

## MEDIATION AGREEMENT

This is an agreement entered into between the Parties.

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Herein referred to as **“THE REFERRING PARTY”**

And

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Herein referred to as **“THE RESPONDING PARTY”**

Herein after together referred to as the **“PARTIES”**

And

### **JUST - MEDIATE (PTY) LTD**

Herein referred to as **“THE APPOINTED MEDIATORS”**

**REPRESENTED BY THE APPOINTED MEDIATOR**

**JONATHAN PANGAS**

With the intent of resolving the current issue(s)

### 1. **GENERAL PROVISIONS:**

- 1.1. This agreement serves to state the roles, duties and responsibilities of each Party regarding the mediation process.



- 1.2. In an endeavour to settle outstanding disputes between them amicably and believing that in so doing they act in the best interests of themselves and their child/ren, the Parties agreed<sup>1</sup> to submit their dispute to mediation.
- 1.3. The Parties have agreed to come to mediation in order to settle the issues with regard to the:
- 1.4.  Divorce or Post Divorce
- 1.5.  Parenting Plan
- 1.6.  Maintenance
- 1.7.  Family Issues
- 1.8.  Workplace Mediation
- 1.9.  Civil Mediation
- 1.10.  Restorative Justice
- 1.11.  Other (Please Specify) \_\_\_\_\_

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<sup>1</sup> In terms of the Children’s Act. Mediation is not voluntary  
 21(3)(a) If there is a dispute between the biological father referred to in subsection (1) and the biological mother of a child with regard to the fulfilment by that father of the conditions set out in subsection (1)(a) or (b), the matter **must** be referred for mediation to a family advocate, social worker, social service professional or other suitably qualified person.

33(5) In preparing a parenting plan as contemplated in subsection (2) the Parties **must** seek-  
 (a) the assistance of a family advocate, social worker or psychologist; or  
 (b) mediation through a social worker or other suitably qualified person.



2. The Parties understand that mediation is an **agreement – reaching process** in which the appointed mediator assists Parties to reach an agreement in a collaborative, consensual and informed manner.
3. **THE MEDIATOR:**
  - 3.1. The service provider records:
  - 3.2. He is a National and International accredited mediator duly accredited with ADR International<sup>2</sup> and SAAM<sup>3</sup> a member organization of NABFAM.<sup>4</sup>and subscribe by the code of ethics of SAAM.
  - 3.3. He has had no prior professional or personal relationship with either of the Parties.
  - 3.4. He has no interest whatsoever directly or indirectly, personal, or otherwise in the outcome of the mediation or the underlying dispute.
  - 3.5. He does not have the power or authority to render a binding decision, nor will he oblige either Party to settle the dispute.
  - 3.6. He may give legal information and make use of evaluative mediation processes but does not provide legal advice.
  - 3.7. He will at all times, act with the utmost good faith and impartially.
4. **THE PARTIES:**
  - 4.1. The Parties undertake in good faith to:

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<sup>2</sup> <https://adr-register.com/about-us>

<sup>3</sup> <https://www.saam.org.za/constitution-2/>

<sup>4</sup> <http://nabfam.co.za/wp-content/uploads/2020/07/NNS-document-17.07.2020-JV.pdf>

- 4.1.1. Use their best efforts to find agreement in a spirit of compromise.
- 4.1.2. To treat each other with dignity and respect during mediation; and
- 4.1.3. To make full and proper disclosure to each other of all relevant information including but not limited to their financial affairs.
- 4.1.4. If necessary, the Parties can request the Mediator during the mediation process to explain any aspect they may not understand.
- 4.1.5. To avoid any delay in any action or decision as far as possible.<sup>5</sup>

## 5. **CONFIDENTIALITY**

- 5.1. “Confidentiality” means neither the clients nor the Mediator can share the documentation or the content of mediation discussions with other Parties<sup>6</sup> unless recorded in a settlement agreement signed by the Parties or are otherwise discoverable in terms of the rules of Court, or any other law.
- 5.2. “Privilege” means a rule of evidence allowing the holder of the privilege to refuse to disclose information or provide evidence about a particular subject or to bar such evidence from being disclosed or used in judicial or other proceedings. South African law does not recognise legal privilege between mediators and clients. Mediators may accordingly testify in matters in courts of law.

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<sup>5</sup> 6 (4)(b) In any matter concerning a child a delay in any action or decision to be taken must be avoided as far as possible.

<sup>6</sup> This includes legal representatives

- 5.3. The Parties acknowledge the Mediator is bound to confidentiality but not a privilege.
- 5.4. The Mediator may encourage the Parties to make a full disclosure if, in the opinion of the Mediator, such disclosure may facilitate the resolution of the dispute.
- 5.5. Clients may not leave mediation sessions with notes made during mediation and may not record mediation sessions.
- 5.6. The Mediator records sessions and makes notes to allow for accurate drafting of Agreements.
- 5.7. Clause 5.1. apply to the mediator's notes and recordings.
6. **TERMINATION:**
- 6.1. Either the Mediator or the Parties may at any time terminate mediation on *bona fide* grounds.
- 6.2. In such an event, the provisions of clause 5 (Confidentiality) and 8 (Costs) shall nevertheless apply.
7. **AGREEMENT:**
- 7.1. The Mediator will reduce agreed outcomes to writing, and the Parties will sign the agreement subject to clause 7.2.
- 7.2. The Parties may submit the agreement for comment and legal advice to an attorney of their/his/her choice.

7.3. The agreement, once signed by the Parties, shall become final and binding subject to legislation determining differently. The agreement may also be submitted to Court for incorporation into any Court order subsequently granted.<sup>7</sup>

8. **COSTS:**

8.1. The Parties shall share the mediation cost equally.<sup>8</sup>

Or

Mr/Mrs \_\_\_\_\_ will settle the mediation fees in full.<sup>9</sup>

8.2. The participants shall be jointly and severally liable to the Mediator for the mediation costs in respect of option 1.<sup>10</sup>

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<sup>7</sup> Parenting plans and Rights and responsibility Agreements must be formalised by a Court order or registered with the office of the family advocate. See section 22 and 34.

22 (4) Subject to subsection (6), a parental responsibilities and rights agreement takes effect only if

(a) registered with the family advocate; or

(b) made an order of the High Court, a Divorce Court in a divorce matter or the Children's Court on application by the Parties to the Agreement.

34 (1) (b) A parenting plan must either, subject to subsection (2), be registered with a family advocate or made an order of Court.

<sup>8</sup> The Parties may share the mediation costs on any other percentage they agreed on.

<sup>9</sup> Joint and severally liable does not apply to the second option as only one Party have contracted to pay the fees.

<sup>10</sup> Osborne's Concise Law Dictionary define the term "jointly and severally liable" as "An obligation entered into by two or more persons, so that each is liable severally, and all liable jointly, and a creditor or obligee may sue one or more severally, or all jointly, at his option."

- 8.3. The Terms and Conditions for services, Intake Form, and the Rates Agreement signed by the Parties apply in respect of all fees.
- 8.4. These fees exclude fees which may be charged by a Co-Mediator or other specialist opinion.
9. A non – refundable case registration fee of **R 800** is payable towards the registration of the matter with Just - Mediate.
- 9.1. The non – refundable case registration fee shall be paid into the banking account of Just - Mediate along with the signing of this Agreement. The fee covers (The intake documentation):
- 9.1.1. Completion of the intake forms.
- 9.1.2. Perusal of an existing Court order.
- 9.1.3. Calling the responding Party to arrange for the mediation and Caucus appointments.
- 9.1.4. The case registration fee is payable upfront by the referring Party.
- 9.1.5. Any and all VAT invoices presented by Just – Mediate will be paid by the Parties 24 hours after the invoice has been presented to the Parties.
- 9.1.6. The Parties irrevocably accept that consultations, mediation sessions, venue charges, perusal of documentations, report writing, visitation, and any and all work done by the mediators are payable upfront and before any such commences.

9.1.7. The Parties further agree and understand that an upfront retainer of R \_\_\_\_\_ is required from the paying Party(s) before any work will be considered.

10. **INDEMNITY:**

10.1. The Parties acknowledge that the function of the Mediator is to facilitate an agreement between them regarding their dispute.

10.2. If the Parties reach an agreement, it will be the result of what they have found acceptable to them.

10.3. They accordingly indemnify the Mediator against any claims of whatsoever nature that may be made against him from whatsoever cause arising from the mediation.

11. **DECLARATION OF INTENTION BY THE PARTIES:**

11.1. It is the participant's intention by signing this agreement:

11.2. To try to settle their disputes courteously in the **best interest** of themselves and their children.

11.3. To commit themselves to **mutual co – operation** in resolving the conflicts submitted to mediation.

11.4. To be **fair and reasonable** throughout the process.

11.5. To strive for the **least possible emotional** and **financial upheaval** for all concerned. To make full disclosure to each other regarding all relevant **financial information.**



- 11.6. To **abide by mutually agreed decisions** made during mediation and to carry out these decisions.
12. **FINANCIAL TRANSPARENCY:**
- 12.1. The Parties agree:
- 12.2. Not to transfer, obstruct, conceal or dispose of any assets in any way during the process of mediation. This excludes providing for expenses in the ordinary course of business.
- 12.3. Not to add any further charges under any account for which the Parties are legally responsible, unless mutually agreed upon.
13. **DUTY OF CARE:**
- 13.1. The Parties also understand that the mediators are not required to maintain confidentiality if they have reason to believe that a child, or other family member, or Party to the dispute is said to be, or appears to be at risk of serious harm, and may be in need of protection.
- 13.2. If action is necessary, this will be discussed with both Parties before contact is made with a relevant authoritative and or medical body / agency.
- 13.3. The Parties irrevocably agree that in the event of early termination of the mediation, the above clauses will also apply.
14. **ATTORNEY INVOLVEMENT AND FURTHER MEDIATION:**

- 14.1. The Parties will give due consideration to the preference of engaging attorneys for the purpose of preparing a legally binding agreement based upon the Memorandum of Understanding / Parenting Plan / Settlement Agreement if this is necessary and agreed to by the mediator.
- 14.2. If conflict arises in consultation with the attorney/s either during the legal process or any other phase the Parties will contact the mediators for further mediation.
15. **MEDIATION APPOINTMENTS:**
- 15.1. Mediation appointments are scheduled for **TWO**-hour sessions unless arranged otherwise.
- 15.2. Caucus appointments are scheduled for **ONE**-hour sessions unless arranged otherwise.
- 15.3. The voice of the child consultations will be referred by the mediator to a registered forensic psychologist and or a forensic social worker.
- 15.3.1. The Parties irrevocably agree that they will without any delay co-operate with the appointed forensic professional and by assigning their signature hereto irrevocably concede to the appointed forensic professionals report to be made available to the mediator.
- 15.3.2. The Parties further agree that they will enter into a separate fee agreement with the appointed professional.

- 15.3.3. The Parties further concede that should the mediator at any time be of the opinion that a Party needs to be referred to a psychologists for psychotherapy to assist that Party to deal with its stress levels the other Party will accept such recommendation made by the mediator.
- 15.3.4. The Party being referred for psychotherapy will be liable for its own costs as agreed with the appointed psychologist.
16. **CANCELLATION OF APPOINTMENTS:**
- 16.1. Should either Party be unable to keep a scheduled appointment it is irrevocably agreed by the Parties that they have to inform the other Party and the mediator at least 48 hours in advance.
- 16.2. The Parties accept that a scheduled appointment cancelled by either Party will be charged for at the rate of a two - hour session.
17. We at Just - Mediate believe in online- and cloud-based operations for all client-related handling and operational processes, including intakes, meetings, document review(s).
18. The current developments regarding COVID-19 underline the relevance and urgency of online- and cloud-based operations. Please find attached the ADR Process & procedure requirements for the International certified conflict navigators <https://adr-register.com/about-us/pressreleases/online-cloud-based-operations-covid-19-related-issues>.

19. The Parties by assigning their signature hereto irrevocably confirm and accept that they have read the terms of this agreement and that by assigning their signature hereto freely and willingly concede that they understand and agree to the terms of this Agreement.

Thus done and signed at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

\_\_\_\_\_  
Party 1

Thus done and signed at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

\_\_\_\_\_  
Party 2

Thus done and signed at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

\_\_\_\_\_  
Mediator

