

AGREEMENT TO MEDIATE

Party A

Party B

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

1. PARTICULARS OF PARTY A

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

2. PARTICULARS OF PARTY B

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

3. MEDIATOR

The parties hereby agree to appoint the undermentioned mediator:

Name and Surname:	Eugene Opperman from Oppermans Inc Attorneys
Business address:	83 Miller Street, Gordons Bay, 7150
Telephone:	021-2000470 (9 lines)
Email:	eugene@oppermansinc.co.za

4. MEDIATOR FEES

4.1 The Parties 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 A deposit of _____ 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 Parties.

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

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

4.5 The Parties 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 _____, _____
2022 at _____.

5.2 The mediation will be in person at the office of Oppermans Inc. Attorneys, 83 Miller Street, Gordons Bay, but may be changed by agreement between the Parties and the mediator.

6. DURATION OF MEDIATION

The Parties agree that the anticipated duration of the mediation is approximately 2 hours. If more time is needed, it will be scheduled by agreement between the parties.

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 Parties understand that it is for the parties, 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 Parties understand that mediation is an agreement reaching process in which the mediator assist parties 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 Parties.

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

8.4 The Parties understand that the mediator's objective is to facilitate the Parties themselves reaching their most constructive and fairest agreement. The Parties also understand that the

mediator is obliged to work on behalf of each party equally, including the dependent children, and that the mediator cannot render individual legal advice to any party and will not render therapy within the mediation.

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

8.6 The Parties 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 Parties understand that the mediator must remain impartial throughout and after the mediation process. The mediator shall therefore not champion the interests of any party 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 Parties legal representatives at a party's request only.

9.3 The mediator may communicate separately with an individual mediating party; in which case such discussions shall be confidential between the mediator and the individual mediating party 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 Parties 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 Parties;

d) assist the Parties 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 Parties 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 Parties in relation to the disputed Issues.

11. BEFORE THE MEDIATION

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

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

11.3 The Parties 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 Parties, how the Mediation is to be conducted.

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

12.3 The Parties 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 Parties or the Mediator from taking a 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 Parties.

13. CONFIDENTIALITY

13.1 During and before the Mediation, the Mediator may speak to the Parties separately in order to improve the Mediator's understanding of each Party's views and to prepare for the Mediation. Information given to the Mediator during such separate talks will be confidential unless the Party 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 Party 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 Parties.

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 Parties 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 Party 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.

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 Parties;

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 Parties;

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

14. SETTLEMENT

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.

15. ENDING THE MEDIATION

The Mediator or either of the Parties, 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 _____ 2022

WITNESS 1

WITNESS 2

PARTY A:

SIGNED AT _____ ON _____ OF _____ 2022

PARTY A:

_____ WITNESS 1

_____ WITNESS 2