**CONFLICT DYNAMICS**

MODEL

WORKPLACE MEDIATION

AGREEMENT TO MEDIATE

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**WORKPLACE**

THIS AGREEMENT dated

IS MADE BETWEEN

**Party A**

**Party B**

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

**The Employer**

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

c/o Conflict Dynamics, 1 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)

**The Mediation**

1. The Parties wish to have a confidential discussion facilitated by the Mediator regarding their working relationships and agree to participate in this process in good faith. The Mediator agrees to conduct the process and the Parties agree to participate in the process in accordance with this Agreement and consistent Conflict Dynamics Guide to Workplace 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 Mediator will act as a facilitator of discussion and engagement between the Parties. The Mediator may meet with the Parties separately in order to develop their understanding of each Party’s views, and the Mediator will determine the procedure for and will chair any joint meetings between the Parties. The Mediator will not make or issue any recommendations, decisions or findings.
3. 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.
4. The Mediation may take place in person, online, or any combination of the aforementioned as agreed by the Parties and the Mediator.

**Authority**

1. The person signing this Agreement on behalf of each Party warrants having authority to bind that Party to observe the terms of this Agreement.

**Confidentiality and without prejudice status**

1. Each Party shall ensure that 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 any agreed outcomes, 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 terms of an agreement made pursuant to the Mediation;
	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 formal process including any internal complaint or grievance 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.
	5. Where a Party privately discloses to the Mediator or Conflict Dynamics any information in confidence before, during or after the Mediation, 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.
	6. The Parties agree, however, that 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.

**Agreed Outcomes**

1. Any agreed outcomes, including when a review meeting, if any, will take place, future actions agreed, and matters that have not been resolved, or that no agreement has been reached, may be recorded in writing. The Mediator will assist the parties in the preparation of such a document.
2. With the parties’ permission and subject to the confidentiality and without prejudice clauses of this agreement the mediator may disclose agreed outcomes to the Employer.

**Fees and costs**

1. The Employer will be responsible for the fees and expenses of Conflict Dynamics and the Mediator (‘the Mediation Fees’) in accordance with Conflict Dynamics’s Terms and Conditions of Business current at the date of this Agreement (including any provision for additional hours if the Mediation process extends beyond the allocated hours).

**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 wilful 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 formal 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, the Employer, Conflict Dynamics and the Mediator.

**Signed**

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

(Sign and Print Name)

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

(Sign and Print Name)

Employer .............................................................................................................................................................

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

Conflict Dynamics

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