

# OHADAC Post Natural Disaster “OPND” Mediation Rules

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## Article 1: Scope of the OPND Mediation Procedure

1.1. The OPND Mediation Procedure is available to all parties, *i.e.* individuals (the “Insured”) and insurance companies (the “Insurer”) to personal lines insurance claims. The OPND Mediation Procedure is also available to Insured Business with a capital up to 1.000 Euros (USD 1.200) (the “Insured Businesses”).

1.2. The Insured, the Insurer and/or the Insured business may submit Insurance claims arising from a natural disaster to OPND mediation procedure. In order to establish that a claim comes within the scope of the OPND Mediation Rules, the documents provided for at Article 3(f) and (g) shall be attached to the Request for Mediation.

## Article 2: Agreement of parties to refer to OPND Procedural Rules (the “Rules”)

2.1. In order for the Rules to apply, the parties must agree to submit their dispute to this set of rules, either before or after the claim arises.

When the parties agree to submit their dispute to OPND Mediation after the dispute arises, they may do it either before or after a Request for Mediation has been filed with CARO. In the latter instance, the procedure provided for at article 3.4. applies.

2.2. When the parties agree to submit their insurance disaster claim to OPND Mediation, they are deemed to have made the Rules, as amended and in effect as of the date of the submission of the dispute, a part of their agreement.

## Article 3: Commencement of OPND Mediation Procedure: Filing of the Request for Mediation (the “Request”)

3.1. The Insurer shall initiate an OPND Mediation procedure by sending a written request using either of the following means:

- electronic mail; or

- regular post; or
- courier.

### 3.2. The Request shall contain the following:

- (a) the names, addresses, telephone numbers, email addresses and any other contact details of the parties to the dispute and of any person(s) representing the parties to these proceedings;
- (b) a description of the dispute including, if possible, an assessment of its value;
- (c) any agreement as to the language(s) of the mediation, or, in the absence thereof, any proposal as to such language(s);
- (d) any joint nomination by the parties of a Mediator or in the absence of any such agreement, any agreement or proposal as to the attributes of the Mediator who will be appointed by the CARO Centre;
- (e) A copy of the Agreement under which the Request is made, except when the Request is a proposal to mediate as per the terms of Article 3.4. below;
- (f) A copy of the Insurance Claim Form;
- (g) When the Insured Party is an Insured Business, any document establishing the value of the company's assets.

3.3. Together with the Request, the Insurer shall deposit with the CARO Centre the Mediator's non-refundable fee of 40 Euros (USD 50) (the "non refundable fee"). The CARO Centre will issue the compensation to the Mediator after the Mediator's appointment is confirmed.

3.4. When there is no prior agreement to bring the dispute to OPND Mediation, the Insurer, the Insured Party or the Insured Business may nonetheless propose recourse to OPND Mediation by filing a written request with CARO as per the terms of Articles 3.1 and 3.2.

Upon receipt of the Request, CARO will inform all the parties of the Mediation proposal under the OPND Rules, and assist them in reaching an agreement to mediate under the OPND Rules:

- (i) If this agreement has been reached within 10 days from the date of receipt of the Mediation Request or any other reasonable time determined by the parties, the Mediation proceedings shall commence and the Insurer shall deposit with the CARO

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Centre the Mediator's non-refundable fee. The CARO Centre will issue the compensation to the Mediator after the Mediator's appointment is confirmed.

- (j) If this agreement has not been reached within 10 days from the date of receipt of the Mediation Request or any other reasonable time determined by the parties, the Mediation proceedings shall not commence.

## Article 4: Language of Mediation

Within three days upon receipt of the Request, CARO will acknowledge receipt of the Request and will determine the language of the mediation when the parties have not expressly determined it.

## Article 5: Appointment of the Mediator

5.1. Within three days upon receipt of the Request, CARO will acknowledge receipt of the Request and will proceed with the appointment of the Mediator, by either:

- (i) Confirming the Mediator when it has been jointly nominated by both parties; or  
(ii) Appointing a Mediator when the parties have not jointly nominated a Mediator.

5.2. When appointing the Mediator, CARO will take into account factors such as the language of the Mediation; the expertise of the Mediator and/or the Mediator's availability to conduct the mediation within the timeframe provided for in the OPND Mediation Rules at Articles 8 and 11.

## Article 6: Disclosure of potential Financial Bias by the Mediator

6.1. The mediator must meet the requirements of independence and impartiality. Prior to being appointed, the CARO Centre shall ask the mediator to fill out a statement of independence and impartiality (the "Statement of independence and impartiality"), which shall be forwarded to the parties for their comments.

6.2. If, prior to accepting the mediator's appointment, there are any circumstances likely to cast doubts in the parties' minds as to the mediator's independence and/or impartiality, or

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that are liable to delay the early progress of the mediation procedure as provided for herein, the mediator must disclose these circumstances in the statement of independence and impartiality. These circumstances may include for example:

- any personal or business relationship with one of the parties;
- any direct or indirect financial or other interest in the outcome of the mediation; or
- the fact that the mediator or a member of his or her governing structure, has acted in any capacity other than mediator for one of the parties (such as counsel, adviser, arbitrator, expert or other).

6.3. This obligation shall apply throughout the procedure in the event that new circumstances arise that could affect the independence and/or impartiality of the mediator.

6.4. Upon receipt of this information in the statement of independence and impartiality and/or any other subsequent communication from the mediator, the CARO Centre shall immediately forward it to the parties, inviting them to comment.

If the parties expressly agree that the mediator can start or continue his or her mission despite the circumstances, the mediator shall be appointed or confirmed by the CARO Centre or, alternatively, if the procedure is already ongoing, the mediator shall continue to conduct the mediation if s/he is certain that s/he can do so with complete independence and impartiality.

Failing express agreement by both parties, the CARO Centre may, if the mediator has not yet been confirmed or appointed, refuse to confirm or appoint him or her. If the mediator has already been confirmed or appointed and such circumstances come to light during the procedure, the CARO Centre may replace the mediator and appoint a new one, in accordance with Article 10 of these Rules.

## Article 7: Replacement of the Mediator

When a mediator can no longer or no longer wishes to perform his or her mission as covered by these Rules, the CARO Centre shall appoint another mediator. If the mediator does not comply with the provisions of these Rules regarding the conduct of the mediation procedure, particularly those relating to the mediation time limits, the CARO Centre may appoint another mediator after inviting the parties to submit their observations, unless all the parties object.

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## Article 8: The Mediation Conference

8.1. Once appointed by the CARO Centre, the Mediator shall contact the parties within 48 hours of its appointment by fax, telephone or email to fix the date and the time of the Mediation Conference. Any contact by phone shall be followed by the communication by the mediator of a written summary confirming that the exchange took place and giving a brief account of its content.

8.2. The Mediation Conference will take place by video-conference or by phone when the parties do not have access to an Internet connection. In the event both parties wish to organize an in-person conference, they will have to make the necessary arrangements directly with the Mediator and advance the costs related to such conference. The costs of the in-person conference shall ultimately be the sole responsibility of the Insurer.

8.3. The duration of the Mediation Conference will be 2 hours.

8.4. Prior to the Mediation Conference, the Mediator will request that each party communicate a brief statement of the facts of the case, along with a description of their position with regard to the issues that need to be resolved to the mediator by fax, regular post or email. The parties are invited to also communicate any relevant documentation that may be useful to the satisfactory resolution of the dispute. The Mediator is free to contact directly any party should he need clarification on the documents produced.

8.5. The Mediation Conference shall take place within a month of the Mediator's initial contact to the Parties as per the terms of article 8.1, unless both parties agree otherwise.

8.6. If following the Mediation Conference the parties have not reached an agreement, they can either:

- (i) continue the Mediation Conference as provided for at article 9(3); or
- (ii) notify the Mediator in writing that they do not want to continue the Mediation procedure. Absent such written notification, and if the parties do not want to continue the Mediation Conference as provided for at Article 9(3), the Mediator can notify the termination of the Mediation Procedure by communicating to the parties the written declaration provided for at Article 11.1 (iii).

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## Article 9: Fees of the Mediator

9.1. The Mediator's compensation will amount to 250 Euros (USD 300) if the parties reach a satisfactory settlement to their dispute.

9.2. The modalities of payment of the Mediator's fees shall be the following:

- (i) Non-refundable 40 Euros (USD 50) upon transmission of the Request for Mediation to CARO (the "non-refundable fee");
- (ii) 210 Euros (USD 250) upon satisfactory settlement of the dispute, payable on the date of signature of the Settlement Agreement provided for at Article 11.

Payment of the Mediator's fees shall be made to the CARO Centre directly, and shall be the sole responsibility of the Insurer.

9.3. Further billing beyond two hours of mediation time will be issued by the Mediator directly to the Insurer, if both parties agree to continue the mediation session past the initial mediation period, and at the rate of 85 Euros (USD 100) per hour, at the sole responsibility of the Insurer. Mediators may require that this clause be confirmed by the parties in writing and that deposits for this compensation be made with the Mediator prior to continuing the sessions. Absent such confirmation and/or payment, the Mediator shall be free to suspend the mediation procedure.

## Article 10: Confidentiality

10.1. Parties opting to settle their dispute via mediation shall undertake to keep confidential everything that is said, written or done within the framework of this mediation procedure, unless otherwise provided for by law and/or any agreement in writing between the parties.

10.2. Mediation sessions are private and confidential and shall only remain accessible to the parties and their representatives. Any other person may only participate in these sessions subject to approval by the parties and the mediator.

10.3. Any document or information communicated during the mediation process shall be strictly confidential and shall be treated as such by the mediator. Unless otherwise provided for by the applicable law and/or unless otherwise agreed by the parties and the mediator,

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the mediator shall not provide any testimony regarding any aspect of the procedure governed by the Rules in any judicial, arbitration, administrative proceedings or any other proceedings, in relation to the dispute or otherwise.

10.4. Any agreement between the parties reached during the mediation procedure shall also be considered confidential unless disclosure is required by law or necessary to ensure its approval or execution.

10.5. In particular, both the mediator and the parties undertake not to rely on or use for evidential purposes in any judicial, arbitration, administrative proceedings or any other proceedings, in relation to the dispute or otherwise, anything that is said or that has come to its knowledge during the mediation procedure and in particular:

- (i) An invitation to mediation or any other indication that one of the parties was willing to settle the dispute amicably;
- (ii) Any document drawn up in the context of the mediation procedure;
- (iii) Any document or evidence originating outside the mediation procedure but obtained in the course of the mediation from the mediator or the other parties, unless the document can be obtained independently from the mediation procedure or when the document is already in possession of the other party;
- (iv) Opinions expressed or suggestions made by the opposing party in the context of prior negotiations with a view to reaching an amicable settlement to the dispute;
- (v) Any admission made by one of the participants in the mediation procedure during the mediation procedure;
- (vi) Any non-public information obtained during the mediation procedure on one of the parties to the procedure, concerning its commercial practices and strategy, financial health, industrial secrets *etc*;
- (vii) Any comments or opinions expressed by the mediator during the mediation procedure;
- (viii) The fact that one of the parties has or has not expressed its intention to accept a proposal by the mediator to settle the dispute; or
- (ix) The terms of the agreement bringing an end to the mediation or any other agreement reached by the parties during the mediation procedure.

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## Article 11: “Cooling off” Period and Termination of Mediation

11.1. The Mediation Proceedings shall be terminated by either:

- (i) The execution of a Settlement Agreement by the parties, which shall be drafted by the Mediator within a week of the Mediation Conference;
- (ii) The notification in writing to the Mediator by any party that it no longer wishes to pursue the mediation and/or that the proceedings are terminated;
- (iii) A written declaration of the Mediator to the effect that further efforts at mediation will not resolve the dispute;
- (iv) If one or other party informs the mediator in writing that it is terminating the mediation.

11.2. When the Mediation Conference leads to an agreement, no party shall be bound by its terms until the Settlement Agreement is signed by both parties.

## Article 12: Non-liability and non-compellability clause

Neither the CARO Centre nor the mediator shall be liable to any person for any acts or omissions in relation to the OPND mediation procedure and may not be called on to testify in judicial or arbitration proceedings in relation to facts surrounding the mediator’s mission or the information obtained or exchanged between them.