
MEDIATION PROTOCOL

APPLICABLE IN THE

THE GAUTENG DIVISION

OF THE HIGH COURT

(APRIL 2025)

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MEDIATION PROTOCOL FOR THE GAUTENG DIVISION

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 Mediation 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 Mediation 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 Mediation 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 the referral of a dispute to mediation as contemplated in Rule 41A(3).

2.2.5. Where the parties to a civil action had attempted mediation unsuccessfully prior to the Mediation Directive becoming effective, and provided that such mediation was conducted by a suitably qualified, skilled and experienced mediator who complied, at the time of conducting the mediation in question, with the requirements for Qualified Mediators contained in this Protocol (excluding the functional and/or administrative components thereof introduced by this Protocol), as certified by the Recognised Mediation Organisation (**RMO**) under whose auspices such mediator practised, such mediation will constitute sufficient compliance for the purposes of the Protocol and the Mediation Directive and the parties may approach the mediator who conducted such mediation to obtain written confirmation thereof, which written confirmation will qualify as the Mediator's Report for the purposes of the Mediation Directive and the Protocol.

2.3. **Judicial Oversight**

2.3.1. 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.

2.3.2. The Judge President shall be at liberty to nominate a Judge for the Gauteng Division (or for each seat thereof) (**the Mediation Judge**) to oversee the implementation of the Directive and Protocol and act as Umpire, as contemplated in paragraph 5.2.3 below, if the parties cannot agree on the appointment of a Qualified Mediator or intervene when a party encounters a recalcitrant participant that abuses the provisions of the Mediation Directive and this Protocol in order to frustrate the process

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 Recognised Mediation Organisations (**RMO**) (i.e. accredited mediation members organisations as defined in paragraph 5.3 below); or

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- 3.1.2. the TGS platform (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 non-RMO administration software solution service provider) as an independent, viable, option for the online administration of court-annexed mediation, as contemplated in this Protocol. Administration of court-annexed mediations by the ADR-TG will occur via its *ADR Personal Assistant Online Administration Software system and platform (Technology Group Software or TGS)* accessible at: <https://adrtechgroup.com/administered-matters/>.
- 3.3. Court-annexed mediations will be administered either by the RMO agreed to between the parties or by the ADR-TG via the TGS platform. Should the parties be unable to agree on which of the aforesaid alternatives should apply, or, which of the RMOs should be appointed to administer the mediation, the matter must be referred to the Umpire in accordance with 5.2.3 below.
- 3.4. Qualified Mediators who wish to appear on the TGS platform database, can register on the centralised database of mediators for court-annexed mediation at <https://qpp.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 RMO engaged to administer the mediation and/or RMOs 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.
- 3.6. Qualified Mediators who are appointed by the parties privately shall, for the purposes of the reporting requirements referred to in paragraph 3.5, notify the RMO under whose auspices they practice or alternatively, may log the matter on the TGS platform to ensure efficient reporting on the outcomes of court-annexed mediations and consolidation of the related statistical data in a manner that enables the Judge President to continuously assess the efficiency and success of the initiative contemplated by the Mediation Directive and the Protocol for the purposes of policy considerations and reporting to stakeholders.

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

- 4.1. The process shall be initiated by a Notice in terms of Rule 41A.
- 4.2. Parties who are yet to deliver a Notice in terms of Rule 41A should ensure that the Rule 41A notice such party delivers complies with the provisions of Rule 41A (**Initial Rule 41A Notice**) and contains the particulars set out in this Protocol (to the extent applicable).

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- 4.3. Unless all the parties to a civil action delivered a Notice in terms of Rule 41A which contained the required particulars set out in this Protocol before the Mediation Directive becoming effective, the parties to such civil action are expected to deliver a further Rule 41A notice that is amplified with the particulars set out in this Protocol (to the extent applicable) (**Amplified Rule 41A Notice**) notwithstanding having done so previously.
- 4.4. Unless the parties had previously mediated and is able to obtain a Mediator's Report to that effect, all parties to pending civil actions are required to deliver either an Initial Rule 41A Notice or an Amplified Rule 41A Notice and to obtain a Mediator's Report, notwithstanding the current status of the matter, and any application for a trial date, including in matters where a trial date is yet to be applied for, a trial date has not yet been or allocated (notwithstanding having been applied for already) or an allocated trial date is forfeited, must be relodged with the Registrar of Civil Trials accompanied by a Mediator's Report.
- 4.5. **Initial Rule 41A Notice**
- 4.5.1. Any party who is, as at the date of the issue of the Mediation 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.
- 4.5.2. 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 Mediation Directive and this Protocol. In addition, the Initial Rule 41A Notice must, to the extent possible and and/or applicable, also contain the particulars set out in paragraph 4.6.2 below.
- 4.6. **Subsequent Amplified Rule 41A Notice(s)**
- 4.6.1. If, as a result of the Mediation Directive and implementation of this Protocol, the parties stand to lose their trial date or a trial date is yet to be applied for and/or allocated, 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**).
- 4.6.2. **The Amplified Rule 41 Notice must stipulate at least the following:**
- 4.6.2.1. The party's preference for administration of the mediation process in accordance with paragraph 3.1 above.
- 4.6.2.2. The name and relevant details of one or more proposed mediator(s).
- 4.6.2.3. The facts of the matter it deems are:
- 4.6.2.3.1. common cause; and
- 4.6.2.3.2. in dispute.

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- 4.6.2.4. What disputed facts of the matter, if any, might reasonably be resolved by admissions.
- 4.6.2.5. Whether the need for expert evidence in the matter is reasonably anticipated and, if so:
 - 4.6.2.5.1. What evidence of an expert nature is already available, if any.
 - 4.6.2.5.2. 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.
- 4.6.2.6. Which procedural aspects and timelines applicable to the further conduct of the matter can potentially be addressed and agreed upon.
- 4.6.2.7. 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 Mediation Directive.
- 4.6.2.8. Any other issue of material relevance to a mediation engagement.

4.7. **Irregular Notices:**

- 4.7.1. 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:

- 4.7.1.1. the matter cannot be resolved, either in full or partially; and
- 4.7.1.2. none of the other aspects provided for in terms of Rule 41A including:
 - 4.7.1.2.1. the identification and classification of issues in dispute, and
 - 4.7.1.2.2. 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**).

- 4.7.2. An aggrieved party who received such an irregular 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 4.9 below, shall be applicable and the aggrieved party shall be entitled to proceed accordingly.

4.8. **Time Periods**

- 4.8.1. 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.

- 4.8.2. 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/is (**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 Mediation Directive and no more than 15 (fifteen) court days.
- 4.8.3. In addition to the particulars set out in paragraph 4.6.2, the responding Amplified Rule 41A Notice must also indicate:
- 4.8.3.1. The responding party's acceptance or rejection (with valid reasons) of the mediator(s) proposed by the initiating party;
- 4.8.3.2. 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 RMO's, which the responding party will irrevocably accept to be appointed as mediator, for the initiating party to choose from.
- 4.8.3.3. 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.
- 4.8.3.4. 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 4.8.3.3 above, request the Umpire to appoint a mediator *mutatis mutandis* in accordance with the provisions of paragraph 5.2.3 below.
- 4.8.4. Once a mediator has been appointed, either by agreement between the parties or by the Umpire, the parties shall:
- 4.8.4.1. within 5 (five) court days be obliged to:
- 4.8.4.1.1. Contact the approved RMO agreed to in accordance with paragraph 3.1; or
- 4.8.4.1.2. Initiate the mediation process via the TGS platform by accessing it at <https://adrtechgroup.com/administered-matters/> and submitting the particulars relevant to the matter in question; or
- 4.8.4.1.3. Contact the mediator directly and confirm his/her appointment and make logistical arrangements for the mediation to be convened.
- 4.8.4.2. 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.

- 4.8.4.3. 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.
- 4.8.5. The ordinary timelines and provisions of Rule 41A shall apply further or to any aspect not expressly dealt with in this Protocol.
- 4.8.6. 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 4.8.4.2.
- 4.8.7. 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 4.9 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 mediation¹.
- 4.8.8. 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.
- 4.9. **Delinquent Parties**
- 4.9.1. 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 Mediation Directive and this Protocol, such party is classified as a delinquent party (**delinquent party**).
- 4.9.2. 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.
- 4.9.3. Should the delinquent party fail to comply with the compelling order contemplated in paragraph 4.9.2 within the time provided for, the aggrieved party shall:
- 4.9.3.1. be excused from having not subjected the matter to mediation;
- 4.9.3.2. 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
- 4.9.3.3. may seek an order for the costs of compliance with this Protocol, and the content of paragraph 4.9 in particular, on a punitive scale.

4.9.4. 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.

4.10. **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 Mediation Directive and this Protocol or deliberately frustrate or unreasonably delay the process.

4.10.1. Non-participation penalties

4.10.1.1. Parties refusing to mediate without reasonable cause may face adverse cost orders to discourage non-compliance.

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

4.10.2. Non-compliance result

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

4.10.2.2. 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 4.9 above.

4.10.2.3. 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 Mediation 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.

4.10.2.3.1. 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.

4.10.2.3.2. 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**). Qualified Mediators are accredited mediators, who have, in addition to the training accreditation assessment, been specifically certified by the RMO under whose auspices such mediators conduct their mediation practices, as sufficiently skilled and experienced to conduct court-annexed mediations in accordance with the provisions of this Protocol, are currently registered members in good standing on the panel of Qualified Mediatorsⁱⁱ of such an accredited RMO (as set out in Annexure B) and thus 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 RMO, request such RMO to nominate a Qualified Mediator for appointment;
- 5.2.2.2. If agreement was reached on the use of the TGS platform, request the appointment of a mediator by ADR-TG from its consolidated list of Qualified Mediators for Court-Annexed Mediation on the TGS platform; 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 cannot agree on the Mediation Administrator and/or a Qualified Mediator to be appointed, or the parties have failed to appoint a mediator within 30 calendar days of the response to an Initial Rule 41A Notice or an Amplified

Rule 41A Notice (or in the absence of a response within 30 days of the due date thereof), as the case may be, the appointment shall be made by the Umpire.

5.2.3.2. The Umpire shall be the Mediation Judge, or a person delegated by the Mediation Judge.

5.2.3.3. The Umpire shall within 10 (ten) court days of the referral either appoint a Qualified Mediator and/or Mediation Administrator or delegate the duty to make such appointment to either an RMO or the ADR-TG who, in turn, shall appoint a Qualified Mediator within 5 (five) court days, which appointment is final and binding on the parties.

5.3. **Recognised Mediation Organisations (RMOs)**

5.3.1. Qualified Mediators must be members in good standing of an approved and accredited mediator members organisation (**Recognised Mediation Organisation** or **RMO**).

5.3.2. RMOs are responsible for the supervision of members acting under their auspices and to ensure that they comply with the RMO's code of conduct and policies, procedures, rules and regulations regardless of whether such Qualified Mediator is acting in a mediation administered by the RMO, pursuant to an appointment by the parties privately, or through any other administrative process including, but not limited to, the TGS platform.

5.3.3. RMOs must attend to (i) certify their members as suitably qualified for the purposes of acting as mediators in the court-annexed mediation contemplated in this Protocol (subject to any assessment or additional requirement as the RMO may determine necessary internally), (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.

5.3.4. Recognised Mediation Organisations for this project must meet the Minimum Standards for Recognised Mediation Organisations set out in Annexure B.

5.3.5. As a starting point, mediator members organisations that are based in South Africa and are

5.3.5.1. members of the Alternative Dispute Resolution Practitioners of South Africa NPC (**ADRP - SA**), or

5.3.5.2. accredited by any one of the Dispute Settlement Accreditation Council of South Africa (**DiSAC**), the National Accreditation Board of Family Mediators (**NABFAM**), the International Mediation Institute (**IMI**), or the Centre for Effective Dispute Resolution (**CEDR**), or

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- 5.3.5.3. affiliated with a South African University as a mediation training provider and comply otherwise with the standards set out in Annexure B, are recognised as such RMOs. Any other organisation or entity wishing to become an RMO may apply for membership with and recognition by the aforesaid organisations.
- 5.3.6. RMOs, by virtue of their voluntary participation in this initiative, agree to:
- 5.3.6.1. Diligently assess their member mediators and certify them in accordance with clause 5.1 above;
- 5.3.6.2. Provide ongoing practice supervision of the member mediators it has certified. This includes dealing with complaints against any such member mediator, and implementing disciplinary processes where required;
- 5.3.6.3. 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
- 5.3.6.4. Promote transformation.
- 5.3.7. RMOs 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 RMO 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 Mediation 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 necessaryⁱⁱⁱ) 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. Mediations (including in personal injury and RAF-related matters) may however be

conducted virtually where, taking into account logistical, financial and/or other considerations, the appointed mediator considers, in his/her discretion, that conducting the mediation virtually is likely to be more beneficial than an in person mediation, in which event such determination shall be valid and binding on the parties.

- 6.4.6. Should a mediation be scheduled to be held in person - 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 and/or their legal representative/s. 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. Online mediations must be conducted via a video-conference platform that allows the mediator to control the process and similarly allow for separate meeting rooms (virtual breakout rooms) for each party, where they can have confidential and private meetings with the mediator and/or their legal representative/s.
- 6.4.8. 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.
- 6.4.9. 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, prior to the scheduled commencement date and time of the mediation, that they have stable connectivity, clear audio and a functioning webcam with sufficient display quality that ensures 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.
- 6.4.10. 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.
- 6.4.11. The parties shall:
- 6.4.11.1. act in good faith during the mediation process;
 - 6.4.11.2. provide the mediator with all relevant documents and information that may be pertinent to the matter or that the mediator may request;
 - 6.4.11.3. participate actively and constructively in mediation sessions;

6.4.11.4. 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 7.1.3.5.

6.8.2. Termination of the mediation does not detract from the confidentiality and payment obligations of the parties under the Agreement to Mediate.

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6.8.3. A mediation which is not finalised at a particular sitting (such as mediations conducted over multiple sessions 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.

6.9. **Settlements**

6.9.1. If a matter is successfully resolved by mediation, the matter should be removed from the trial roll by way of notice, including a direct notice to the Registrar of Civil Trial Dates - so that the Registrar takes notice of an allocated date becoming available.

6.9.2. As the slots on the trial roll become available due to matters being settled at mediation, pending applications for trial dates in matters where allocated trial dates had previously been forfeited shall be given preference in the allocation of a trial date on an expedited basis by utilising the seats that become available as a result of the settlement and removal of matters from the trial roll.

6.9.3. Matters are settled at mediation only once a settlement agreement has been signed by all the parties (all signatories being duly authorised thereto).

6.9.4. Matters that were so settled should be referred to the Settlement Court (where applicable) for the settlement agreement to be made an order of court.

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

7.1. **Mediator's Report**

7.1.1. Within ten (10) 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. The mediator's particulars including:
 - 7.1.3.1.1. the name and conduct details of the mediator who conducted the mediation;
 - 7.1.3.1.2. the RMO under whose auspices the mediator practises; and
 - 7.1.3.1.3. which entity attended to the administration of the mediation in question.
- 7.1.3.2. Confirmation of issues that have been resolved or are, by agreement between the parties, common cause.
- 7.1.3.3. Identification of the issues that are (or remain) in dispute.
- 7.1.3.4. The outcome of the mediation, being:
 - 7.1.3.4.1. Completely successful (i.e. agreement reached in respect of all issues in dispute).
 - 7.1.3.4.2. 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).
 - 7.1.3.4.3. Partially successful (i.e. agreement reached in respect of some issues in dispute, but unresolved issues to be referred to trial).
 - 7.1.3.4.4. Unsuccessful (i.e. no issues could be resolved and thus all issues are to be referred to trial).
- 7.1.3.5. Should there not have been complete resolution of all issues in dispute as contemplated in paragraph 7.1.3.4.1 above, whether the mediation failed (in whole or in part) due to any one or more of the following aspects:
 - 7.1.3.5.1. Failure to properly comply with paragraph 6.3.2 of this Protocol;
 - 7.1.3.5.2. Failure of one or more of the parties to attend the mediation;
 - 7.1.3.5.3. 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);
 - 7.1.3.5.4. Logistical issues - such as connectivity, availability of suitable facilities, system-related challenges, etc. - prevented the commencement, continuation or completion of the mediation;
 - 7.1.3.5.5. 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

- 7.1.3.5.6. If the mediator considers that it is pertinent and necessary to make such disclosure - state if the parties (or any one of them) 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.
- 7.1.3.6. 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.
- 7.1.3.7. To the extent necessary, provide proposed feedback on process efficiency and suggestions for improvement.
- 7.1.4. The particulars referred to in paragraphs 7.1.3.2 and 7.1.3.3 and any agreement in respect of the limitation of issues which need not be dealt with by the trial court should also be set out in the Joint Minute in terms of Rule 41A(8)(b) and (c) and such Joint Minute may be made available to the court at the commencement of the trial. Save as aforesaid, the Mediator’s Report shall not form part of the court bundles and shall only be disclosed to the presiding Judge to consider in the determination of the issue of costs after the merits of the matter have been decided.
- 7.2. **Register of Mediation Outcomes**
- 7.2.1. Each organisation that administers court-annexed mediation referrals (whether ADR-TG or the Recognised Mediation Organisation (where such RMO administers or administered any court -annexed and/or RAF-related mediations), as the case may be) (**Mediation Administrator**) 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.
- 7.3. **Party Feedback**
- 7.3.1. The parties to a mediation shall, within 10 (ten) court days of the completion or termination of a mediation, as the case may be, complete and submit a form containing anonymised feedback on the conduct of the mediator and such party’s experience of the mediation to both the RMO under whose auspices the mediator is practising and, should a different entity have attended to the administration of the mediation, such Mediation Administrator.
- 7.3.2. The anonymised feedback form shall include, without being limited to, particulars of each party’s level of satisfaction with:
- 7.3.2.1. the administration of the mediation;
- 7.3.2.2. the efficiency and skills of the mediator; and

7.3.2.3. the manner in which the mediation was conducted.

7.3.3. Where a mediation was unsuccessful, or only partially successful, the parties may indicate what, in their reasonable opinion, was/were the primary cause(s) for or factors that contributed to the failure of the mediation.

8. PARTICULAR PROVISIONS APPLICABLE TO RAF-MEDIATIONS

8.1. The RAF, following its participation in the collaborative meetings referred to in paragraph 3.2 above has, in formal correspondence to the Gauteng Judiciary and publicly, confirmed its full unconditional 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 Mediation 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 Mediation 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 RMO 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 RMOs and subscribes to the Code of Conduct and Complaints and Disciplinary Procedures of the relevant association; and

8.3.2.1.3. that the RMO recommends the mediator for mediation of RAF matters.

- 8.3.2.2. Qualified Mediators shall be eligible for conducting RAF-related mediations, provided the RMO under whose auspices they practice have certified such mediator as being suitable skilled and experienced and complying with the relevant additional criteria imposed for the conduct of personal-injury/RAF-related mediations. Qualified Mediators who wish to conduct RAF-related mediations that are administered via the TGS platform, can register on the centralised database of mediators for court-annexed mediation at <https://gpp.adrdirectory.co.za/>.
- 8.3.2.3. Should a personal injury matter be particularly complex or have unique and/or complex facts or particulars of a legally or medically technical nature, the parties are encouraged to consider the appointment of either a Qualified Mediator who is sufficiently skilled and experienced and/or has the requisite expertise in both fields (such as a medico-legal expert) so as to be able to deal with all the issues of the matter collectively or, alternatively, two Qualified Mediators (with one being an accredited healthcare practitioner (registered with the HPCSA) and the other an accredited legal practitioner (registered with the LPC)). In circumstances where two mediators are appointed, the two mediators shall act as co-mediators (who shall be entitled to manage the process as they may, in consultation with one another, consider necessary, appropriate and/or expedient).
- 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 Mediation Directive and this Protocol. Any of the RMOs are able to attend to the administration of mediations for Qualified Mediators acting under their auspices. The ADR-TG is not an RMO, but an independent, viable, software solution service provider that has the capacity and ability to administer the process via its TGS 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, it is proposed that all RAF matters referred to court-annexed mediation in terms of the Mediation Directive and this Protocol should, initially and until a formal appointment has been made, be administered by either the ADR-TG (via its TGS platform accessible at <https://adrtechgroup.com/administered-matters/>) or the Recognised Mediation Organisation (where such RMO administers or administered any RAF-related mediations), as the case may be) (**Mediation Administrator**).

- 8.3.3.3. 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 including via any one of the approved RMOs or via the TGS platform. .
- 8.3.3.4. Where Qualified Mediators have been privately appointed, such Qualified Mediator shall notify the RMO under whose auspices they practice or, alternatively, log the matter on the TGS platform to ensure efficient administration of court-annexed mediation, including the ability to report on the mediation outcomes in a consolidated manner.
- 8.3.3.5. The Mediation Administrator (whether an RMO or other administrator being called upon to administer any court-annexed mediation (including an RAF-related mediation)), shall not only administer the mediations referred to it or its members in accordance with the Mediation Directive and this Protocol, but also comply with the reporting requirements set out in paragraph 8.3.7 below.
- 8.3.3.6. The RAF is unable to commit to the payment of any administration fees to the Mediation Administrator 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, 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 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 RMOs.

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 4.9.4, 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 at the relevant mediator's ordinary rate.
- 8.3.7. **Monitoring and Reporting**
- The Mediation Administrator (whether ADR-TG or the Recognised Mediation Organisation (if such RMO 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.

ⁱ Rule 41A(4)(c).

ⁱⁱ Mediators must practice under the supervision of Recognised Mediation Organisation and be subject to the RMO's code of professional conduct, complaints system, disciplinary process and continued professional development program.

ⁱⁱⁱ 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 - REQUIREMENTS FOR APPROVAL AS QUALIFIED MEDIATOR

Application of Requirements for approval as Qualified Mediator^{iv}

To be approved as a Qualified Mediator for the purposes of court-annexed mediation in the Gauteng Division, and thus be permitted to act as a mediator in matters referred to mediation pursuant to the Mediation 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 by an independent assessor;under a mediator training program that is affiliated with a South African University in line with internationally accepted mediation accreditation requirements or otherwise accredited by the Dispute Settlement Accreditation Council of South Africa (**DISAC**), the National Accreditation Board of Family Mediators (**NABFAM**), the International Mediation Institute (**IMI**), or the Centre for Effective Dispute Resolution (**CEDR**) or, alternatively, has been recognised as duly trained by virtue of the RMO's policy on the Recognition of Prior Learning.
- 2) An accredited mediator training program shall be for an aggregate of 40 hours minimum must be primarily focussed on practical exercises. Following completion of the training program, the trainee must be assessed and certified as competent by independent assessors^v (normally by having to conduct a mock mediation) in order to satisfy this requirement. This minimum standard is aligned with the internationally accepted minimum requirements as established by the IMI.

b) Practising under the auspices of a Recognised Mediation Organisation

The mediation practitioner must be registered as such with an RMO (as contemplated in Annexure B) and subject him-/herself to the RMO's codes, policies and rules including, but not limited to, the RMO's Code of Conduct and Disciplinary Policy.

When conducting court-annexed mediations, mediation practitioners must comply with the RMO's codes, policies and rules as aforesaid, and shall be subject to the RMO's oversight,

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regardless of whether the mediation was arranged and administered privately, by the RMO, or via any other administrative process.

c) Additional post-training competence certification by RMOs:

The RMO must, in addition to verifying compliance with the training requirement set out in paragraph a) of this Annexure A certify that mediators on their panel have the necessary skills, experience and competence to conduct court annexed mediations. In order to comply with this requirement, the RMO may require of its mediators to comply with such assessment as they internally determine necessary and appropriate and may require its members to undergo additional training or act as an observer in a stipulated number of mediations prior to being certified as aforesaid. The RMO shall bear the responsibility to ensure that they put forward mediators who are competent to conduct court-annexed mediations as envisaged in this protocol.

Qualified Mediators who apply for listing on the TGS platform, or any other independent database or register of Qualified Mediators, must provide proof to the platform, database or register administrator that they have been certified as such by the RMO.

d) For mediation of personal injury matters only - provide written proof of personal injury-specific experience or training:

Qualified Mediators who wish to conduct mediations of personal injury matters (including RAF and medical-negligence claims) should have either additional experience or specific training in personal injury matters. This requirement ensures that mediators understand the industry of and law applicable to personal injury matters and are able to facilitate the negotiations between the parties efficiently. Those mediating personal injury matters must have a basic understanding of such matters (including the law applicable thereto and the practical administration thereof) - either through practice experience in this field, prior mediation experience in this field or through additional (personal injury/medical-negligence/RAF-focused) training to mediate in this field.

^{iv} There are currently no regulatory requirements applicable to the accreditation of mediators in South Africa. As such, some individuals without the necessary qualifications and training hold themselves out to be mediators. The professional practitioners operating within the mediation industry in South Africa have supported accreditation of mediators in line with international standards through voluntary certification of qualification and good standing of mediators in line with the standards prescribed by The South African Dispute

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Settlement Accreditation Council (**DiSAC**) in respect of civil and commercial matters and the National Accreditation Board of Family Mediators (**NABFAM**) in respect of family law related matters.

∨ Details of DiSAC and NABFAM accredited training programs are listed on their websites. See the standards published by DiSAC (www.disac.co.za) and by NABFAM (www.nabfam.co.za).

ANNEXURE B - STANDARDS FOR RECOGNISED MEDIATION ORGANISATIONS

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 mediator members organisation (**Recognised Mediation Organisation** or **RMO**) and be recognised as such 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.

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- b) Details of how they ensure that mediators on their panel are legally subject to these standards of conduct and processes.
- c) Confirmation 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 – COURT-ANNEXED MEDIATION DATABASE AND REPORTING

1. Database of Qualified Mediators

- 1.1 Each organisation^{vi} 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 Mediation Directive (**organisation**), shall be obliged to publish a consolidated list/register/database of court-annexed mediation 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 court-annexed mediation panel members shall be publicly available on a 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, NABFAM, IMI, CEDR or University-affiliated accredited mediation training course, expressly recording which 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 RMO and which the RMO undertakes to make available on request).
 - vii) Confirmation by the RMO under whose auspices the member practices that the panel member is certified by the RMO 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 by the RMO to be uploaded to such website/database and be available for download, and/or held on record by the RMO and made available on request).
 - viii) Experience (number of mediations).
 - ix) Other relevant experience and/or training.

2. Reporting by administrators of court-annexed mediation

- 2.1 The Mediation Administrator (either ADR-TG or the Recognised Mediation Organisation (where such RMO administers or administered any court -annexed and/or RAF-related mediations), as the case may be) shall be responsible for reporting to the Judge President and/or the Mediation Judge 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 Mediation Directive takes effect and the transitional period provided for in the Mediation 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 last business 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.
 - h) Systemic challenges and proposed solutions to enhance efficiency and effectiveness.

**ANNEXURE C – COURT-ANNEXED MEDIATION MEDIATOR DATABASE AND REPORTING
MEDIATION PROTOCOL FOR THE GAUTENG DIVISION**

^{vi} In accordance with the election exercised by the parties pursuant to the provisions of paragraph 3.1 of the Protocol, this will be either one of the Recognised Mediation Organisations or the ADR-TG. 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
MEDIATION PROTOCOL FOR THE GAUTENG DIVISION**

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
MEDIATION PROTOCOL FOR THE GAUTENG DIVISION**

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: _____

RMO: _____

Mediation

Administrator: _____

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

**ANNEXURE D – TEMPLATE MEDIATOR’S REPORT & JOINT MINUTE
MEDIATION PROTOCOL FOR THE GAUTENG DIVISION**

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: _____

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 7.1.3.5)		
PARAGRAPH	PROVISION	YES	NO	N/A
7.1.3.5.1	– Agreement to Mediate Signed	<input type="checkbox"/>	<input type="checkbox"/>	
7.1.3.5.2	– Both parties in attendance	<input type="checkbox"/>	<input type="checkbox"/>	
7.1.3.5.3	– Both parties prepared	<input type="checkbox"/>	<input type="checkbox"/>	
7.1.3.5.4	– No logistical issues experienced	<input type="checkbox"/>	<input type="checkbox"/>	
7.1.3.5.5	– Representative/s in attendance evidenced proper mandate to mediate and/or authority to settle	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7.1.3.5.6	– Parties participated in good faith	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Additional Comments:

Please ensure that the following annexures are attached hereto:

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

SIGNED AT _____ ON THE ____ OF _____ 202__.

**ANNEXURE D – TEMPLATE MEDIATOR’S REPORT & JOINT MINUTE
MEDIATION PROTOCOL FOR THE GAUTENG DIVISION**

MEDIATOR
(in his/her capacity as such)

**ANNEXURE D – TEMPLATE MEDIATOR’S REPORT & JOINT MINUTE
MEDIATION PROTOCOL FOR THE GAUTENG DIVISION**

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

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

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
MEDIATION PROTOCOL FOR THE GAUTENG DIVISION**

3) The mediation continued for a period of _____ hours / _____ 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
---	---	---

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
MEDIATION PROTOCOL FOR THE GAUTENG DIVISION**

Please ensure that the following annexures are attached hereto:

1. Annexure JM1: Joint Minute in terms of Rule 41A(4)(a)
2. Annexure JM2: Agreement to Mediate

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)