



AGREEMENT TO MEDIATE

We, the undersigned, (hereafter referred to as “the Participants”), agree to mediate the matter between us, as set out below, on the terms and conditions in this agreement.

1. PARTICULARS OF PARTICIPANT A

Name and Surname:	
Residential address:	
Business address:	
Postal address:	
Cell phone:	
Email:	

2. PARTICULARS OF PARTICIPANT B

Name and Surname:	
Residential address:	
Business address:	
Postal address:	
Cell phone:	
Email:	

SIGNATURE PARTICIPANT A:

SIGNATURE PARTICIPANT B:

3. MEDIATOR

The participants hereby agree to appoint the undermentioned mediator:

Name and Surname: Allison Borchardt from Grace Mediation International
Telephone: 071 3645 752

4. MEDIATOR FEES

4.1 The Participants and the mediator agree that the fees to the mediator will be paid in accordance with the tariff as communicated by the mediator.

4.2 An amount R_____ toward the mediator's fees and expenses will be paid to the mediator prior to the commencement of mediation. Any unearned amount in fees, paid as deposit, will be refunded towards the Participants.

4.3 The Participants will be jointly and severally liable for the mediator's fees and expenses. Each participant to pay equal half of the mediator's fees prior to commencement of the mediation.

4.4 Should payment not be timeously made, the mediator may at her sole discretion, stop all work on behalf of the Participants and suspend the mediation until payment is received, or withdraw from the mediation.

4.5 The Participants understand that they shall be responsible for 2 (TWO) hours of the mediator's time at the above stated rate for any appointment which they do not attend and do not provide at least 48 hours advance notice of the cancellation.

5. DATE, TIME AND VENUE

5.1 The first mediation session will be held on _____ at _____.

5.2 The mediation will be in person / online but may be changed by agreement between the Participants and the mediator.

6. DURATION OF MEDIATION

The Participants agree that the anticipated duration of the mediation is no less than 2 hours. If more time is needed, it will be scheduled by agreement between the participants.

7. MEDIATION PROCESS

7.1 Mediation is a process by which disputes can be resolved amicably with the assistance of an impartial mediator quickly and cost effectively.

7.2 The Participants understand that it is for the participants, with the mediator's concurrence, to determine the scope of the mediation and this will be accomplished early in the mediation process.

8. NATURE OF MEDIATION

8.1 The Participants understand that mediation is an agreement reaching process in which the mediator assists participants to reach agreement in a collective, consensual and informed manner.

8.2 It is understood that the mediator has no power to decide disputed issues for the Participants.

8.3 The Participants understand that mediation is not a substitute for independent legal advice.

SIGNATURE PARTICIPANT A:

SIGNATURE PARTICIPANT B:

8.4 The Participants understand that the mediator's objective is to facilitate the Participants themselves reaching their most constructive and fairest agreement. The Participants also understand that the mediator is obliged to work on behalf of each participant equally, including the dependent children, and that the mediator cannot render individual legal advice to any participant and will not render therapy within the mediation.

8.5 The Participants state their good faith intention to complete mediation by an agreement. It is however understood that any participant may withdraw from or suspend mediation at any time, for any reason.

8.6 The Participants also understand that the mediator may suspend or terminate the mediation if she feels that the mediation will lead to an unjust or unreasonable result, if the mediator feels that an impasse has been reached, or if the mediator determines that she can no longer effectively perform her facilitative role.

9. MEDIATOR IMPARTIALITY

9.1 The Participants understand that the mediator must remain impartial throughout and after the mediation process. The mediator shall therefore not champion the interests of any participant over another in the mediation or in any court or other proceeding.

9.2 The mediator will provide copies of correspondence, draft agreements, and written documentation to the Participants legal representatives at a participant's request only.

9.3 The mediator may communicate separately with an individual mediating participant; in which case such discussions shall be confidential between the mediator and the individual mediating participant unless they agree otherwise.

10. ROLE OF THE MEDIATOR

10.1 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 Participants 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 Participants;
- d) assist the Participants 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.

10.2 The Participants 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.

10.3 The Mediator confirms that they have no interest in the disputed Issues or their outcome and has had no undisclosed prior dealing with the Participants in relation to the disputed Issues.

11. BEFORE THE MEDIATION (IF APPLICABLE)

11.1 The Mediator may contact the Participants to discuss their preparation for the Mediation.

11.2 If so requested, each of the Participants will prepare and send to the Mediator and all other Participants such brief summary setting out its main concerns and Issues as the Mediator deems appropriate.

SIGNATURE PARTICIPANT A:

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11.3 The Participants 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.

12. CONDUCT OF THE MEDIATION

12.1 The Mediator shall decide, when possible in consultation with the Participants, how the Mediation is to be conducted.

12.2 The Participants agree to comply with all requests of the Mediator in relation to the good conduct of the Mediation.

12.3 The Participants agree to use reasonable endeavours to settle the issues between them and act in good faith before and during the Mediation.

12.4 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 Participants or the Mediator from taking notes. Such notes shall remain confidential and will be destroyed shortly after the conclusion of the Mediation.

12.5 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 Participants.

12.6 No portion of the mediation may be recorded by any of the Participants.

13. CONFIDENTIALITY

13.1 During and before the Mediation, the Mediator may speak to the Participants separately in order to improve the Mediator's understanding of each Participant's views and to prepare for the Mediation. Information given to the Mediator during such separate talks will be confidential unless the Participant who provided that information allows the Mediator to disclose the information.

13.2 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 Participant brings proceedings in relation to those terms.

13.3 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.

13.4 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 Agreement to Mediate 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 Participants.

13.5 Paragraphs 13.2 and 13.4 shall not apply to the extent that disclosure is required by law.

13.6 None of the Participants 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 Participant 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.

SIGNATURE PARTICIPANT A:

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13.7 In the event of the Mediation proceeding remotely online then:

13.7.1 The Mediator and participants will not create any electronic video or audio recording of the Mediation except with the written consent of both Participants;

13.7.2 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 Participants;

13.7.3 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 Participants present at each station shall be within camera view throughout the Mediation.

14. SETTLEMENT

In the event that the Participants settle the Dispute or any part thereof in a Settlement Agreement, then that Settlement Agreement shall be a final and binding settlement of the Dispute or such part thereof, as applicable.

15. ENDING THE MEDIATION

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

16. LEGAL STATUS AND EFFECT OF THE MEDIATION

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.

SIGNED AT _____ ON _____ OF _____

WITNESS 1

WITNESS 2

PARTICIPANT A:

SIGNED AT _____ ON _____ OF _____

WITNESS 1

WITNESS 2

PARTICIPANT B:

SIGNATURE PARTICIPANT A:

SIGNATURE PARTICIPANT B: