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GOVERNMENT NOTICE

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

No. R. 183

18 March 2014

RULES BOARD FOR COURTS OF LAW ACT, 1985 (ACT NO. 107 OF 1985)

AMENDMENT OF RULES REGULATING THE CONDUCT OF THE PROCEEDINGS OF THE MAGISTRATES' COURTS OF SOUTH AFRICA

The Rules Board for Courts of Law has, under sections 6(1) and 6(2) of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985), read with sections 9(6)(a) and 9(6)(b) of the Jurisdiction of Regional Courts Amendment Act, 2008 (Act No. 31 of 2008), with the approval of the Minister of Justice and Constitutional Development, made the rules in the Schedule.

SCHEDULE

Definition

1. In these rules "the Rules" means the Rules Regulating the Conduct of Proceedings of the Magistrates' Courts of South Africa published under Government Notice No. R. 740 of 23 August 2010, as amended by Government Notice Nos. R. 1222 of 24 December 2010, R. 611 of 29 July 2011, R. 1085 of 30 December 2011,

R. 685 of 31 August 2012, R. 115 of 15 February 2013, R. 263 of 12 April 2013 and R. 760 of 11 October 2013.

Amendment of the Rules

2. The Rules are hereby amended by –
- (a) the insertion of the heading “**Chapter 1**” before rule 3 of the Rules; and
 - (b) the insertion of the following Chapter before rule 70 of the Rules.

“Chapter 2

Objectives

70. The objectives of this Chapter are to give effect to-
- (1) section 34 of the Constitution of the Republic of South Africa, 1996, which guarantees everyone the right to have any dispute that can be resolved by the application of the law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum; and
 - (2) the resolution of the Access to Justice Conference held in July 2011, under the leadership of the Chief Justice, towards achieving delivery of accessible and quality justice for all, that steps be taken to introduce alternative dispute resolution mechanisms, preferably court-annexed mediation or the Commission for Conciliation, Mediation and Arbitration kind of alternative dispute resolution, into the court system.

Purposes of mediation

71. The main purposes of mediation are to—
- (a) promote access to justice;
 - (b) promote restorative justice;

- (c) preserve relationships between litigants or potential litigants which may become strained or destroyed by the adversarial nature of litigation;
- (d) facilitate an expeditious and cost-effective resolution of a dispute between litigants or potential litigants;
- (e) assist litigants or potential litigants to determine at an early stage of the litigation or prior to commencement of litigation whether proceeding with a trial or an opposed application is in their best interests or not; and
- (f) provide litigants or potential litigants with solutions to the dispute, which are beyond the scope and powers of judicial officers.

Purpose of rules

72. The purpose of the rules in this Chapter is to provide the procedure for the voluntary submission of civil disputes to mediation in selected courts.

Definitions

73. For the purposes of this Chapter—

'action' means litigation commenced by the issue of summons;

'alternative dispute resolution' means a process, in which an independent and impartial person assists parties to attempt to resolve the dispute between them, either before or after commencement of litigation;

'application' means litigation commenced by notice of motion;

'defendant' includes any respondent and any party who would be defending a dispute if litigation were initiated;

'dispute' means the subject matter of actual or potential litigation between parties or an aspect thereof;

'litigant' means a party to litigation;

'litigation' means court proceedings commenced by action or application proceedings;

'mediation' means the process by which a mediator assists the parties in actual or potential litigation to resolve the dispute between them by facilitating discussions between the parties, assisting them in identifying issues, clarifying priorities, exploring areas of compromise and generating options in an attempt to resolve the dispute;

'mediation session' means the period that a mediator and the parties are engaged in mediation of the dispute;

'mediator' means a person selected by parties or by the clerk of the court or registrar of the court from the schedule referred to in rule 86(2), to mediate a dispute between the parties;

'potential litigation' means litigation which may arise out of a dispute;

'statement of claim' means a written statement signed by the party, in which a party intending to claim any relief against another party sets out in clear and concise terms the material facts on which the claim is based;

'statement of defence' means a written statement, signed by the defendant, in which the defendant sets out in clear and concise terms the material facts on which the defendant's defence is based.

Application of rules

74. (1) The rules in this Chapter apply to the voluntary submission by parties to mediation of—

- (a) disputes prior to commencement of litigation; and
- (b) disputes in litigation which has already commenced and as contemplated in rules 78 and 79.

(2) These rules apply to courts to be designated by the Minister by publication in the *Gazette*.

(3) The application of these rules is subject to the provisions of any other law and the procedure provided for in any other law, for the mediation of disputes between parties to litigation.

Referral to mediation

75. (1) Parties may refer a dispute to mediation—

(a) prior to the commencement of litigation; or

(b) after commencement of litigation but prior to judgment;

Provided that where the trial has commenced the parties must obtain the authorisation of the court.

(2) A judicial officer may at any time after the commencement of litigation, but before judgment, enquire into the possibility of mediation of a dispute and accord the parties an opportunity to refer the dispute to mediation.

Functions and duties of clerks and registrars

76. (1) A clerk or registrar of the court must explain to all parties—

(a) the purpose of alternative dispute resolution, the meaning, objectives and benefits, including costs saving, of mediation; and

(b) their liability for the fees of the mediator.

(2) A clerk or registrar of the court must—

(a) inform the parties that they may be assisted by practitioners of their choice, at their own cost;

- (b) in consultation with the parties, execute the duties in rules 77 and 78;
- (c) if the parties agree to mediation, assist them to conclude a written agreement to mediate, which must be signed by the parties; and
- (d) upon conclusion of an agreement to mediate, forward to the mediator—
 - (i) a copy of the agreement to mediate;
 - (ii) copies of the statement of claim and statement of defence, if mediation is to occur prior to commencement of litigation;
 - (iii) in action proceedings, copies of the summons and plea, or statement of defence if no plea has been filed; and
 - (iv) in application proceedings, copies of the founding, answering and replying affidavits, or statement of defence, if no answering affidavit has been filed.

Referral to mediation prior to commencement of litigation

77. (1) A party desiring to submit a dispute to mediation prior to commencement of litigation must make a request in writing to the clerk or registrar of the court, which would ordinarily have jurisdiction to hear the matter, if litigation were commenced.

(2) The request referred to in subrule (1) must indicate—

- (a) whether relief is being claimed by or against the party seeking to mediate;

- (b) the full names of the other party or parties or name or names by which the other party or parties to the dispute are known to the party seeking mediation;
- (c) the physical and postal addresses of the other party or parties to the dispute;
- (d) the facsimile number or electronic mail address of the party seeking mediation, if such party has a facsimile number or email address; and
- (e) the nature of the dispute and the material facts on which the dispute is based.

(3) The clerk or registrar of the court must inform all other parties to the dispute that mediation of the dispute is being sought and must call upon the party seeking mediation and all other parties to the dispute to attend a conference within 10 days, for the purposes of determining whether all or some of the parties agree to submit the dispute to mediation.

(4) If at the conference referred to in subrule (3), some or all of the parties between whom mediation is possible, agree to submit the dispute to mediation, the clerk or registrar of the court must—

- (a) in collaboration with the parties appoint a mediator or, if the parties cannot agree on a mediator, the clerk or registrar of the court must appoint a mediator;
- (b) confer with the mediator and set the date, time and venue for mediation; and
- (c) assist the parties to conclude a written mediation agreement between the parties, which must be signed by them and contain the following particulars:

- (i) The particulars referred to in subrule 2(b), (c) and (d);
- (ii) a statement that the parties have agreed to mediate the dispute between them;
- (iii) the date, time and venue of the mediation;
- (iv) the name of the mediator;
- (v) the period of time that will be allocated for each mediation session;
- (vi) the time within which mediation will be concluded and the method by which any periods or time limits may be extended;
- (vii) the confidentiality and privilege attaching to disclosures at the mediation;
- (viii) the consequences of any party not abiding by the agreement; and
- (ix) where there are multiple parties to the dispute, the terms of any settlement agreement are not binding on any party who has not participated in mediation.

(5) A party claiming relief must lodge a statement of claim with the clerk or registrar of the court within 10 days of the signature of the agreement referred to in subrule 4(c), and forward a copy of the statement of claim to all other parties to the mediation proceedings.

(6) The party or parties against whom relief is being claimed must lodge a statement of defence with the clerk or registrar of the court within 10 days of receipt of the statement of claim, and forward a copy of the statement of defence to all other parties to the mediation proceedings.

Referral to mediation by litigants

78. (1) (a) Any party may at any stage after litigation has commenced, but before trial, request the clerk or registrar of the court, in writing, to refer the dispute to mediation.

(b) The clerk or registrar of the court must inform all other parties to the dispute that mediation of the dispute is being sought and must call upon the party seeking mediation and all other parties to the dispute to attend a conference within 10 days for the purposes of determining whether all or some of the parties agree to mediation.

(2) After the commencement of trial but prior to judgment any party may apply to court to refer the dispute to mediation.

(3) If the court refers the dispute to mediation, the provisions of subrule (4) and rules 76(2) and 77(4) apply.

(4) (a) In action matters, if pleadings have closed, the summons or declaration and plea, as referred to in the rules, will serve as the statement of claim and statement of defence, respectively.

(b) If a plea has not been delivered, the defendant must deliver a statement of defence within 10 days of the conclusion of the agreement to mediate.

(c) In application matters, the founding affidavit will serve as the statement of claim and the answering affidavit, if delivered, will serve as the statement of defence.

(d) If no answering affidavit has been delivered, the respondent must deliver a statement of defence within 10 days of the conclusion of the agreement to mediate.

Referral to mediation by court

79. (1) A court may, prior to or during a trial but before judgment, enquire into

the possibility of mediation and accord the parties an opportunity to refer the dispute to the clerk or registrar of the court to facilitate mediation.

(2) If during the trial the parties consent to the dispute being mediated, the parties must request the court to refer the dispute to the clerk or registrar of the court to facilitate mediation.

(3) The provisions of rules 76(2), 77(4) and 78(4) apply if a dispute is referred to mediation under this rule.

Role and functions of mediator

80. (1) At the commencement of mediation the mediator must inform the parties of the following:

- (a) The purposes of mediation and its objective to facilitate settlement between the parties;
- (b) the facilitative role of the mediator as an impartial mediator who may not make any decisions of fact or law and who may not determine the credibility of any person participating in the mediation;
- (c) the inquisitorial nature of mediation proceedings;
- (d) the rules applicable to the mediation session;
- (e) all discussions and disclosures, whether oral or written, made during mediation are confidential and inadmissible as evidence in any court, tribunal or other forum, unless the discussions and disclosures are recorded in a settlement agreement signed by the parties, or are otherwise discoverable in terms of the rules of court, or in terms of any other law;

- (f) the mediator may during the mediation session encourage the parties to make full disclosure if in the opinion of the mediator such disclosure may facilitate a resolution of the dispute between the parties;
 - (g) no party may be compelled to make any disclosure, but a party may make voluntary disclosures with the same protection referred to in subrule (1)(e);
 - (h) the mediator will assist to draft a settlement agreement if the dispute is resolved; and
 - (i) if the dispute is not resolved, the mediator will refer the dispute back to the clerk or registrar of the court, informing him or her that the dispute could not be resolved.
- (2) A mediator must, within 5 days of the conclusion of mediation, submit a report to the clerk or registrar of the court informing him or her of the outcome of the mediation.
- (3) A mediator may postpone a mediation session if the parties agree.

Suspension of time limits

81. The time limits prescribed by the rules in Chapter I for the delivery of pleadings and notices, the filing of affidavits or the taking of any step by any litigant are suspended from the time of conclusion of an agreement to mediate to the conclusion of the mediation proceedings.

Settlement agreements

82. (1) In the event that the parties reach settlement, the mediator must assist the parties to draft the settlement agreement, which must be transmitted by the mediator to the clerk or registrar of the court.

(2) If a settlement is reached at mediation in a dispute which is not the subject of litigation, the clerk or registrar of the court must, upon receipt of the settlement agreement from the mediator, file the settlement agreement.

(3) If a settlement is not reached at mediation in a dispute which is not the subject of litigation, the clerk or registrar of the court must, upon receipt of the report from the mediator, file the report.

(4) If a settlement is reached at mediation in a dispute which is the subject of litigation, the clerk or registrar of the court must at the request of the parties and upon receipt of the settlement agreement from the mediator, place the settlement agreement before a judicial officer in chambers for noting that the dispute has been resolved or to make the agreement an order of court, upon the agreement of the parties.

(5) If a settlement is not reached at mediation in a dispute which is the subject of litigation, the clerk or registrar of the court must, upon receipt of the report from the mediator, file the report to enable the litigation to continue, from which time all suspended time periods will resume.

(6) Settlement agreements must be reduced to writing and signed by the parties.

Multiple parties and multiple disputes

83. (1) Where there are multiple parties to a dispute, parties who are agreeable to mediate may proceed to do so and parties who do not agree to mediate may proceed to litigation.

(2) Where there are multiple aspects to a dispute, the parties may agree that some aspects be mediated upon and other aspects be proceeded with to litigation.

(3) Where any aspect of a dispute remains unsettled after mediation, the parties may proceed to litigation on the unsettled aspect.

Fees of mediators

84. (1) Parties participating in mediation are liable for the fees of the mediator, except where the services of a mediator are provided free of charge.

(2) Liability for the fees of a mediator must be borne equally between opposing parties participating in mediation: Provided that any party may offer or undertake to pay in full the fees of a mediator.

(3) The tariffs of fees chargeable by mediators will be published by the Minister together with the schedule of accredited mediators referred to in rule 86(2).

Representation of parties at mediation proceedings

85. (1) Subject to subrules (2) and (3), parties to mediation must attend mediation sessions in person.

(2) Where a juristic person or a firm or a partnership is a party to mediation proceedings such entity must be represented by an official from that juristic person, firm or partnership, who must be duly authorised to represent the entity, to conclude a settlement and sign a settlement agreement on behalf of such entity.

(3) Where the state or an organ of state is a party to mediation proceedings the state or such organ must be represented by an official, duly authorised to represent the state or such organ to conclude a settlement and sign a settlement agreement on behalf of the state or organ of state, and be assisted by the State Attorney.

(4) Any party to mediation proceedings may be assisted by a practitioner or practitioners.

Accreditation of mediators

86. (1) The qualification, standards and levels of mediators who will conduct mediation under these rules, will be determined by the Minister.

(2) A schedule of accredited mediators, from which mediators for the purposes of this Chapter must be selected, will be published by the Minister.

Forms and guidelines

87. Forms and guidelines for assistance to parties, clerks of the court, registrars of the court, judicial officers and mediators in mediation proceedings will be published together with the promulgation of these rules.”.

Amendment of rule 70 of the Rules

3. Rule 70 of the Rules is hereby amended by the substitution for the number “70” of the number “88”.

Amendment of annexures to the Rules

4. The annexures to the Rules are hereby amended by the insertion after Annexure 2 of the following Annexure:

"ANNEXURE 3

Mediation Forms

(Rule 87)

Form No:

MED-1	Application for referral to mediation prior to litigation
MED-2	Invitation to respondent to engage in mediation prior to litigation
MED-3	Application for referral to mediation after litigation commenced
MED-4	Invitation to mediation after litigation commenced
MED-5	Explanation of process and rights
MED-6	Agreement to mediate
MED-7	Notice to Cash Hall to receive payment of mediator's fees
MED-8	Statement of Claim
MED-9	Statement of Defence
MED-10	Instructions to mediator
MED-11	Postponement of mediation
MED-12	Mediation time sheet
MED-13	Outcome of mediation
MED-14	Settlement Agreement
MED-15	Mediator's Report

FORM MED-1
(Rules 77(1) and (2))

COURT:

FILE NO:

**APPLICATION FOR REFERRAL TO MEDIATION
(Prior to litigation)**

PARTIES:

AA Claimant

And

BB Respondent

(To be completed by claimant/mediation clerk)

1. I the undersigned, the Claimant/Representative of the Claimant, apply for referral to mediation of a dispute between the above parties.

2. My particulars/particulars of the entity I represent are:

Surname/Name _____

First Names _____

Residential address _____

Business Address _____

Postal Address _____

Telephone _____

Cellular phone _____

Fax no _____

Email _____

3. Particulars of the Respondent:

Surname/Name _____
First Names _____
Residential address _____
Business Address _____
Postal Address _____
Telephone _____
Cellular phone _____
Fax no _____
Email _____

4. Summary of claim by claimant:

Signed at _____ on this _____ day of _____

CLAIMANT
PERSONAL CAPACITY/
DULY AUTHORISED
*(Attach copy of Authority/
Resolution)*

FORM MED-2
(Rule 77(3))

COURT:

FILE NO:

**INVITATION TO RESPONDENT TO ENGAGE IN MEDIATION
(Before commencement of litigation)**

PARTIES:

AA

Claimant

And

BB

Respondent

(To be completed by mediation clerk)

PARTICULARS OF RESPONDENT

Surname/Name _____
First Names _____
Residential address _____
Business Address _____
Postal Address _____
Telephone _____
Cellular no _____
Fax no _____
Email _____

1. Mediation is a process by which disputes can be resolved amicably with the assistance of an impartial mediator quickly and cost effectively.

2. The claimant has applied for mediation in a claim against you as set out in the attached application for mediation.
3. You are invited by the mediation clerk of the above court to a meeting for the purpose of explaining the process of mediation and thereafter, by consent, to consider an agreement to mediate. This may avoid formal court proceedings being instituted against you.
4. The meeting will take place on _____ in Room _____, _____ Magistrates' Court at _____ am/pm.

MEDIATION CLERK
DATE STAMP

FORM MED-3
(Rule 78(1))

COURT:

FILE NO:

**APPLICATION FOR REFERRAL TO MEDIATION
(After commencement of litigation)**

PARTIES:

AA Claimant

And

BB Respondent

(To be completed by party(ies)/mediation clerk)

1. I the undersigned, the Claimant/Respondent or Representative, apply for referral to mediation of the matter under Court Case No _____

2. PARTICULARS OF CLAIMANT:

Surname/Name _____

First Names _____

Residential address _____

Business Address _____

Postal Address _____

Telephone _____

Cellular no _____

Fax no _____

Email _____

3. PARTICULARS OF RESPONDENT:

Surname/Name _____
First Names _____
Residential address _____
Business Address _____
Postal Address _____
Telephone _____
Cellular no _____
Fax no _____
Email _____

4. Summary of claim/defence

Signed at _____ on this _____ day of _____

CLAIMANT/RESPONDENT

(If more than one claimant or respondent separate annexures should be used to provide particulars of further claimants and/or respondents)

FORM MED-4
(Rule 78(1))

COURT:

FILE NO:

INVITATION TO MEDIATION
(After commencement of litigation)

PARTIES:

AA Claimant

And

BB Respondent

(To be completed by mediation clerk)

PARTICULARS OF APPLICANT/RESPONDENT

Surname/Name _____
First Names _____
Residential address _____
Business Address _____
Postal Address _____
Telephone _____
Cellular no _____
Fax no _____
Email _____

1. Mediation is a process by which disputes can be resolved amicably with the assistance of an impartial mediator quickly and cost effectively.

2. The claimant/respondent has applied for mediation in a dispute between you and the claimant/respondent, as set out attached application for mediation.
3. You are invited by the mediation clerk of the above court to a meeting for the purpose of explaining the process of mediation and thereafter, by consent, to consider an agreement to mediate.
4. Notwithstanding the litigation which is in progress, you are invited to mediate.
5. The meeting will take place on _____ in Room _____, _____ Magistrates Court at _____ am/pm.

MEDIATION CLERK
DATE STAMP

Form MED-5
(Rule 76(1) & (2))

COURT:

FILE NO:

EXPLANATION OF PROCESS & RIGHTS
--

PARTIES

AA

Claimant

And

BB

Respondent

The parties hereby acknowledge that:

1. They have been informed of the following:
 - (a) The purpose of alternative dispute resolution;
 - (b) The meaning, objectives and benefits of mediation;
 - (c) The cost saving that is likely to result from mediation;
 - (d) They are equally liable for the fees of the mediator, but either party may elect to pay the mediator's fees in full;
 - (e) They may be assisted by legal representatives of their own choice, at the mediation proceedings, but the cost of such legal representation is for their own account.
2. They are not compelled to refer the dispute between them to mediation, but that if they do engage in mediation, they have the option of continuing with litigation, if mediation is not successful.

Signed by the Claimant/ attorney at _____ on _____

Signed by the Respondent/attorney at _____ on _____

MEDIATION CLERK

FORM MED-6
(Rules 77(4) & 78(3))

COURT:

FILE NO:

**AGREEMENT TO MEDIATE
(Prior to and after litigation)**

PARTIES:

AA

Claimant

And

BB

Respondent

(To be completed by mediation clerk)

We, the undersigned, (hereinafter referred to as "the Parties") agree to mediate the dispute between us, as set out in the Application for Referral to Mediation, on the terms and conditions in this agreement.

1. PARTICULARS OF CLAIMANT:

Surname/Name _____
First Names _____
Residential address _____
Business Address _____
Postal Address _____
Telephone _____
Cellular no _____
Fax no _____
Email _____

2. PARTICULARS OF RESPONDENT:

Surname/Name _____
First Names _____
Residential address _____
Business Address _____
Postal Address _____
Telephone _____
Cellular no _____
Fax no _____
Email _____

3. MEDIATOR

The Parties hereby agree to appoint the under mentioned mediator:

Surname _____
First Names _____
Address _____
Telephone _____
Cellular no _____
Fax no _____
Email _____

4. MEDIATOR'S FEES

4.1 The Parties and the mediator agree that the fees to the mediator will be paid in accordance with the tariff determined by the Minister.

4.2 A deposit of R_____ toward the mediator's fees and expenses, as determined by the mediation clerk, will be paid to the clerk of the court prior to the commencement of mediation. Any unearned amount in fees, paid as deposit, will be refunded to the Parties.

4.3 The Parties shall be jointly and severally liable for the mediator's fees and expenses.

4.4 Should payment not be timely made, the mediator may, at his/her sole discretion, stop all work on behalf of the Parties and withdraw from the mediation.

4.5 The Parties understand that they shall be responsible for two hours of the mediator's time at the above stated rate for any appointment which they do not attend and do not provide at least 24 hours advance notice of the cancellation.

5. DATE, TIME AND VENUE

5.1 The first mediation session will be held on / / at am/pm.

5.2 The mediation venue will be _____
but may be changed by agreement between the Parties and the mediator.

6. DURATION OF MEDIATION

The Parties agree that the anticipated duration of the mediation is _____ hours/days.

7. MEDIATION PROCESS

7.1 The Parties understand that mediation is a process in which a mediator facilitates communication between the Parties and, without deciding the issues or imposing a solution on the Parties, enables them to understand the issues and reach a mutually agreeable resolution of their dispute.

7.2 The Parties understand that it is for the parties, with the mediator's concurrence, to determine the scope of the mediation and this will be accomplished early in the mediation process.

8. NATURE OF MEDIATION

8.1 The Parties understand that mediation is an agreement-reaching process in which the mediator assists parties to reach agreement in a collaborative, consensual and informed manner.

8.2 It is understood that the mediator has no power to decide disputed issues for the Parties.

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

- 8.4 The Parties understand that the mediator's objective is to facilitate the Parties themselves reaching their most constructive and fairest agreement. The Parties also understand that the mediator has an obligation to work on behalf of each party equally and that the mediator cannot render individual legal advice to any party and will not render therapy within the mediation.
- 8.5 The Parties state their good faith intention to complete their mediation by an agreement. It is, however, understood that any party may withdraw from or suspend the mediation at any time, for any reason.
- 8.6 The Parties also understand that the mediator may suspend or terminate the mediation if she/he feels that the mediation will lead to an unjust or unreasonable result, if the mediator feels that an impasse has been reached, or if the mediator determines that s/he can no longer effectively perform his/her facilitative role.

9. MEDIATOR IMPARTIALITY

- 9.1 The Parties understand that the mediator must remain impartial throughout and after the mediation process. The mediator shall therefore not champion the interests of any party over another in the mediation or in any court or other proceeding.
- 9.2 The mediator will provide copies of correspondence, draft agreements, and written documentation to the Parties' legal representatives at a party's request.
- 9.3 The mediator may communicate separately with an individual mediating party, in which case such discussions shall be confidential between the mediator and the individual mediating party unless they agree otherwise.

10. MEDIATOR'S INDEMNITY

The Parties agree that the mediator shall not be liable for any act or omission directly or indirectly connected to the mediation.

11. FULL DISCLOSURE

Each of the Parties agrees to fully and honestly disclose all relevant information and documents, as requested by the mediator, and all information requested by

any other party to the mediation, if the mediator determines that the disclosure is relevant to the mediation discussions.

12. CONFIDENTIALITY

12.1 It is understood between the Parties and the mediator that the mediation will be strictly confidential and without prejudice.

12.2 Mediation discussions, written and oral communications, any draft resolutions, and any unsigned mediated agreements shall not be admissible in any court proceeding, unless such information is discoverable in terms of the normal rules of court. Only a mediated agreement, signed by the Parties may be so admissible.

12.3 The Parties further agree to not call the mediator to testify concerning the mediation or to provide any materials from the mediation in any court proceeding between the Parties.

12.3 The Parties understand the mediator has an ethical responsibility to break confidentiality if he/she suspects another person may be in danger of harm.

13. LITIGATION

The Parties agree to refrain from pre-emptive maneuvers and adversarial legal proceedings (except in the case of an emergency necessitating such action), while actively engaged in the mediation process.

14. PRESCRIPTION

The Parties are aware that the process of mediation shall not suspend, stay or interrupt prescription of any of the parties' claim and the onus rests on each party to take steps to interrupt such prescription for the duration of the mediation.

15. SETTLEMENT AGREEMENT

Should the Parties settle the dispute between them, the Parties agree to reduce the terms of the settlement to writing, with the assistance of the mediator.

16. BREACH OF AGREEMENT

Any party breaching this agreement shall be liable for and shall indemnify the non-breaching parties and the mediator for any loss, including all costs, expenses, liability and fees, including attorneys' fees, which may be incurred as a result of such breach.

17. NON-VARIATION AND WAIVER

The Parties agree that any amendment or variation or waiver of any term of this agreement must be in writing and signed by the parties, including the mediator.

SIGNED AT _____ ON _____

WITNESSES:

1. _____
2. _____

_____ CLAIMANT
PERSONAL CAPACITY/
DULY AUTHORISED
*(Attach copy of authority/
resolution)*

WITNESSES:

1. _____
2. _____

_____ RESPONDENT
PERSONAL CAPACITY/
DULY AUTHORISED
*(Attach copy of authority/
resolution)*

FORM MED-7

COURT:

FILE NO:

NOTICE TO RECEIVE MEDIATOR'S FEES

PARTIES:

AA

Claimant

And

BB

Respondent

To: The Cash Hall/Clerk of Court

Please accept the amount of _____ on behalf of the Claimant/Respondent, being the deposit/further payment of mediator's fees.

Particulars:

Mediator _____

Date of Mediation _____

Estimated duration of mediation _____

MEDIATION CLERK

DATE STAMP

FORM MED-8
(Rule 77(5))

COURT:

FILE NO:

STATEMENT OF CLAIM

PARTIES:

AA

Claimant

And

BB

Respondent

(To be completed by the claimant)

Description of claim

State:

(a) Date and description of the event.

(b) The nature of the breach or the loss suffered.

(c) The relief you require.

(if inadequate space attach additional pages)

SIGNED AT _____ ON _____

CLAIMANT
PERSONAL CAPACITY/

FORM MED-9
(Rule 77(6) & 78(4))

COURT:

FILE NO:

STATEMENT OF DEFENCE

PARTIES:

AA

Claimant

And

BB

Respondent

(To be completed by the respondent)

1. PARTICULARS OF THE RESPONDENT:

Surname/Name _____
First Names _____
Residential address _____
Business Address _____
Postal Address _____
Telephone _____
Cellular no _____
Fax no _____
Email _____

2. Description of the defence:

(a) State whether you agree or disagree with the claimant's statement of claim.

(b) If you deny the claim, explain your version.

FORM MED-10
(Rule 76(2))

COURT:

FILE NO:

INSTRUCTIONS TO MEDIATOR

PARTIES:

AA Claimant

And

BB Respondent

TO MEDIATOR	
MEDIATION DATE	

Please receive copies of the following documents:

- (a) _____
- (b) _____
- (c) _____
- (d) _____
- (e) _____

MEDIATION CLERK
DATE STAMP

FORM MED-11
(Rule 80(3))

COURT:

FILE NO:

POSTPONEMENT OF MEDIATION

PARTIES:

AA

Claimant

And

BB

Respondent

By agreement between the parties, the mediation session held on _____
from _____ to _____ has been postponed to _____ at _____ am/pm.

MEDIATOR

NAME

DATE

FORM MED-12

COURT:

FILE NO:

MEDIATION TIME SHEET

PARTIES:

AA

Claimant

And

BB

Respondent

DATE	TIME	CLAIMANT SIGN	RESPONDENT SIGN

MEDIATOR

NAME

DATE:

FORM MED-13

(Rule 80(2))

COURT:

FILE NO:

OUTCOME OF MEDIATION

PARTIES:

AA

Claimant

And

BB

Respondent

To: The mediation clerk

1. Mediation held on _____ was successful/unsuccessful.
2. The Settlement Agreement is attached.
3. By agreement the parties require the settlement to be made/not to be made an order of court.

MEDIATOR

NAME

DATE:

FORM MED-14
(RULE 82)

COURT:

FILE NO:

SETTLEMENT AGREEMENT

PARTIES:

AA

Claimant

And

BB

Respondent

Whereas the parties referred their dispute to mediation;

And whereas the parties have settled the dispute between them with the assistance of the mediator;

And whereas the parties hereby record the terms and conditions of the settlement;

Now therefore it is agreed as follows:

1. TERMS OF SETTLEMENT

2. AUTHORITY TO ENTER INTO SETTLEMENT

Each person signing this agreement in a representative capacity warrants that he or she has full authority to bind his or her principal to this agreement.

3. CONSENT TO JUDGMENT

The Claimant/Respondent agrees that in the event of failure to comply with any term of this agreement, the Claimant/Respondent shall be entitled to lodge with the clerk/registrar of the court the written Consent to Judgment signed by the Claimant/Respondent and obtain judgment in accordance with the provisions of section 58 of the Magistrates' Courts Act 32/1944.

4. NON PAYMENT

Should any amount payable in terms of this agreement not be paid on the due date the full amount outstanding shall immediately become due, owing and payable.

5. CONFIDENTIALITY

5.1 It is understood between the parties and the mediator that the mediation will be strictly confidential and without prejudice.

5.2 Mediation discussions, written and oral communications, any draft resolutions, and any unsigned mediated agreements shall not be admissible in any court proceeding, unless such information is discoverable in terms of the normal rules of court. Only a mediated agreement, signed by the parties may be so admissible.

5.3 The parties further agree to not call the mediator to testify concerning the mediation or to provide any materials from the mediation in any court proceeding between the parties.

5.4 The parties understand the mediator has an ethical responsibility to break confidentiality if s/he suspects another person may be in danger of harm.

6. ORDER OF COURT

The parties agree that this settlement agreement is/is not forthwith to be made an order of court.

7. BREACH

In the event that this agreement has not been made an order of court and any party breaching the agreement, the aggrieved party will be entitled to make application to court to make this agreement an order of court and to enforce the terms of hereof.

8. NON-VARIATION AND WAIVER

The parties agree that any amendment, waiver or variation of any term of this agreement must be in writing and signed by all parties.

SIGNED AT _____ ON _____

WITNESSES:

1. _____

2. _____

CLAIMANT
PERSONAL CAPACITY/
DULY AUTHORISED
(Attach copy of authority/
resolution)

WITNESSES:

1. _____

2. _____

RESPONDENT
PERSONAL CAPACITY/
DULY AUTHORISED
*(Attach copy of authority/
resolution)*

FORM MED-15
(Rule 80(2))

COURT:

FILE NO:

MEDIATOR'S REPORT

PARTIES:

AA

Claimant

And

BB

Respondent

To: The mediation clerk

1(a) Mediation between the parties was held on the following dates and at the following times:

Date: _____ Time: _____

Date: _____ Time: _____

Date: _____ Time: _____

(b) Mediation was concluded on _____

2. Mediation was fully successful and a settlement agreement was concluded.

OR

3(a) Mediation was partially successful and the following was agreed upon:

(b) An agreement was/was not concluded

OR

4 (a) Mediation was not successful for the following reasons:

(b) The parties have elected to continue with litigation/take no further steps/take time to consider what they would elect to do.

MEDIATOR
NAME
DATE"

COMMENCEMENT

5. These rules come into operation on 1 August 2014.