

RULE 41A MEDIATION & CONFIDENTIALITY AGREEMENT BETWEEN:

CASE NO.:

Parties:

Plaintiff

and

Defendant

and

ALAN JACOBS

Mediator

HIGH COURT RULE 41A MEDIATION

1. The plaintiff and the defendant have approached the mediator to conduct a mediation in terms of rule 41A.
2. This agreement serves as the basis for the conduct of the mediation.
3. The mediator will endeavour to assist the parties to settle their litigation (disputes), by agreement. The mediator will not adjudicate the disputes, nor make any decision which is binding on the parties concerning the resolution of the disputes. The resolution of the disputes thus depends solely upon agreement being reached by the parties. Any opinion expressed by the mediator during the proceedings will have no binding status on the parties.
4. Subject to this agreement, the mediator will have the discretion to conduct the mediation in such manner as he determines.

5. Each party undertakes to co-operate in good faith with the mediator in the conduct of the mediation.
6. Each representative signing this agreement agrees to the provisions of this agreement on behalf of the party that he represents. Each signatory, by her or his signature hereto, warrants that she/he is duly authorised to so bind the party on whose behalf she/he signs this agreement.

The Mediator and Mediation

7. The mediator is attorney Alan Jacobs who is an accredited mediator with Conflict Dynamics.
8. The mediation will take place, virtually, commencing on the DAY of MONTH and YEAR at 10am, and at such further times as the mediator may thereafter determine in conjunction with the parties.
9. The mediator may in consultation with the parties, where appropriate, call upon the parties to attend a meeting or meetings with him in advance of the mediation proceedings.
10. Prior to the mediation, the mediator will consider all the documents the parties may wish to send to him by way of preparatory background reading, including the summons, particulars of claim, the defendant's plea, the minute, the 41A notice of the plaintiff as well as the rule 41A response of the defendant, and any further documentation that may be furnished to him.
11. The mediator will chair and determine the procedure for and during the mediation.
12. The mediator will facilitate the drawing up and signature of any settlement agreement which may be concluded.
13. If either party furnishes any document to the mediator which contains information which the party submitting such information considers to be confidential and does not wish to disclose to any other party, this should be clearly indicated to the mediator who may then not disclose such documentation to the other party unless expressly authorised so to do.
14. No mechanical recording or transcript of the mediation will be made.

15. The mediator will not act for any of the parties, individually, in connection with the dispute in any capacity, either during the currency of this agreement or at any other time thereafter. The parties accept that in relation to the dispute the mediator is not an agent of, or acting in any capacity for, either of the parties.

Mediator Fees and Costs

16. The parties agree that the mediator shall charge his professional fees of R3 000.00 plus VAT, per hour which will be paid by the parties equally, i.e 50% each. Any further necessary attendances by the mediator will be paid by the parties at the mediator's professional rate of R3 000.00 an hour plus VAT, calculated on a time basis where an hour is divided into 10 units of 6 units each.
17. A deposit equivalent to 4 hours being ($R3\ 000.00 \times 4\ \text{Hours} = R12\ 000 + 15\% \text{ VAT} = R13\ 800.00$) is required to commence and secure the mediation.
18. Each party will otherwise bear their own costs and the expense of participating in the mediation.

Termination of the mediation

19. Either party may elect to withdraw from the mediation at any time and, should a party so decide, that party shall immediately in writing inform the mediator of such decision.
20. The mediation will terminate when:
- 20.1. a party notifies the mediator and the other party in writing of the decision to withdraw from the mediation; or
 - 20.2. the mediator, at his discretion, withdraws from the mediation or calls the mediation to a close; or
 - 20.3. a written settlement agreement is concluded.
21. Any settlement reached in the mediation will not be legally binding until it has been reduced to writing and signed by, or on behalf of, the above parties.
22. The mediator may adjourn the mediation proceedings when appropriate, including in order to allow parties to consider specific proposals, to obtain additional

information or for any other reason which the mediator considers helpful in furthering the mediation process.

23. The mediation will, in such event, reconvene the mediation on a date and time determined by the mediator in consultation with the parties.

Confidentiality

24. The mediation proceedings will be conducted on a without prejudice basis. All information arising out of or in connection with the mediation will be without prejudice, privileged, and not admissible as evidence or disclosable in any pending or subsequent litigation or other proceedings whatsoever. This restriction will not apply to any information which would, notwithstanding the mediation, in any event have been admissible or disclosable in any such proceedings.
25. Every person involved in the mediation will keep confidential and not use for any collateral or ulterior purpose any information (whether provided orally, in writing or otherwise) arising out of, or in connection with, the mediation, including the fact of any settlement and its terms, save for the fact that the mediation is to take place or has taken place.
26. The mediator will not disclose to any other party any information or document given to him by a party in confidence.
27. Clauses 23 to 25 above shall not apply if, and to the extent that:
- 27.1. The party or parties (as the case might be) consent to disclosure; or
 - 27.2. the mediator is required in law to make disclosure; or
 - 27.3. the mediator reasonably considers that there is a serious risk of significant harm to the life or safety of any person if the information in question is not disclosed; or
 - 27.4. the mediator reasonably considers that there is a serious risk of being subjected to criminal proceedings unless the information in question is disclosed.
28. None of the parties to this agreement will call the mediator as a witness in any litigation or other proceedings whatsoever arising from, or in connection with, the matters in issue in the mediation.

29. These provisions will not preclude a party from using a written settlement agreement, once signed, to enforce its rights arising from that settlement agreement.
30. The mediator shall not be liable to the parties for any act or omission in connection with the services provided by him in, or in relation to, the mediation, unless the act or omission is shown to have been in bad faith.

Signed at _____ on this the _____ day of _____ 2025.

Duly Authorised -Plaintiff

Signed at _____ on this the _____ day of _____ 2025.

Duly Authorised -Defendant

Signed at _____ on this the _____ day of _____, 2025.

Mediator

(ALAN JACOBS)