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**MEDIATION PROTOCOL**  
**APPLICABLE IN THE**  
**THE GAUTENG DIVISION**  
**OF THE HIGH COURT**

(MARCH 2025)

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## MEDIATION PROTOCOL FOR THE GAUTENG DIVISION

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### 1. INTRODUCTION

Court-annexed mediation, as contemplated in the *MEDIATION DIRECTIVE OF THE GAUTENG DIVISION* issued by the Judge Present of the Gauteng Division of the High Court ( **the Directive**) will be conducted according to the guidelines set out in this *MEDIATION PROTOCOL FOR THE GAUTENG DIVISION* (**the Protocol**).

### 2. COURT-ANNEXED MEDIATION PROTOCOL

#### 2.1. Purpose & Aim

- 2.1.1. The purpose of this Protocol is to provide a structured standardised yet flexible framework for implementing court-annexed mediation in the Gauteng Division of the High Court (**Gauteng Division**), pursuant to the Directive.
- 2.1.2. This Protocol aims to:
  - 2.1.2.1. Ensure compliance with Rule 41A of the Uniform Rules of Court (**Rules**).
  - 2.1.2.2. Promote the efficient administration of justice in the Gauteng Division whilst also transforming access to justice and the availability of the courts to the litigating public.
  - 2.1.2.3. Promote the use of mediation as an alternative dispute resolution mechanism to alleviate congestion on the court rolls.
  - 2.1.2.4. Enhance access to justice by providing an efficient, cost-effective, and less adversarial method of resolving disputes.
  - 2.1.2.5. Foster a culture of cooperation and mutual respect among litigants.

#### 2.2. Scope of Application

- 2.2.1. This Protocol applies to all civil trials in the Gauteng Division, including but not limited to commercial disputes, delictual claims, family disputes and personal injury claims (including, specifically, all actions where habitual litigants such as the Road Accident Fund (**RAF**) or Gauteng MEC for Health is the defendant).
- 2.2.2. A court directing or encouraging the parties to engage in mediation in a case which is not a trial, may direct the parties to apply this Protocol.
- 2.2.3. This Protocol applies uniformly to both the Pretoria and Johannesburg seats of the Gauteng **Division**).

- 2.2.4. Nothing in the Directive or this Protocol shall detract from the right of the parties to refer their dispute to mediation in accordance with the provisions of Rule 41A, or otherwise by agreement between them, or from a Judge, or a Case Management Judge referred to in Rule 37A, to direct the parties to consider referral of a dispute to mediation as contemplated in Rule 41A(3).

2.3. **Judicial Oversight**

This Protocol is devised to provide an effective mediation service to litigants of the Gauteng High Court which is in alignment with the needs of the Gauteng Division to provide an effective litigation service to the public in the face of a burgeoning caseload and intolerable lead-times for cases, particularly trials, to be heard. To that end, and as contemplated in section 173 of the Constitution, the Judge President shall exercise policy oversight over the manner in which matters are brought before the Division for hearing as well as over the calibre of professional court annexed mediation services and the efficacy of the systems to provide a pool of professional mediators accessible to litigants.

### **3. ADMINISTRATION OF COURT-ANNEXED MEDIATION**

- 3.1. Litigants may refer their dispute to mediation and follow the administrative processes of either:
- 3.1.1. any of the accredited Mediation Service Providers (accredited mediation organisations as defined in paragraph 5.3); or
- 3.1.2. the ADR-PA system (referred to in paragraph 3.2 below);
- in the administration of mediations in accordance with this Protocol.
- 3.2. The stakeholders involved in the Gauteng Mediation collaborative meetings which led to this Protocol have identified the ADR Technology Group (**ADR-TG**) (an external administration software solution service provider) as an independent, viable, online administrator for court-annexed mediation, as contemplated in this Protocol, via its ADR Personal Assistant (**ADR-PA**) system and platform.
- 3.3. In the absence of an agreement between the parties to the contrary, the parties may refer the dispute to mediation via the ADR-PA platform accessible at: <https://adrtechgroup.com/administered-matters/>.
- 3.4. Qualified Mediators who wish to appear on the ADR-PA panel, can register on the centralised database of mediators for court-annexed mediation at <https://gpp.adrdirectory.co.za/>.
- 3.5. The parties acknowledge that an additional statistical report must be delivered to the Judge President for purposes of record keeping and statistics of the Protocol and the metrics of the impact of its implementation in accordance with the content of annexure C, and any

alternative Mediation Service Provider engaged to administer the mediation and/or Mediation Service Providers who intend to self-administer referrals of court-annexed mediations to Qualified Mediators practising under its auspices should accordingly be made aware of and agree to comply with such requirement.

#### **4. INITIATION OF COURT-ANNEXED MEDIATION**

4.1. The process shall be initiated by either an Initial Rule 41A Notice or an Amplified Rule 41A Notice.

##### **4.2. Initial Rule 41A Notice**

4.2.1. Any party who is, as at the date of the issue of the Directive, yet to serve a notice indicating whether such party agrees to or opposes referral of the dispute to mediation in accordance with the provision of Rule 41A(2), shall proceed to do deliver its Notice in terms of Rule 41A (**Initial Rule 41A Notice**) in accordance with the provisions of the Rules.

4.2.2. Parties must properly comply with the provisions of Rule 41A(2) insofar as it concerns the content of the notice, taking into account the nature and purpose of Rule 41A, as well as the Directive and this Protocol. In addition, the Initial Rule 41A Notice must also contain the particulars set out in paragraph 4.3.2 below.

##### **4.3. Subsequent Amplified Rule 41A Notice(s)**

4.3.1. If, as a result of the Directive and implementation of this Protocol, the parties stand to lose their trial date, and notwithstanding the **prior** delivery of Notices in terms of Rule 41A by one or more or all of the parties to the matter, the parties shall be required to file a subsequent amplified Rule 41A Notice (**Amplified Rule 41A Notice**).

4.3.2. The Amplified Rule 41 Notice must stipulate at least the following:

4.3.2.1. The party's preference for administration of the mediation process in accordance with paragraph 3.1 above.

4.3.2.2. The name and relevant details of one or more proposed mediator(s).

4.3.2.3. The facts of the matter it deems are:

4.3.2.3.1. common cause; and

4.3.2.3.2. in dispute.

4.3.2.4. What disputed facts of the matter, if any, might reasonably be resolved by admissions.

4.3.2.5. Whether the need for expert evidence in the matter is reasonably anticipated and, if so:

4.3.2.5.1. What evidence of an expert nature is already available, if any.

- 4.3.2.5.2. The party's position regarding the appointment of a single expert on a given issue, as well as its preferred expert to be appointed, if any.
- 4.3.2.6. Which procedural aspects and timelines applicable to the further conduct of the matter can potentially be addressed and agreed upon.
- 4.3.2.7. The time period within which the adversary party should respond to the Amplified Rule 41A Notice, if not within the default period provided for in the Directive.
- 4.3.2.8. Any other issue of material relevance to a mediation engagement

4.4. **Irregular Notices:**

4.4.1. A generic Rule 41A notice delivered by a party (**the delinquent party**) to another party (**the aggrieved party**), either of its own volition or in response to the receipt of an Initial Rule 41A Notice or an Amplified Rule 41A Notice from the aggrieved party, as the case may be, which simply rejects the referral of the matter to mediation without cogent reasons (specifically and directly applicable to the unique facts of the matter) motivating why:

- 4.4.1.1. the matter cannot be resolved, either in full or partially; and
- 4.4.1.2. none of the other aspects provided for in terms of Rule 41A including:
  - 4.4.1.2.1. the identification and classification of issues in dispute, and
  - 4.4.1.2.2. the procedural aspects and timelines to be applicable to the further conduct of the matter

can be dealt with by way of mediation, is inadequate and constitutes an irregular notice (**irregular notice**).

4.4.2. An aggrieved party who received such an inadequate notice shall be entitled to proceed in accordance with the provisions of Rule 30A. Furthermore, the provisions that relate to delinquent parties, as set out in paragraph 4.6 below, shall be applicable and the aggrieved party shall be entitled to proceed accordingly.

4.5. **Time Periods**

4.5.1. Mediations initiated by an Initial Rule 41A Notice: The time periods provided for in Rule 41A shall apply in respect of mediations initiated pursuant to the service of an Initial Rule 41A Notice. The parties are however encouraged to initiate mediation as soon as possible, as early intervention improves the likelihood of a successful outcome.

4.5.2. Mediations initiated by an Amplified Rule 41A Notice: Once the first of any one of the parties to a matter (**the initiating party**) has delivered an Amplified Rule 41A Notice, the other party/ies (**the responding party/ies**) is/are required to respond thereto and deliver its/their Amplified Rule 41A Notice within the time period stipulated in the initiating party's Amplified Rule 41A Notice. The time period to respond stipulated in an

Amplified Rule 41A Notice may be no less than 5 (five) court days/ the default period as per the Directive and no more than 15 (fifteen) court days.

4.5.3. In addition to the particulars set out in paragraph 4.3.2, the responding Amplified Rule 41A Notice must also indicate:

4.5.3.1. The responding party's acceptance or rejection (with valid reasons) of the mediator(s) proposed by the initiating party;

4.5.3.2. If all of the initiating party's proposed mediators are rejected by the responding party, with valid reasons, the responding party must propose three alternative mediators, from three different MSP's, which the responding party will irrevocably accept to be appointed as mediator, for the initiating party to choose from.

4.5.3.3. The initiating party shall be entitled to accept any of the of the alternative mediators proposed in the Responding Amplified Rule 41A, in which event such mediator shall be appointed within 5 (five) court days from delivery of responding Amplified Rule 41A Notice failing which, the alternative mediators shall be deemed to have been rejected.

4.5.3.4. If both the initiating party and responding party/ies reject the other's proposed mediators, any one of the parties may, upon expiration of the 5 (five) day period referred to in paragraph 4.5.3.3 above, request the Umpire (as provided for in paragraph **Error! Reference source not found.** above) to appoint a mediator *mutatis mutandis* in accordance with the provisions of paragraph 5.2.3 below.

4.5.4. Once a mediator has been appointed, either by agreement between the parties or by the Umpire, the parties shall:

4.5.4.1. within 5 (five) court days be obliged to:

4.5.4.1.1. Contact the approved Mediation Service Provider agreed to in accordance with paragraph 3.1; or

4.5.4.1.2. Initiate the mediation process via the ADR-PA platform by accessing it at <https://adrtechgroup.com/administered-matters/> and submitting the particulars relevant to the matter in question; or

4.5.4.1.3. Contact the mediator directly and confirm his/her appointment and make logistical arrangements for the mediation to be convened.

4.5.4.2. By no later than 5 (five) court days from the mediator's acceptance of his/her appointment as such, proceed to conclude the joint minute and enter into an Agreement to Mediate in accordance with Rules 41A(4)(a) and (b) respectively.

4.5.4.3. Proceed to convene and conclude the mediation in accordance with the provisions and timelines stipulated in Rule 41A or as otherwise provided for in this Protocol.

4.5.5. The ordinary timelines and provisions of Rule 41A shall apply further or to any aspect

not expressly dealt with in this Protocol.

4.5.6. In amplification of Rule 41A(4)(d), unless the parties expressly agree otherwise in writing or a court has authorised a longer period, mediations are to be concluded within 30 (thirty) days after the signature of the joint minute contemplated in rule 41A(4)(a) referred to in paragraph 4.5.4.2.

4.5.7. For the duration of the process of mediation, the time limits prescribed by the Rules for the delivery of pleadings and notices and the filing of affidavit or the taking of any step, save for proceedings which relate to the mediation as contemplated in paragraph 4.6 below, shall be suspended for every party to the dispute from the date of signature of the Rule 41A(4)(a) minute to the time of conclusion of the mediation<sup>i</sup>.

4.5.8. In the absence of the 30-day period being extended by written agreement between the parties or a court authorising a longer period, or on the expiry of the longer period agreed to or authorised by the court, the mediation process shall be deemed complete for the purposes of suspension of time-limits.

4.6. **Delinquent Parties**

4.6.1. If a party fails to reply to an Initial Rule 41A Notice or an Amplified Rule 41A Notice, as the case may be, timeously or at all or unreasonably fails to cooperate in the appointment of a mediator or the furtherance of the mediation process in accordance with the Directive and this Protocol, such party is classified as a delinquent party (**delinquent party**).

4.6.2. The other party (**aggrieved party**) may, when dealing with a delinquent party, seek a compelling order in the Special Interlocutory Court (**SIC**) directing the delinquent party to cooperate in accordance with the provisions of this Protocol within such time as the presiding judge considers appropriate in the circumstances.

4.6.3. Should the delinquent party fail to comply with the compelling order contemplated in paragraph 4.6.2 within the time provided for, the aggrieved party shall:

4.6.3.1. be excused from having not subjected the matter to mediation;

4.6.3.2. be entitled to enrol the matter on the Default Judgment roll and seek an order declaring the delinquent party in contempt of the compelling order and further seek a striking out of the claim or defence, as the case may be, and seek substantive relief on the merits; and

4.6.3.3. may seek an order for the costs of compliance with this Protocol, and the content of paragraph 4.6 in particular, on a punitive scale.

4.6.4. If a party fails to attend a mediation session that has been scheduled, or does not cancel a scheduled mediation session, in writing, at least 48 (forty-eight) hours before the scheduled commencement time of such mediation session, such party shall similarly be



considered a delinquent party and shall be liable for the wasted costs occasioned by such failure to attend or late cancellation notice, as the case may be.

**4.7. Enforcement Mechanisms**

Punitive measures shall be implemented against delinquent parties and/or parties who are obstructive and refuse to participate in mediation in accordance with the Directive and this Protocol or deliberately frustrate or unreasonably delay the process.

**4.7.1. Non-participation penalties**

4.7.1.1. Parties refusing to mediate without reasonable cause shall face adverse cost orders under Rule 41A(9) to discourage non-compliance.

4.7.1.2. Judges may impose additional punitive cost orders for egregious non-compliance with the Directive and this Protocol.

**4.7.2. Non-compliance result**

4.7.2.1. To discourage non-compliance, the Directive clearly stipulates that no new trial dates shall be issued unless the parties present a Mediator's Report.

4.7.2.2. Non-compliant parties shall be classified as delinquent parties and the aggrieved party shall be entitled to proceed in accordance with the provisions of paragraph 4.6 above.

4.7.2.3. Legal Practitioners and/or other duly authorised representatives of a litigating party (and representatives of a habitual litigant such as the RAF in particular) who, in the representation of their client, frustrate an adversary party from compliance with the provisions of the Directive and this Protocol, either deliberately or by unreasonably failing to respond to the adversary party in accordance with the provisions of and within the timelines provided for in this Protocol, are considered to be acting in breach of their duties as officers of the court and, as such, be guilty of professional misconduct.

4.7.2.3.1. The court may consider granting a costs order (on a punitive scale) against the legal practitioner in question *de bonis propriis* or order that the legal practitioner shall not be entitled to recover fees from his/her client in relation to the matter in question.

4.7.2.3.2. Furthermore, and in addition to any other punitive measures the court may consider appropriate in the circumstances, the court may refer conduct of this nature to the Legal Practice Council for appropriate disciplinary steps to be taken against the legal practitioner in question.

## **5. MEDIATOR SELECTION AND ALLOCATION PROCEDURES**

### **5.1. Qualified Mediators**

- 5.1.1. Mediation services under the auspices of this Protocol must be provided by Qualified Mediators who comply with the minimum requirements for approval as Qualified Mediator as set out in Annexure A (**Qualification Requirements**), on the panel of Qualified Mediators<sup>ii</sup> of an accredited Mediation Service Provider (as set out in Annexure B) and work within a framework of professional accountability.
- 5.1.2. The accreditation process for mediators will be guided by the criteria set out in Annexure A, ensuring that all mediators meet specific requirements and have the necessary required experience.

### **5.2. Mediator Selection and Appointment**

- 5.2.1. The parties should not only consider the mediator's experience in its selection of proposed mediators, but also consider factors such as gender, race, disability, and the like, to ensure the advancement of diversity and the transfer of skills and competency to previously disadvantaged individuals and the advancement of transformation as a Constitutional imperative and in line with Legal Sector Code of the Codes of Good Practice on Broad-Based Black Economic Empowerment.
- 5.2.2. Parties involved in the mediation process can agree on any Qualified Mediator to be appointed as mediator in the referral of their dispute failing which, either:
  - 5.2.2.1. If agreement was reached on the use of an approved Mediation Service Provider, request such MSP to nominate a Qualified Mediator for appointment;
  - 5.2.2.2. If agreement was reached on the use of the ADR-PA system, request the appointment of a mediator by the ADR-PA administrator from its consolidated list of Qualified Mediators for Court-Annexed Mediation; or
  - 5.2.2.3. Request the Umpire to make a determination in respect of the appointment of a suitable Qualified Mediator.
- 5.2.3. **The Umpire**
  - 5.2.3.1. If the parties can neither agree on a Qualified Mediator to be appointed nor on the use of either a particular MPS or the use of the ADR-PA system, or the parties have failed to appoint a mediator within 30 days of the response to an Initial Rule 41A Notice or an Amplified Rule 41A Notice, as the case may be, the appointment shall be made by the Umpire.
  - 5.2.3.2. In the absence of a designated person being pre-selected to act as umpire, the Umpire shall be the Chairperson for the time-being of the Gauteng Provincial Office of the Legal Practice Council (**Chairperson**), or a person delegated by the Chairperson.

- 5.2.3.3. The parties may each submit a list of potential mediators to the Umpire within 5 (five) days of the expiry of the time period provided for in paragraph 4.5.3.3 or the 30 day time period provided for in paragraph 5.2.3.1, as the case may be.
- 5.2.3.4. If a party has a cogent objection to a nominee, that objection must be made in writing to the Umpire together with the submission of nominees to the Umpire, or within 24 (twenty-four) hours of the adversary party's submission (if any).
- 5.2.3.5. The Umpire shall within 5 (five) days of receipt of the nominations, nominate a Qualified Mediator for appointment, which nomination is final and binding on the parties.

**5.3. Approved Mediation Service Providers**

- 5.3.1. Qualified Mediators must be a member in good standing of an approved/accredited mediation service providers (**Mediation Service Provider** or **MSP**).
- 5.3.2. MSPs must be competent to (i) assess and verify their members as suitably qualified for the purposes of acting as mediators in the court-annexed mediation contemplated in this Protocol, (ii) exercise practice supervision over the conduct of these mediators, (iii) ensure that their panel of mediators subject themselves to a code of professional conduct that meets the requirements set out in Annexure B, (iv) have a system for dealing with complaints against their panel members, and (v) report on the outcomes of court-annexed mediation in accordance with the content of Annexure D.
- 5.3.3. Accredited Mediation Service Providers for this project must meet the Minimum Standards for Mediation Service Providers set out in Annexure B
- 5.3.4. As a starting point, mediation service provider organisations that are members of the Alternative Dispute Resolution Practitioners of South Africa NPC (**ADRP - SA**) and/or accredited by either DiSAC or NABFAM are recognised as such Mediation Service Providers. Any other organisation or entity wishing to become a Mediation Service Providers may apply for membership with and recognition by ADRP-SA and/or accreditation by DiSAC and/or NABFAM.
- 5.3.5. Mediation Service Providers agree to:
  - 5.3.5.1. Diligently assess mediators and certify them in accordance with clause 5.1 above;
  - 5.3.5.2. To provide ongoing practice supervision of the mediators it has certified. This includes dealing with complaints against any such mediator, and implementing disciplinary processes where required;
  - 5.3.5.3. Allow for observers and/or co-mediators (trained mediators who wish to gain experience for professional development purposes) to attend court-annexed mediations which they arrange; and
  - 5.3.5.4. Promote transformation.

- 5.3.6. Mediation Service Providers are encouraged to organise annual workshops to align stakeholders on best practices and shared objectives

5.4. **Allocation and Duties of Mediators**

- 5.4.1. Mediators will ensure that mediations are conducted according to the provisions of the Rule 41A, as well as this Protocol, the Code of Conduct of the MSP he/she is affiliated with, and the Agreement to Mediate concluded between the parties.
- 5.4.2. Together with the joint minute envisaged in Rule 41A(8)(b), the mediator will provide a Mediator's Report containing an outcome summary, substantially in accordance with the template attached hereto as Annexure D1, within 5 (five) days after the conclusion of the mediation. The Mediator's Report shall include the requirements of paragraph 7.1.3 below for the purposes of reporting to the Judge President on mediation outcomes relating to court-annexed mediations.
- 5.4.3. Mediators should prepare adequately by perusing the documents presented by the parties prior to the mediation, in order to understand the issues in dispute. Mediators should take preparation time into account when determining their fee for the mediation.
- 5.4.4. In appropriate circumstances, mediators may request each party to draw up a privileged statement of case, to be copied to the other party, to assist the mediators in grasping the essence of each party's case and to avoid the need to read prolix documents

5.5. **Professional Fees for Mediators and Costs of Mediation**

- 5.5.1. Unless agreed to otherwise between the parties, professional fees will be paid to the appointed sole mediator or co-mediators (where the appointment of co-mediators was agreed to between the parties), as the case may be, by the parties jointly, no less than 10 (ten) days in advance of the commencement of the mediation.
- 5.5.2. Qualified Mediators are qualified professionals who render a professional service and typically charge for the time spent on the mediation. The parties are advised to establish the nominated mediator's hourly or daily tariff, and that such tariff should be recorded in the Agreement to Mediate.
- 5.5.3. Whilst the costs of mediation are typically shared between the parties equally, the parties are at liberty to agree to any alternative arrangement insofar as it concerns the liability for payment of the costs of the mediation and/or the mediator's professional fees.
- 5.5.4. As a general rule the costs incurred by the parties in their compliance with the provisions of the Directive and this Protocol, including the mediation administration fees (if any), the professional fees for the mediator(s), the costs of the mediation (including travelling charges and venue fees, if applicable), and the fees payable to their legal representatives for attendance at the mediation shall constitute costs in the cause and

be recoverable by the party in whose favour costs are granted at the trial of the matter unless the parties reach an express written agreement to the contrary in this regard or in exceptional circumstances a court orders otherwise.

- 5.5.5. Should a matter proceed to trial, or in the absence of an express agreement between the parties in relation to the aspects of costs, the general rule set out in paragraph 5.5.4 shall apply to all costs incurred by the parties in relation to the entire mediation process.

## **6. MEDIATION REQUIREMENTS AND IMPLEMENTATION**

### **6.1. Mandate Verification**

- 6.1.1. All participants in the mediation must confirm their authority to settle disputes (including proof of settlement mandates where the mediator consider it to be necessary<sup>iii</sup>) to avoid delays in reaching agreements.

### **6.2. Pre-Mediation**

- 6.2.1. Should any party express concern about the mediation process, whether in relation to informed consent or any other aspect, the mediation should be preceded by a pre-mediation meeting.
- 6.2.2. The pre-mediation meeting shall simply be for the mediator to inform the parties of the mediation process and deal with any procedural questions relating to the anticipated mediation that any of the parties might raise.

### **6.3. Agreement to Mediate**

- 6.3.1. The parties must sign an Agreement to Mediate no less than one (1) week before the mediation is scheduled to commence. The Agreement to Mediate outlines the mediation process, confidentiality requirements, and obligations of all participants. This agreement shall also include provisions for rescheduling or terminating the mediation process under specified conditions.
- 6.3.2. The parties, by signing the Agreement to Mediate, shall confirm inter alia:-
- (i) their understanding of the mediation process,
  - (ii) their informed consent to mediate,
  - (iii) that an appropriate mandate to mediate has been obtained and
  - (iv) that the party's representative attending the mediation will have authority to settle the matter within the reasonably anticipated ambit of settlement having regard to
    - a) the specific matter referred to mediation,
    - b) the issues in dispute, and
    - c) the aggregate quantum of the various elements of the claim/s.

6.4. **Mediation**

- 6.4.1. The mediation shall be conducted in a confidential and without prejudice manner.
- 6.4.2. The mediation shall be non-binding until the parties have signed a written settlement agreement in terms whereof one or more of the issues in dispute are resolved.
- 6.4.3. The mediator shall:
  - 6.4.3.1. facilitate discussion between the parties;
  - 6.4.3.2. assist the parties in identifying issues, exploring settlement options, considering their best and worst alternatives to a negotiated agreement and reaching an agreement on one or more of the issues in dispute;
  - 6.4.3.3. ensure that the mediation process is conducted fairly and impartially;
  - 6.4.3.4. manage the mediation sessions efficiently in such manner as the mediator may deem fit, including by conducting joint sessions and separate private sessions with the respective parties, the legal representatives and/or the experts;
  - 6.4.3.5. provide the parties with guidance on the structure and procedure of the mediation process while refraining from imposing solutions.
- 6.4.4. The mediator will follow a facilitative style of mediation and will refrain from expressing opinions and from advising the parties on outcomes, unless this is specifically agreed in the mediation agreement.
- 6.4.5. The mediation will, unless agreed otherwise in writing, be conducted in person.
- 6.4.6. The parties are responsible for organising a mutually acceptable venue for the mediation. The venue must at least have separate meeting rooms (breakout rooms) for each party, where they can have confidential and private meetings with the mediator. One of the meeting rooms must be big enough for a joint meeting between all of the participants present at the mediation, including the parties and their legal representatives.
- 6.4.7. Whilst the mediator has no control over the outcome of the mediation, and whether the parties arrive at a mutually acceptable negotiated agreement in respect of one or more of the issues in dispute, the mediator shall have full autonomous control over the process and the parties shall be obliged to follow all instructions and requests of a procedural nature that the mediator may direct.
- 6.4.8. The mediator and the parties themselves (or properly authorised and mandated representatives where the party is an organisation) must personally attend the mediation (either in-person or virtually on a suitable online video call meeting platform elected by the mediator, and in the event of a virtual mediation, the participants shall ensure that they have clear audio and that their faces are visible to the mediator and

the adversary party). Parties are encouraged to, but not obliged to, have their legal representatives in attendance.

6.4.9. The mediator is an impartial third party who helps the parties identify solutions. The mediator asks questions, reframes issues, and helps the parties understand each other.

6.4.10. The parties shall:

6.4.10.1. act in good faith during the mediation process;

6.4.10.2. provide the mediator with all relevant documents and information that may be pertinent to the matter or that the mediator may request;

6.4.10.3. participate actively and constructively in mediation sessions;

6.4.10.4. comply with the rules and guidelines established for the mediation process, including any timelines agreed upon.

### 6.5. **Style Of Mediation**

6.5.1. The style of mediation for this Protocol is Facilitative Mediation. The mediator facilitates a process of communication between the parties, so as to assist the parties to craft their own unique solution to the dispute. The mediator controls the mediation process and the parties determine the outcome of the mediation.

### 6.6. **Settlement Authority And Representation Of Parties**

6.6.1. Each party must be in attendance at the mediation, either in person (in the case of a natural person litigant) or represented by a duly authorised representative (in the case of a juristic person). The person attending the mediation in a representative capacity must be vested with full settlement authority. Should a party be unable to attend the mediation, the Mediator shall exercise his/her discretion on whether to continue with or postpone the mediation for such party to be in personal attendance at a reconvened mediation.

6.6.2. Each party in attendance at the mediation, whether in a personal or representative capacity, or in their capacity as the legal representative of one of the parties to the mediation, shall be required to sign the Agreement to Mediate and shall be bound by all the provisions thereof including, specifically the confidentiality undertakings contained therein.

6.6.3. No person other than the parties, the legal representatives for the parties, the mediator(s), and observer(s) (if applicable) shall be present at mediation sessions. For the involvement of other persons in the mediation, the consent of all parties to the mediation shall be required.

6.6.4. A party may be accompanied by his/her/its appointed legal practitioner to the mediation. Legal practitioners are encouraged to participate in the mediation and related negotiation process on the understanding that the parties (not the legal practitioners)

take centre stage in mediation and that the mediator, and not the legal representatives, are in charge of the process.

6.6.5. Any settlement of any aspect of the matter, or agreement in respect of formalities, during a mediation must be reduced to writing and signed by the parties to the dispute. Settlement agreements, once signed by the parties, are fully binding and enforceable, and may, at the instance of any one of the parties, be made an order of court. For these purposes, the matter may be enrolled on the roll of the Settlement Court for the settlement agreement to be made an order of court. Such order shall then, failing compliance with the terms thereof, be executable by the issuing of a warrant.

6.6.6. The entire mediation process shall be strictly confidential and remain so after the mediation has ended save for what is recorded in a settlement agreement reduced to writing and signed by the parties to the dispute, and what is recorded in the Mediator's Report and Joint Minute.

6.7. **Multiple Mediation Sessions, Prolonged Mediations And Deadlock**

6.7.1. Some disputes may not be capable of resolution at a single sitting.

6.7.2. Mediators faced with protracted disputes should, at intervals, encourage the participants to revisit the question of whether there is a reasonable prospect that the mediation will lead to a settlement or at least a formal narrowing of the issues for trial.

6.7.3. If, after several sittings or a protracted mediation, a deadlock has clearly occurred and it would, in the mediator's reasonable opinion, be a waste of time and money to proceed with the mediation, then, in the interests of both parties, the mediator/s should turn his/her focus on facilitating discussion regarding the procedural aspects and timelines to be agreed upon for the further conduct of the matter and the trial thereof, whereafter the mediator should terminate the mediation.

6.8. **Termination of the Mediation**

6.8.1. The mediation shall end:

6.8.1.1. When the parties have resolved their dispute by reaching a settlement agreement, the terms of which have been recorded in writing and such settlement agreement has been signed by the parties;

6.8.1.2. When the mediator informs the parties that the mediation has ended (including where the mediator is of the opinion that there is no reasonable prospect that the mediation will lead to a settlement or narrowing of the issues for trial); or

6.8.1.3. When either party withdraws from the mediation, provided that the parties commit to having a separate side session with the mediator on the reasons for such party's intended withdrawal to afford the mediator an opportunity to mediate such party's continued participation in the mediation process and/or for the mediator to obtain



the relevant particulars required for completion of the Mediator's Report including which issues, if any, have been resolved via the mediation, which issues remain in dispute and need to be referred to trial, the outcome of the mediation (partial settlement (partial failure), incomplete settlement (partial failure) or mediation unsuccessful (total failure)) and if the failure or partial failure of the mediation, as the case may be, falls within the ambit of paragraph 7.1.3.4.

- 6.8.2. Termination of the mediation does not detract from the confidentiality and payment obligations of the parties under the Agreement to Mediate.
- 6.8.3. A mediation which is not finalised at a particular sitting (such as mediations conducted over multiple session as contemplated in paragraph 6.7 above and gets postponed or adjourned with the intention of it being reconvened at a later stage for the continuation thereof shall not be considered to have been terminated, and the provisions of the Agreement to Mediate shall remain valid and binding, pending the mediation being reconvened and finalised and/or formally terminated by the mediator.

## **7. MEDIATOR'S REPORT AND OUTCOME MONITORING AND REPORTING**

### **7.1. Mediator's Report**

- 7.1.1. Within five (5) court days of the conclusion of a mediation conducted under the auspices of this Protocol, the mediator shall prepare, sign, and submit to the parties a report certifying the outcome of the mediation (**Mediator's Report**), and, together with the parties, also prepare a joint minute in accordance with the provisions of Rule 41A(8)(b) (**Joint Minute**), each substantially in the form prescribed in Annexure D hereto.
- 7.1.2. The parties will file the Mediator's Report and Joint Minute electronically on the CourtOnline portal and, in accordance with Rule 41A(7)(a), notify the registrar and all other parties that the mediation has been completed.
- 7.1.3. Following completion of a mediation the following information, based on the mediator's honest and bona fide impressions of the subject matter (**subject to the confines of confidentiality relating to the merits of the matter that remain in dispute**), shall be recorded in the Mediator's Report:
  - 7.1.3.1. Confirmation of issues that have been resolved or are, by agreement between the parties, common cause.
  - 7.1.3.2. Identification of the issues that are (or remain) in dispute.
  - 7.1.3.3. The outcome of the mediation, being:
    - 7.1.3.3.1. Completely successful (i.e. agreement reached in respect of all issues in dispute).

- 7.1.3.3.2. Partially successful, but mediation incomplete (i.e. agreement reached in respect of some issues in dispute, with agreement to refer unresolved issues to further investigation, negotiation and/or mediation).
- 7.1.3.3.3. Partially successful (i.e. agreement reached in respect of some issues in dispute, but unresolved issues to be referred to trial).
- 7.1.3.3.4. Unsuccessful (i.e. no issues could be resolved and thus all issues are to be referred to trial).
- 7.1.3.4. Should there not have been complete resolution of all issues in dispute as contemplated in paragraph 7.1.3.3.1 above, whether the mediation failed (in whole or in part) due to any one or more of the following aspects:
  - 7.1.3.4.1. Failure to properly comply with paragraph 6.3.2 of this Protocol;
  - 7.1.3.4.2. Failure of one or more of the parties to attend the mediation;
  - 7.1.3.4.3. One or more of the parties failed to properly prepare for the mediation (i.e. the representatives attended the mediation without having familiarised themselves with the facts and the relevant documents pertaining to the matter or could not make pertinent documents available to or accessible by the mediator during the mediation);
  - 7.1.3.4.4. Logistical issues - such as connectivity, availability of suitable facilities, system-related challenges, etc. - prevented the commencement, continuation or completion of the mediation;
  - 7.1.3.4.5. The representative/s attending on behalf of a party did not hold, or could not evidence to the mediator's satisfaction, a proper mandate to mediate and/or settlement authority as contemplated in paragraph 6.3.2(iv); or
  - 7.1.3.4.6. The parties, in the mediator's reasonable opinion, unreasonably failed to participate and engage with the mediator in good faith and/or unreasonably failed to attempt to resolve one or more of the issues in dispute.
- 7.1.3.5. To the extent that the mediation has resulted in the partial resolution of the matter – the Mediator's Report should stipulate whether the remaining issues are suitable for referral to mediation or need to be referred to court for a hearing and determination thereof.
- 7.1.3.6. Feedback on process efficiency and suggestions for improvement.

7.2. **Register of Mediation Outcomes**

- 7.2.1. Each organisation that administers court-annexed mediation referrals (including the Mediation Administrator and any Mediation Service Provider performing such function in relation to its panel of Qualified Mediators) shall be required to maintain a separate

register of mediation outcomes of all court-annexed mediation referrals and report thereon to the Judge President on no less than a quarterly basis.

7.2.2. The particulars to be reported on are set out in Annexure C.

## **8. PARTICULAR PROVISIONS APPLICABLE TO RAF-MEDIATIONS**

8.1. The RAF, following its participation in the consultative process referred to in endnote **Error! Bookmark not defined.** below has, in formal correspondence to the Gauteng Judiciary, confirmed its support for the use of mediation as form of alternative dispute resolution for their litigious matters and their commitment to the court-annexed mediation initiative contemplated by the Directive and this Protocol.

8.2. The RAF has, accordingly, undertaken to participate in good faith in the proposed court-annexed mediations envisioned by the Directive and this Protocol. To this end, the RAF has indicated its willingness to contribute to the professional fees **of the mediator** for a period of one year.

8.3. All the provisions of this Protocol are applicable to the mediation of personal injury matters where the RAF is the defendant, save that such provisions will be amplified with the following terms:

### **8.3.1. Mandate Verification & Settlement Authority**

8.3.1.1. Any RAF mediation requires the presence and participation of:-

8.3.1.1.1. An RAF claims manager, or other duly authorised representative, with full settlement authority in regard to the issues in dispute that are being referred to mediation (i.e. either the issue of liability on the merits or the likely monetary range of the capital-and-costs settlement figure for the dispute/s to be mediated).

8.3.1.1.2. An authorised legal representative of the plaintiff with power of attorney that affords such representative full settlement authority, and/or the plaintiff in person and/or the curator ad litem (where applicable).

### **8.3.2. Qualified Mediators**

8.3.2.1. To qualify to mediate RAF personal injury disputes, a Mediator must provide written confirmation from an approved Mediation Service Provider that confirms:

8.3.2.1.1. that the mediator meets the minimum requirements as set out in Annexure A;

8.3.2.1.2. that the mediator is an accredited panel member in good standing with the approved Mediation Service Providers and subscribes to the Code of Conduct and Complaints and Disciplinary Procedures of the relevant association; and

- 8.3.2.1.3. that the Mediation Service Provider recommends the mediator for mediation of RAF matters.
- 8.3.2.2. Qualified Mediators who wish to conduct RAF-related mediations that are administered via the ADR-PA platform, can register on the centralised database of mediators for court-annexed mediation at <https://gpp.adrdirectory.co.za/>.
- 8.3.2.3. Given the intricate nature of personal injury matters, the parties are encouraged to consider the appointment of two mediators (with one being a healthcare practitioner and the other a legal practitioner). In such circumstances, the two mediators shall act as co-mediators (with one acting as lead-mediator and the other as co-mediator).
- 8.3.3. **Mediation Administration**
- 8.3.3.1. The RAF acknowledges that neither it, nor the court, has the capacity to properly monitor, administer and report on the outcome of court-annexed mediations that will follow from the implementation of the Directive and this Protocol. The ADR-TG is an independent, viable, software solution service provider that has the capacity and ability to administer the process via its ADR-PA platform (a software solution which has been specifically designed to administer and report on alternative dispute resolution matters electronically).
- 8.3.3.2. In the interest of expedience and the efficient administration of justice, the RAF agrees that all RAF matters referred to court-annexed mediation in terms of the Directive and this Protocol shall, initially and until a formal appointment has been made, be administered by the ADR-TG who shall act as the mediation administrator of RAF-related court-annexed mediations (**Mediation Administrator**) via its ADR-PA platform accessible at <https://adrtechgroup.com/administered-matters/>.
- 8.3.3.3. Although the parties are at liberty to agree on the appointment of any Qualified Mediator, and for the process to be administered in such manner as they may agree or via any one of the approved Mediation Service Providers, the Judge President has identified the Mediation Administrator and its ADR-PA platform as an efficient administration mechanism of court-annexed mediations, including the ability to report on the mediation outcomes in a consolidated manner, and accordingly recommends the use thereof for this purpose.
- 8.3.3.4. Should any other approved Mediation Services Provider be called upon to administer any court-annexed mediation (including an RAF-related mediation), it shall be subject to the same requirements as the Mediation Administrator including, without limitation, the reporting requirements set out in paragraph 8.3.7 below.

- 8.3.3.5. Notwithstanding the RAF's agreement to the appointment of the ADR-TG for the administration of their court-annexed mediations, the RAF is unable to commit to the payment of any administration fees to the ADR-TG pending a formal appointment being made. In the circumstances and in order to expedite the resolution of their matters, the plaintiff shall pay the relevant administration fee, but shall be entitled to recover such costs from the RAF as costs in the cause, *mutatis mutandis* in accordance with the provisions of paragraph 5.5.5 above.

**8.3.4. Observer Mediators**

- 8.3.4.1. Unless the parties, for a specific reason disclosed to the mediator in advance, or the appointed lead mediator, raise a valid objection thereto, up to two (2) observers per mediation may be invited to observe mediations of RAF matters for such observers to benefit from the experience of the lead- and/or co-mediator.
- 8.3.4.2. The observers shall participate on a pro-bono basis and shall receive no remuneration from the parties.
- 8.3.4.3. The observers shall also be required to sign the Agreement to Mediate and shall be bound by the same terms of confidentiality as the other participants in the mediation.
- 8.3.4.4. Observers must be registered mediators and a member of one of the MSPs.

**8.3.5. Professional Fees of the Mediator**

- 8.3.5.1. The RAF has agreed to pay an amount of no more than R15,000.00 (fifteen thousand Rand) per mediation towards the mediator's fees. The amount payable by the RAF towards the mediator's fees is to be determined by the ADR-TG on a sliding scale taking into account the:
- 8.3.5.1.1. Complexity of the matter;
- 8.3.5.1.2. Quantum of the claim amount involved;
- 8.3.5.1.3. Time spent by the mediator in preparation for the mediation;
- 8.3.5.1.4. The mediator's experience in the mediation industry (by number of mediations complete and/or total hours having acted as mediator);
- 8.3.5.1.5. The mediator's experience with personal injury matters; and
- 8.3.5.1.6. The duration of the entire mediation process.
- 8.3.5.2. Should the fees payable to the mediator in respect of a particular mediation exceed the amount made available by the RAF, the plaintiff shall be liable for the balance of the fee provided that such costs form part of the costs provided for in paragraph 8.3.5.5 below.
- 8.3.5.3. If payment of the mediator's fees are required to be made in advance, as provided for in paragraph 5.5.1 above, and the plaintiff makes payment thereof in order to

expedite the furtherance and finalisation of the mediation process, the plaintiff shall be entitled to claim reimbursement of the funds so disbursed, up to the limit of the RAF's liability provided for in this paragraph 8.3.5, from the RAF at such time as the RAF's payment of their contribution becomes due in accordance with paragraph 8.3.5 below.

8.3.5.4. The RAF shall be liable for the payment of their contribution to the mediator's fee within 30 (thirty) days from the completion of the Mediator's Report.

8.3.5.5. The provisions of paragraphs 4.6.4, 5.5.5 and 5.5.5 shall *mutatis mutandis* apply to the costs incurred in relation to RAF-related mediations.

**8.3.6. Professional Fees of the Co-Mediator**

8.3.6.1. Co-mediators who participate in mediations for the purposes of personal, professional development shall not be entitled to charge professional fees for his/her attendance at the mediation.

8.3.6.2. A co-mediator who is specifically appointed as such by the parties to the dispute, and is thus attending the mediation at the instance of and by agreement between the parties, and not only in order to obtain exposure and gain experience for the purposes of advancement of professional development, shall be remunerated for their attendance at the mediation on the same rate as the lead mediator.

**8.3.7. Monitoring and Reporting**

The Mediation Administrator or Mediation Services Provider (if such MSP administers or administered any RAF-related mediations) will prepare quarterly reports summarising:

8.3.7.1. RAF-related mediation success rates and trends over time.

8.3.7.2. Participation rates segmented by case type and mediator demographics.

8.3.7.3. Systemic challenges and proposed solutions to enhance efficiency and effectiveness.

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<sup>i</sup> Rule 41A(4)(c).

<sup>ii</sup> Mediators must practice under the supervision of an accredited Mediation Service Provider and be subject to the MSP's code of professional conduct, complaints system, disciplinary process and continued professional development program.

<sup>iii</sup> It is recorded that RAF claims-handlers are required to produce proof of settlement authority to the Mediator prior to the mediation proceedings scheduled for the day being commenced with.

**ANNEXURE A - MINIMUM REQUIREMENTS FOR APPROVAL AS QUALIFIED MEDIATOR**

**Application of Minimum Requirement for approval as Qualified Mediator<sup>iv</sup>**

In order to be approved as a Qualified Mediator for the purposes of court-annexed mediation in the Gauteng High Court, and thus be permitted to act as a mediator (or lead-mediator in matters where co-mediators are appointed) in matters referred to mediation pursuant to the Directive or in terms of this Protocol a mediation practitioner must comply with all of the following minimum requirements:-

**a) Training requirement:**

- 1) The practitioner must be a graduate professional who
  - (i) has completed; and
  - (ii) has been assessed as competent;  
under a mediator training program accredited by DiSAC or NABFAM.
- 2) Both the DiSAC and the NABFAM standards require that a person must undergo training under an accredited mediator training program (40 hours minimum) and be assessed and certified as competent by independent assessors. Details of accredited training programs are listed on the DiSAC and NABFAM websites<sup>v</sup>.

This minimum standard is aligned with the minimum requirements stipulated by the International Mediation Institute, which certifies mediation training courses worldwide.

**b) Mediation experience requirement:**

The mediator must provide evidence of at least five prior mediations in which he/she acted as lead mediator<sup>vi</sup>.

**c) For mediation of personal injury matters only:-**

**Additional experience or training in personal injury matters:** This requirement ensures that mediators understand the industry of personal injury matters. Those mediating personal injury matters must have a special understanding of such matters - either through practice experience in this field, prior mediation experience in this field or through proof of specialised training to mediate in this field.

## ANNEXURE A – MINIMUM REQUIREMENTS FOR APPROVAL AS QUALIFIED MEDIATOR

### GAUTENG HIGH COURT MEDIATION PROTOCOL

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<sup>iv</sup> There are currently no regulatory requirements applicable to the accreditation of mediators. As such, some individuals without the necessary qualifications and training hold themselves out to be mediators. The professional practitioners operating within the mediation industry has supported accreditation of mediators in line with international standards through voluntary certification of qualification and good standing of through The South African Dispute Settlement Accreditation Council (**DiSAC**) in respect of civil and commercial matter and NABFAM in respect of family law related matters.

<sup>v</sup> See the standards published by DiSAC ([www.disac.co.za](http://www.disac.co.za)) and by Nabfam ([www.nabfam.co.za](http://www.nabfam.co.za)).

<sup>vi</sup> This requirement ensures that mediators have practice experience and are competent to mediate on their own.



**ANNEXURE B - MINIMUM STANDARDS FOR MEDIATION SERVICE PROVIDERS**

These standards may from time to time be updated by the Judge President after consultation with stakeholders.

In order to be approved as an accredited Mediation Service Provider for the purposes of administering and overseeing court-annexed mediation, an organisation must:

**1) Provide details of the Organisation. This must include:**

- a) Registered name, registration number (if applicable), and legal status of the organization.
- b) Business address and contact details.
- c) Names and contact details of all of its directors or management committee members.
- d) Name and contact details of the executive officer of the organisation (person who has authority to act on behalf of the organisation).
- a) Name and contact details of:
  - i) The person responsible for receiving complaints; and
  - ii) The person managing disciplinary processes.
- e) Sufficient details of the organisation's administrative systems and record-keeping so as to demonstrate competency.
- f) A statement of compliance with all regulatory and statutory requirements for registration and ongoing conduct of business.

**2) Provide details of its admission criteria and processes for admitting mediators to its panel.**

The admission criteria must comply with the Minimum Mediator Standards in Annexure A.

**3) Provide details of its quality management processes. These must include:**

- a) Copies of the following:
  - i) Its prescribed code of professional conduct that meets ADRP-SA/DiSAC or NABFAM requirements;
  - ii) Its complaints system that meets ADRP-SA/DiSAC or NABFAM requirements;
  - iii) Its disciplinary process that meets ADRP-SA/DiSAC or NABFAM requirements; and
  - iv) Its Continued Professional Development ('CPD') program.
- b) Details of how they ensure that mediators on their panel are legally subject to these standards of conduct and processes.

**ANNEXURE B – MINIMUM STANDARDS FOR MEDIATION SERVICE PROVIDERS**  
**GAUTENG HIGH COURT MEDIATION PROTOCOL**

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- c) Conformation of whether the mediators on their panel are covered by Professional Indemnity Insurance.

**4) Publication of Information.** The organisation must publish (or hyperlink) the following information on a publicly accessible website:

- a) The information in section 1(a), 1(b), 1(d) and 1(e) above of these Minimum Standards;
- b) The names of all the mediators (**panel**) that have been certified by the Organisation as competent and qualify to perform court-annexed mediations (**Qualified Mediators**);
- c) Copies of all the documents referred to in section 3(a); and
- d) Details of how a member of the public can raise a complaint against any panel member.

**ANNEXURE C – DATABASE FOR AND REPORTING ON COURT-ANNEXED MEDIATION**

**1. Database of Qualified Mediators**

- 1.1 Each organisation<sup>vii</sup> which attends to any aspect of the administration of court-annexed mediations, or performs the administrative functions in relation to referrals to mediation of disputes following the publication of the Directive (**organisation**), shall be obliged to publish a consolidated list/register/database of panel members which it has identified as Qualified Mediators (that comply with the Minimum Standards for Mediators set out in Annexure A of the Protocol). The list of panel members shall be publicly available on an website accessible by the general public, and shall set out, at least, the following particulars of each panel member:
- i) Full names.
  - ii) Geographical area of practice;
  - iii) Willingness to travel and ability to mediate online.
  - iv) Registered professional discipline (legal practitioner, healthcare practitioner, etc.) and whether he/she is currently, in his/her capacity as such, a practising or non-practising member of the relevant profession.
  - v) The professional authority (LPC, HPCSA, etc.) with whom the panel member is affiliated, and his/her membership number with such authority (if applicable).
  - vi) Confirmation of the panel member's successful completion of a ADRP-SA/DiSAC or NABFAM accredited mediation training course, expressly recording which the accredited training course/provider presented such training course (with a copy of such member's training certificate to be uploaded to the website/database and be available for download by the parties, alternatively held on record by the MSP and which the MSP undertakes to make available on request).
  - vii) Confirmation by the accredited Mediation Service Provider under whose auspices the member practices that the panel member has been assessed as mediator and is accredited by the MSP as being sufficiently qualified, skilled, and experienced in mediation practice to competently conduct court-annexed mediations in terms of this Protocol (with written confirmation of the aforesaid assessment and accreditation by the MSP to be uploaded to such website/database and be available for download, and/or held on record by the MSP and made available on request).
  - viii) Whether the member is able to function as

- (1) sole mediator;
- (2) co-mediator; or
- (3) observer mediator.
- ix) Experience (number of mediations).
- x) Other relevant experience and/or training.

## **2. Reporting by administrators of court-annexed mediation**

- 2.1 The Mediation Service Providers or Mediation Administrator, as the case may be, shall be responsible for reporting to the Judge President and/or the Mediation Judge (if applicable) on the aggregated and averaged metrics of mediation outcomes.
- 2.2 This will enable the Judge President to assess and report on the initiatives
- 2.3 The reporting organisation will prepare reports relating to all court-annexed mediation administered by it during each quarter (i.e. 3-month period) of the running of the mediation initiative (**reporting period**) starting with the month in which the Directive takes effect and the transitional period provided for in the Directive commences (i.e. the period of April 2025 to June 2025) and each quarter (i.e. 3-month period) following thereon, by no later than the 20<sup>th</sup> calendar day of the month following the completion of each quarter.
- 2.4 The reports must provide a dashboard view of the number of pending matters, referrals received, and outcomes of mediations (as a percentage of the matters pending and newly referred during the reporting period) finalised during the quarter being reported on, and be supported by comprehensive further details stipulating at least the following:
  - a) Number of prior referrals pending resolution at the start of the reporting period;
  - b) Number of new referrals received during the reporting period;
  - c) Number of mediations convened and/or finalised, and what percentage such mediations constitute of the total referrals (new and pending) that were not yet finalised at the start of the reporting period.
  - d) Number of referrals (and what percentage it constitutes of the total referrals (new and pending) that remain unresolved as at the end of the reporting period (regardless of whether, in respect of which mediations were convened during the reporting period.
  - e) Success rates of mediations conducted;
  - f) Mediation success rates and trends over time.
  - g) Participation rates segmented by case type and mediator demographics.

**ANNEXURE C – MEDIATOR DATABASE FOR AND REPORTING ON COURT-ANNEXED MEDIATION  
GAUTENG HIGH COURT MEDIATION PROTOCOL**

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- h) Systemic challenges and proposed solutions to enhance efficiency and effectiveness.

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<sup>vii</sup> In accordance with the election exercises by the parties pursuant to the provisions of paragraph 3.1 of the Protocol, this will be either one of the accredited Mediation Service Providers or ADR-TG as Mediation Administrator. In the absence of a single service provider performing the administrative function, each organisation performing administrative functions must commit to also establish a reporting mechanism for an accurate and holistic assessment of the impact mediation initiative.

**ANNEXURE D - TEMPLATE MEDIATOR’S REPORT & JOINT MINUTE**

**TEMPLATE MEDIATOR’S REPORT & JOINT MINUTE OF MEDIATION**

IN ACCORDANCE WITH RULE 41A(8)(b) AND (c)  
OF THE UNIFORM RULES OF COURT

A **MEDIATOR’S REPORT**, substantially in accordance with the template attached as D1, with the particulars of the parties and the dispute to which it relates must be completed and signed by the mediator upon the completion of the mediation.

The **JOINT MINUTE**, substantially in accordance with the template attached as D2, containing the particulars referred to in Rule 41A(8)(b) and (c) must be completed and signed by the mediator and the parties upon the completion of the mediation.

ANNEXURE D – TEMPLATE MEDIATOR'S REPORT & JOINT MINUTE  
GAUTENG HIGH COURT MEDIATION PROTOCOL

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**ANNEXURE D1 – MEDIATOR'S REPORT**

**IN THE HIGH COURT OF SOUTH AFRICA**  
**GAUTENG DIVISION, JOHANNESBURG / PRETORIA**

CASE NO: \_\_\_\_\_

In the matter between:

\_\_\_\_\_

Applicant / Plaintiff / Appellant

and

\_\_\_\_\_

Respondent / Defendant

---

**MEDIATOR'S REPORT**

**Mediator:**

Name: \_\_\_\_\_

Email: \_\_\_\_\_

Contact Nr: \_\_\_\_\_

Organisation: \_\_\_\_\_

**Date of Mediation:**

Start: \_\_\_\_\_

End: \_\_\_\_\_

**Duration of Mediation:**

Days: \_\_\_\_\_

**Place of Mediation:**

☐ Online

☐ In-person

☐ Hybrid

If online/hybrid:

Online Platform: \_\_\_\_\_

If in person:/hybrid:

Physical Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Type of Settlement:**

Please indicate:

☐ FULL

☐ PARTIAL

☐ UNSUCCESSFUL

In the case of Partial Settlement, please elaborate on the issues that have been settled between the parties and do not need a hearing by the court:

**Issue 1:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Issue 2:**

\_\_\_\_\_

**ANNEXURE D – TEMPLATE MEDIATOR'S REPORT & JOINT MINUTE**  
**GAUTENG HIGH COURT MEDIATION PROTOCOL**

Issue 3:

**Without Prejudice Offer / Tender**

Please indicate:

A without-prejudice offer/tender was made and should be taken into account by the court when an order for costs is considered.

☐ YES

☐ NO

**Feedback on administrative process efficiency and suggestions for improvement:**

**Protocol Compliance**

**(per paragraph 7.1.3.4)**

**PARAGRAPH**

**PROVISION**

**YES**

**NO**

**7.1.3.4.1**

– Agreement to Mediate Signed

☐

☐

**7.1.3.4.2**

– Both parties in attendance

☐

☐

**7.1.3.4.3**

– Both parties prepared

☐

☐

**7.1.3.4.4**

– No logistical issues experienced

☐

☐

**7.1.3.4.5**

– Representative/s in attendance evidenced proper mandate to mediate and/or authority to settle

☐

☐

**7.1.3.4.6**

– Parties participated in good faith

☐

☐

**Directive Compliance:**

**PART/PARAGRAPH/ITEM**

**YES**

**NO**

☐

☐

☐

☐

☐

☐

☐

☐

☐

☐

☐

☐

☐

☐

**Additional Comments:**

Please ensure that the following annexures are attached hereto:

1. Annexure OC1: Agreement to Mediate in terms of Rule 41A(4)(b)

SIGNED AT \_\_\_\_\_ ON THE \_\_\_\_ OF \_\_\_\_\_ 202\_\_.

\_\_\_\_\_  
**MEDIATOR**  
 (in his/her capacity as such)



**ANNEXURE D2 – JOINT MINUTE**

**IN THE HIGH COURT OF SOUTH AFRICA**  
**GAUTENG DIVISION, JOHANNESBURG / PRETORIA**

CASE NO: \_\_\_\_\_

In the matter between:

\_\_\_\_\_

Applicant / Plaintiff / Appellant

and

\_\_\_\_\_

Respondent / Defendant

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**JOINT MINUTE IN ACCORDANCE WITH RULE 41A(8)(b) & (c)**

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**REFERRAL OF DISPUTE TO MEDIATION [MEDIATOR TO TICK RELEVANT OPTION]**

- ☐ The parties referred the dispute to mediation by agreement. /
- ☐ Mediation had been initiated by the parties in terms of Rule 41A(2)(b). /
- ☐ The parties referred the matter to mediation with the leave of the court in accordance with Rule 41A(3)(a).
- ☐ A Judge/Case Management Judge (contemplated in rule 37A) directed the parties to consider the referral of the dispute to mediation in accordance with Rule 41A(3)(b), and the parties elected to proceed with mediation. /
- ☐ The matter was referred to mediation in compliance with the provisions of the Court-Annexed Mediation Project Directive issued on \_\_\_\_\_.

**APPOINTMENT OF MEDIATOR [MEDIATOR TO TICK RELEVANT OPTION]**

- ☐ The mediator was appointed by agreement between the parties. /
- ☐ The parties could not agree on a mediator to be appointed, and accordingly, the mediator was appointed in accordance with the Gauteng High Court Mediation Protocol.

**COMMENCEMENT AND DURATION OF THE MEDIATION [MEDIATOR TO COMPLETE PARTICULARS]**

- 1) The parties had entered into an agreement to mediate on the \_\_\_\_ of \_\_\_\_\_ 202\_\_\_\_ after which the mediation process commenced.
- 2) The parties had their first mediation sessions with the mediator on the \_\_\_\_ of \_\_\_\_\_ 202\_\_\_\_.

**ANNEXURE D – TEMPLATE MEDIATOR’S REPORT & JOINT MINUTE**  
**GAUTENG HIGH COURT MEDIATION PROTOCOL**

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3) The mediation continued for a period of \_\_\_\_\_ days / \_\_\_\_\_ days.

**CONCLUSION OF THE MEDIATION** [*MEDIATOR TO COMPLETE PARTICULARS*]

The mediation was concluded / terminated on the \_\_\_\_ of \_\_\_\_\_ 202\_\_\_\_.

**OUTCOME OF THE MEDIATION** [*MEDIATOR TO SELECT RELEVANT OPTION*]

<input type="checkbox"/> MATTER SETTLED IN FULL	<input type="checkbox"/> MATTER PARTIALLY SETTLED	<input type="checkbox"/> MEDIATION UNSUCCESSFUL
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The issues upon which agreement was reached during the mediation, and which do not require hearing by the above honourable court are (*exhaustive list to be provided*):

1. \_\_\_\_\_  
\_\_\_\_\_
2. \_\_\_\_\_  
\_\_\_\_\_
3. \_\_\_\_\_  
\_\_\_\_\_
4. \_\_\_\_\_  
\_\_\_\_\_

The main issues which remain unresolved and require hearing by the above honourable court, in accordance with Rule 41A(5)(b), are (*please specify with clarity*):

1. \_\_\_\_\_  
\_\_\_\_\_
2. \_\_\_\_\_  
\_\_\_\_\_
3. \_\_\_\_\_  
\_\_\_\_\_
4. \_\_\_\_\_  
\_\_\_\_\_

**ANNEXURE D – TEMPLATE MEDIATOR’S REPORT & JOINT MINUTE**  
**GAUTENG HIGH COURT MEDIATION PROTOCOL**

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Please ensure that the following annexures are attached hereto:

1. Annexure JM1: Joint Minute in terms of Rule 41A(4)(a)
2. Annexure JM2: Anonymised Feedback (Party A)
3. Annexure JM3: Anonymised Feedback (Party B)

SIGNED AT \_\_\_\_\_ ON THE \_\_\_\_ OF \_\_\_\_\_ 202\_\_.

\_\_\_\_\_  
**MEDIATOR**  
(in his/her capacity as such)

SIGNED AT \_\_\_\_\_ ON THE \_\_\_\_ OF \_\_\_\_\_ 202\_\_.

\_\_\_\_\_  
**APPLICANT / PLAINTIFF / APPELLANT**  
(in his/her personal capacity/duly authorised\*)  
(\*attach a copy of power of attorney/written authority/resolution)

SIGNED AT \_\_\_\_\_ ON THE \_\_\_\_ OF \_\_\_\_\_ 202\_\_.

\_\_\_\_\_  
**RESPONDENT / DEFENDANT**  
(in his/her personal capacity/duly authorised\*)  
(\*attach a copy of power of attorney/written authority/resolution)