

AGREEMENT TO MEDIATE

Prepared by:



entered into by and between

(hereinafter referred to as “the Mediator”)

and

(Party One)

and

(Party Two)

and

(Party Three)

and

(Party Four)

(hereinafter referred to as “the Parties”)



1 THE MEDIATION PROCESS:

- 1.1 By their signatures hereto, the Parties express their willingness to engage in the mediation process to attempt resolution of the dispute/s between them.
- 1.2 The Parties appoint the Mediator to assist them in the aforesaid mediation process.

2 ROLE OF THE MEDIATOR:

- 2.1 The role of the Mediator is to act as facilitator, during joint and side meetings, to assist the Parties with attempted resolution of their dispute/s through *inter alia*:
- 2.1.1 identification of the issue/s in dispute;
 - 2.1.2 identification of areas of possible agreement;
 - 2.1.3 creative problem solving;
 - 2.1.4 generating proposals for possible resolution of the issue/s in dispute.
- 2.2 The Mediator has no vested interest, either personal or otherwise, in the dispute/s between the Parties or in the outcome of the mediation.

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- 2.3 The Mediator does not act for or on behalf of, nor will the Mediator accept any request or nomination to act for or on behalf of either of the Parties in connection with the dispute during the currency of this Agreement to Mediate or subsequently.
- 2.4 The Mediator does not act as a substitute for the Parties obtaining independent legal advice concerning the issue/s in dispute.
- 2.5 The Mediator does not have the power or authority to impose a binding decision on the Parties, nor will the Mediator place any obligation on the Parties to settle their dispute.
- 2.6 Private information shared with the Mediator during side meetings shall be treated as confidential and will not be shared with the other Party without the first Party's express consent to do so.

3 THE PARTIES:

- 3.1 The Parties undertake in good faith to:
- 3.1.1 use their best endeavours to arrive at a possible resolution of the issue/s in dispute;
 - 3.1.2 treat each other with dignity and respect throughout the mediation process;

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3.1.3 adhere to the mediation process as determined by the Mediator;

3.1.4 make full and proper disclosure to each other and the Mediator of any and all relevant information pertaining to the issue/s in dispute.

3.2 The Parties undertake to notify the Mediator immediately should either of them at any stage become aware of any circumstances which, in their opinion, preclude either of them from fully engaging in the mediation process.

3.3 If the Parties are not legally represented during the mediation process, they may, at any stage during the mediation process, obtain legal advice on the issue/s in dispute.

4 CONFIDENTIALITY:

4.1 The Parties acknowledge that confidentiality is fundamental to the mediation process and that by virtue of such confidentiality, the mediation takes place on a without prejudice basis.

4.2 In accordance with the principle of confidentiality, no recording of the mediation, whether video or audio, is permitted by the Parties.

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4.3 In order to properly inform each other and the Mediator as to the issue/s in dispute, the Parties:

4.3.1 undertake to make a full and frank disclosure of their attitude/s towards the issue/s in dispute;

4.3.2 where required, make a full and proper disclosure to each other and the Mediator of any and all relevant information pertaining to the issue/s in dispute, including their respective financial positions;

4.3.3 confirm that it is understood, as set out herein, that supporting documentation of a financial nature may be deemed not privileged by a Court of Law and could, potentially, be used in subsequent litigation;

4.3.4 agree that all discussions with the Mediator, including any and all settlement proposals, interim arrangements, correspondence to and from the Mediator, reports and recordal of draft proposals are made on an entirely without prejudice basis;

4.3.5 agree that any proposals or suggestions for possible settlement emanating from the Mediator are also made on a without prejudice basis and may not be disclosed by either Party in any litigation between them;

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4.3.6 agree that at no time will the Mediator be subpoenaed, requested to give evidence or provide any written response to:

4.3.6.1 any query relating to the contents of discussions held during the mediation process between or with the Parties, either jointly or separately; and/or

4.3.6.2 any query relating to the conduct of either of the Parties during the mediation process, except where required to do so by law;

4.3.7 undertake not to subpoena any co-mediator or any other person involved in the mediation process for the purpose of such person revealing in any subsequent court proceedings the content and/or substance of the mediation.

4.4 All statements, communications and information disclosed by any of the Parties during the mediation process are deemed privileged. Accordingly, same is not admissible or disclosable in any current or future legal proceedings, save for supporting financial documentation, in that discussion/s around financial issues will invariably require verification through supporting documentation and save further that same may be deemed not privileged by a Court of Law. Such documentation will be made available to all Parties and the Mediator during the mediation process.

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- 4.5 As set out in paragraph 2.6 above, save as expressly agreed to between the Mediator and the Parties acting jointly, or where required by law, the Mediator will not disclose to any Party, third party or a Court of Law, any such information and/or documentation.
- 4.6 The Parties acknowledge and understand that any and all notes made by the Mediator during the mediation process are made purely for the Mediator's own recollection and do not constitute a recordal in any way of any binding agreement between the Parties.
- 4.7 It is recorded that any and all notes made during and/or as a result of the mediation shall fall within the scope of confidentiality as set out above and that the Mediator shall, immediately upon termination of the mediation, destroy any and all such notes and any and all documents provided to the Mediator by the Parties.
- 4.8 The Mediator will not disclose to any third party any information about the mediation in any forum, save in the event where proceedings are brought against the Mediator personally relating to the mediation process and save further that the Mediator shall notify the relevant authorities where, in the opinion of the Mediator, either of the Parties or any child is at risk of serious harm, where either Party expresses an intention to commit a criminal offence or where either Party communicates a desire to terminate their life.

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4.9 The Parties confirm that, notwithstanding what is set out hereinabove, should any of them subpoena the Mediator or co-mediator to give evidence in any forum on any aspect of the mediation process, that Party shall be liable to pay the Mediator's reasonable fees and costs as a professional, which fees and costs shall not be limited to any scale of witness fees as provided in any Rules of Court.

4.10 By their signatures hereto, the Parties commit themselves to ensure that the principles of confidentiality of the mediation process as set out above are strictly adhered to.

5 TERMINATION OF THE MEDIATION PROCESS:

5.1 The Parties acknowledge that their participation in the mediation process is entirely voluntary. The Mediator and any of the Parties to the mediation may, in their sole discretion, terminate the mediation at any stage during the mediation process.

5.2 Furthermore, the Mediator may terminate the mediation process where, in the opinion of the Mediator:

5.2.1 the issue/s in dispute is/are inappropriate for mediation;

5.2.2 any of the Parties is unable or unwilling to participate fully and effectively in the mediation process;

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5.2.3 the Parties insist on pursuing an agreement which is unfair and/or may constitute a miscarriage of justice; or

5.2.4 the conduct of any of the Parties towards the Mediator and/or the mediation process is such as to potentially jeopardise the integrity of the mediation process.

5.3 The provisions relating to confidentiality shall continue to apply even in the event of termination of mediation.

6 SETTLEMENT OF THE DISPUTE/S:

6.1 The Parties acknowledge that they understand that any and all proposals emanating out of mediation will not become effective or binding on the Parties until such proposals have been recorded in a written settlement agreement signed by all Parties.

6.2 The Parties confirm that they will not make any claim of whatsoever nature against the Mediator arising from or in connection with (whether directly or indirectly) the mediation and/or any settlement agreement reached by them as a result of proposals emanating out of mediation.

6.3 Furthermore, the Parties hereby indemnify the Mediator against any claims of whatsoever nature which may be made against the Mediator by a third party for any act or omission in connection with and/or arising from mediation.

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7 IN-PERSON / ONLINE MEDIATION:

7.1 The Parties agree to attend in-person / online mediation (**please delete whichever is irrelevant**).

7.2 If on-line mediation is accepted by the Parties:

7.2.1 The Mediator shall send the Parties the relevant link to the mediation session/s in advance of the mediation.

7.2.2 The Parties shall ensure that they have the necessary hardware and internet connection to enable them to attend online mediation.

7.2.3 The Parties agree that the Mediator shall be entitled to record the mediation sessions.

7.2.4 The Parties acknowledge that they understand that such recordings are for the use of the Mediator only and shall be deleted by the Mediator upon settlement or termination of the mediation.

7.3 The Mediator may make use of joint sessions with the Parties in the same room whether in-person or virtual mediation is used or may use side/caucus meetings (otherwise referred to as shuttle mediation) with the Parties separately, at the discretion of the Mediator.

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8 AUTHORITY TO ACT ON BEHALF OF A JURISTIC ENTITY, STATE-OWNED ENTERPRISE OR THE STATE

8.1 In the event that any Party to this mediation is a representative of the State, a juristic person, including but not limited to a company, close corporation, trust, or non-profit organisation, or a state-owned enterprise ("SOE"), such Party shall ensure that the person representing it at the mediation has the necessary authority to act on its behalf. This includes written authority to participate in the mediation, make decisions during the process, negotiate in good faith, and, where applicable, to enter into and sign a binding settlement agreement.

8.2 Proof of such authority must be provided to the Mediator and the other Party/Parties at least five (5) working days prior to the commencement of the mediation. The required proof may include, but is not limited to, a signed board resolution, power of attorney, or written delegation of authority, which shall be sufficient in form and content to satisfy the Mediator and the other Party/Parties that the representative is duly authorised.

8.3 Failure to provide such proof of authority may result in the postponement or termination of the mediation at the discretion of the Mediator, and any costs incurred as a result of such postponement or termination may be borne by the defaulting Party.

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9 COSTS OF MEDIATION:

9.1 The mediation cost shall be (**please delete whichever is irrelevant**):

- 9.1.1 R16,000.00 plus VAT for a full-day mediation session (7 hours);
- 9.1.2 R9,000.00 plus VAT for a half-day mediation session (4 hours);
- 9.1.3 R3,000.00 plus VAT per hour if mediation is conducted over a number of days in shorter sessions. Such sessions shall be a minimum of two hours.

9.2 Costs included in the above:

- 9.2.1 Pre-mediation meeting with each Party – maximum 15 minutes per Party, maximum 4 Parties. Additional Parties or time will be charged at R750.00 plus VAT per 15 minutes or part thereof;
- 9.2.2 Perusal of pleadings and documentation – maximum 100 pages in total. Additional perusal fees will be charged at R750.00 plus VAT per 15 minutes or part thereof;

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- 9.3 Additional costs:
- 9.3.1 Travel and/or venue hire costs when required – actual cost;
 - 9.3.2 Drafting of settlement agreement for civil, commercial, labour, employment or other such like disputes – quotation will be provided by **Dignified Dispute Resolution™** upon request and shall be based on the complexity of the matter and estimated time involved in drafting and settling such agreement, which quote shall be approved in writing by all Parties;
 - 9.3.3 Drafting of settlement agreement for divorce disputes – R4,000.00 plus VAT;
 - 9.3.4 Drafting of a parenting plan/agreement in disputes relating to care and contact of minor children – R5,000.00 plus VAT.
- 9.4 The mediation fee shall be payable to **Dignified Dispute Resolution™** in advance of the mediation. Any additional costs referred to in 9.3.1 to 9.3.4 above shall be payable to **Dignified Dispute Resolution™** in advance and/or prior to drafting.
- 9.5 The Parties agree that payment of the mediation fee and additional costs shall be made by the Parties in the following proportions:

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9.5.1 Party One: _____ %

9.5.2 Party Two: _____ %

9.5.3 Party Three: _____ %

9.5.4 Party Four: _____ %

Please note: If any Party intends to have their legal representative attend the mediation with them, such legal representative is required to co-sign this Agreement in the space provided below.

SIGNED at _____ this _____ day of _____ 202	
Party One	Attorney
Signature: _____	Signature: _____
_____	_____
Name: _____	Name: _____

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SIGNED at _____ this _____ day of _____ 202	
Party Two	Attorney
Signature: _____	Signature: _____
Name: _____	Name: _____

SIGNED at _____ this _____ day of _____ 202	
Party Three	Attorney
Signature: _____	Signature: _____
Name: _____	Name: _____

SIGNED at _____ this _____ day of _____ 202	
Party Four	Attorney
Signature: _____	Signature: _____
Name: _____	Name: _____

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SIGNED at _____ this _____ day of _____ 202	
Mediator	Co-Mediator
Signature: _____ _____	Signature: _____ _____
Name: _____	Name: _____

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