

1. **The original ADR clause included in the draft Kind 3 report (456 words)**

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 business days, the parties must refer the dispute for resolution by way of mediation in accordance with the 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 business days, 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.

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.

2. **New Suggested plain English version - Changes tracked, plus explanation in square brackets and highlighted in yellow (the moving of text around has not been tracked)**

DISPUTE RESOLUTION

~~[This should be the first paragraph]~~ A dispute ~~regards this Agreement within the meaning of this clause~~ exists once ~~one a Part~~party notifies the others ~~s~~ ~~[There may be more than two parties]~~ in writing ~~[this includes by email]~~ of the nature of the dispute and requires ~~the it to be resolution~~ed of the dispute in terms of ~~under~~ ~~[under is better than "in terms of"]~~ this clause. ~~The parties~~ ~~[There is no good reason why "parties" should be a defined term and it was not consistently used as a definition in this clause]~~ must refer ~~[prefer the active voice over the passive voice]~~ ~~if any dispute arises out of or in connection with this Agreement, or related thereto, whether directly or indirectly, the Parties~~ ~~[Considering the second paragraph (which should be the first) this wording is irrelevant]~~ ~~must refer the dispute for resolution to be resolved by~~ ~~[Turn -ion words into verbs when you can]:~~

- ~~firstly~~ ~~[Cannot use firstly and then not secondly or thirdly]~~ ~~by way of~~ ~~[can be just "by"]~~ negotiation; ~~and in the event of that~~ ~~[legalism]~~ ~~failing which,~~
- ~~by way of~~ ~~[should not be repeated]~~ mediation; ~~and in the event of that~~ ~~failing which,~~
- ~~by way of A~~arbitration ~~[not a defined term].~~

~~The reference to negotiation and mediation is a precondition to the Parties having the dispute resolved by arbitration.~~ ~~[This is a duplication of the above and therefore not required. It is clear from the above paragraph that the first two are preconditions for the third.]~~

Within ~~40 (ten) b~~ ~~[word-numeral doublets are not necessary – no good reason to use them. To maximise readability it is better to spell out numbers one to ten]~~ Business ~~d~~Days ~~[should be consistently used as a definition. Would it not be better to use calendar days and therefore it would not be necessary to check whether Business Days has been defined in the agreement into which this clause is pasted?]~~ following such ~~[no good reasons to use “such” – what other notification could be referred to?]~~ of notification, the ~~Part~~parties ~~shall~~must ~~[shall isn't plain English and has multiple meanings]~~ seek an amicable resolution to ~~such~~the dispute by referring ~~such dispute~~it to designated ~~and authorised~~ representatives of each of the ~~Part~~parties for ~~their~~to negotiations and resolution~~ve~~ of the dispute~~it~~. The representatives ~~shall be authorised to resolve the dispute by the parties signing an agreement resolving it within 15 Business Days.~~

~~In the event of~~ the negotiation ~~fails between the designated representatives~~~~[not required – it is clear which negotiation is being referred to]~~ ~~not resulting in an agreement signed~~ ~~[in what form]~~ by the Parties resolving the dispute within ~~15 business days~~, the parties must refer the dispute for resolution by way of mediation in accordance ~~with~~under the rules of the Arbitration Foundation of Southern Africa ~~(or its successor or body nominated in writing by it in its stead)~~ (“AFSA”).

~~In the event of the~~ mediation envisaged in 1.4 failing in terms of the rules of AFSA~~fails~~, the parties must refer the dispute within 15 Business Days for resolution by the matter must, within 15 business days, be referred to arbitration- (including any appeal against the arbitrator's decision) as envisaged in the clauses below. ~~Each Party agrees that~~ ~~[not required – it is an agreement]~~ by one arbitrator (appointed by agreement between the parties) ~~he~~ Arbitration will be held as an expedited arbitration in Sandton in accordance with~~under~~ the then current rules ~~[insert hyperlink]~~ 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 ~~Part~~parties cannot agree on ~~the any~~ 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 will~~ be appointed by the Secretariat of AFSA.

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

~~The provisions of t~~This clause ~~1 shall will~~ not preclude any ~~Part~~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 ~~Part~~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~~must remain in effect even if the Agreement terminates, is nullified, or cancelled for ~~whatsoever any~~ ~~[legalism]~~ reason or cause.

3. New Suggested plain English version – clean – 320 words

DISPUTE RESOLUTION

A dispute regards this Agreement exists once a party notifies the others in writing of the nature of the dispute and requires it to be resolved under this clause. The parties must refer any dispute to be resolved by:

- negotiation; failing which
- mediation; failing which
- arbitration.

Within ten Business Days of notification, the parties must seek an amicable resolution to the dispute by referring it to designated and authorised representatives of each of the parties to negotiate and resolve it by the parties signing an agreement resolving it within 15 Business Days.

If negotiation fails, the parties must refer the dispute for resolution by mediation under the rules of the Arbitration Foundation of Southern Africa (or its successor or body nominated in writing by it in its stead) (“AFSA”).

If mediation fails, the parties must refer the dispute within 15 Business Days for resolution by arbitration (including any appeal against the arbitrator's decision) by one arbitrator (appointed by agreement between the parties) as an expedited arbitration in Sandton under the then current [rules for expedited arbitration](#) of AFSA. If the parties cannot agree on any arbitrator within a period of ten Business Days after the referral, the arbitrator will be appointed by the Secretariat of AFSA.

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

This clause will 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.

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

By John Giles

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