**CONFLICT DYNAMICS**

MODEL

AGREEMENT TO MEDIATE

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THIS AGREEMENT dated

IS MADE BETWEEN

**Party A**

**Party B**

(together referred to as ‘**the Parties**’)

**The Mediator** (a term which includes any agreed **Mediator Observer**)

c/o Conflict Dynamics, 11 Alice Lane, 8th Floor, Sandton Johannesburg, South Africa

and

**Conflict Dynamics** of 11 Alice Lane, 8th Floor, Sandton Johannesburg, South Africa

(together **‘the Mediation**’ scheduled for the date of XXXXX)

IT IS AGREED by those signing this Agreement THAT:

**The Mediation**

1. The Parties agree to attempt in good faith to settle their dispute during the mediation. The Mediator agrees to conduct and the Parties to participate in the mediation in accordance with this Agreement to Mediate and consistent with the Conflict Dynamics Guide to Mediation and the Dispute Settlement Accreditation Council (DiSAC) Code of Conduct for Third Party Neutrals as published on Conflict Dynamics’s website as at the date of this Agreement.
2. The mediation will begin, and the terms of this Agreement will apply from the moment that the Mediator first communicates with either of the Parties and will continue until the date agreed by the Mediator and the Parties or determined by the Mediator.
3. The mediation may take place in person, online or any combination of the aforementioned as agreed by the Parties and the Mediator.

**Online Mediations**

1. The Parties agree that for the purposes of the mediation the Mediator will be the host of any video conferencing software used, unless otherwise agreed by all Parties.

**Authority and mandate**

1. The person signing this Agreement on behalf of each Party warrants having authority and a mandate to bind that Party to observe the terms of this Agreement, to participate in this mediation, and to authorize the terms of any settlement.

**Confidentiality and without prejudice status**

1. Each Party shall ensure that mediation participants attending on their behalf are informed and agree to the confidentiality provisions set out in this section.
2. Every person involved in the mediation:
	1. will keep confidential all information arising out of or in connection with the mediation, including but not limited to communications relating to the set-up and scheduling of the mediation, the discussions had leading up to and at the mediation, and terms of any settlement, unless otherwise agreed by the Parties in writing but not including the fact that the mediation is to take place or has taken place or where disclosure is required by law, to prevent physical harm to self or to others, or to implement or to enforce terms of settlement or to notify their insurers, insurance brokers and/or accountants;
	2. agrees that all such information passing between the Parties, the Mediator and/or Conflict Dynamics, however communicated, is 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 process, except where otherwise disclosable in law;
	3. will not make any attempt to, or make any audio or video recording of any part of the mediation; and
	4. will ensure that where the mediation or a portion thereof is taking place using video conferencing software or other remote means of communication, the only person(s) present in the room where the computer, phone or other communication device is located will be those persons notified in writing as attending to the Mediator and any and all other Party or Parties.
3. Where a Party privately discloses to the Mediator or Conflict Dynamics any information in confidence before, during or after the mediation:
	1. The Mediator or Conflict Dynamics will not disclose that information to any other Party or person without the consent of the Party disclosing it, except under the following circumstances:
		1. the Mediator or any party or their representative is required by law to make disclosure;
		2. 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
		3. the Mediator reasonably considers that there is a serious risk of being personally subject to criminal proceedings unless the information in question is disclosed.
	2. The Mediator may disclose such information to Conflict Dynamics provided that such disclosure is made by the Mediator and received by Conflict Dynamics in confidence.

**Settlement formalities**

1. No terms of settlement reached at the mediation will be legally binding until set out in writing and agreed to either in writing (including by email) or by ink or electronic signature, by or on behalf of each of the Parties.

**Fees and costs of the Mediation**

1. The Parties will be responsible for the fees and expenses of Conflict Dynamics and the Mediator (‘the Mediation Fees’) in accordance with Conflict Dynamics’s email confirming the mediation (including any provision for additional hours if the mediation process extends beyond the allocated hours).
2. Unless otherwise agreed by the Parties and Conflict Dynamics in writing, each Party agrees to share the Mediation Fees equally and also to bear its own legal and other costs and expenses of preparing for and attending the mediation (‘each Party’s Legal Costs’). However, each Party further agrees that any court or tribunal may treat both the Mediation Fees and each Party’s Legal Costs as costs in the case in relation to any litigation or arbitration where that court or tribunal has power to assess or make orders as to costs, whether or not the mediation results in settlement of their dispute.

**Liability of Conflict Dynamics and the Mediator**

1. Neither the Mediator nor Conflict Dynamics shall be liable to the Parties for any act or omission in relation to the mediation, including the use and operation of the video conferencing platform, unless the act or omission is proved to have been fraudulent or involved willful misconduct.
2. The Parties understand that neither the Mediator nor Conflict Dynamics give legal advice and agree that they will not make any claim against the Mediator or Conflict Dynamics in connection with this mediation. The Parties will not make an application to call the Mediator or any employee or consultant of Conflict Dynamics, as a witness, nor require them to produce in evidence any records or notes relating to the mediation, in any litigation, arbitration or other process arising out of or in connection with their dispute and the mediation; nor will the Mediator nor any Conflict Dynamics employee or consultant agree to act as a witness, expert, arbitrator or consultant in any such process. If any Party does make such an application (as listed above), that Party will fully indemnify the Mediator, Conflict Dynamics or the employee or consultant of Conflict Dynamics in respect of any costs any of them incur in resisting and/or responding to such an application, including reimbursement at the Mediator’s standard hourly rate for the Mediator’s time spent in resisting and/or responding to such an application.

**Law and Jurisdiction**

1. This Agreement is governed by the law of South Africa and the courts of South Africa shall have exclusive jurisdiction to decide any matters arising out of or in connection with this Agreement and the mediation.
2. The referral of the dispute to the mediation does not affect any rights that exist under the South African Constitution, and if their dispute does not settle through the mediation, the Parties’ right to a fair trial remains unaffected.

**Changes to this Agreement**

1. Any changes to this Agreement must be agreed in writing by the Parties, Conflict Dynamics and the Mediator.

**Signed**

Party A .............................................................................................................................................................

(Sign and Print Name)

Party B .............................................................................................................................................................

(Sign and Print Name)

Mediator .............................................................................................................................................................

Conflict Dynamics

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