



CD DIRECT

MODEL

AGREEMENT TO MEDIATE

(for face-to-face and remote online mediation)



**CONFLICT
DYNAMICS**

TRAINING
& DISPUTE
RESOLUTION
SERVICES

**AGREEMENT TO MEDIATE
BETWEEN**

[PARTY A]

AND

[PARTY B]

THIS AGREEMENT is made on

BETWEEN

1 _____ “the Mediator”, (a term which incorporates a Co-Mediator or Observer Mediator in attendance at the Mediation with the Parties’ permission),

The Parties are:

2 _____ (“Party A”)

3 _____ (“Party B”)

(and together referred to as “the Parties”)

THE PARTIES AGREE TO A MEDIATION of the Issues arising between Party A and Party B relating to (the Issues) on the terms set out in this Agreement to Mediate;

AND THAT:

Mediator

1) _____ will be the Mediator.

Role of the Mediator

- 2) The Mediator will:
 - a) attend any meetings or discuss the Mediation on the telephone or any other agreed mode of communication with any or all of the Parties preceding the Mediation if requested to do so or if the Mediator decides that this is appropriate;
 - b) read before the Mediation all the documents sent to him/her;
 - c) chair and determine the procedure for the Mediation, in consultation with the Parties;
 - d) assist the Parties to settle the Issues which have arisen between them, while reserving their rights to revert to any dispute resolution option if they do not reach settlement terms in the Mediation.
- 3) The Parties understand that the Mediator is neutral, impartial and independent and does not give legal advice. They agree that they will not make any claim of any nature against the Mediator in connection with this Mediation unless the Mediator has acted dishonestly or in bad faith.
- 4) The Mediator confirms that they have no interest in the disputed Issues or their outcome and has had no undisclosed prior dealing with the Parties in relation to the disputed Issues.

Before the Mediation

- 5) The Mediator will contact the Parties to discuss their preparation for the Mediation.
- 6) Each of the Parties will prepare and send to the Mediator and all other Parties such brief summary setting out its main concerns and Issues as the Mediator deems appropriate.
- 7) The Parties agree to exchange with each other, under the Mediator's supervision, documents relevant to the disputed Issues, and also provide these documents to the Mediator.

Conduct of the Mediation

- 8) The Mediator shall decide, when possible in consultation with the Parties, how the Mediation is to be conducted.
- 9) The Parties agree to comply with all requests of the Mediator in relation to the good conduct of the Mediation.
- 10) The Parties agree to use reasonable endeavours to settle the Issues between them and act in good faith before and during the Mediation.

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- 11) The Mediation will take place on _____ at the offices of _____.
 - 12) No transcript or recording shall be made of the Mediation, or any part of it, except with the written consent of all participants, including the Mediator. This shall not prevent the Parties or the Mediator from taking a notes. Such notes shall remain confidential and will be destroyed shortly after the conclusion of the Mediation.
 - 13) Any settlement reached in the Mediation shall not be legally binding unless it has been reduced to writing and has been signed by or on behalf of the Parties.

Authority

- 14) Each of the Parties will attend the Mediation with a person who has authority to bind that Party to any agreement reached as a result of the Mediation.
- 15) Each Party will inform the other Party and the Mediator prior to the Mediation of the names of the persons attending on behalf of that Party.
- 16) The Parties must consent to the presence of persons other than the Parties and their advisers in the Mediation.

Confidentiality

- 17) During and before the Mediation, the Mediator may speak to the Parties separately in order to improve the Mediator's understanding of each Party's views and to prepare for the Mediation. Information given to the Mediator during such separate talks will be confidential unless the Party who provided that information allows the Mediator to disclose the information.
- 18) Any information, whether or not in writing, arising out of the Mediation shall be confidential and shall not be used for any collateral or ulterior purpose. This includes the terms of any settlement but does not include the fact that the Mediation is to take place or has taken place. Only the terms of settlement may be referred to in the event that a Party brings proceedings in relation to those terms.
- 19) The Mediator will maintain the confidentiality of all written and verbal communications in the Mediation unless required to disclose by a court of competent jurisdiction.
- 20) Each Party or representative who signs this Agreement to Mediate warrants that the persons attending with them and/or on its behalf at the Mediation will be bound by and will observe the agreement set out in clause 18 above.
- 21) All information, whether or not in writing, arising out of or in connection with the Mediation shall be without prejudice and privileged and not admissible as evidence or

disclosable in any current or future litigation or other proceedings whatsoever. This does not apply to any information which would apart from this clause be admissible or disclosable in such proceedings. Otherwise inadmissible evidence can only be used with the written consent of both Parties.

- 22) Paragraphs 18 and 21 shall not apply to the extent that disclosure is required by law.
- 23) None of the Parties shall call the Mediator as a witness, consultant, arbitrator or expert in any litigation or other proceedings whatsoever arising from or in connection with the dispute or any other matters in issue at the Mediation. In the event that a subpoena, witness summons or other request is made to require the Mediator or Assistant Mediator to testify or produce records, notes or any other information or material whatsoever in any future or continuing proceedings the Party making that request, whether or not that request is successful, hereby agrees to pay the Mediator for any time incurred in responding to such request at the daily rate plus VAT (or proportion thereof) or such other hourly rate as the Mediator may then usually charge together with any disbursements and travel expenses (including advocate's fees) that the Mediator may incur in seeking to resist being called as a witness.
- 24) In the event of the Mediation proceeding remotely online then:
 - a) The Mediator and participants will not create any electronic video or audio recording of the Mediation except with the written consent of both Parties;
 - b) The Mediator and participants will not make or allow any live or deferred video or audio relay of the Mediation to others except with the written consent of both Parties;
 - c) Only the participants to the Mediation, the Mediator and anybody agreed in advance (e.g. participants' lawyers) will be present in the room used by each participant during any mediation session and all Parties present at each station shall be within camera view throughout the Mediation.

Costs

- 25) The Parties will have paid the Mediator's fees for the Mediation but in any event, but each Party will bear their own legal costs unless otherwise agreed at the Mediation. Whether or not a settlement is reached at the Mediation, each Party's legal costs of attendance will be treated as costs in the cause by the court.

Ending the Mediation

- 26) The Mediator or either of the Parties, after canvassing their intentions with the Mediator, may end the Mediation at any time without giving a reason.

Legal status and effect of the Mediation

27) This Agreement is governed by the law of the Republic of South Africa and the courts of the Republic of South Africa shall have exclusive jurisdiction to decide any matters arising out of or in connection with this Agreement and the Mediation.

We agree to the above terms and conditions

(a) Party At
Address
.....
.....
Signed
Dated.....

(b) Party B
Address
.....
.....
Signed
Dated.....

(c) Mediator
Signed
Dated.....