

AGREEMENT TO MEDIATE - LEIGH DE SOUZA ATTORNEYS
AND MEDIATORS

ENTERED INTO BETWEEN

(PARTY 1)

Name of **legal representative** if represented:

Telephone number **and** email address of legal representative:

Name, contact details and designation of parties to attend mediation:

AND

(PARTY 2)

Name of **legal representative** if represented:

Telephone number **and** email address of legal representative:

Name, contact details and designation of parties to attend mediation:

AND

THE MEDIATOR

Telephone number **and** email address of mediator:

1. **Agreement:**

The parties hereby agree to mediate the issues arising between them before the Mediator set out below on the _____ day of _____ 20____ at _____ alternatively utilizing ZOOM as a virtual platform.

2. **Dispute:**

2.1 Description of dispute by **party 1:**

2.2 Description of dispute by **party 2:**

3. **Pre-mediation attendances:**

3.1 All parties shall notify the other party/parties and the mediator of the persons who shall be attending the mediation which final notice shall be given no less than 2 days prior to the commencement of the mediation;

3.2 The parties agree that the style of mediation adopted by the mediator shall be facilitative;

- 3.3 The mediator may contact the parties prior to the mediation either telephonically or per email to discuss the administrative requirements of the mediation and to glean an understanding, if necessary of the issues in dispute which form the subject of the mediation. Any communication between the mediator and a party/parties shall be disclosed to all parties to the mediation although the information relayed by such parties shall remain confidential;
- 3.4 Circumstances may be conducive to a pre-mediation meeting which the parties agree to should the mediator deem the same to be necessary;
- 3.5 The parties shall send to the mediator and to all other parties a brief summary of the case to be mediated as well as his/her/its issues in dispute;
- 3.6 The parties shall no less than 5 days prior to the date of mediation provide the mediator with a set of agreed documents which the mediator shall peruse in preparation for the mediation. The mediator shall supervise this process if necessary;
- 3.7 The parties agree that the commencement of the mediation shall be suspended in the absence of payment by the parties in accordance with paragraph 6 of this agreement and acknowledge their indebtedness in this event of the applicable cancellation/settlement fees as set out in paragraph 6.

4. Mediation process and role of mediator:

- 4.1 The mediator shall chair the proceedings and shall at the outset, determine the mediation process in consultation with the parties;
- 4.2 The parties acknowledge and accept that the mediator is **neutral** and **objective**, favouring no party over another. The mediator similarly records that he / she has no interest in the dispute nor in the outcome thereof and has not partaken in any undisclosed interaction, act or omission in relation to the issues in dispute;

- 4.3 The mediator shall assist the parties to the best of his or her ability, to resolve their issues in dispute;
- 4.4 The parties agree to comply with the requests of the mediator in relation to the conduct of the mediation;
- 4.5 The parties indemnify the mediator against any claim, howsoever arising as a result of the mediation or any consequence ensuing therefrom and acknowledge their entitlement to withdraw from and/or end the mediation at any point of their choosing during the mediation process;
- 4.6 Inherent in the mediation process is a *bona fides* will on the part of the parties to resolve the issues in dispute. The parties undertake to enter the mediation in this spirit and to act in good faith before and during the mediation;
- 4.7 The parties agree, accept and undertake that no recording shall be made of the mediation save with the consent of **all** parties including the mediator. The parties to the mediation shall be entitled to take notes during the mediation process but such notes shall be confidential and without prejudice in nature;
- 4.8 No settlement agreement whether full, partial or otherwise shall be legally binding between the parties unless reduced to writing and signed by or on behalf of the parties. In the case of virtually convened mediations and for recordal purposes, the agreement reached may be recorded virtually. Litigated matters in the Gauteng region require compliance with paragraph 6.6.5 of the Gauteng Mediation protocol which dictates a binding agreement between the parties on signature of a settlement agreement.

5. Acknowledgement of the principles inherent in the mediation process:

The parties hereby acknowledge and agree to adhere to the following principles in relation to the conduct of the mediation:

5.1. Confidentiality:

- 5.1.1 The mediation process is confidential in nature and the parties recognise, acknowledge and accept the confidentiality of the process;
- 5.1.2 The mediator recognises and acknowledges the confidential nature of the mediation process and accepts his / her obligation to treat the process as such. Such acknowledgement includes the confidentiality of all communication during the mediation;
- 5.1.3 The mediator may conduct both joint as well as private meetings between the parties so as to glean an understanding of the nature of the dispute as well as the views of the respective parties. The contents of private or side meetings between the parties shall remain confidential and the contents thereof shall not be divulged to other parties without the consent of the party in question;
- 5.1.4 It is recorded that the mediator shall not be willing nor obliged to divulge any information regarding any communications during the mediation process save where such disclosure becomes necessary by order of court;
- 5.1.5 The parties agree that the mediator shall not be subpoenaed to court to lead evidence nor be called upon in any form to disclose any information or documentation, whether obtained verbally or in writing either prior to or during the course of the mediation and in relation to the subject matter of the mediation itself;
- 5.1.6 While recognising that by necessity there will be exchange of documentation and information during the mediation which could also be placed before a court, the parties acknowledge, accept and agree that privileged documents/information, or without prejudice disclosures made during the mediation are confidential and inadmissible as evidence in court.

5.2 Parties warrant that they participate in the mediation with the chosen mediator and the relevant parties freely and voluntarily alternatively that such mediation takes place in accordance with the Mediation Protocol applicable in the Gauteng Division of the High Court.

5.3 The mediation shall be conducted on a without prejudice basis and without waiver of any other rights which the parties have in law.

5.4 It is required that the parties attending the mediation are equipped with the necessary mandate and authority to engage therein and to reach settlement of the matter. The parties warrant that they are equipped with such mandate and authority.

5.5 The parties are in agreement that the selection of the mediator herein is both appropriate and acceptable.

6. **Costs of mediation:**

6.1 The mediator shall charge an hourly rate of **R3 000.00 (VAT exclusive)** to mediate the matter.

This hourly rate shall apply to the time spent by the mediator on preparation and perusal of documentation as well as time spent in pre-mediation meetings, convening the mediation, compiling the mediator's report and if appropriate, the joint minute as well as all other attendances in relation thereto. Travel costs shall apply in relation to face to face mediations.

6.2 A **deposit of R5 000.00** shall be paid and reflect in the mediator's banking account no later than 5 business days prior to the scheduled date of the mediation;

6.3 It is acknowledged and accepted by the parties that the mediator is required to reserve her time set aside for the mediation. The mediator is also required to prepare for the mediation.

The parties agree that cancellation/settlement fees are chargeable on the following basis:

6.3.1 0 - 3 days prior to the mediation: full preparation and reservation;

6.3.2 3 - 7 days prior to mediation: full preparation and 50% reservation;

6.3.3 7 - 14 days prior to mediation: no charge

Any waiver by the attorney of these charges are solely within the discretion of the mediator.

6.4 The parties accept joint and several liability for all mediator fees, the one paying the other to be absolved, this in recognition of the fact that such fees may be claimable at a later stage by one party from the other.

6.5 The parties undertake to settle the mediator's full fees within 30 days of the mediation on the basis set out in paragraph 6.4 above.

7. The mediation shall terminate in the following circumstances:

7.1 Upon settlement or partial settlement of the matter and upon signature of a settlement agreement and/or memorandum of understanding.

7.2 If the parties reach deadlock and the mediator is of the opinion that there is no reasonable prospect of any settlement or partial settlement of the matter;

7.3 In the event that one or more of the parties withdraw from the mediation.

SIGNED AT ON THIS THE DAY OF

PARTY 1 :

PARTY 2 :

MEDIATOR :