

1.1 [Summary of dispute giving rise to referral to mediation] ("the dispute").

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and extend across the width of the page. There are no margins, text, or other markings on the paper.

1.3 To this end, the parties agree to submit the dispute to commercial mediation, to be held on _____ [date].

2. PARTICIPATION IN THE MEDIATION

The parties will attempt to settle the dispute by mediation (“the mediation”).

3. MEDIATOR

The Mediator will be Adv. Nirvana Rambachan-Naidoo.

4. PARTICIPANTS

4.1 At least one representative of each party (“the lead negotiator”) at the mediation will have full authority to settle the dispute at the mediation, as set out in the rules of proceedings detailed below.

4.2 Each representative signing this agreement agrees to the provisions of this agreement on behalf of the party that s/he represents as well as all other persons to be present on that party’s behalf at the mediation. Each signatory, by her/his signature hereto, warrants that s/he is duly authorized to so bind the party on whose behalf s/he signs this agreement.

5. PLACE AND TIME

The mediation will commence on _____ [date] at _____ [time]. The venue for the mediation will be _____
[physically/virtually].

6. MEDIATION FEE

6.1 The parties agree that the Mediator shall raise her fee on the following basis:

6.1.1 **R2 200.00 per hour, excl VAT**, for preliminary meetings, discussions with the parties' representatives and preparation for the mediation.

6.1.2 **R22 000.00 per day, excl VAT**, for the mediation proceedings.

6.2 Each party will pay 50% of the Mediator's fees and the other expenses of the mediation process ("the mediation fees").

6.3 Payment of the mediation fees will be made to the Mediator prior to the hearing of the mediation and on terms to be determined by the Mediator.

6.4 Each party will otherwise bear their own costs and the expense of participating in the mediation.

7. LAW AND JURISDICTION

This agreement shall be governed by South African law.

8. RULES OF THE PROCEEDINGS

8.1 THE MEDIATOR

8.1.1 The Mediator, after consultation with the parties will be entitled, where appropriate, to call upon the parties to attend a meeting with her, in advance of the mediation proceedings.

8.1.2 Before the mediation, the Mediator will read each case summary, and all the documents sent to her as detailed below;

8.1.3 The Mediator will chair and determine the procedure for the mediation;

8.1.4 The Mediator will facilitate the drawing up and signature of any settlement agreement.

8.1.5 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, any of the parties.

8.2 AUTHORITY TO SETTLE THE DISPUTE

The lead negotiators for the parties must be sufficiently senior and have the full authority of the party which they represent to settle the dispute, without having to refer to anybody else. Any restriction on that authority should be disclosed to and discussed with the Mediator before the mediation.

8.3 EXCHANGE OF INFORMATION

8.3.1 The parties agree to submit to the Mediator a summary of the issues relevant to the dispute, together with any other documents to which they may want to refer in the mediation, by a date to be determined by the Mediator, which date will be as soon as reasonably possible after the date of signature of this agreement.

8.3.2 The parties will at the same time furnish one another with the summary and documents submitted by them to the Mediator.

8.3.3 Each party may, in addition, should it so choose, send to the Mediator, such further documentation as it might wish to disclose in confidence to the Mediator (but not to any other party), clearly recording in writing, in that event, that such documentation is confidential to the Mediator.

8.4 THE MEDIATION

8.4.1 The mediation will take place at the arranged place and time set out in paragraph 5 above.

8.4.2 No recording or transcript of the mediation will be made.

8.5 SETTLEMENT AGREEMENT

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 parties.

8.6 TERMINATION

8.6.1 Any party may elect to withdraw from the mediation at any time and, if so deciding, shall immediately inform the Mediator and the other party of such decision in writing.

8.6.2 The mediation will terminate when:

8.6.2.1 a party notifies the Mediator and the other party of her/his decision to withdraw from the mediation; or

8.6.2.2 the Mediator, at her discretion, withdraws from the mediation;
or

8.6.2.3 a written settlement agreement is concluded.

8.7 ADJOURNMENT

8.7.1 The Mediator may adjourn the mediation in order to allow parties to consider specific proposals, get further information or for any other reason which the Mediator considers helpful in furthering the mediation process.

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

8.8 CONFIDENTIALITY

8.8.1 Every person involved in the mediation will keep confidential and not use for any collateral or ulterior purpose any information (whether given 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.

8.8.2 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.

8.8.3 The Mediator will not disclose to any other party any information or document given to her by a party in confidence.

8.8.4 Paragraphs 8.8.1 to 8.8.3 shall not apply if, and to the extent that:

8.8.4.1 the party or parties (as the case might be) consent to the disclosure;

8.8.4.2 the Mediator is required in law to make disclosure; or

8.8.4.3 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

8.8.4.4 the Mediator reasonably considers that there is a serious risk of being subjected to criminal proceedings unless the information in question is disclosed.

8.9 **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.**

8.10 **THESE PROVISIONS WILL NOT PRECLUDE A PARTY FROM USING A WRITTEN SETTLEMENT AGREEMENT, ONCE SIGNED, TO ENFORCE ITS RIGHTS ARISING FROM THAT SETTLEMENT AGREEMENT.**

8.11 **EXCLUSION OF LIABILITY**

The Mediator shall not be liable to the parties for any act or omission in connection with the services provided by her in, or in relation to, the mediation, unless the act or omission is shown to have been in bad faith.