



BERNARD BEKINK (sole proprietor) B BEKINK & ASSOCIATES
Prokureurs, Notarisse, Transportbesorgers, Boedelberedderaars, Mediators & Arbiters
Attorneys, Notaries, Conveyancers, Administrator of Estates, Expert mediators & arbiters



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***National Government of South Africa - Central Supplier Database (CSD) Registration Number: MAAA0546773**

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B BEKINK & ASSOCIATES (BB&A): MODEL MEDIATION
AGREEMENT

Between:

Party A

[Insert Full Name]



[Insert Address]

(“Party A”)

and

Party B

[Insert Full Name]

[Insert Address]

(“Party B”)

(Collectively, “the Parties”)



and

The Mediator

[Insert Full Name]

PROF. DR. BERNARD BEKINK

[Insert Address or Institution Affiliation]

BB&A ATTORNEYS PRETORIA

882 CROTSS STREET, RIETFontein, Pretoria, Gauteng, 0084

C/O 23 Avenue and Crots Street Rietfontein

AFSA Mediation and Arbitration Panel Member

("the Mediator")

1. Purpose of Mediation

The Parties hereby agree to resolve, or in good faith attempt to resolve, the dispute arising out of or in connection with:

[insert brief description of the dispute or the case number/matter enrolled before Court] _____

through a process of mediation administered by: _____

_____ (

hereafter the Mediation Organisation (MO).



The mediation shall be conducted in accordance with: [state the applicable Mediation Rules] _____

_____, as in force at the time of signing this Agreement, which Rules are deemed incorporated herein by reference.

The Parties acknowledge that:

- 1.1. Mediation is a confidential, voluntary, and facilitative process in which a neutral third party (the Mediator) assists them in exploring the resolution of the/their dispute;
- 1.2. The objective of the mediation is to seek a mutually acceptable settlement of the dispute without resorting to further adversarial proceedings;
- 1.3. This Agreement serves as the procedural and contractual foundation upon which the mediation will proceed, and shall govern the conduct of the Parties and the Mediator throughout the process;
- 1.4. The mediation will be conducted under the auspices of the MO as the administering institution, which shall coordinate the process and may provide facilities, case management services, and procedural oversight as necessary;
- 1.5. The seat of the mediation shall be a suitable office of the MO or the Mediator in PRETORIA, unless the Parties and the Mediator agree to conduct the mediation remotely via the MO's secure online platform; and
- 1.6. Nothing in this Agreement shall be construed as obliging the Parties to reach a settlement, but all Parties undertake to participate in the process in good faith and with the intention of exploring all reasonable prospects of resolution.

2. Applicable Rules and Administration

- 2.1. The mediation shall be conducted in accordance with the MO Mediation Rules, as applicable to court-annexed mediation proceedings, including any supplementary guidelines issued by the MO in relation to matters referred from the courts. The Rules in effect on the date of signature of this Agreement shall govern the procedure, unless otherwise agreed in writing by the Parties and accepted by the MO.
- 2.2. The seat of the mediation shall be Pretoria, South Africa, under the administration of the MO. The Parties may, by mutual agreement and with the consent of the Mediator, elect to conduct the mediation in whole or in part via the MO's secure online mediation platform, with the online format deemed to have the same legal and procedural status as in-person mediation for all purposes under this Agreement and the MO's Mediation Rules.



3. Appointment and Role of the Mediator

- 3.1. The Parties hereby jointly appoint Prof. Dr. Bernard Bekink as the Mediator to assist them in resolving the dispute through a facilitative and non-binding mediation process. The Parties confirm that the Mediator has the requisite expertise, experience, and standing to conduct the mediation under the auspices of the MO.
- 3.2. The Mediator accepts the appointment and undertakes to act at all times in accordance with the principles of independence, impartiality, neutrality, and confidentiality, and to conduct the mediation in a manner that is fair, efficient, and consistent with the MO's Mediation Rules and the MO's Code of Conduct on Mediation.
- 3.3. The Mediator further declares that there are no known conflicts of interest or circumstances that may give rise to justifiable doubts as to their independence or impartiality and commits to immediately disclose any such circumstances should they arise during the course of the mediation.
- 3.4. The Mediator's acceptance of the appointment, along with a signed Declaration of Independence and Impartiality and confirmation of adherence to the MO's Code of Conduct on Mediation, attached hereto as **Annexures A and B**, respectively.

4. Authority and Representation

Each Party confirms that it shall be represented in the mediation by one or more individuals who possess full authority to negotiate and conclude a settlement on behalf of that Party, without the need for further consultation or approval. Where full authority is not immediately available, such Party undertakes to ensure that such authority can be obtained without undue delay, and in a manner that does not frustrate the mediation process. The Parties acknowledge that the effectiveness of the mediation is dependent upon the presence and good faith participation of duly authorised representatives throughout the process.

5. Confidentiality

The mediation is private and confidential. All persons attending agree to be bound by the confidentiality obligations set out in **Annexure C**.

6. Costs and Fees

- 6.1. The administration fee charged by the MO for the facilitation and management of the mediation shall be payable by the Party initiating the mediation, unless otherwise agreed in writing by the Parties and approved by the MO.



- 6.2. The Mediator's professional fees and any reasonable expenses incurred by the Mediator in the conduct of the mediation shall be shared equally between the Parties (50/50), unless an alternative apportionment is agreed in writing and communicated to the MO in advance of the commencement of the mediation.
- 6.3. Each Party shall bear ALL its own internal costs, including but not limited to legal representation, expert advice, travel expenses, and document preparation, unless otherwise agreed in the terms of any subsequent settlement.
- 6.4. The mediation shall not proceed unless and until the MO confirms that it has received the administration fee and each Party's share of the Mediator's fee as contemplated in this clause.

7. Settlement and Outcome

- 7.1. In the event that the Parties reach a resolution of the dispute through mediation, the terms of such resolution shall be recorded in a written settlement agreement, duly signed by or on behalf of each Party. The Parties may, by mutual consent, submit the settlement agreement to a relevant court for the purpose of making it an order of court, in accordance with the applicable rules governing court-annexed mediation.
- 7.2. Where no full or partial settlement is reached, or if the mediation is otherwise terminated in accordance with this Agreement, the Mediator shall provide written confirmation to the MO of the outcome of the mediation, stating either:
- that a settlement was achieved;
 - that a settlement was not achieved; or
 - that the mediation was concluded without agreement on all issues, without disclosing any confidential information or the content of the proceedings.
- 7.3. The Parties acknowledge that any such confirmation by the Mediator is procedural in nature and does not affect the confidentiality protections afforded to the substance of the mediation process.

8. Termination of the Mediation

The mediation process governed by this Agreement may be terminated in any of the following circumstances:

- 8.1. By written agreement of the Parties, jointly confirming their intention to withdraw from the mediation process and terminate further proceedings;
- 8.2. By the Mediator, acting in his sole discretion and after appropriate consultation with the Parties, where the Mediator determines that:
- continued efforts are unlikely to resolve the dispute;



- a Party is not participating in good faith or in accordance with this Agreement; or
- circumstances have arisen that make it inappropriate or impractical to continue the mediation;

8.3. Upon the conclusion and signing of a written settlement agreement by or on behalf of the Parties, whether in full or in part resolution of the issues in dispute.

8.4. In any event, the Mediator shall promptly notify the MO writing of the termination of the mediation and indicate whether the matter was resolved, partially resolved, or unresolved, without disclosing any confidential content of the discussions.

9. Governing Law

This Mediation Agreement, and the mediation conducted in terms hereof, shall be governed by the laws of the Republic of South Africa, unless the Parties expressly agree in writing to the application of the law of another specific jurisdiction. Any such agreement shall be recorded in writing and form part of this Agreement.

10. Entire Agreement

This Agreement, including all annexures attached hereto, constitutes the entire understanding and agreement between the Parties with respect to the mediation process. It supersedes all prior negotiations, communications, agreements, or understandings, whether oral or written, relating to the subject matter herein. No amendment or modification of this Agreement shall be valid or binding unless made in writing and signed by all Parties.

11. Signatures

Signed at _____ on this _____ day of _____, 20_____

Party A:

Signature: _____

Name: _____

Capacity: _____



Party B:

Signature: _____

Name: _____

Capacity: _____

Mediator:

Signature: _____

Name: _____



Annexure A: Mediator's Declaration of Independence and Impartiality

I, BERNARD BEKINK, hereby declare that:

1. I am independent and impartial with respect to all Parties involved and the subject matter of the dispute submitted for mediation under this Agreement.
2. I have made full disclosure of any past, present, or potential circumstances, relationships, or interests that may reasonably give rise to justifiable doubts regarding my independence or impartiality. I undertake to disclose promptly any such circumstances should they arise during the course of the mediation.
3. I shall conduct the mediation proceedings with the utmost fairness, neutrality, and procedural integrity, in accordance with the applicable rules and ethical standards, including the MO's **Code of Conduct on Mediation**.

Signed: _____

(The Mediator: BERNARD BEKINK)

Date: _____



Annexure B: Mediator's Confirmation of Adherence to the MO's Code of Conduct on Mediation

I, BERNARD BEKINK, hereby confirm that I have read, understood, and undertake to adhere strictly to the MO's **Code of Conduct on Mediation**. I commit to conducting the mediation in accordance with its ethical principles and professional standards, ensuring fairness, impartiality, confidentiality, and respect for all Parties throughout the mediation process.

Signed: _____

(The Mediator: BERNARD BEKINK)

Date: _____



Annexure C: Confidentiality Undertaking

Each Party, including their respective representatives, agents, and the Mediator, hereby agree and undertake as follows:

1. To maintain the strict confidentiality of all information, whether communicated orally, in writing, or by any other means, disclosed during the mediation process, except where disclosure is required by law or is otherwise expressly agreed in writing by all Parties.
2. Not to rely upon, submit, or introduce into any judicial, arbitral, or other dispute resolution proceeding any documents, communications, statements, admissions, or offers made during the mediation, whether written or oral, for any purpose.
3. Not to subpoena, compel, or require the Mediator to provide testimony, produce records, notes, or any other documents or materials arising from or related to the mediation proceedings in any court, tribunal, or arbitration, except where such disclosure is mandated by applicable law and no other means of obtaining such evidence exist.

Acknowledged and agreed:

Party A: _____

Party B: _____

Mediator: _____



Vennote/Partners: Dr. Bernard Bekink (sole practitioner) BLC, LLB, LLM (Fundamental Rights and Constitutional Litigation), LLD (Constitutional and Local Government Law) (Pret); AFSA panellist and IBA Mediator and Arbiter comsmittee member. In association with: Dawie Beyers Attorneys (General Litigation); Dr. Llewelyn G Curlewis (Criminal Law and Procedure consultant); Dr. Birgit Kuschke (Contract & Insurance law and notarial matters); Mr. Paul Du Plessis attorneys (medical negligence claims) and Mr. Philip Botha at Weyer attorneys (Conveyancing and Administration of Estates).