

MEDIATION AGREEMENT

PARTIES

[Party A]

and

[Party B]

and

Martin J. Bauwens
50 Buitenkant Street
The Square, Unit 7
Cape Town

1. INTRODUCTION

- 1.1 [Summary of the dispute] ("the dispute").
- 1.2 The parties recognise that it is in their mutual interest to attempt to settle the dispute through mediation.
- 1.3 To this end, the parties agree to refer the dispute to mediation.
- 1.4 Mediation is the process by which a mediator assists all the parties in actual or potential litigation to resolve the dispute between them by facilitating discussions between the parties, assisting them in identifying issues, clarifying priorities, exploring areas of compromise and generating options in an attempt to resolve the dispute.
- 1.5 It is recorded that the main purposes of mediation are:
 - 1.5.1 promote access to justice;
 - 1.5.2 preserve relationships between litigants or potential litigants which may become strained or destroyed by the adversarial nature of litigation;
 - 1.5.3 facilitate an expeditious and cost-effective resolution of a dispute between litigants or potential litigants;

- 1.5.4 assist litigants or potential litigants to determine at an early stage of the litigation or prior to commencement of litigation whether proceeding with or an opposed application is in their best interests or not; and
- 1.5.5 provide litigants or potential litigants with solutions to a dispute, which may be beyond the scope or powers of judicial officers.

2. ADMINISTRATION OF THE MEDIATION

- 2.1 The Parties commit to cooperating with the mediator to assist him with the administration and the preparation of the mediation.
- 2.2 Parties further undertake to deal with any request made to them by the mediator, quickly and constructively.
- 2.3 The mediator is always available to assist the parties with their queries concerning procedural aspects of the dispute and in clarifying issues, if any, arising out of this agreement.

3. MEDIATOR

The mediator appointed by the parties is:

Martin J. Bauwens
50 Buitenkant Street
The Square, Unit 7
Cape Town
martin@bauwens.com

4. MEDIATION FEES & COSTS

- 4.1 The parties agree that the mediator shall raise his fee on the following basis (“the mediation fees”):
 - 4.1.1 R950 per hour for preliminary meetings, discussions with the parties, their representatives and preparation for the mediation.
 - 4.1.2 R1,200 per hour for the mediation session.
 - 1.1.1 R2,000 collapse fee should the dispute have been settled after the mediator has reserved a session date.
- 4.2 The mediation costs are as follows:

4.2.1 Office expenses: R1,200 (flat fee)

4.2.2 Venue fee: R1,900 per day.

4.3 Each party will pay 50% of the mediation fees and costs.

4.4 Payment of the mediation fees and costs, or part thereof, will be made to the mediator on terms to be determined by the mediator and no later than the session date.

4.5 The parties are jointly and severally liable for the mediation fees and costs.

4.6 Should payment not be timely made, the mediator may, at his sole discretion, stop all work on behalf of the parties and withdraw from the mediation.

4.7 Each party will otherwise bear their own costs, as well as the expense of participating in the mediation, including legal fees.

5. PLACE AND TIME

5.1 The mediation session will commence at a time and date which will be determined by the mediator after consultation with the parties.

5.2 The venue for the mediation will be 50 Buitenkant Streer, The Square, Unit 7, Cape Town.

5.3 The mediation session may also be conducted by video conference.

6. PARTICIPANTS

6.1 The parties must attend mediation sessions in person.

6.2 When a juristic person or a firm or a partnership is a party to mediation proceedings, such entity must be represented by an official from that juristic, firm or partnership, who must have full authority to settle the dispute and sign a settlement agreement on behalf of such entity.

6.3 When the state or an organ of state is a party to mediation proceedings, the State or such organ must be represented by an official, duly authorized to represent the State or such organ to conclude a settlement and sign a settlement agreement on behalf of the State or organ of State, and be assisted by the State Attorney.

- 6.4 Each representative signing this agreement agrees to the provisions of this agreement on behalf of the party that he represents, as well as all other persons to be present on that party's behalf at the mediation.
- 6.5 Each signatory, by his signature hereto, warrants that he or she is duly authorised to so bind the party on whose behalf he or she signs this agreement.

7. LAW AND JURISDICTION

This agreement shall be governed by South African law.

8. RULES OF THE PROCEEDINGS

8.1 The mediator

- 8.1.1 The mediator, after consultation with the parties, will be entitled, where appropriate, to call upon the parties to attend a meeting with him, in advance of the mediation proceedings.
- 8.1.2 Before the mediation session, the mediator will read each case summary and all the documents sent to him by the parties or requested by him.
- 8.1.3 The mediator will chair and determine the procedure for the mediation.
- 8.1.4 The mediator will facilitate the drawing up and signature of any settlement agreement.
- 8.1.5 The mediator will not act for any of the parties individually in connection with the dispute in any capacity, either during the currency of this agreement or at any other time thereafter.
- 8.1.6 The parties accept that in relation to the dispute the mediator is not an agent of, or acting in any capacity for, any of the parties.
- 8.1.7 The parties recognise that, to the best of their knowledge, the mediator is able to mediate impartially and independently in the dispute.

8.1.8 The mediator may suspend or terminate the mediation if he feels that the mediation will lead to an unjust or unreasonable result, if he believes that an impasse has been reached, or if he finds that he can no longer effectively perform his role.

8.2 Exchange of information

8.2.1 The parties agree to submit to the mediator a summary of the issues relevant to the dispute, together with any other documents to which they may want to refer in the mediation, by a date to be determined by the mediator, which date will be as soon as reasonably possible after the date of signature of this agreement.

8.2.2 The parties will at the same time furnish one another with the summary and documents submitted by them to the mediator.

8.2.3 Each party may, in addition, should it so choose, send to the mediator, such further documentation as it might wish to disclose in confidence to the mediator (but not to any other party), clearly recording in writing, in that event, that such documentation is confidential to the mediator.

8.3 Mediation session

8.3.1 The mediation session will take place at the arranged place and time set out in paragraph 5 above.

8.3.2 No recording or transcript of the hearing will be made.

8.4 Settlement Agreement

8.4.1 Any settlement reached in the mediation will not be legally binding until it has been reduced to writing and signed by, or on behalf of, the parties.

8.4.2 The parties agree not to oppose any application for an order of court lodged for the purposes of enforcing the settlement.

8.5 Termination

The mediation will terminate when:

8.5.1 the mediator, at his discretion, withdraws from the mediation; or

8.5.2 a written settlement agreement is concluded.

8.6 Failure to participate

Should any party fail to cooperate with the mediator with the result that, in the view of the mediator, such default or omission prejudices the mediation process, then the mediator may decide that the party in question will forfeit any fee it has paid towards the mediation process.

8.7 Adjournment

The mediator may adjourn the mediation in order to allow the parties to consider specific proposals, get further information or for any other reason which the mediator considers helpful in furthering the mediation process. The mediation will, in such event, reconvene on a date and time determined by the mediator.

8.8 Confidentiality

8.8.1 Every person involved in the mediation will keep confidential and not use for any collateral or ulterior purpose any information (whether given orally, in writing or otherwise) arising out of, or in connection with, the mediation, including the fact of any settlement and its terms, save for the fact that the mediation is to take place or has taken place.

8.8.2 All information arising out of or in connection with the mediation will be without prejudice, privileged and not admissible as evidence or disclosable in any pending or subsequent litigation or other proceedings whatsoever. This restriction will not apply to any information which would, notwithstanding the mediation, in any event, have been admissible or disclosable in any such proceedings.

8.8.3 The mediator will not disclose to any other party any information or document given to him by a party in confidence.

8.8.4 Paragraphs 8.8.1 to 8.8.3 does not apply if, and to the extent that:

8.8.4.1 The party or parties (as the case might be) consent to the disclosure; or,

8.8.4.2 the mediator is required in law to make the disclosure; or,

8.8.4.3 the mediator reasonably considers that there is a serious risk of significant harm to the life or safety of any person if the information in question is not disclosed; or,

8.8.4.4 the mediator reasonably considers that there is a serious risk of being subjected to criminal proceedings unless the information in question is disclosed.

8.8.5 None of the parties to this agreement will call the mediator as a witness in any litigation or other proceedings whatsoever arising from, or in connection with, the matters in issue in the mediation.

8.8.6 These provisions will not preclude a party from using a written settlement agreement, once signed, to enforce its rights arising from that settlement agreement.

8.9 Exclusion of liability

The mediator shall not be liable to the parties for any act or omission in connection with the services provided by him in, or in relation to, the mediation unless the act or omission is shown to have been in bad faith.

9. **PRESCRIPTION**

The parties understand that the process of mediation shall not suspend, stay or interrupt prescription of any of the parties' claim and the onus rests on each party to take steps to interrupt such prescription for the duration of the mediation.

10. **BREACH OF THE AGREEMENT**

Any party breaching the agreement shall be liable for and shall indemnify the non-breaching party, as well as the mediator, for any loss, including all costs, expenses, liability and fees (including attorney's fees) which may be incurred as a result of such breach.

11. **NON-VARIATION AND WAIVER**

The parties agree that any amendment or variation or waiver of any terms of this agreement must in writing and signed by the parties, including the mediator.

SIGNED AT _____ ON THE ____ DAY OF _____ 20____

For and on behalf of:

PARTY A

SIGNED AT _____ ON THE ____ DAY OF _____ 20____

For and on behalf of:

PARTY B

SIGNED AT _____ ON THE ____ DAY OF _____ 20____

THE MEDIATOR

Mediation Agreement