

## **DISPUTE RESOLUTION CLAUSE**

### **1 DISPUTE RESOLUTION**

If any dispute arises out of or in connection with this Agreement, or related thereto, whether directly or indirectly, the Parties must refer the dispute for resolution firstly by way of negotiation and in the event of that failing, by way of mediation and in the event of that failing, by way of Arbitration. The reference to negotiation and mediation is a precondition to the Parties having the dispute resolved by arbitration.

A dispute within the meaning of this clause exists once one Party notifies the other in writing of the nature of the dispute and requires the resolution of the dispute in terms of this clause.

Within 10 (ten) business days following such notification, the Parties shall seek an amicable resolution to such dispute by referring such dispute to designated representatives of each of the Parties for their negotiation and resolution of the dispute. The representatives shall be authorised to resolve the dispute.

In the event of the negotiation between the designated representatives not resulting in an agreement signed by the Parties resolving the dispute within 15 (fifteen) business days thereafter, the Parties must refer the dispute for resolution by way of mediation in accordance with the then current rules of the Arbitration Foundation of Southern Africa ("AFSA").

In the event of the mediation envisaged in 1.4 failing in terms of the rules of AFSA, the matter must, within 15 (fifteen) business days thereafter, be referred to arbitration as envisaged in the clauses below.

The periods for negotiation or mediation may be shortened or lengthened by written agreement between the parties.

Each Party agrees that the Arbitration will be held as an expedited arbitration in Sandton in accordance with the then current rules for expedited arbitration of AFSA by 1 (one) arbitrator appointed by agreement between the Parties, including any appeal against the arbitrator's decision. If the Parties cannot agree on the arbitrator or appeal arbitrators within a period of 10 (ten) Business Days after the referral of the dispute to arbitration, the arbitrator and appeal arbitrators shall be appointed by the Secretariat of AFSA, who shall administer and manage the arbitration proceedings.

The provisions of this clause 1 shall not preclude any Party from access to an appropriate court of law for interim relief in respect of urgent matters by way of an interdict, or *mandamus* pending finalisation of this dispute resolution process for which purpose the Parties irrevocably submit to the jurisdiction of a division of the High Court of the Republic of South Africa.

The references to AFSA shall include its successor or body nominated in writing by it in its stead.\*

This clause is a separate, divisible agreement from the rest of this Agreement and shall remain in effect even if the Agreement terminates, is nullified or cancelled for whatsoever reason or cause.

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\* AFSA is a non-profit organisation of longstanding and high integrity which provides independent and comprehensive administrative services in support of mediation and arbitration. The IoD recommends the choice of AFSA as a service provider to provide the parties with the maximum benefit from use of the dispute resolution clause. Should the Parties acting on the basis of informed consent wish to dispense with service providers or substitute others, then this clause will need to be redrafted. AFSA has joined with the University of Pretoria in issuing a diploma in Mediation and Arbitration. In doing so, numerous individuals have been trained as mediators and arbitrators. AFSA also has the most experienced panel of experts for effective alternative dispute resolution.