



The Association of Arbitrators (Southern Africa)

AGREEMENT TO MEDIATE

Entered into between

Party A

(Registration number _____)

("A")

And

Party B

(Identity number _____)

("B")

(Collectively "The Parties")

WHEREBY IT IS AGREED AS FOLLOWS:

THE MEDIATION

1. The Parties agree to attempt, in good faith, to settle their Dispute (the details of which are set out in Schedule 1 hereto) by Mediation and to conduct the Mediation in accordance with the terms of this Agreement.
2. The Mediation shall take place in _____, South Africa and shall be conducted in accordance with the laws of the Republic of South Africa.

AUTHORITY AND STATUS

3. The person signing this Agreement on behalf of each Party warrants having authority to bind that Party and all other persons present on that Party's behalf at the Mediation and to observe the terms of this Agreement, and also having authority to bind that Party to the terms of any settlement.

CHOOSING THE MEDIATOR

4. The Parties shall agree on a Mediator within 5 (five) business days. Should the Mediator be unable to accept the invitation to act as Mediator, the Parties may, within a further 5 (five) business day period, agree on another Mediator.
5. If the Parties are unable to agree on a Mediator within 5 (five) business days, then any Party may approach the Chairperson of the Association of Arbitrators, Southern Africa, ("AoA") to submit to each Party a list of names of potential Mediators.
6. The Parties will then have a further 5 (five) business day period within which to agree on a Mediator. Should they be unable to agree, the AoA will be asked to appoint a suitable Mediator.

MEDIATOR'S POWERS AND DUTIES

7. The Mediator shall endeavor to assist the Parties to settle the Dispute by agreement. The Mediator shall not adjudicate the Dispute, make any recommendations to the Parties or advise any Party on the merits of the Dispute.
8. The Mediator shall have the discretion to conduct the Mediation in such a manner as s/he determines.

9. The Mediator shall be responsible for the administration of the Mediation including the process and conduct of the Mediation, which shall be done in an expeditious and cost-effective manner.

RESPONSIBILITIES OF THE PARTIES

10. Prior to and during the scheduled mediation session(s) the parties shall, as appropriate to each party's circumstances, exercise their best efforts to prepare for and engage in a meaningful and productive mediation.

CONFIDENTIALITY AND WITHOUT PREJUDICE STATUS

11. Every person involved in the Mediation:
 - 11.1 Will keep confidential all information arising out of or in connection with the Mediation, including the fact and terms of any settlement, the fact that the Mediation is to take place or has taken place unless disclosure is required by law to implement or to enforce terms of settlement; and
 - 11.2 Acknowledges that all such information passing between the Parties and the Mediator is agreed to be without prejudice to any Party's legal position and may not be produced as evidence or disclosed to any judge, arbitrator or other decision-maker in any legal or other formal process, except where otherwise disclosable in law.
12. Where a Party privately discloses to the Mediator any information in confidence before, during or after the Mediation, the Mediator will not disclose that information to any other Party or person without the consent of the Party disclosing it, unless required by law to make disclosure.
13. The Parties will not call the Mediator as a witness, nor require the Mediator to produce in evidence any records or notes relating to the Mediation, in any litigation, arbitration or other formal process arising from or in connection with their dispute and the Mediation; nor will the Mediator act or agree to act as a witness, expert, arbitrator or consultant in any such process.

SETTLEMENT

14. In the event that the Parties 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.

FEES AND EXPENSES

- 15. The fee to the request for mediation is R500-00.
- 16. The parties shall pay the mediator’s fees and administrative costs in equal proportions. All expenses of the mediation, including required traveling and other expenses or charges of the mediator, shall be borne equally by the parties unless they agree otherwise.
- 17. The expenses of participants for either side shall be paid by the party requesting the attendance of such participants.

SIGNED AT _____ on _____

For: A

_____ who warrants his/her authority hereto

SIGNED AT _____ on _____

For: B

_____ who warrants his/her authority hereto

TERMINATION

- 18. The Mediation of the Dispute shall terminate when:
 - 18.1 The Mediator receives written notice from a Party stating that the Party withdraws from the Mediation provided that no Party shall withdraw from the Mediation without first orally notifying the Mediator and giving the Mediator an opportunity to mediate on that Party’s continued participation in the Mediation;
 - 18.2 The Mediator advises that Parties in writing that the Mediator believes that there is no reasonable prospects of settlement in the Mediation; and
 - 18.3 The Parties conclude a written Settlement Agreement provided that they agree to continue the Mediation in the event of any part of the Dispute that remains unsettled after the conclusion of the Settlement Agreement.

SCHEDULE 1
Details of Dispute

(This must be set out in detail)

SIGNED AT _____ on _____

Mediator



The Association of Arbitrators (Southern Africa)

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