

## **Dispute Resolution Clauses**

### **“Catch All” Dispute Resolution Clause**

"The parties shall attempt to resolve any dispute arising out of or relating to this contract, or any disputes associated with it, directly or indirectly through negotiations between senior executives of the parties, who have authority to settle the same.

If the matter is not resolved by negotiation within 30 days of receipt of a written 'invitation to negotiate', the parties will attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution (ADR) procedure, or in default of agreement, through an ADR procedure as recommended to the parties by the Chairperson, Vice Chairperson or the Ad-Hoc Dispute Resolution Committee, for the time being, of the Chartered Institute of Arbitrators, South Africa branch and failing that, the Chartered Institute of Arbitrators, UK (appointing authority).

If the matter has not been resolved by an ADR procedure within 60 days of the initiation of that procedure, or if any party will not participate in an ADR procedure, the dispute may be referred to arbitration by any party.

The seat of the arbitration shall be Sandton, South Africa. The arbitration shall be governed by the South African Arbitration legislation (domestic or international) and Rules as agreed between the parties. Should the parties be unable to agree on an arbitrator or arbitrators, or be unable to agree on the Rules for Arbitration, any party may, upon giving written notice to other parties, apply to the appointing authority for the appointment of an Arbitrator or Arbitrators and for any decision on rules that may be necessary.

Nothing in this clause shall be construed as prohibiting a party or its affiliate from applying to a court for interim injunctive relief."

### **Suggested Arbitration Clause**

"Any dispute or difference arising out of or in connection with this contract, or associated to this contract, directly or indirectly shall be determined by the appointment of a single arbitrator to be agreed between the parties, or failing agreement within fourteen days, after either party has given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by the Chairperson, Vice Chairperson or the Ad-Hoc Dispute Resolution Committee, for the time being, of the Chartered Institute of Arbitrators, South Africa branch and failing that, the Chartered Institute of Arbitrators, UK."

### **Suggested Arbitration & Mediation Clause**

Any dispute arising out of or in connection with this contract shall, at first instance, be referred to a mediator for resolution. The parties shall attempt to agree upon the appointment of a mediator, upon receipt, by either of them, of a written notice to concur in such appointment. Should the parties fail to agree within fourteen days, either party, upon giving written notice, may apply to the Chairperson, Vice Chairperson or the Ad-Hoc Dispute Resolution Committee, for the time being, of the Chartered Institute of Arbitrators, South Africa branch and failing that, the Chartered Institute of Arbitrators, UK, for the appointment of a mediator.

Should the mediation fail, in whole or in part, either party may, upon giving written notice, and within twenty-eight days thereof, apply to the Chairperson, Vice Chairperson or the Ad-Hoc Dispute Resolution Committee, for the time being, of the Chartered Institute of Arbitrators, South Africa branch and failing that, the Chartered Institute of Arbitrators, UK, for the appointment of a single arbitrator, for final resolution. The arbitrator shall have no connection with the mediator or the mediation proceedings, unless both parties have consented in writing.

The arbitration shall be governed by the South African Arbitration legislation (domestic or international) and Rules as agreed between the parties. Should the parties be unable to agree on the Rules for Arbitration, the arbitrator may decide on the Rules to be used and failing that, any party may, upon giving written notice to other parties, apply to the appointing authority for the appointment of an Arbitrator or Arbitrators and for any decision on rules that may be necessary. The seat of the arbitration shall be Sandton, South Africa.

### **Suggested Construction Adjudication Clause**

A party to this contract ("the Referring Party") may at any time give notice ("the Notice") in writing to the other party of its intention to refer a dispute arising under the contract to adjudication.

The parties may agree the identity of the adjudicator.

Where an adjudicator is not agreed within 2 days of the Notice being given the Referring Party shall immediately apply to the Chartered Institute of Arbitrators, South Africa branch for the nomination of an adjudicator, which nomination shall be communicated to the parties within 5 days of receipt of the application.

Within 7 days of the Notice the Referring Party shall refer the dispute to the adjudicator.

The adjudicator shall reach a decision within 28 days of referral or such longer period as is agreed by the parties after the dispute has been referred.

The adjudicator may extend the period of 28 days by up to 14 days, with the consent of the party by whom the dispute was referred.

The adjudicator shall act impartially.

The adjudicator may take the initiative in ascertaining the facts and the law. The decision of the adjudicator is binding until the dispute is finally determined by legal proceedings, by arbitration (if the contract provides for arbitration or the parties otherwise agree to arbitration) or by agreement.

The adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his or her functions as adjudicator unless the act or omission is in bad faith and any employee or agent of the adjudicator is similarly protected from liability.