

Agreement to mediate

Entered into by and between:

.....

and

.....

(hereinafter referred to as "the Parties")

1. THE MEDIATION PROCESS

- 1.1 The Parties herein hereby express their willingness to engage in the mediation process for purposes of attempting resolution of their dispute.
- 1.2 The Parties appoint **STANTON ROY BREGMAN** (hereinafter referred to as the mediator) to assist them in the aforesaid mediation process.

2. THE ROLE OF THE MEDIATOR

- 2.1 The role of the mediator is to assist the Parties with the attempted resolution of their dispute through *inter alia*:
 - (i) identification of the areas of agreement;
 - (ii) identification of the relevant issues in dispute;
 - (iii) delineation of the areas of dispute;
 - (iv) problem solving; and
 - (v) generating proposals for possible resolution of the issue(s) in dispute.

- 2.2 The mediator has no vested interest, be it personal or otherwise, in the underlying dispute between the Parties or in the outcome of the mediation.
- 2.3 The mediator does not act for, nor will the mediator accept any request or nomination to act for either of the Parties in connection with the area of dispute during the currency of this agreement or at any time thereafter.
- 2.4 Additionally, the mediator does not act as a substitute in respect of each party obtaining their own independent legal advice in respect of the issue(s) in dispute.
- 2.5 The mediator does not have the power nor does the mediator have the authority to impose a binding decision on the Parties. Additionally, the mediator will not place any obligation on any of the Parties to settle their dispute.
- 2.6 Save as where agreed to in the contrary as between the mediator and the Parties acting jointly or where required by law, the mediator will not disclose to any third party any information pertaining to the mediation.
- 2.7 The mediator will not, except with the specific authority of both the Parties, discuss or correspond with either of the Parties' legal representatives regarding the merits of the issues in dispute. The mediator may however from time to time communicate with the legal representatives in respect of the formal matters of procedure, cost and the proposed timetable for mediation.

3. THE PARTIES

- 3.1 The Parties undertake in good faith to:
 - 3.1.1 use their best endeavours to arrive at an agreement;
 - 3.1.2 treat each other with dignity and respect throughout the mediation process;
 - 3.1.3 adhere to the mediation process determined by the mediator; and
 - 3.1.4 make a full and proper disclosure to each other of all relevant information pertaining to the areas of dispute under mediation.
- 3.2 The Parties may at any stage during the mediation process consult with their own legal representatives for purposes of obtaining legal advice in respect of the issue(s) in dispute.

4. CONFIDENTIALITY

- 4.1 The Parties acknowledge that the issue of confidentiality is fundamental to the mediation process.
- 4.2 The Parties confirm that by virtue of the principle of confidentiality, the mediation takes place on a without prejudice basis.
- 4.3 Save as provided for here below, all statements, communications, and information disclosed by either of the Parties during the mediation process is deemed privileged and accordingly not admissible nor disclosable in any current or subsequent legal proceedings.
- 4.4 In order to properly inform each other and the mediator as to the issue(s) in dispute in their matter, including *inter alia* the issue of their respective financial positions, the Parties:
- 4.4.1 undertake to make a full and frank disclosure of their attitudes towards the issue(s) in dispute;
 - 4.4.2 agree that all discussions with the mediator including *inter alia* any settlement proposals, interim arrangements, correspondence to and from the mediator, reports and Memoranda of Understanding are made entirely on a without prejudice basis;
 - 4.4.3 agree, in furtherance of the principle of confidentiality, that each of them will not refer to the contents of any such discussions in any written correspondence and/or communication between the Parties and/or between their respective legal representatives;
 - 4.4.4 agree that any proposals for settlement emanating from the mediator are also without prejudice and may not be disclosed by either Party in any litigation between them;
 - 4.4.5 agree that at no time will the mediator be subpoenaed, or requested to give evidence or any written response to:
 - (i) any query relating to the contents of discussions held during the mediation process between or with the Parties either jointly or separately, and/or

- (ii) any query relating to the conduct of either of the Parties during the mediation process, except as where may be required by law.

- 4.5 Notwithstanding the provisions of clause 4.4.5 above, should any of the Parties subpoena the mediator to give evidence at court on any aspect of the mediation process such Party undertakes to pay the mediator's time and costs hereof.
- 4.6 It is hereby recorded that the mediator will not disclose information pertaining to the mediation to third parties.
- 4.7 In the event of a Party's subsequent loss of any documentation transmitted during the mediation process, the mediator will only release a copy of such documentation where both Parties' written consent is available.
- 4.8 The Parties commit themselves to ensuring that the confidentiality of the mediation process is at all times strictly observed.

5. TERMINATION OF THE MEDIATION PROCESS

- 5.1 The Parties acknowledge that their participation in the mediation process is voluntary and that the mediator and/or any of the Parties to the mediation may, in their sole discretion, at any stage in the mediation process, terminate the mediation.
- 5.2 In furtherance of the provisions of clause 5.1 above, it is recorded that the mediator may withdraw from the mediation process where –
 - (a) the mediator is of the opinion that the issues are inappropriate for mediation;
 - (b) the mediator is of the opinion that either of the Parties is unable or unwilling to participate fully and effectively in the mediation process;
 - (c) the parties insist on pursuing an agreement which in the view of the mediators is unfair and may constitute a miscarriage of justice.
- 5.3 In the event of the termination of the mediation process, the provisions of this agreement pertaining to confidentiality of information shall nonetheless continue to apply.

6. PROPOSALS FOR POSSIBLE SETTLEMENT OF THE DISPUTE

- 6.1 The Parties acknowledge that they are aware that the basis upon which this Mediation will operate is that proposals emanating out of the mediation will not be deemed to be effective and binding upon the Parties until such time as the said proposals have been recorded in writing and signed by the Parties.
- 6.2 The Parties acknowledge that where proposals have been generated for possible resolution of the issue(s) in dispute; such proposals will be recorded by the mediator in a written Memorandum of Understanding which Memorandum shall thereafter be submitted to the Parties for onward transmission (where applicable) to their respective legal representatives for their legal representative's comment, opinion and legal advice.

7. COSTS OF THE MEDIATION

- 7.1 The mediator's fees for the mediation shall be charged at the rate of R4,000 plus VAT per session of 1.5 hours.
- 7.2 All additional work undertaken by the mediator in connection with the mediation shall be calculated according to an hourly rate of R4000 plus VAT. Without in any way affecting the generality hereof, such work shall include but not be limited to document identification and review, legal research, communication and correspondence and the drafting of documents including the Memorandum of Understanding.
- 7.3 The mediator's fees set out in section 7.1 above shall be payable prior to each mediation session. The mediator reserves the right to cancel a mediation session in the event of payment not having been made in this regard.
- 7.4 Payment for all other work undertaken by the mediator as contemplated in section 7.2 here above shall be due and payable on presentation of a statement of account.
- 7.5 The parties shall be jointly and severally liable for the payment of the mediator's fees.

8. INDEMNITY

8.1 The Parties are aware that mediation is a process in terms of which the Parties to the mediation, with the assistance of the mediator, identify areas of dispute for purposes of developing possible options, considering alternatives and reaching consensual settlement thereon. Any agreement reached by the Parties, will be the result of what they themselves have found acceptable for the resolution of their dispute.

8.2 The Parties confirm that they will not make a claim of whatsoever kind against the mediator arising from or in connection with (whether directly or indirectly) the mediation and/or any settlement eventually reached by them as a result of any proposals emanating out of their mediation and in addition the Parties hereby indemnify the mediator against any claims of whatsoever nature that may be made against the mediator by a third party for any act or omission in connection with the mediation and/or arising from the mediation.

Dated at _____ this ____ day of _____ 20 __.

[first party to sign here]

Dated at _____ this ____ day of _____ 20 __.

[second party to sign here]

Dated at _____ this ____ day of _____ 20 __.

[mediator to sign here]