



The Association of Arbitrators (Southern Africa)

MEDIATION RULES

AGREEMENT

1. Where parties have provided for mediation of existing or future disputes, the parties, unless agreed otherwise in writing, shall be deemed to have made these procedural guidelines, as amended, a part of their agreement and designate the Association of Arbitrators, Southern Africa ("AoA") as the administrator of their mediation.

REQUEST FOR MEDIATION

- 2.1 Any party to a dispute may initiate mediation by making a request for mediation to the AoA by way of email or fax.
- 2.2 The party initiating the mediation shall simultaneously notify the other party/ies of the request.
- 2.3 The initiating party shall provide the following information to the AoA and to the other party:-
 - 2.3.1 A copy of the mediation provision in the contract between the parties alternatively if a contract does not exist, a party may invite another by making a voluntary request for mediation. The mediation process however cannot proceed from this point unless the other party agrees to such voluntary request;
 - 2.3.2 The names, email addresses, telephone and telefax numbers of all parties to the dispute;
 - 2.3.3 A brief statement of the nature of the dispute and the relief requested;
 - 2.3.4 The party may request a particular mediator on the AoA panel or state the specific qualifications the mediator should possess.

REPRESENTATION

- 3.1 It is advisable that parties are not represented at the mediation process.
- 3.2 However, should the parties wish to be represented, the parties representatives agree to be bound by the terms set out herein and wherever reference is made to the parties themselves, this shall include their representatives.

APPOINTMENT OF MEDIATOR

- 4.1 The Parties shall agree on a mediator within 5 (five) business days. Should the mediator be unable to accept the invitation to act as mediator, the parties may, within a further 5 (five) business day period, agree on another mediator.
- 4.2 If the parties are unable to agree on a mediator within 5 (five) business days, then any party may approach the Chairperson of the AoA to submit to each party a list of names of potential mediators.
- 4.3 The parties will then have a further 5 (five) business day period within which to agree on a mediator. Should they be unable to agree, the AoA will be asked to appoint a suitable mediator.

MEDIATOR'S IMPARTIALITY

5. The AoA mediators are required to abide by its Code of Conduct, a copy of which can be found on the AoA's website.

DUTY TO DISCLOSE

- 6.1 Prior to accepting an appointment, mediators are required to make a reasonable inquiry to determine whether there are any facts that a reasonable individual would consider likely to create a potential or actual conflict of interest for the mediator and make disclosure to the parties of such possible conflicts.
- 6.2 The parties then have the discretion to reject the mediator's appointment or waive such potential conflict and proceed with the mediation. If rejected, a new mediator will be appointed by the Chairperson of the AoA.
- 6.3 If any mediator shall become unwilling or unable to serve, the AoA will appoint an alternate mediator.

MEDIATOR'S POWERS AND DUTIES

- 7.1 The mediator shall endeavor to assist the parties to settle the dispute by agreement. The mediator shall not

adjudicate the dispute, make any recommendations to the parties or advise any party on the merits of the dispute.

- 7.2 The mediator shall have the discretion to conduct the mediation in such a manner as s/he determines.
- 7.3 The mediator shall be responsible for the administration of the mediation including the process and conduct of the mediation, which shall be done in an expeditious and cost-effective manner.

RESPONSIBILITIES OF THE PARTIES

8. Prior to and during the scheduled mediation session(s) the parties shall, as appropriate to each party's circumstances, exercise their best efforts to prepare for and engage in a meaningful and productive mediation.

CONFIDENTIALITY AND WITHOUT PREJUDICE STATUS

- 9.1 The mediator shall endeavor to assist the parties to settle the dispute.
- 9.2 Every person involved in the Mediation:
 - 9.2.1 Will keep confidential all information arising out of or in connection with the mediation, including the fact and terms of any settlement, the fact that the mediation is to take place or has taken place unless disclosure is required by law to implement or to enforce terms of settlement; and
 - 9.2.2 acknowledges that all such information passing between the parties and the mediator is agreed to be without prejudice to any party's legal position and may not be produced as evidence or disclosed to any judge, arbitrator or other decision-maker in any legal or other formal process, except where otherwise disclosable in law.
10. Where a Party privately discloses to the mediator any information in confidence before, during or after the mediation, the mediator will not disclose that information to any other party or person without the consent of the party disclosing it, unless required by law to make disclosure.
11. The parties will not call the mediator as a witness, nor require the mediator to produce in evidence any records or notes relating to the mediation, in any litigation,

arbitration or other formal process arising from or in connection with their dispute and the mediation; nor will the mediator act or agree to act as a witness, expert, arbitrator or consultant in any such process.

FEES AND EXPENSES

12. The fee to the request for mediation is R500-00.
13. The parties shall pay the mediator's fees and administrative costs in equal proportions. All expenses of the mediation, including required traveling and other expenses or charges of the mediator, shall be borne equally by the parties unless they agree otherwise.
14. The expenses of participants for either side shall be paid by the party requesting the attendance of such participants.

TERMINATION

15. The mediation of the dispute shall terminate when:
 - 15.1 The mediator receives written notice from a party stating that the party withdraws from the mediation provided that no party shall withdraw from the mediation without first orally notifying the mediator and giving the mediator an opportunity to mediate on that party's continued participation in the mediation;
 - 15.2 The mediator advises that parties in writing that the mediator believes that there is no reasonable prospects of settlement in the mediation; and
 - 15.3 The parties conclude a written Settlement Agreement provided that they agree to continue the mediation in the event of any part of the dispute that remains unsettled after the conclusion of the Settlement Agreement.

SETTLEMENT

16. In the event that the parties settle the dispute or any part thereof in a Settlement Agreement, then that Settlement Agreement shall be a final and binding settlement of the dispute or such part thereof, as applicable.



The Association of Arbitrators (Southern Africa)

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