

MEDIATION AGREEMENT

(For Personal Injury – RAF / Medical Negligence)

BETWEEN:

CLAIMANT:

Full Name: _____

Identity Number: _____

Address: _____

and

RESPONDENT:

(Select applicable)

- ☐ Road Accident Fund (RAF)
 - ☐ Provincial Health Department / MEC
 - ☐ Private Hospital / Practitioner
 - ☐ Insurer

Represented by: _____

AND

MEDIATOR:

Name: Nomvuyo Molefe

Professional Accreditation Body: South African Medico-Legal Association

Address: 09 Saint Benedict Road; Gresswold: Johannesburg

Contact Details: 0622645327 // 0781411774

1. PURPOSE OF THIS MEDIATION

1.1 The parties agree to attempt to resolve their dispute arising from:

- ☐ A Road Accident Fund claim
- ☐ A medical negligence / clinical malpractice claim without resorting to litigation or to reduce the issues in dispute.



1.2 The mediation is conducted in good faith and on a voluntary basis.

2. LEGAL STATUS

2.1 This mediation is conducted in accordance with:

- 2.1.1 The Uniform Rules of Court (Rule 41A)
- 2.1.2. Common law principles
- 2.1.3. Applicable statutory provisions
- 2.1.4. The mediator's professional code of conduct.

2.2 Participation does not constitute an admission of liability by any party.

3. CONFIDENTIALITY

3.1 All discussions, documents and communications shared between and used by the parties during mediation are confidential and without prejudice.

3.2 No party may subpoena the mediator to testify in subsequent proceedings.

3.3 The confidentiality obligation survives termination of mediation.

4. AUTHORITY TO SETTLE

4.1 Each party confirms that they or their representatives have authority to negotiate and conclude settlement.

4.2 RAF or State representatives confirm they have the necessary internal mandates.



5. THE PARTIES AGREE AS FOLLOWS:

5.1. The Date of Mediation _____ 202__

5.2. Time of Mediation : _____

5.3. Venue _____ or Online Platform Meeting : Zoom/Teams

5.4. The parties shall endeavour to settle the dispute referred to above by mediation.

5.5. The entire content of the mediation shall be confidential, without prejudice and off the record.

5.6. The parties shall have **authority to settle** or attend with a person who has authority to settle.

5.7. Each party will inform the other party (parties) and the mediator prior to the mediation of the names of **the persons attending on behalf** of the party.

5.8. The mediation shall be administered by the Mediator and the mediation will be conducted in the styles of facilitative mediation and/or transformative mediation

5.9. If any party or representative perceives or believes that a mediator has ventured outside these styles, or has any other reason for **discomfort or concern, this will immediately be brought to the attention of the mediator(s)**, so that the perception, belief or concern may be addressed prior to signing any settlement agreement

5.10. A settlement agreement is **only legally binding once it has been signed** by all the parties.

6 . COSTS OF MEDIATION

6.1 The mediator's fees shall be R2000 an hour and equally shared unless otherwise agreed.

6.2 Each party bears its own legal and expert costs.

6.3 Payment terms: Payments to be made to ADR Technology Group upon receipt of an invoice to Mediate before the commencement of the Mediation

7. The parties confirm the contents of the attached minute of the pre-mediation meeting and that the minute forms part of this agreement.



8. The role of the Mediator

- 8.1. The main role of the mediator is to assist the parties in finding unique and creative solutions to the dispute that will resolve the matter to the best satisfaction of all parties in the dispute.
- 8.2. The mediator shall familiarise him/herself of the issues in the dispute and may require documents, a short summary or opening statements from the parties before the mediation date.
- 8.3. Before the mediation the mediator/s may communicate with both parties orally or in writing, on condition that all communication is disclosed to both parties.
- 8.4. The mediator shall have the discretion to conduct the mediation of the dispute in such manner as the mediator determines, given the principles of fairness, informed consent and impartiality.
- 8.5. Unless agreed otherwise, the mediator shall not adjudicate the dispute, recommend a solution to the dispute, advise a party on the merits of the dispute or negotiate a settlement of the dispute on behalf of a party.
- 8.6. No information from either party will be disclosed by the mediator unless there is explicit consent to do so.

9. The role of the parties

- 9.1. The parties undertake to operate in good faith during the mediation and to participate actively in creating a mutually beneficial result.
- 9.2. Politeness and courtesy will be upheld during the proceedings.
- 9.3. Confidentiality, cooperation and goodwill are essential attitudes from all participants to ensure positive resolution of the dispute.
- 9.4. Parties are reminded that mediation is a voluntary process.
- 9.5. The parties will not call the mediator as a witness nor require him or her to produce in evidence any record or notes relating to the mediation in any litigation, arbitration or other formal process arising from or in connection with the dispute and the mediation nor will the mediator act or agree to act as a witness, expert or consultant in any such process.

10. During the mediation

- 10.1. All notes are strictly confidential and transcripts or recordings of the sessions are prohibited.
- 10.2. The parties shall abide by all decisions of the mediator regarding the administration, process and conduct of the mediation, which shall be done in a



manner which ensures expedition and which is as cost effective as the nature of the dispute permits.

10.3. No agreement is binding until it is signed by all parties concerned.

11. The mediation of the dispute shall terminate when

11.1. The parties conclude a written agreement between themselves in which the parties set out the terms upon which the parties settle the dispute or any part thereof (the "settlement agreement"), provided that the parties and the mediator may agree in writing to continue the mediation in respect of any part of the dispute that remains unsettled after the conclusion of the settlement agreement. This settlement agreement shall be a final and binding settlement of the dispute or such part thereof, as applicable; or

11.2. The mediator receives written notice from a party stating that such party withdraws from the mediation, provided that no party shall withdraw from the mediation without first orally notifying the mediator and giving the mediator a reasonable opportunity to mediate on that party's continued participation in the mediation; or

11.3. The parties receive written notice from the mediator stating that in the mediator's opinion there is no reasonable prospect of a settlement and therefore the mediator terminates the mediation

Sign below and print name:

CLAIMANT / ATTORNEY

Name & Signature

RESPONDENT / ATTORNEY

Name & Signature

MEDIATOR

Name & Signature

