - § 1.** Any Party may propose to the other Parties, regardless of any other judicial or arbitral proceedings, before, during or after the conduct of judicial proceedings, to have recourse to a mediation procedure. The Parties appoint the Mediator by mutual consent or call upon a Third Party to make the appointment.

§ 2. If the proposal is sent by registered mail and if it contains a claim to a right, it shall be assimilated to the formal notice referred to in Article 1153 of the Civil Code.

§ 3. Under the same conditions, the proposal shall suspend the limitation period of the claim related to the said right during one month.

**Art. 1731 - § 1.** The Parties decide by mutual agreement, with the assistance of the Mediator, upon the Rules for the conduct of the mediation as well as its duration. This agreement is confirmed in writing in a Mediation Protocol signed by the Parties and by the Mediator. The mediation costs and fees are payable in equal shares by the Parties, unless agreed otherwise by the Parties.

§ 2. The Mediation Protocol contains:

- (1°) the name and domicile of the Parties and their Counsel;
- (2°) the name, function and address of the Mediator, and, as the case may be, the indication that the Mediator is accredited by the Commission mentioned in Article 1727;
- (3°) the restatement of the voluntary character of mediation;
- (4°) a brief summary of the dispute;
- (5°) the restatement of the principle of the confidentiality of all communications exchanged during the mediation;
- (6°) the method by which the fees of the Mediator are fixed, the fee rate as well as the terms of payment;
- (7°) the date;
- (8°) the signature of the Parties and of the Mediator.

§ 3. The signature of the protocol suspends the limitation period for the duration of the mediation.

§ 4. Unless expressly agreed by the Parties, the suspension of the limitation period ends one month after one of the Parties or the

Mediator informs the other Party or Parties of its wish to terminate the mediation. This notification is done by registered mail.

**Art. 1732** – If the Parties reach a settlement, it is set out in a document dated and signed by the Parties and by the Mediator. If the Mediator is accredited, this is mentioned.

This written document sets out the precise commitments of each Party.

**Art. 1733** – When a settlement agreement is reached, and if the Mediator who has conducted the mediation is accredited by the Commission mentioned in Article 1727, the Parties or one of the Parties may submit for homologation by the competent Court the settlement agreement reached in accordance with Articles 1731 and 1732. This is done in accordance with Articles 1025 to 1034. The Request can however be signed by the Parties themselves, if it emanates from all the Parties to the mediation. The Mediation Protocol is attached to the Request. The Court may only refuse the homologation of the settlement agreement if it is contrary to public policy or, in the case of a mediation in family matters, if the agreement is against the interests of under age children. The homologation has the same effect as a judgment in the sense of Article 1043.

### CHAPITRE III – COURT-INSTIGATED MEDIATION

**Art 1734** - § 1. At every stage of the proceedings, even in summary proceedings, but not in proceedings before the Supreme Court (Hof van Cassatie/Cour de cassation) or before the Case Allocation Court (arrondissementsrechtbank/tribunal d'arrondissement), at the joint Request of the Parties or on its own initiative but with the consent of the Parties, a Court in pending proceedings may order a mediation, as long as the case has not been closed for the purposes of rendering a judgment. The Parties agree on the name of the Mediator, who must be accredited by the Commission mentioned in Article 1727.

By way of derogation to the above paragraph, the Parties, jointly and on a reasoned basis, may ask the Court to appoint a non-accredited Mediator. Unless the Mediator proposed by the Parties obviously does not satisfy the conditions set forth in Article 1726, the Court shall accede to this Request if the Parties demonstrate that no accredited Mediator with the required skills is available to conduct the mediation.

§ 2. Any decision that orders mediation shall expressly mention the agreement of the Parties, the name, the function and the address of the Mediator and shall determine the initial duration of his term of office, which may not exceed three months, and shall also indicate the date to which the case is postponed, which is the first useful date after the expiration of said time limit.

§ 3. At the latest at the hearing mentioned in § 2, the Parties shall inform the Court of the result of the mediation. If they have not reached a settlement agreement, they may Request a new time limit or ask that the proceedings be continued.

§ 4. The Parties may Request a mediation, either in the writ initiating the proceedings, or at the hearing, or by simple written Request filed with, or sent to, the Court clerk. In the latter case, the case is scheduled within fifteen days following the said Request.

The Court clerk convokes the Parties by judicial notification, and, as the case may be, their Counsel by ordinary mail. If it is a joint Request of the Parties, they and, as the case may be, their Counsel are convoked by ordinary mail.

§ 5. When the Parties jointly Request that a mediation be ordered, the time limits in relation to the proceedings are suspended as from the date on which they formulate their Request.

As the case may be, the Parties or any one of them may Request new time limits so as to have the case ready for the hearing mentioned in § 2 or in Article 1735, § 5.

**Art. 1735 - § 1.** Within eight days after the rendering of the decision, the Court clerk sends to the Mediator by judicial notification a certified copy of the judgment. Within eight days, the Mediator informs by ordinary mail the Court and the Parties of the place, date and time for the beginning of his office.

§ 2. The mediation may concern a part or the entirety of the dispute.

§ 3. During the mediation the dispute continues to be laid before the Court, which, at any time, may take such measures as it deems necessary. At the Request of the Mediator or any of one of the Parties, the Court may put an end to the mediation even before expiry of the time limit which has been set.

§ 4. At any time during the proceedings, the appointed Mediator, with the agreement of the Parties, may be replaced by another accredited Mediator. This agreement is signed by the Parties and is included in the file.

§ 5. The case may be brought back before the Court prior to the date initially set by means of a simple written declaration filed with, or sent to, the registry by the Parties or by anyone of them. A Court hearing is scheduled within fifteen days following the said Request. The Court clerk convokes the Parties by judicial notification and, as the case may be, their Counsel by ordinary mail. In case of a joint Request of the Parties, they are convoked, and, as the case may be, their Counsel by ordinary mail.

**Art. 1736** – The mediation is conducted in accordance with the provisions of Articles 1731 and 1732. When his term of office has expired, the Mediator informs the Court in writing whether or not the Parties have reached a settlement agreement. If the mediation leads to a settlement agreement, even if the agreement is only partial, the Parties or any one of them, in accordance with Article 1043, may ask the Court to homologate the said agreement. The Court may refuse the homologation of the settlement agreement only if it is contrary to public policy or, in the case of a mediation in family matters, if the agreement is against the interests of under age children. If the mediation has not led to a full settlement agreement, the Court proceedings are resumed at the date set, but the Court has the right, if it deems it so appropriate and with the consent of all the Parties, to extend the term of office of the Mediator for such time limit as it determines.

**Art. 1737** – It is not possible to appeal against any Court decision ordering the mediation, extending its duration or putting an end to the mediation.



## **SCHEDULE V**

### **SECRETARIAT AND CONTACT INFORMATION**

#### **I. SECRETARIAT**

Emma VAN CAMPENHOUDT, Secretary General

Audrey GOESSENS, Counsel

Camille LIBERT, Legal Attaché

#### **II. CONTACT INFORMATION FOR THE SECRETARIAT**

CEPANI NPO

Secretariat

Stuiversstraat 8 Rue des Sols

B-1000 Brussels

Tel : +32 (0) 2 515 08 35

E-mail : [info@cepani.be](mailto:info@cepani.be)

Website : <http://www.cepani.be>





**CEPANI**

Responsible editor: Emma Van Campenhoudt

The Belgian Centre for Arbitration and Mediation  
[www.cepani.be](http://www.cepani.be) | [info@cepani.be](mailto:info@cepani.be)

The Belgian Centre  
for **A**rbitration  
and **M**ediation

[www.cepani.be](http://www.cepani.be)

[info@cepani.be](mailto:info@cepani.be)

**Office**

Stuiversstraat 8 Rue des Sols – 1000 Brussels

Belgium

Tel: +32 2 515 08 35

Responsible editor : Emma Van Campenhoudt



THE BELGIAN CENTRE FOR **A**RBITRATION AND **M**EDIATION