



**GENERAL ARBITRATION RULES**

**EXHIBIT E**

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## **1 DEFINITIONS**

For the purposes of these Rules, unless the context specifically indicates otherwise:

**"the ABC" means the dispute resolution service provider conducting business under the name and style of "The Arbitration Board Committee" for Pleasant View Village;**

- 1.1 "the Act" means The Federal Arbitration Act (FAA), (Title 9 US Code 1 et seq.), as amended;
- 1.2 "Arbitration agreement" means a written agreement providing for the reference to arbitration of an existing or future dispute, or any further dispute relating to a matter specified in the agreement, whether an Arbitrator is named or designated therein or not, and "arbitration clause" shall have a similar meaning;
- 1.3 "Arbitrator" means the person appointed in terms of these Rules to preside at the applicable arbitration process and exercise the powers given to him/her in terms of these Rules;
- 1.4 "Claimant" means the party who causes the Arbitration Commencement Notice or the Notice of Conversion to Arbitration to be served;
- 1.5 "Convenor" means a person appointed by the ABC from time to time to perform the case management services in terms of these Rules;
- 1.6 "Converted disputes" means any dispute wherein the parties have agreed that an existing legal process that was initiated in any Court in the jurisdiction of the United States of America, or in accordance with any other process, can be converted to arbitration proceedings in accordance with these Rules;
- 1.7 "Day" means any day other than a Saturday, Sunday or public holiday, and is calculated excluding the first day and including the last;
- 1.8 "Defendant" means the party to the arbitration other than the Claimant;
- 1.9 "Deliver" in these Rules shall mean delivery to every other party to the dispute or arbitration agreement, and to the ABC:
  - 1.9.1 The parties may elect to have delivery on them effected by way of hand, registered mail, fax and / or e-mail. Where hand delivery is required the address for such delivery shall be within 10 miles of the venue identified in the First Meeting Notice;
  - 1.9.2 The Claimant shall state his/her election as to the place and manner of delivery in the Arbitration Commencement Notice or the Notice of Conversion to Arbitration;
  - 1.9.3 The Defendant shall state his/her election as to the place and manner of delivery in his/her Notice of Participation, or failing that, at the First Meeting;
  - 1.9.4 In the absence of an election by any party, delivery shall be effected in the manner provided for in Rule 4, provided that the delivery need not be effected by the sheriff; and
  - 1.9.5 Delivery on the ABC shall be effected by hand or fax or registered mail. The ABC may in each dispute by written notice to the parties appoint one of its venues / fax numbers / address (as the case may be) for purposes of accepting delivery in that particular dispute, whereafter delivery may only be affected at the said venue / fax number / address;
  - 1.9.6 The ABC may elect to effect delivery on the parties in any of the manners specified in Rule 1.9.1;
- 1.10 "Discovery document" means a document, which unless the parties have otherwise agreed shall be, duly sworn to by a party or on his/her behalf by a competent person:
  - 1.10.1 detailing documents which by reason of privilege he/she has a valid objection to produce at the arbitration; and
  - 1.10.2 detailing in respect of relevant documents not delivered with any of the Pleadings
    - 1.10.2.1 those in his/her possession or in the possession of any person on his/her behalf; and
    - 1.10.2.2 those which were previously in such possession but are no longer so, specifying the date of and the reason for the termination of such possession; or
  - 1.10.3 recording that there were or are no relevant documents to which sub-paragraph 1.10.2

applies;

- 1.11 "Dispute" means any claim for relief against another party. It is specifically recorded that a claim for relief which arises out of a party's failure or refusal to perform in accordance with the terms of an agreement shall constitute a dispute;
- 1.12 "the ABC" means the dispute resolution service provider conducting business under the name and style of "The Arbitration Board Committee" for Pleasant View Village;
- 1.13 "Parties" means the parties personally and or their duly authorised representatives, as provided for in Rule 31;
- 1.14 "Pleadings" means any document wherein a party's claim or defence is set out, and shall include the documentation provided in terms of Rules 3.2.1, 4.1.1, 8, 9, the statement of issues taken in terms of Rule 10.3.4, any further particulars filed in terms of Rule 11, any record of a deposition requested in terms of Rule 13, and any other similar statements and or documents permitted by the Arbitrator. "Pleadings" shall further include the Convenor's minute of any meeting convened in terms of these Rules;
- 1.15 "Relevant Document" means, in relation to each party, any document of whatsoever nature in his/her possession or under his/her control, whether an original or a copy, relating to the dispute which has been referred to arbitration, including all plans, diagrams, photographs and computer-generated documents, but excluding documents which by reason of privilege he/she has a valid objection to produce at the arbitration;
- 1.16 "Rules" means the General Arbitration Rules, as contained in this document;
- 1.17 "Rules Committee" means the Rules committee appointed from time to time by the ABC;
- 1.18 "Serve" means to serve a document in the manner provided for in Rule 4;
- 1.19 "Venue" means a facility managed by the ABC, or a facility nominated by the ABC for purposes of a particular dispute; and
- 1.20 Where appropriate, words importing the singular shall include the plural and words importing the feminine shall include the masculine and the neuter and *vice versa*.

## **2 APPLICATION OF THE RULES**

- 2.1 The Rules shall apply to all disputes that are referred to the ABC for determination, provided that:
  - 2.1.1 The parties may agree that a different set of Rules shall apply;
  - 2.1.2 Where the ABC publishes specific sets of Rules for specific categories of disputes those Rules shall apply to those categories of disputes.
- 2.2 These Rules shall apply to all disputes wherein the parties have agreed that the ABC's summary arbitration rules shall apply to their dispute.
- 2.3 For purposes of Arbitration, a dispute shall be regarded as having been subjected to arbitration upon service of the Arbitration Commencement Notice in terms of Rule 3.2 or delivery of the Notice of Conversion to Arbitration in terms of Rule 4.1.
- 2.4 For purposes of any arbitration agreement, arbitration proceedings shall be regarded as having been initiated upon service of an Arbitration Commencement Notice in terms of Rules 3.2 or delivery of the Notice of Conversion to Arbitration in terms of Rule 4.1;

## **3 REFERRAL OF A DISPUTE TO ARBITRATION**

- 3.1 A Claimant wishing to refer a dispute to arbitration where no arbitration agreement exists, or the existing arbitration agreement does not stipulate that the dispute be determined in accordance with these Rules, shall, prior to the taking of any of the steps in Rule 3.2, obtain the Defendant's written consent to have the dispute determined in accordance with these Rules.
- 3.2 Subject to the provisions of Rules 3.1 and 4, a Claimant wishing to refer a dispute to arbitration shall take the following steps:
  - 3.2.1 Prepare an Arbitration Commencement Notice that substantially complies with the

- provisions of Schedule 1;
- 3.2.2 Request the ABC to provide a First Meeting Notice. Such a request shall be in the format prescribed in Schedule 2;
- 3.2.3 Obtain the First Meeting Notice from the ABC. Such a notice shall be in the format prescribed in Schedule 3;
- 3.2.4 Serve the Arbitration Commencement Notice and First Meeting Notice on the Defendant;
- 3.2.5 Deliver to the ABC:
  - 3.2.5.1 a copy of the Arbitration Commencement Notice and First Meeting Notice; and
  - 3.2.5.2 proof that the items listed in paragraph 3.2.4 were served on the Defendant.

#### **4 CONVERSION OF A DISPUTE TO ARBITRATION**

- 4.1 Subject to Rule 3.1, a Claimant wishing to refer a converted dispute to arbitration shall take the following steps:
  - 4.1.1 Prepare a Notice of Conversion to Arbitration. Such a notice shall be in the format prescribed in Schedule 4;
  - 4.1.2 Request the ABC to provide a First Meeting Notice. Such a request shall be in the format prescribed in Schedule 2;
  - 4.1.3 Obtain the First Meeting Notice from the ABC. Such a notice shall be in the format prescribed in Schedule 3;
  - 4.1.4 Deliver the Notice of Conversion to Arbitration and First Meeting Notice to the Defendant;
  - 4.1.5 Deliver to the ABC:
    - 4.1.5.1 a copy of the Notice of Conversion to Arbitration and the First Meeting Notice; and
    - 4.1.5.2 proof that the items listed in paragraph 4.1.4 were served on the Defendant.

#### **5 NOTICE OF PARTICIPATION**

- 5.1 Where a Defendant elects to contest the Claimant's claim he/she shall prior to the commencement of the First Meeting as scheduled in the First Meeting Notice, deliver written notice of his/her intention to participate in the process, provided that where the scheduled First Meeting date is less than five days after the date of service of the Arbitration Commencement Notice or delivery of a Notice of Conversion to Arbitration, he/she shall in any event have 5 days to deliver the said Notice of Participation.
- 5.2 Such written notice may be given by completing the Notice of Participation that is attached to the First Meeting Notice, and delivery thereof, but shall in any event:
  - 5.2.1 Identify the Claimant in the dispute;
  - 5.2.2 Identify the Defendant in the dispute;
  - 5.2.3 Provide the manner in which, and where appropriate, the address or fax number at which delivery of documents in the arbitration process is to be effected on the Defendant; and
  - 5.2.4 Provide the ABC allocated case number.
- 5.3 No defect that exists in the Defendant's Notice of Participation shall constitute grounds for applying for a default award.
- 5.4 In the event of the Defendant not having entered a Notice of Participation prior to the date of the First Meeting, but attending the First Meeting, that First Meeting shall proceed as normal, provided that where the Claimant is absent, the meeting shall be postponed by the Convenor for a period of no more than 10 days.
- 5.5 Where the Defendant has entered a Notice of Participation, and in the event of any party not attending the First Meeting, the meeting shall proceed as normal, but in the absence of such party, provided that the Convenor may on good cause shown postpone the meeting for a period of no

more than 10 days.

- 5.6 In the event of the scheduled First Meeting being less than 5 days after the date of service of the Arbitration Commencement Notice or delivery of a Notice of Conversion to Arbitration, the Convenor shall postpone the First Meeting for at least 10 days. The Claimant shall serve notice of the postponement and the new date on the Defendant, and such notice shall be served more than 5 days prior to the new First Meeting date.
- 5.7 In the event of the Defendant not entering a Notice of Participation and not attending the First Meeting:
- 5.7.1 The Convenor shall, where he/she is satisfied that the time periods prescribed in Rule 5.1 and 5.6 have lapsed, duly record these facts;
- 5.7.2 The Claimant may, without any further notice to the Defendant, apply for a non-participation default award by delivery to the ABC of a Request for Default Award. Such request shall be in the format prescribed in Schedule 5;
- 5.7.3 Upon receipt of such a request, the Convenor shall appoint an Arbitrator solely for purposes of dealing with the application for a default award, and forward the required documents to him/her. The Convenor shall appoint an Arbitrator of his/her choice, and the provisions of Rules 6.5.3, 7.2 and 7.3 shall not apply to such an appointment;
- 5.7.4 The Arbitrator shall thereafter deal with the matter in accordance with the provisions of Rule 20.7.1;
- 5.7.5 Where the Defendant delivers a Notice of Participation after being in default, but prior to a default award being delivered on the ABC, the Arbitrator shall immediately be informed of this. The Arbitrator shall thereafter:
- 5.7.5.1 Not enter any default award, or rescind a default award that has subsequently been delivered on the ABC; and
- 5.7.5.2 Make an award that wasted costs of \$250.00 in respect of the request for a default award be paid by the Defendant. Such an award shall be an interim award, pending application from any party for an amendment or rescission. Failing such application within 10 days of delivery of this award, it shall become final.

## **6 FIRST MEETING**

- 6.1 On receiving a request in terms of Rules 3.2.2 or 4.1.2, the Convenor shall allocate a First Meeting time, date and venue. Notice of such allocation shall be contained in a First Meeting Notice, which shall be in the format prescribed in Schedule 3.
- 6.2 The First Meeting date allocated in terms of Rule 6.1 shall be no less than 10 days from the date of delivery of the request in terms of Rules 3.2.2 or 4.1.2.
- 6.3 The First Meeting shall be chaired by the Convenor;
- 6.4 At the commencement of the First Meeting the parties will be requested to discuss the possible settlement of the dispute. In the event of such settlement agreement being reached, the terms thereof will be recorded, and a copy of such recordal will be submitted to the Convenor.
- 6.5 In the event of the dispute not being settled, the following shall be recorded:
- 6.5.1 The parties' agreement, or their failure to agree that the dispute falls within the ambit of the arbitration agreement;
- 6.5.2 The parties shall attempt to clarify the terms of the dispute, or eliminate any aspects thereof where possible;
- 6.5.3 The selection of the Arbitrator by the parties, and determination of the terms of his/her appointment and any conditions attached thereto;
- 6.5.4 The dates for the delivery of the pleadings in accordance with Rules 8.2 and 8.4;
- 6.5.5 Where appropriate, the dates for the delivery of pleadings in respect of a counter claim in accordance with Rule 9.2 and 9.3;
- 6.5.6 In the case of a referral in terms of Rule 4.1, whether one or both parties can be excused

- from providing some or all of the information specified in Rules 8.2 and 8.4, as a result of the pleadings already filed or exchanged prior to the referral to arbitration;
- 6.5.7 The date and venue for the Pre-Adjudication Meeting with the Arbitrator in accordance with Rule 10.2;
- 6.5.8 The provisional date for the hearing. Unless the parties otherwise agree, this date shall be 15 days after the date for the Pre-Adjudication Meeting;
- 6.5.9 Whether the discovery document needs to be in the form of an affidavit or not;
- 6.5.10 Determining the manner and extent of the recording of the hearing; and
- 6.5.11 Any other matters or proposals that might facilitate the settlement of the dispute or shorten the arbitration proceedings.
- 6.6 Where in the course of the First Meeting, any of the time periods allowed in Rule 8, or where relevant Rule 9, are considered inappropriate by one or more of the parties the parties may agree on amended time periods. Where such amended time periods cannot be agreed upon, the Convenor shall set the dates in accordance with the provisions of Rules 8.2, 8.4, 9.2 and 9.3.
- 6.7 Any party who reasonably requires an amendment to one or more of the dates set in accordance with Rule 6.6, may within 2 days of the date of the First Meeting deliver written argument as to the appropriate dates for the procedural steps envisaged in Rule 8 and where relevant Rule 9:
- 6.7.1 The other party may deliver written response thereto within two days;
- 6.7.2 The Convenor shall forward such written argument, together with any response thereto, to the Arbitrator; and
- 6.7.3 the Arbitrator shall thereafter, within 2 days, determine such dates on the written argument before him/her.
- 6.7.4 In the event of any party, due to circumstances beyond his/her control, not being in a position to stipulate a date upon which he/she will be ready to file his/her documents in terms of these rules, the Arbitrator may, instead of immediately determining a date in accordance with Rule 6.7.3, determine a date upon which the parties shall attend a Progress Meeting chaired by the Arbitrator. The date of this meeting shall not be later than 30 days after the date of the First Meeting;
- 6.7.5 The Arbitrator shall at the Progress Meeting:
- 6.7.5.1 determine the dates for the procedural steps envisaged in Rule 8 and 9; or
- 6.7.5.2 where any party seeks a further postponement, evaluate the reasonableness of that party's request, and make such ruling as to his/her seems meet, provided that where a further postponement is granted, he/she shall determine a date for the resumption of the Progress Meeting.
- 6.8 Where the parties are of the opinion that a short postponement of the First Meeting may facilitate a settlement of the dispute, they can, instead of immediately determining dates in accordance with Rule 6.5, determine a date, which shall be no more than 20 days after the date of the First Meeting, upon which the parties shall attend a Progress Meeting chaired by the Convenor, provided that:
- 6.8.1 the parties shall minute the reasons for the postponement, the actions required to be taken by each party during the period of the postponement, and the date by which each action is to be taken.
- 6.8.2 In the event of such a postponement the Arbitrator selected in terms of these Rules shall only be appointed after the conclusion of the Progress Meeting or in the event of an interim dispute arising.
- 6.9 Failing agreement between the parties on any aspect set out in Rule 6.5 the Convenor shall determine the matters therein contained, save insofar as they are prescribed by these Rules, provided that in the absence of agreement between the parties:
- 6.9.1 A single Arbitrator shall be appointed in accordance with the Convenor's own choice;
- 6.9.2 The terms and conditions of the Arbitrator's appointment shall be determined by the Convenor, in consultation with the parties that are in attendance;
- 6.10 Where the First Meeting proceeds in the absence of any party the matters set out in Rules 6.5

shall, subject to the provisions of Rule 6.9, be determined by the Convenor in consultation with the party or parties that are in attendance;

- 6.11 At the conclusion of any sitting of the First Meeting the Convenor shall draw a minute of the matters discussed and determined at the meeting, which minute shall be signed by the parties in attendance prior to the closure of the meeting. Any party's refusal to sign the minute, and his/her reasons therefor, shall be noted in the minute.

## **7 APPOINTMENT OF THE ARBITRATOR**

- 7.1 The Convenor shall, subject to the provisions of Rule 6.8, within 5 days from the date of the First Meeting obtain from the selected Arbitrator his/her written acceptance of the appointment and conditions thereto;
- 7.2 In the event of an Arbitrator not being available, or not accepting the terms of his/her appointment, the Convenor shall forthwith consult with the parties for purposes of selecting another Arbitrator, or where appropriate, amending the terms of appointment. Failing agreement between the parties within 5 days from the start of the consultation process, the Convenor can elect to:
- 7.2.1 Appoint another Arbitrator of a similar standing on the same terms and conditions as the previous Arbitrator; or
- 7.2.2 Amend the terms and conditions, and appoint the same or another Arbitrator of similar standing on those amended terms and conditions.
- 7.3 In the event of an Arbitrator having to be substituted, the Convenor shall forthwith consult with the parties for purposes of selecting another Arbitrator. Failing agreement between the parties within 5 days from the start of the consultation process, the Convenor can elect to:
- 7.3.1 Appoint another Arbitrator of a similar standing on the same terms and conditions as the previous Arbitrator; or
- 7.3.2 Amend the terms and conditions, and appoint another Arbitrator of similar standing on those amended terms and conditions.
- 7.4 In the event of any party having good cause, which was not reasonably known to him/her at the time of the appointment, to show that the Arbitrator appointed in accordance with the provisions of this Rule is not fit, or no longer fit to hold the appointment, such a party shall, on application to the appointed Arbitrator, request the Arbitrator to relinquish his/her appointment.
- 7.5 In the event of any party challenging in Court the Arbitrator's refusal to relinquish his/her appointment, the Arbitrator may continue the arbitration proceedings, and make an award, while such a challenge is pending, provided that such arbitration proceedings shall not commence on the same day as that on which the application for recusal was refused;
- 7.6 In the event of the Arbitrator having to be substituted for any reason:
- 7.6.1 A new Arbitrator will be appointed in the same manners as set out in Rule 7.3.
- 7.6.2 The new Arbitrator shall be furnished with all documentation and minutes of meetings which have already taken place and shall not be required to re-take any of the procedural steps which have already been taken; and
- 7.6.3 Where evidence was presented prior to the substitution, the new Arbitrator shall:
- 7.6.3.1 be furnished with the record of any evidence that has already been led;
- 7.6.3.2 at his/her own discretion, determine whether he/she requires any evidence to be reheard, and make an order accordingly.

## **8 EXCHANGE OF INFORMATION**

- 8.1 The parties shall exchange documents as set out in this Rule, or as otherwise agreed or determined in accordance with Rules 6.5 and 6.6.
- 8.2 The Claimant shall within 10 days of conclusion of the First Meeting deliver:
- 8.2.1 any amendments or additions to his/her Arbitration Commencement Notice or Notice of



## Conversion to Arbitration;

- 8.2.2 a list of all the witnesses that he/she intends calling at the hearing,
  - 8.2.3 a summary of each witness's evidence (including expert witnesses). All witness statements shall comply with the provisions of Rule 12;
  - 8.2.4 notification to the other party of any points that he/she wishes to take at the outset of the matter (points *in limine*); and
  - 8.2.5 a bundle of all the relevant documents in his/her possession which he/she intends to rely on at the hearing of the dispute and which were not attached to the Arbitration Commencement Notice or Notice of Conversion to Arbitration; and
  - 8.2.6 a discovery document.
- 8.3 Within 5 days of delivery of the information set out in Rule 8.2 the Defendant may:
- 8.3.1 deliver a notice requesting specified particulars in respect of the pleadings filed in terms of Rule 8.2; and/or
  - 8.3.2 a notice in terms of Rule 13.1 requesting a deposition from one or more of the Claimant's listed witnesses.
- 8.4 The Defendant shall within 15 days of delivery of the pleadings stipulated in Rule 8.2, deliver:
- 8.4.1 full particulars of his/her defense to the Claimant's claim, and the grounds upon which that defense is based;
  - 8.4.2 particulars of the award he/she requires the Arbitrator to make;
  - 8.4.3 a list of all the witnesses that he/she intends calling at the hearing,
  - 8.4.4 a summary of each witness's evidence (including expert witnesses). All witness statements shall comply with the provisions of Rule 12;
  - 8.4.5 notification to the other party of any points that he/she wishes to take at the outset of the matter (points *in limine*); and
  - 8.4.6 a bundle of all the relevant documents in his/her possession which he/she intends to rely on at the hearing of the dispute and which were not attached to the Arbitration Commencement Notice or Notice of Conversion to Arbitration, or to the Claimant's pleadings filed in terms of Rule 8.2; and
  - 8.4.7 a discovery document.
- 8.5 Within 5 days of delivery of the information set out in Rule 8.4 the Claimant may:
- 8.5.1 deliver a notice requesting specified particulars in respect of the pleadings filed in terms of Rule 8.4; and/or
  - 8.5.2 a notice in terms of Rule 13.1 requesting a deposition from one or more of the Defendant's listed witnesses.
- 8.6 In the event that the Claimant deems it necessary to respond to the pleadings filed by the Defendant in terms of Rule 8.4 or in response to a request in terms of Rule 8.5.1, or as a result of a deposition requested in terms of Rule 8.5.2, the Claimant shall deliver such response:
- 8.6.1 within 3 days of delivery of such pleadings by the Defendant; or
  - 8.6.2 Where a deposition was requested, within 3 days of conclusion of the deposition process.
- 8.7 The failure or inability of the Claimant to file his/her response in accordance with Rule 8.6 shall not constitute grounds for the postponement of the Pre-Adjudication Meeting. The Arbitrator shall at the Pre-Adjudication Meeting accept any such response, and where at all possible, continue with the meeting in accordance with Rule 10. Where the late filing of a response results in a postponement of the Pre-Adjudication Meeting, the Arbitrator shall make an appropriate costs order in accordance with Rule 25.

## **9 COUNTER CLAIMS**

- 9.1 In the event of the Defendant wishing to file any counter claim, the Defendant shall, in respect of that counter claim, deliver:
- 9.1.1 full particulars of his/her counter claim, and the grounds upon which that claim is based;
  - 9.1.2 particulars of the award he/she requires the Arbitrator to make;

- 9.1.3 a list of all the witnesses that he/she intends calling at the hearing,
  - 9.1.4 a summary of each witness's evidence (including expert witnesses). All witness statements shall comply with the provisions of Rule 12;
  - 9.1.5 notification to the other party of any points that he/she wishes to take at the outset of the matter (points *in limine*); and
  - 9.1.6 a bundle of all the relevant documents in his/her possession which he/she intends to rely on at the hearing of the dispute and which were not attached to the Arbitration Commencement Notice or Notice of Conversion to Arbitration, or to the Claimant's pleadings filed in terms of Rule 8.2; and
  - 9.1.7 a discovery document.
- 9.2 Such documents shall, unless the parties otherwise agree, be filed on the date determined in terms of Rule 8.4 for the delivery by the Defendant of the particulars of his/her defence to the claim.
- 9.3 The provisions of Rules 8.3 to 8.7 and 10. shall apply to such a counter claim, subject to the necessary changes (*mutatis mutandis*).

## **10 THE PRE-ADJUDICATION MEETING**

- 10.1 On a date determined in accordance with Rule 10.2 the parties shall attend a meeting, which meeting shall be called the "Pre-Adjudication Meeting". The Pre-Adjudication Meeting shall be presided over by the Arbitrator.
- 10.2 Unless the parties otherwise agree, the date for this meeting shall be set for 20 days after the due date for delivery of the pleadings referred to in Rule 8.4 in respect of the claim, and where appropriate the counterclaim.
- 10.3 The Arbitrator shall at the Pre-Adjudication Meeting, or such further Pre-Adjudication Meetings as he/she deems necessary:
- 10.3.1 ascertain the claims and counter-claims and defenses thereto which the parties make or raise against each other;
  - 10.3.2 ascertain the issues of fact and law on which the parties agree and those on which they disagree;
  - 10.3.3 propose and discuss ways of further limiting or eliminating those issues of fact and law on which they disagree;
  - 10.3.4 record in writing signed by him/herself and the parties, the matters referred to in Rules 10.3.1, 10.3.2 and where applicable 10.3.3, which matters are herein called 'the Statement of Issues'.
  - 10.3.5 Once the Statement of Issues has been signed by the parties and the Arbitrator, the dispute will be considered to have reached the stage of *litis contestatio*.
- 10.4 In addition to the matters mentioned in Rule 10.3 the Arbitrator and the parties shall at the Pre-Adjudication Meeting consider the following:
- 10.4.1 the holding of any inspection or examination;
  - 10.4.2 the making of any further or better discovery of documents;
  - 10.4.3 in respect of the expert evidence:
    - 10.4.3.1 a meeting between the experts with the purpose of narrowing the points of dispute between them, with or without the presence of the parties' representatives; and or
    - 10.4.3.2 the preparation of a joint report by the experts setting out points of agreement and disagreement; and or
    - 10.4.3.3 the calling of a third expert, agreed on by the parties, to advise on the reports of the other experts;
    - 10.4.3.4 identifying which expert witnesses will be required to testify at the hearing;
    - 10.4.3.5 limiting the subject matter on which such expert witnesses will be required to testify;
    - 10.4.3.6 scheduling, insofar as is possible, the date and time at which expert witnesses

- will be required to testify;
- Provided that the Arbitrator may in any event exercise his/her powers in terms of Rule 24.3.6;
- 10.4.4 in respect of the other evidence:
  - 10.4.4.1 identifying witnesses in respect of which no summaries were filed, that may nevertheless be required to testify. In respect of any such witnesses the dates by which their witness summaries are to be filed shall also be fixed;
  - 10.4.4.2 identifying which witnesses will be required to testify at the hearing;
  - 10.4.4.3 limiting the subject matter on which such witnesses will be required to testify;
  - 10.4.4.4 scheduling, insofar as is possible, the date and time at which witnesses will be required to testify.
- Provided that the Arbitrator may in any event exercise his/her powers in terms of Rule 24.3.6;
- 10.4.5 the giving of any further particulars reasonably required for the purposes of the hearing;
- 10.4.6 the production of plans, diagrams, photographs, models and the like to be used at the hearing;
- 10.4.7 the settlement or referral of any dispute concerning the quantum of a claim to an expert for his/her final determination;
- 10.4.8 determining whether or not the duration of the hearing can be curtailed through agreement to the effect that:
  - 10.4.8.1 evidence be presented on affidavit on all or some of the points of dispute;
  - 10.4.8.2 a restricted hearing as contemplated in Rule 22 will take place;
  - 10.4.8.3 evidence in chief be presented on affidavit, while cross-examination and re-examination be done orally;
  - 10.4.8.4 time limits be set on the duration of cross-examination of witnesses;
  - 10.4.8.5 identified points of dispute be referred to formal mediation, which shall be concluded prior to the hearing;
- Provided that the Arbitrator may in any event exercise his/her powers in terms of Rule 24.3.6;
- 10.4.9 determining the manner of the hearing of points in limine, if any. This shall include considering the hearing of such a point in accordance with Rule 17;
- 10.4.10 determining, if possible, which party has the duty to begin with the adducing of evidence;
- 10.4.11 determining, if possible, which party bears the onus in respect of the various points of dispute;
- 10.4.12 the appointment of an assessor with such expertise and powers as the parties may determine;
- 10.4.13 the appointment of an interpreter in cases where one is required;
- 10.4.14 confirm the manner and extent of the recording of the hearing.
- 10.5 Where any party at the Pre-Adjudication Meeting is required to take further action prior to the hearing:
  - 10.5.1 the Arbitrator shall determine the date by which that party shall have taken the said action, provided that such date shall not be more than 10 days after the conclusion of the last Pre-Adjudication Meeting, unless the parties agree otherwise, or in the absence of such agreement, the Arbitrator on good cause shown so orders;
  - 10.5.2 The Arbitrator shall consider whether or not to reconvene the Pre-Adjudication Meeting on the day after the date determined in accordance with Rule 10.5.1, and shall order the meeting to be reconvened where there is a reasonable likelihood of a further narrowing of the points of dispute, or of settlement.
  - 10.5.3 Where a party has failed to take the prescribed action in accordance with Rule 10.5.1 the Arbitrator may mero moto or on application without notice, and without any further notice, exercise the powers in Rule 20.7.

- 10.6 The Arbitrator shall, prior to the conclusion of the Pre-Adjudication Meeting, and in consultation with the parties, determine a venue and date upon which the dispute shall be heard, and the time and duration of the sessions; provided that, and unless the parties agree otherwise, or in the absence of such agreement, the Arbitrator on good cause shown so orders, the hearing shall take place on the provisional hearing date agreed on in terms of Rule 6.5.8.
- 10.7 Prior to the conclusion of the Pre-Adjudication Meeting the parties shall exchange written offers, and where applicable, counter offers, for the final settlement of the dispute. Any party's refusal or failure to make such an offer shall be construed as an offer of settlement in the same terms as that of the award requested in that party's pleadings filed in terms of Rule 3.2.1, 4.1.1 or 8.4.2. The Arbitrator shall not be present when these offers are exchanged and or discussed, and the contents of these offers, or details of the discussions in respect thereof, may not be made known to the Arbitrator prior to the delivery of his/her award on all issues in the arbitration other than the costs.
- 10.8 The Arbitrator shall have the power to:
- 10.8.1 grant the parties such opportunity as he/she deems reasonable to amend the Statement of Issues, provided that where this results in wasted costs, he/she shall make an appropriate costs order in accordance with Rule 25.1;
- 10.8.2 propose to a joint meeting of the parties any compromise settlement or agreement to dispose of the whole or portion of the issues. The fact that an Arbitrator has proposed a compromise settlement or agreement shall not in it self be a basis for challenging his/her appointment; and
- 10.8.3 direct the parties, as he/she deems fit, and on dates determined by him/her, to submit further documents or evidence or submissions in writing, sworn or unsworn, provided that each party shall be given reasonable opportunities of presenting evidence or submissions and of responding to those of the other party.

## **11 FURTHER PARTICULARS**

- 11.1 The parties may request further particulars in terms of Rules 8.3.1 and 8.5.1 by delivery of a written request which:
- 11.1.1 Specifies the particulars required;
- 11.1.2 States the grounds upon which those particulars are regarded as being reasonably necessary.
- 11.2 Further particulars shall inter alia be regarded as being reasonably necessary where:
- 11.2.1 Any contention of fact made by a party reasonably requires amplification or clarification;
- 11.2.2 It does not reasonably appear from a party's pleadings what evidence he/she will present in support of any particular averment;
- 11.2.3 It does not reasonably appear from a party's pleadings which principles of law he/she relies on in support the relief claimed; or
- 11.2.4 A witness statement does not substantially comply with the provisions of Rule 12.1.
- 11.3 Where the further particulars requested are reasonably necessary, they shall be provided within 5 days from delivery of the request in terms of Rules 8.3.1 and 8.5.1.
- 11.4 Where a party has failed to provide the further particulars requested, the Arbitrator may at the Pre-Adjudication Meeting order that they be provided. In the event that any party's failure to provide the requested further particulars results in a postponement of the Pre-Adjudication Meeting, the Arbitrator shall, unless there are special circumstances, order the defaulting party to pay the wasted costs.
- 11.5 The Arbitrator may order any party to provide any further particulars he/she deems necessary, provided that the Arbitrator shall not normally exercise this discretion prior to the commencement of the Pre-Adjudication Meeting.

## **12 CASE SUMMARIES AND WITNESS STATEMENTS**

- 12.1 The purpose of a case summary is to inform the Arbitrator and the other Party of the nature and particulars of that Party's claim or defence. In formulating his/her claim or defence a Party shall provide information regarding:
- 12.1.1 The facts relied on in support of that claim or defense;
  - 12.1.2 The conclusions of law which can be deduced from the stated facts; and
  - 12.1.3 The relief claimed.
- The information in the case summary, read together with the witness statements, should be sufficient to enable the other Party to understand, evaluate and where necessary prepare a response to that claim or defence.
- 12.2 A case summary may be relied on during the examination or cross-examination of any witness
- 12.3 The purpose of a witness statement is to facilitate an informed evaluation of the parties' evidence concerning the dispute or an aspect thereof, and to enable meaningful settlement discussions to take place. Any witness statement made in terms of these Rules shall:
- 12.3.1 Identify the name and normal work or residential address of the witness;
  - 12.3.2 Summarize the substance of the evidence, and the grounds therefor, that such witness is expected to give on each issue with sufficient particularity as to present a clear picture as to the nature of the witness' evidence, and the basis thereof;
  - 12.3.3 Shall be confirmed by the witness by way of oath or affirmation. Where the statement is not made under oath or affirmation, the party who drafted the statement shall certify under his/her signature that the statement contains a true version of the evidence as communicated to his/her personally by the witness. In any subsequent proceedings in terms of these Rules, it shall be assumed, unless the contrary is proven, that the party so certifying a statement, had correctly and accurately recorded the witness's evidence therein.
- 12.4 A witness statement may be relied on during examination or cross-examination of any witness.
- 12.5 No witness may be called to testify at a hearing unless that witness's witness statement was delivered in terms of these Rules.
- 12.6 Where a party failed to deliver a witness statement in terms of Rule 8 or where relevant Rule 9, he/she may nevertheless deliver an additional statement at any stage prior to the conclusion of the hearing, provided that:
- 12.6.1 Where such statement is delivered after conclusion of the Pre-Adjudication Meeting, any party receiving such a statement shall have the unilateral power, by way of delivery of written notice, to reconvene the Pre-Adjudication Meeting. This election shall only be exercised where:
    - 12.6.1.1 The party receiving such statement reasonably deems it necessary to deliver a responding witness statement, provided that where such an additional statement requires a response from a witness in respect of which a statement has already been filed, such response can be led in evidence without amplification of the filed witness statement; or
    - 12.6.1.2 The information in such statement, or any response thereto, is of such a nature that further consideration thereof at a reconvened Pre-Adjudication Meeting has a reasonable likelihood of result in a further narrowing of the issues, or settlement.
  - 12.6.2 Where such statement is delivered less than 5 days prior to the commencement of the hearing, or after such commencement, any party receiving such a statement shall have the unilateral power, by way of delivery of written notice, to postpone the hearing. This election shall only be exercised where the party receiving such a statement reasonably requires such a postponement to consider and or prepare responding evidence. Where this election is exercised, the Arbitrator shall, in absence of agreement between the parties, determine the duration of the postponement;

- 12.6.3 In awarding any wasted or additional costs incurred by such late filing of a witness statement, the Arbitrator shall apply the principles in Rule 25, and also evaluate the reasonableness of any election exercised in terms of Rule 12.6.1 or Rule 12.6.2.

### **13 DEPOSITIONS**

- 13.1 Any party to a dispute may request that a witness in respect of whom a witness statement has been submitted in terms of these Rules, shall make him/herself available for a deposition by:
- 13.1.1 Payment of the prescribed fee; and
  - 13.1.2 Delivery of a notice which specifies:
    - 13.1.2.1 the name of the witness from whom a deposition is required;
    - 13.1.2.2 the intended purpose of the deposition;
    - 13.1.2.3 the city or town where the party intends taking the deposition, provided that such city or town shall either be where the venue for this dispute is located, or the city or town closest to where the witness normally resides;
- 13.2 Without limiting its application, a deposition would normally be requested for one or more of the following purposes:
- 13.2.1 To obtain a clearer understanding of the substance of the witness's evidence, and or the grounds therefor;
  - 13.2.2 To test the credibility or weight of the witness's evidence;
  - 13.2.3 To obtain the witness's opinion (where his/her opinion is relevant) on matters that will be canvassed with his/her during a hearing.
- 13.3 The request referred to in Rule 13.1 above must be delivered within the applicable time period as set out in Rules 8.3.2 and 8.5.2;
- 13.4 Where a witness normally resides and works more than 50 miles from the city or town where the deposition is to be taken, the party requesting the deposition shall also tender the reasonable travelling costs of such a witness to and from the venue of the deposition:
- 13.4.1 Unless the Parties otherwise agree the reasonable travel costs shall be calculated at the mileage rate as determined by the ABC from time to time, and shall be in respect of each mile of the shortest route that the witness is required travel to and from the venue of the deposition.
  - 13.4.2 The traveling costs as agreed, or failing agreement, the traveling costs as stipulated by the Party whose witness is required to make a deposition, shall be paid to the ABC within 3 days of receipt of a notice in terms of Rule 13.5, failing which the deposition may validly be refused. The appropriateness of this amount may be reviewed by the Arbitrator at the conclusion of the hearing.
  - 13.4.3 On receipt of the traveling costs the ABC shall pay the said amount to the Party whose witness is required to make a deposition.
- 13.5 Within 5 days of delivery of a request in terms of Rule 13.1 the party whose witness is required to make a deposition, shall submit to the ABC a notice stating:
- 13.5.1 whether or not travel expenses are due in terms of Rule 13.4, and if so, the amount due in terms of Rule 13.4.1;
  - 13.5.2 whether or not the witness is available for a deposition within the next 10 days, and;
  - 13.5.3 Where the witness is available, the date and time on which the deposition can take place;
  - 13.5.4 Where the witness is unavailable in the next 10 days:
    - 13.5.4.1 The reasons for the witness's unavailability;
    - 13.5.4.2 When the witness will be available.
- 13.6 On receipt of the notice referred to in Rule 13.5.3 the Convenor shall inform the parties of the date, time and location of the deposition. Unless the Arbitrator otherwise orders, the deposition shall take place in the city or town designated in terms of Rule 13.1.2.3, and at a venue designated by the ABC.
- 13.7 On receipt of a notice referred to in Rule 13.5.4 the Convenor shall facilitate an agreed date for

the deposition. Failing such agreement between the parties within 1 day, the Convenor shall inform the Arbitrator of the relevant facts. The Arbitrator may thereafter make such a determination as he/she deems meet. Such a determination can include:

- 13.7.1 an order that a witness be made available on a specific day at a specified venue; or
- 13.7.2 an order refusing the deposition.

13.8 Once the date for the taking of a deposition has been determined, the Convenor shall assess if the dates previously determined in accordance with Rule 6.5.4, 6.5.5, 6.5.7 and 6.5.8, or 6.7, 6.8 or 6.10 are still appropriate. In making this assessment the Convenor shall also consider the expected delay caused by the transcription of the record of the deposition. In the event that the Convenor deems any of the dates to be no longer appropriate:

- 13.8.1 He/She shall propose a schedule of revised dates to the parties;
- 13.8.2 Failing their agreement to this schedule, he/she shall call a case management meeting for purposes of determining such revised dates.

13.9 Any deposition taken in terms of this Rule shall be conducted in the following manner:

- 13.9.1 The deposition shall, whenever possible, be mechanically recorded;
- 13.9.2 The deponent may, subject to Rule 13.14.2, be represented by:
  - 13.9.2.1 the representatives of the party who filed his/her statement; or
  - 13.9.2.2 her own representative. In the event that he/she is so represented, the party who filed his/her statement shall also be entitled to be represented at the deposition;
- 13.9.3 The deponent shall state his/her name and personal details for the record;
- 13.9.4 The deponent shall begin his/her deposition by taking an oath or making an affirmation;
- 13.9.5 The deponent shall confirm, if he/she is able to, that the content of his/her witness statement is true and correct;
- 13.9.6 The duration of the deposition shall subject to the parties' agreement, not be longer than forty five minutes and shall be divided as follows:
  - 13.9.6.1 The party who requested the deposition may examine the deponent for no more than 30 minutes;
  - 13.9.6.2 Any other party to the dispute may thereafter examine the deponent for no more than 10 minutes.
- 13.9.7 The deponent is not compelled to answer any question put to him/her, but the fact of his/her refusal will be recorded, and may be used in argument concerning the credibility of the witness;
- 13.9.8 As far as possible the deposition should be conducted in a non-argumentative and non-confrontational manner;
- 13.9.9 On completion of the deposition a service provider appointed by the ABC shall transcribe the record of the deposition. The ABC shall upon receipt of this deliver a copy to the parties and, at the appropriate time, to the Arbitrator.

13.10 Any party who is obliged to ensure the attendance of a witness at a deposition may enforce the witness's attendance through the provisions of Rule 23.2.

13.11 In the event of:

- 13.11.1 a party whose witness is required to make a deposition failing to submit a notice in terms of Rule 13.5; or
  - 13.11.2 a witness failing to attend a scheduled deposition;
- the party whose witness it is may not call the particular witness at the hearing of the dispute, and may not rely in any way on the evidence and witness summary of the said witness, provided that where a party availed him/herself of the provisions of Rule 13.10, the Arbitrator shall determine the admissibility or otherwise of the particular witness' evidence.

13.12 In the event of the party who requested the deposition failing to attend a scheduled deposition, he/she shall forfeit the right of obtaining a deposition from the particular witness.

13.13 The record of a deposition will be admissible at the hearing, or where no hearing is conducted, during the adjudication of the dispute;

13.14 The costs resulting from the deposition, including travelling costs, shall be costs in the cause,

provided that:

- 13.14.1 the Arbitrator shall retain the discretion to apportion the costs of the deposition notwithstanding the outcome of the matter. Such apportionment shall only take place in the event of the Arbitrator considering the deposition to be unnecessary or it being conducted in a manner unbecoming of the process; and
  - 13.14.2 where the deposition is to be taken in a city or town other than that in which the venue for the hearing is located, the parties and their representatives shall not be entitled to recover travel and accommodation expenses to that city or town.
- 13.15 Nothing in these Rules shall limit a party's common law rights to interview or question any witness.

#### **14 AMENDMENTS OF PLEADINGS AND TIME LIMITS**

- 14.1 The parties may amend and or amplify their pleadings at any time prior to, or at the Pre-Adjudication Meeting. The Arbitrator shall at the Pre-Adjudication Meeting accept any such amendment or amplification, and any response thereto, and where at all possible, continue with the meeting in accordance with Rule 10. Where the late filing of an amendment or amplification results in a postponement of the Pre-Adjudication Meeting, the Arbitrator shall make an appropriate costs order in terms of Rule 25.
- 14.2 After conclusion of the Pre-Adjudication Meeting the parties may:
  - 14.2.1 By agreement amend or amplify the statement of issues; or,
  - 14.2.2 Failing such agreement, apply to the Arbitrator to exercise his/her power in terms of Rule 10.8.1;
  - 14.2.3 Exercise their rights in terms of Rule 12.6.
- 14.3 Unless otherwise provided for in these Rules the time limits agreed on by the parties, or stated in these Rules, shall not be extended or shortened except:
  - 14.3.1 by written permission from all other parties to the arbitration; or
  - 14.3.2 failing such permission, by leave of the Arbitrator, such leave to be obtained on application.
- 14.4 In an application for the postponement or extension of any time period the onus shall be on the applicant to convince the Arbitrator on a balance of probabilities that:
  - 14.4.1 the need for a postponement or extension was not caused by a lack of due diligence on the part of the applicant or his/her representative; and
  - 14.4.2 the postponement or extension is not being sought for purposes of delay; and
  - 14.4.3 an order of costs should not be made against the applicant.
- 14.5 Any Arbitrator who grants an application for the postponement of the date for a hearing shall:
  - 14.5.1 Postpone the hearing to a specific date;
  - 14.5.2 Postpone the hearing for as short a period of time as is possible in the circumstances. The Arbitrator shall specifically consider postponing the matter on the basis that it be heard after hours or over a week-end;
  - 14.5.3 Make an award in respect of the wasted costs in terms of Rule 25.
- 14.6 In the event of any of the time periods set out in the Rules being amended, the parties or the Arbitrator, as the case might be, shall set out the new time periods and inform the Convenor of same. The Convenor will within 3 days of receiving such notification deliver a schedule setting out the amended dates.

#### **15 INSPECTION AND PRODUCTION OF DOCUMENTS, LATE DISCOVERY AND DOCUMENTARY EVIDENCE**

- 15.1 Each party shall on written notice from the other party allow the other party to inspect and, at his/her own expense, to make copies of all the documents discovered or disclosed by him/her;
- 15.2 Each party shall on written notice from the other party produce at the Pre-Adjudication Meeting



such relevant documents as are identified in that notice and which are in the possession of that party, and which were not previously delivered in terms of Rule 8. Where such request comes after the conclusion of the Pre-Adjudication Meeting, such documents shall be produced within 3 days of delivery of the notice;

- 15.3 Either party shall be entitled to produce at the arbitration hearing any relevant document not discovered or disclosed provided that:
- 15.3.1 the party shall have delivered, by not later than 5 days before the arbitration hearing, written notice to the Arbitrator and to the other party of the intention to so produce, which notice shall be accompanied by a copy of such document; and
- 15.3.2 such document shall be produced at the arbitration hearing by a witness under oath.
- 15.4 Where the filing or exchange of documents was not accompanied by a discovery affidavit, any party may by no later than the Pre-Adjudication Meeting, and by written notice, request any other party to file a discovery affidavit. Such discovery affidavit shall be filed within 10 days of receipt of such a request.
- 15.5 Subject to the provisions of Rule 15.6, any document properly discovered or disclosed shall be admitted as evidence without the necessity for its identification or verification by any witness, but either party shall be entitled to lead evidence on the origin, accuracy, meaning or relevance of the document.
- 15.6 Either party shall be entitled, on written notice to the other party delivered not later than 10 days before the commencement of the arbitration hearing, to require that any relevant document whether discovered or not shall, notwithstanding the provisions of Rule 15.5, be produced at the arbitration hearing by a witness under oath.
- 15.7 Any minute drawn up by a Convenor of a meeting convened in terms of these Rules shall constitute prima facie proof of the events at that meeting, and of any determinations made, or agreements entered into between the parties during such a meeting, irrespective of whether or not such a minute is signed by the parties.

## **16 DISPUTE ON RULES AND ARBITRATION AGREEMENT**

- 16.1 Any dispute about the meaning or effect of any of these Rules or the terms of the parties' arbitration agreement shall be determined by the Arbitrator who shall further have power to give directions, not inconsistent with the Rules, on the manner and time in which the Rules and or the arbitration agreement shall be carried into effect.
- 16.2 Where any document or notice does not substantially comply with the format prescribed in the Schedules to these Rules:
- 16.2.1 The Arbitrator may mero moto or on application ascertain whether or not the failure to comply has caused prejudice;
- 16.2.2 Where any such prejudice can be cured by a postponement or a costs award, the Arbitrator shall postpone the matter and or make an appropriate costs order;
- 16.2.3 Where any such prejudice cannot be cured the Arbitrator shall make an appropriate award, which may include dismissing the Claimant's claim.
- 16.3 The Arbitrator may, in his/her sole discretion, refer any dispute about the meaning or effect of any of these Rules to the ABC's Rules Committee for an advisory determination. Any such determination shall be made known to the parties. The Arbitrator shall take such a determination, and the parties' comments thereon, into account when determining the dispute.
- 16.4 In the event that any subsequent amendment of these Rules would have clarified the disputed point, the parties and the Arbitrator shall be guided by the terms of that amendment in deciding such a dispute.

## **17 JURISDICTIONAL DISPUTES AND PRIOR HEARING OF POINT OF LAW OR FACT**

- 17.1 Where any party to an arbitration raises any jurisdictional issue, including rulings on any dispute

in regard to the existence or validity of the arbitration agreement or the scope thereof, the appointed Arbitrator shall on application consider the issue raised and decide whether or not to proceed with the arbitration.

- 17.2 The Arbitrator shall, if both parties so agree, or may, if he/she so decides, or on the application of either party, determine any specified issue of law or fact, including jurisdictional issues, before other issues in the arbitration are determined.
- 17.3 Where any party is of the opinion the referred dispute should not be determined by arbitration by reason of the fact that:
- 17.3.1 That particular party reasonably requires legal precedent to be established on the point in dispute; or
- 17.3.2 That particular party reasonably requires to join a third party to the dispute, and the third party has refused to participate in the arbitration proceedings;
- that party shall, prior to seeking any other relief, apply to the Arbitrator for an order that the arbitration agreement shall cease to have effect with reference to that particular dispute. In considering such an application the Arbitrator shall only make such an order if he/she finds that the continuation of the arbitration proceedings would cause material prejudice to the applicant.
- 17.4 Where any party is of the opinion that he/she is being unduly prejudiced by the selection of venue for any Pre-Adjudication Meeting or hearing, he/she may, in the absence of the other party's consent to have the venue moved, apply to the Arbitrator to move the venue. Where the Arbitrator or parties appoints a venue which is not a facility operated by the ABC, the ABC shall be entitled to recover any additional costs incurred by it in the rendering of its services.
- 17.5 Any application to a court of law on any matter related to arbitration proceedings commenced in the ABD, shall not affect the continuation of the arbitration proceedings, save and to the extent that a court or the Arbitrator otherwise orders.

## **18 PAYMENT OF ADMITTED AMOUNT**

- 18.1 The Defendant, in respect of the claim, or the Claimant, in respect of the counter-claim, shall be entitled, at any time before the delivery of the Arbitrator's award, to pay the other party an amount of money which he/she admits to be owing by him/her, in which event the following conditions shall apply:
- 18.1.1 the payment shall be by cash or currently dated cheque and, if by cheque, shall be effective when the cheque is paid on due presentation;
- 18.1.2 the payment shall be accompanied by a written notice specifying:
- 18.1.2.1 the claim or counter-claim, or part thereof, on which the payment is made; and
- 18.1.2.2 any tender which the party makes in respect of costs; and
- 18.1.3 a copy of the said notice shall be forthwith delivered to the Arbitrator who shall take the payment and any tender of costs into account in making his/her award.
- 18.2 Where any amount is admitted in the pleadings the Arbitrator may, on application, and where appropriate make an interim award that such an admitted amount be paid, subject to such conditions as he/she may impose.

## **19 OFFER OF SETTLEMENT**

- 19.1 The Defendant, in respect of the claim, or the Claimant, in respect of the counter-claim, shall be entitled, at any time before the delivery of the Arbitrator's award, to tender any offer of settlement, including payment of a specific amount of money, without admission of liability and as an offer of settlement, to which provision the following conditions shall apply:
- 19.1.1 the tender shall be in the form of a written notice specifying:
- 19.1.1.1 the claim or counter-claim, or part thereof, in respect of which the tender is made;
- 19.1.1.2 any tender which the party makes in respect of costs, including the scale on

- which any costs are tendered; and
- 19.1.1.3 the date on which the settlement offer expires provided that such date shall be at least 5 days from date of offer.
- 19.1.2 the recipient of the tender shall be entitled by written notice delivered prior to the date specified in the tender notice referred to in Rule 19.1.1, to accept the tender, failing which he/she shall be deemed to have rejected the tender;
- 19.1.3 on receipt of a notice in terms of paragraph 19.1.2 the tenderor shall:
- 19.1.3.1 where applicable, within 3 days pay the amount tendered to the other party and failing such payment the recipient of the tender shall be entitled to apply for an award or interim award ordering the payment to be made; and
- 19.1.3.2 after such payment, deliver to the ABC a written statement that the payment referred to has been made;
- 19.1.3.3 the ABC shall thereafter deliver to the Arbitrator copies of the notices referred to in paragraphs 19.1.1 and 19.1.2 together with the written statement that the payment referred to has been made.
- 19.2 If the Arbitrator received the notices and statement referred to in paragraphs 19.1.1, 19.1.2 and 19.1.3, the Arbitrator shall take the facts therein recorded into account in making his/her award.
- 19.3 If any tender of settlement was not accepted the fact of the tender and its non-acceptance shall not be made known to the Arbitrator until he/she has delivered his/her award on all the issues in the arbitration other than costs
- 19.4 After the Arbitrator has delivered his/her award on all the issues in the arbitration other than costs, the facts concerning any tender of settlement in terms of this Rule or Rule 10.7, and its non-acceptance, may be made known to him/her, and shall be taken into account by his/her in his/her award of costs, provided that if the Arbitrator shall have made an award of costs before becoming aware of the tender and its non-acceptance the tenderor shall be entitled to have the award reopened and reconsidered in respect of the costs.

## **20 DEFAULT PROVISIONS**

- 20.1 The Arbitrator may proceed with the arbitration process in terms of these Rules notwithstanding any failure, neglect or refusal by either party to comply with these Rules, or to take part, or further part in the arbitration, or failure to appear or comply with any ruling or interim award of the Arbitrator.
- 20.2 Where any party delivers defective or incomplete pleadings or documentation, and where no other remedy is prescribed in terms of these Rules, the other party or parties to the arbitration agreement shall be entitled to, by written notice, request the party in default to rectify the stipulated defect within 5 days of delivery of the notice. If the stipulated defect is not cured, the other party or parties to the arbitration agreement may apply for default award upon 5 days' notice to the party in default, provided that the party in default may at any time prior to the granting of the default award:
- 20.2.1 cure the stipulated defect and tender wasted costs; or
- 20.2.2 show cause, for determination by the Arbitrator when considering the application for default award, why the pleadings or documentation are not incomplete or defective as alleged.
- 20.3 Where any party fails to attend any sitting of a Pre-Adjudication Meeting, the party in attendance may orally request the Arbitrator to grant a default award:
- 20.3.1 Notice of such request shall be delivered to the absent party; and
- 20.3.2 The Arbitrator shall not grant the default award within 2 days of delivery of such a notice.
- 20.4 Where any party fails to attend any sitting of a hearing the Arbitrator may, mero moto or on the oral request of the party in attendance, and without any further notice make a default award against the absent party. Such an award shall only be made after 30 minutes have lapsed from the

scheduled starting time.

- 20.5 Where no other remedy is prescribed in these Rules and in the event of any party:
- 20.5.1 not complying with the time limits determined in accordance with these Rules or any subsequently amended dates; or
  - 20.5.2 failing to comply with any procedural ruling made by the Arbitrator;
- the other party or parties to the dispute shall be entitled to apply to the Arbitrator for a default award.
- 20.6 Save as otherwise provided in these Rules, an application for default award shall be on application in terms of Rule 28.
- 20.7 Upon receipt of an application for default award, and after lapsing of the appropriate time period, the Arbitrator may, but subject to Rule 20.8:
- 20.7.1 Where the party in default is the Defendant, and where the claim is for a debt or liquidated demand, without hearing evidence, and in the case of any other claim, after hearing evidence in such form and to such extent as he/she may determine, make an award as requested against the Defendant in default, or make any order as to his/her seems meet;
  - 20.7.2 Where the party in default is the Claimant, make an award dismissing the claim, or any order as to his/her seems meet.
- 20.8 Where the party in default delivers an application for condonation and leave for the late filing of his/her pleading or affidavit, or for late performance of any other procedural step, prior to a default award being delivered on the ABC, the Arbitrator shall immediately be informed of this. The Arbitrator shall thereafter:
- 20.8.1 Where a default award has subsequently been delivered on the ABC, rescind that default award;
  - 20.8.2 Await the Convenor's submission in terms of Rule 28.4; and thereafter
    - 20.8.2.1 Consider the applications for default award and condonation, and any response thereto, in accordance with the provisions of Rule 28.5; and
    - 20.8.2.2 Make an appropriate default award, or where appropriate, allow the application for condonation.
    - 20.8.2.3 Where the Arbitrator allows the application for condonation, he/she shall also make an appropriate costs order in terms of Rule 25.
- 20.9 A party against whom default award has been granted may within 10 days from the date on which he/she became aware, or should reasonably have been aware of the granting of the default award, apply to the Arbitrator for the rescission of that award.
- 20.9.1 In the event of the Arbitrator deciding to rescind the award, he/she shall:
    - 20.9.1.1 determine the amount of wasted costs occasioned by the default; and
    - 20.9.1.2 set a date by which the defaulting party is to pay the said amount to the ABC and or the other party;
    - 20.9.1.3 give directions as to the further conduct of the matter.
  - 20.9.2 In the event of such costs not being paid on or before the determined date, the award shall become final.

## **21 ADJUDICATION WITHOUT HEARING**

- 21.1 Where the parties so agree the Arbitrator may make his/her award without an oral hearing, and after consideration of the documents and pleadings filed in terms of these Rules
- 21.2 Where the parties have agreed that no oral hearing is to be held, the Pre-Adjudication Meeting shall be chaired by the Convenor, unless the parties otherwise agree.

## **22 RESTRICTED HEARING**

- 22.1 Where the parties so agree the Arbitrator may make his/her award after completion of a restricted

hearing.

- 22.2 Subject to the Arbitrator's discretion or the agreement of the parties the following provisions shall apply to a restricted hearing:
- 22.2.1 Each party may call a maximum of two witnesses;
  - 22.2.2 Examination of a witness may not exceed 10 minutes;
  - 22.2.3 Cross-examination of a witness may not exceed 15 minutes;
  - 22.2.4 Re-examination of a witness may not exceed 5 minutes;
  - 22.2.5 Legal argument may not exceed 10 minutes per party;
  - 22.2.6 The duration of the hearing may not exceed 3 hours.

## **23 HEARINGS**

- 23.1 Unless the parties agree otherwise, or the Arbitrator on application so orders, any hearing during the arbitration proceedings shall be open to members of the public.
- 23.2 Any party may ensure the attendance of a witness at any hearing, including a deposition, by issue and service of a witness subpoena on that witness in accordance with the provision of Section 16 of the Act.
- 23.3 Subject to the parties' agreement:
- 23.3.1 Any mechanical recording commissioned by agreement between the parties, shall constitute the record of the hearing;
  - 23.3.2 In the absence of such a mechanical recording the Arbitrator's notes shall constitute the record of the hearing, provided that this provision shall not place any duty on the Arbitrator to take notes in any manner or format that he/she would not otherwise have done;
  - 23.3.3 Where required to construct a record, the parties and their representatives shall be obliged to assist with the process, if requested by the Arbitrator;

## **24 POWERS OF THE ARBITRATOR & THE CONVENOR**

- 24.1 It shall be the duty of the Arbitrator to determine the issues before his/her in a just, expeditious, economical, pro-active and final manner, and to make an award in accordance with that determination.
- 24.2 The Arbitrator shall have the widest discretion and powers allowed by law, or determined by the parties, to make any ruling or give any direction mentioned in these Rules, or as he/she otherwise considers necessary or advisable for the just, expeditious, economical, pro-active and final determination of all the disputes raised in the proceedings, including the matter of costs.
- 24.3 Without detracting from the generality of the above, and in addition to any powers mentioned elsewhere in these Rules or the Act, the Arbitrator shall inter alia have the following powers:
- 24.3.1 To determine the existence or validity of any contract, and to order rectification and specific performance of any contract where the Court of the United States of America would have the power to do so;
  - 24.3.2 Subject to the provisions of the common law as applied to applications for security for costs in the Court, to order any party who is a Claimant, or Claimant under a counterclaim, to furnish such security for costs in respect of his/her claim or counterclaim as the Arbitrator regards as being appropriate and fair;
  - 24.3.3 To order any other parties who consent in writing, to be joined in the arbitration proceedings;
  - 24.3.4 To make findings of fact and law as may be required for the purposes of the proceeding and the awards;
  - 24.3.5 To make rulings or give interim awards on any matter, including that of onus, admissibility of evidence, and of procedure, including rulings or awards of an interlocutory or interim nature, and rulings or interim awards relating to liability for and

- payment of costs and implementation of interim or final awards.
- 24.3.6 To request, receive and take into account such oral or written evidence as he/she deems relevant and admissible. This power shall include the power to:
- 24.3.6.1 request that specified evidence be presented;
- 24.3.6.2 limit or exclude such evidence as he/she deems to be irrelevant or unnecessarily repetitive; and
- 24.3.6.3 adopt an investigative approach.
- 24.3.7 To require any party to amend or amplify his/her pleadings so that they are clear;
- 24.3.8 To draw an adverse inference in the event of either Party failing to supply requested information and or documentation. In considering whether an adverse inference should be drawn the Arbitrator must consider the explanation, if any, provided by the defaulting Party;
- 24.3.9 To postpone and or reconvene a Pre-Adjudication Meeting where appropriate;
- 24.3.10 To receive evidence by means of telephone or video conferencing facilities, provided that he/she is satisfied that such means afforded all parties a fair opportunity of examining the witness;
- 24.3.11 To make an award whereby a party is restrained from any conduct, either on an interim or final basis;
- 24.3.12 To make an award whereby a party is ordered to perform a specified action, either on an interim or final basis;
- 24.3.13 To order the parties to produce or make available for inspection any property or thing under the control of the party or parties against whom such order is made, and to make orders for the interim custody or preservation of goods or property, or, where such goods or property would otherwise lose their value, for the sale of such goods or property and the interim safe-keeping of the proceeds of such realization;
- 24.3.14 To hold inspections in loco;
- 24.3.15 To formulate mero moto, or on application, prior to making a final award, any question of law arising in the course of the reference in the form of a special case for the opinion of counsel. Such opinion shall be final and not subject to appeal and shall be binding on the Arbitrator and on the parties to the reference. The exercise or refusal of this power shall not preclude any party from relying on the provisions of the Act;
- 24.3.16 To, where appropriate, express his/her award in any currency, unless otherwise agreed by the parties;
- 24.3.17 To, subject to South African common law and statutory provisions, award interest on such basis and terms as he/she considers appropriate and fair in the circumstances, commencing not earlier than the date on which the cause of action arose and ending not later than the date of payment.
- 24.3.18 In the absence of the parties' agreement or any other provision in these Rules or his/her terms of appointment, to determine the time, date and place of the hearing, and the hours during which the hearing shall take place;
- 24.3.19 To appoint a commissioner to take the evidence of any person within or outside the Republic of South Africa as if he/she were a commissioner appointed by the Court;
- 24.3.20 To, on application wherein good cause is shown, direct that the identity and evidence of a witness who testifies, be kept secret. Where an Arbitrator makes such a direction he/she shall also give directions as to the manner in which such evidence shall be heard and dealt with;
- 24.3.21 To generally exercise such powers and duties given to his/her by any agreement between the parties or by the laws of the Republic of South Africa, as are required for the just, economical, pro-active and expeditious conduct and conclusion of the proceedings, where these Rules are silent in any respect.
- 24.4 The Arbitrator shall not be entitled to make an award of absolution from the instance.
- 24.5 The Convenor may at any stage of the proceedings, if he/she considers it appropriate for the just,

expeditious, and or economical determination of the dispute, convene a Case Management Meeting between the parties.

- 24.5.1 Notice of such a Case Management Meeting shall be delivered at least 3 days in advance of the date of this meeting, and shall stipulate the date, time and venue of the meeting.
- 24.5.2 At the Case Management Meeting the Convenor shall facilitate an agreement between the parties on the further conduct of the matter;
- 24.5.3 In the event of such agreement not being reached, or in the absence of one or more of the parties at such a Case Management Meeting, the Convenor may formulate and submit a proposal on the further conduct of the matter to the Arbitrator;
- 24.5.4 Upon receipt of such a proposal the Arbitrator may make such a ruling on the further conduct of the matter as to his/her seems meet;
- 24.5.5 Notwithstanding the provisions of any other Rule the parties may not without the consent of the Convenor agree to the postponement of a Case Management Meeting.

## **25 AWARD OF COSTS**

- 25.1 The Arbitrator may at his/her discretion make any appropriate costs order. As a general rule:
  - 25.1.1 the successful party shall recover his/her costs from the other party;
  - 25.1.2 an order of costs may be used as a punitive sanction where a party causes delay, or as a result of behavior unbecoming to the dispute process. Such a punitive cost order can include an order that the costs be paid on an attorney and client scale, or that the costs be paid by the party's representative (costs *de bonis propriis*);
  - 25.1.3 an award of costs shall include all reasonable fees and disbursements incurred in litigation proceedings that were converted into the arbitration process;
  - 25.1.4 costs resulting from any postponement or extension granted in terms of these Rules shall be born by the party who caused such delay or postponement (including postponements of hearings); and
  - 25.1.5 an award of wasted costs shall be made as soon as possible after such wasted costs are incurred (provided that no interim hearing shall be convened solely for purposes of considering such a costs award), and shall be payable immediately.
- 25.2 The Arbitrator shall set the scale for any costs award.
- 25.3 In the event of the parties being unable to settle the amount of the costs payable within 20 days from the date of rendering of such bill of costs, or such further time period as the parties may agree on, any party may refer the bill of costs for taxation in accordance with the ABC's Taxation Rules. Where a party so refers a matter for taxation, all the parties to the dispute shall be bound by those Rules, and the terms and conditions attached to them.
- 25.4 Notwithstanding the provisions of any other Rule an award of costs shall constitute a final award.

## **26 THE AWARD OF THE ARBITRATOR**

- 26.1 The award, which shall include an order as to costs, shall, unless otherwise agreed by the Parties after commencement of the process, be in writing and shall set out the reasons on which the award is based, and shall be signed by the Arbitrator.
- 26.2 Subject to Rule 28.6, the Arbitrator shall deliver his/her award within 20 days after the conclusion of the hearing, or the submission of the last document to the Arbitrator in the event that there is no hearing. To the extent that this may be later than four months after entering on the reference, the time for making the award shall be deemed to be extended by the parties in terms of Act.
- 26.3 The Arbitrator shall deliver his/her award to the Convenor.
- 26.4 Subject to the provisions of Rules 5.7.5 and 20.8, the Convenor shall within 3 days publish the award by delivering a copy thereof to the parties, provided that the award may be withheld pending payment of any outstanding monies to the ABC or the Arbitrator.

- 26.5 Where any party is of the opinion that the Arbitrator's award contains an error, omission or ambiguity, or that the Arbitrator has failed to address an issue that was placed before him/her:
- 26.5.1 he/she may within 3 days of receiving such an award deliver a notice requesting the Arbitrator to rectify the error, or address the issue therein identified, or interpret the ambiguity. The said notice shall briefly advance reasons in support of the complaint;
  - 26.5.2 the other party to the arbitration agreement may within 3 days of receiving such a notice deliver submissions in reply thereto;
  - 26.5.3 The Arbitrator shall then within 3 days of the date for the delivery of the submission in terms of Rule 26.5.2 confirm or amend his/her award, or interpret the ambiguity, and make an appropriate costs order, if any.
  - 26.5.4 The Arbitrator's award shall only be considered a final award once the time period for the filing of a notice in terms of Rule 26.5.1 has lapsed, or in the event of such a notice being filed, upon the confirmation or amendment of his/her award by the Arbitrator. Until such time the Arbitrator shall retain his/her terms of reference, and shall not be considered *functus officio*.
- 26.6 If during the proceedings the parties settle the dispute, the Arbitrator shall terminate the proceedings and, if requested by the parties and not objected to by the Arbitrator on reasonable grounds, record the settlement in the form of an arbitral award on agreed terms. Such an award on agreed terms has the same status and effect as any other award on the merits of the case.
- 26.7 In the event of the award of an Arbitrator being taken on review, the award shall, nevertheless acquire the status of a provisional sentence judgement, and the successful party shall be entitled to execute the said award against the furnishing of security *de restituendo* in accordance with the parties' agreement, or as determined by the Arbitrator.

## **27 EXECUTION OF AWARDS**

An award, including an interim award and an award on agreed terms, may be made an order of court in terms of the Act.

## **28 APPLICATIONS**

- 28.1 Where these Rules provide that a matter shall be determined on application to the Arbitrator, or that the parties may apply for specified relief, or that a matter shall be referred to the Arbitrator for his/her determination, such application or referral shall:
- 28.1.1 Be on affidavit;
  - 28.1.2 Stipulate the relief sought;
  - 28.1.3 Provide details of the grounds on which the relief is claimed;
  - 28.1.4 Be delivered to all the parties and the ABC;
- 28.2 Upon receipt of an application the Convenor shall convene a case management meeting in accordance with Rule 24.5. The purpose of such a meeting shall be to facilitating an agreement between the parties, or failing such agreement, to facilitate the adjudication of the application.
- 28.3 The case management meeting notice shall direct the parties to submit any amplification or response to the application by no later than the case management meeting.
- 28.4 Failing a settlement of the disputes raised in the application, the Convenor shall:
- 28.4.1 Determine a date, which shall be 2 days hence, for delivery of any final submissions by the parties; and
  - 28.4.2 Upon expiry of that date, he/she shall deliver each party's contentions to the Arbitrator.
- 28.5 The Arbitrator shall thereafter determine the application without any formal hearing, provided that the he/she may *mero moto* or on the request of a party order such a hearing where he/she considers it to be absolutely necessary for a just and fair adjudication of the application.
- 28.6 The Arbitrator shall deliver an award in respect of the application as soon as is possible after the delivery of the parties' submissions, or conclusion of any hearing, provided that, subject to



objective impossibility:

- 28.6.1 Where the application is for urgent relief, the award shall be delivered on the same day;
- 28.6.2 Where the application is for a default award, the award shall be delivered within 1 day;
- 28.6.3 In respect of any other application, the award shall be delivered within 5 days.
- 28.7 Where any application is brought prior to the appointment of an Arbitrator, the Convenor shall in his/her own discretion appoint an Arbitrator for the sole purpose of adjudicating the application.
- 28.8 In the event of a party requiring interim relief in a matter that has commenced in the ABC, such relief shall be sought by way of application. Where such relief is required on an urgent basis the applicant shall inform the Convenor that the application is brought as a matter of urgency, and shall further:
  - 28.8.1 Provide details in his/her application of the nature and reasons for such urgency;
  - 28.8.2 Give written directions to the Convenor as to whether or not:
    - 28.8.2.1 The application is brought on an *ex parte* basis;
    - 28.8.2.2 The holding of a case management meeting would be appropriate;
    - 28.8.2.3 The application should be determined with a formal hearing.
  - 28.8.3 The Convenor shall thereafter deal with the application in the manner requested by the applicant, provided that any written submissions in respect of the application delivered by any other party shall also be forwarded to the Arbitrator;
  - 28.8.4 When hearing the application the Arbitrator may condone the non-compliance with the Rules with regard to time periods and the holding of the case management meeting to the extent justified by the circumstances, provided that, unless grounds for an *ex parte* application exist, the other party to the arbitration agreement shall have received notice of the application and of the time and place of the hearing;
- 28.9 Any party may before or during arbitral proceedings request from a Court an interim measure of protection, provided that such request may only be directed to a Court where:
  - 28.9.1 the Arbitrator is not competent to grant the order; or
  - 28.9.2 the urgency of the matter makes it impractical to seek such order from an Arbitrator, and provided that the Arbitrator, being competent to grant the relief, has not yet determined the matter.

## **29 APPEAL**

- 29.1 Unless the parties otherwise agree, any party to a dispute shall not have the right to appeal against any final determination of the Arbitrator.
- 29.2 Where the parties have agreed to the right of appeal, the appeal:
  - 29.2.1 Shall, subject to any other agreement between the parties, be conducted in accordance with the provisions of this Rule;
  - 29.2.2 Shall, subject to any other agreement between the parties, lie to a single Arbitrator who shall be more senior than the Arbitrator who delivered the award now being appealed against.
  - 29.2.3 Shall only lie against a final award made by the Arbitrator, provided that any appeal against a cost order shall not be brought until after the final determination of all the issues by the Arbitrator.
- 29.3 Where a right of appeal exists, an appeal shall be initiated by delivery of a notice of appeal, and payment of the prescribe deposit:
  - 29.3.1 Such notice shall be delivered, and such deposit shall be paid within 20 days from publication of the award in terms of Rule 26.4, or in the event of any party filing a notice in accordance with Rule 26.5.1, within 20 days of the confirmation or amendment of the Arbitrator's award, failing which the award shall not be appealable.
  - 29.3.2 The amount of the deposit to be paid to the ABC shall be prescribed by the ABC and shall be sufficient to cover the costs of transcribing and copying of the record. It shall be the duty of the Appellant to timeously ascertain the amount payable as a deposit.

- 29.3.3 If there is a cross-appeal, a notice of the cross-appeal shall be delivered within 10 days of delivery of the notice of appeal, failing which a cross-appeal shall be precluded.
- 29.3.4 Any application for extension of the time periods in Rule 29.3.1 or 29.3.3, or for condonation and leave for the late filing of a notice of appeal or cross-appeal, or late payment of the prescribed deposit, shall be determined by the Arbitrator who delivered the award that is now being brought on appeal.
- 29.4 The notice of appeal and notice of cross-appeal, if any, shall:
- 29.4.1 State whether the whole or part only of the award is appealed against;
- 29.4.2 If only part thereof is appealed against, it shall state which part;
- 29.4.3 Specify the findings of fact and rulings of law appealed against; and
- 29.4.4 Specify the grounds upon which the appeal or cross-appeal are founded.
- 29.5 Upon delivery of a notice of appeal, and a notice of cross-appeal, if any, and payment of the prescribed deposit, the convenor shall:
- 29.5.1 give instructions for the record to be transcribed and copied;
- 29.5.2 within 5 days of receipt of the transcribed record, convene an Appeal Meeting between the parties.
- 29.6 At the Appeal Meeting, which shall be chaired by the Convenor, the parties' agreement, or their failure to agree on the following shall be recorded:
- 29.6.1 the selection of the Arbitrator by the parties, and determining the terms of his/her appointment and any conditions attached thereto;
- 29.6.2 determination of the extent and manner of compiling of the record of the hearing;
- 29.6.3 determination of the dates for filing of the parties' heads of argument;
- 29.6.4 determination of whether or not oral argument is to be allowed;
- 29.6.5 determination of the date and venue of the hearing, if any, and times and duration of sessions; and
- 29.6.6 any other matters or proposals that might facilitate the arbitration.
- 29.7 Failing agreement between the parties on any aspect set out in Rules 29.6.1 to 29.6.5, the convenor shall determine the matters therein contained, save insofar as they are prescribed by these Rules.
- 29.8 In the event of any one party not attending the Appeal Meeting, the matters set out in Rules 29.6.1 to 29.6.5 will be determined by the convenor in consultation with the party that is in attendance.
- 29.9 The provisions of Rules 7, 14.3, 14.4, 14.5, 20, 23, 21, 24, 18, 19, 28, 25, 26 and 27 shall apply to appeals, subject to the necessary changes (*mutatis mutandis*).
- 29.10 In the event of the ABC lawfully suspending the appeal proceedings by reason of the appellant's non-payment of monies due in terms of the ABC's standard terms and conditions:
- 29.10.1 The convenor shall deliver a notice to this effect;
- 29.10.2 The respondent may thereafter apply for an award dismissing the appellant's appeal.
- 29.10.3 Where more than one Arbitrator has been appointed to hear the appeal, such an application shall be heard by any one of the appointed Arbitrators.
- 29.10.3.1 The Arbitrator hearing such an application shall dismiss the appeal unless good cause is shown for extending the time period within which the appellant may pay the outstanding monies.
- 29.10.3.2 Where the Arbitrator has so extended the time period, and the appellant fails to pay the outstanding monies timeously, the appeal shall automatically lapse.

### **30 MEDIATION**

- 30.1 A dispute may at any stage after referral, by agreement, be subjected to mediation. Any of the parties to a dispute may request the Convenor to secure an agreement to mediate. Such request shall be in writing and shall stipulate the areas of the dispute which require mediation;
- 30.2 Upon receipt of such a request the Convenor shall attempt to facilitate an agreement to mediate.

Such an agreement shall include:

- 30.2.1 The name of the selected mediator
  - 30.2.2 The terms and conditions of his/her appointment;
  - 30.2.3 The mediator's terms of reference;
  - 30.2.4 An acknowledgement that any settlement reached as a result of the mediation shall be recorded and shall have the same status as any other settlement or award by agreement reached in terms of these Rules.
- 30.3 In the event of a mediation agreement being reached:
- 30.3.1 The Convenor shall appoint the mediator;
  - 30.3.2 In consultation with the mediator and the parties arrange a meeting with the mediator.
- 30.4 The mediator shall:
- 30.4.1 conduct the mediation in a professional manner and in line with accepted mediation practices;
  - 30.4.2 reduce any agreement reached between the parties to a written agreement, signed by both parties and containing all the points agreed to. Any party may request that such agreement may be made an award in terms of Rule 26.6.
- 30.5 The signing of a written mediation agreement shall suspend the running of any time periods set in terms of these Rules, provided that such suspension shall automatically cease on completion of the mediation proceedings as envisaged in terms of Rule 30.6;
- 30.6 The mediation proceedings shall be deemed to have been completed in the event of mediation proceedings not having been completed within 10 days of the appointment of the mediator. The parties may agree to extend this time period provided that each extension is not longer than 20 days.
- 30.7 In the event of mediation being completed without a final settlement of the dispute being reached, the Convenor shall assess if the dates previously determined in accordance with Rule 6.5.4, 6.5.5, 6.5.7 and 6.5.8, or 6.7, 6.8 or 6.10, or any subsequently amended dates, are still appropriate. In the event that the Convenor deems any of the dates to be no longer appropriate:
- 30.7.1 He/She shall propose a schedule of revised dates to the parties;
  - 30.7.2 Failing their agreement to this schedule, he/she shall call a case management meeting for purposes of determining such revised dates.

## **31 REPRESENTATION OF PARTIES**

- 31.1 A party is entitled to be represented in the arbitration by any person he/she deems suitable, subject to any restrictions in the arbitration agreement.
- 31.2 The Arbitrator may preclude any representative from further attending any meeting or hearing, where the Arbitrator reasonably deems that party's conduct to be inhibitive to the just, expeditious, economical, and final determination of the dispute. Where the Arbitrator so orders, the affected party shall be given a reasonable opportunity to obtain alternative representation.

## **32 EFFECTIVE DATE**

The effective date of these Rules is 1 September 2002.

## **33 AMENDMENT OF THESE RULES**

These Rules may be amended by the ABC at any time, provided that such amended Rules shall only apply to disputes wherein the arbitration proceedings were initiated after the date upon which such amendments came into effect, unless the parties otherwise agree.

## **34 THE ARBITRATION ACT**

- 34.1 Save as varied herein, the provisions of the Act shall apply.
- 34.2 Where the provisions of these Rules are in conflict with the peremptory provisions of any Statute of the United States of America, the provisions of that Statute shall prevail.

---XXX---

**SCHEDULE 1**

**ARBITRATION COMMENCEMENT NOTICE**

The purpose of the Arbitration Commencement Notice is to provide sufficient details and supporting documentation for the Defendant and Arbitrator to be able to properly understand the claim. The Arbitration Commencement Notice shall:

- a) be signed by the Claimant or his/her representative;
- b) contain the following information; and
- c) be substantially in the format herein set out:

**“ARBITRATION COMMENCEMENT NOTICE”**

ABC CASE NO: \_\_\_\_\_

IN THE MATTER BETWEEN

\_\_\_\_\_ (Name)  
 \_\_\_\_\_ (Address)  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(herein referred to as “the Claimant”)

AND

\_\_\_\_\_ (Name)  
 \_\_\_\_\_ (Address)  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(herein referred to as “the Defendant”)

---

***IT IS IN YOUR OWN INTEREST TO STUDY THE CONTENTS OF THIS DOCUMENT, AND TO RESPOND TO IT. YOUR FAILURE TO RESPOND MAY RESULT IN A COURT JUDGEMENT BEING GRANTED AGAINST YOU***

---

1. This document serves to notify you that the Claimant has now instituted formal Arbitration Proceedings against you, wherein the Claimant alleges that he/she is entitled to certain relief against you.

2. The purpose of these Arbitration Proceedings are:
  - 2.1 To allow structured negotiations between you and the Claimant in respect of his/her claim; and
  - 2.2 To attempt to resolve any dispute between you and the Claimant; and
  - 2.3 To obtain the award of an independent Arbitrator on any unresolved disputes.Subject to what is said in paragraph 8 below, any agreement, or Arbitrator's award arrived at through this process will be legally binding, and may be made an order of Court that is executable.
3. Details of the relief claimed by the Claimant against you are set out in ANNEXURE 1, attached to this document.
4. Details of the grounds upon which the Claimant seeks this relief against you, are set out in ANNEXURE 2, attached to this document.
5. Should you wish to contest the Claimant's claim, you are required to complete and return the Notice of Participation that is contained in the FIRST MEETING NOTICE (attached to this document), as per the instructions contained therein.
6. **PLEASE NOTE that should you fail to comply with the instructions contained in the FIRST MEETING NOTICE, the Claimant will request that a default award be made against you by the Arbitrator, which award will be enforced by the Court of the United States of America.**
7. Should you be in agreement that the Claimant is entitled to the relief being claimed against you, please complete and return ANNEXURE 3 without any delay. This will result in a judgement being entered against you in the terms claimed by the Claimant, but may save you additional legal costs.
8. \* Arbitration Proceedings are authorised by the Act. In terms of this Act parties may by agreement refer a dispute to arbitration for a legally binding determination of that dispute. You and the Claimant have already agreed that the claim referred to in paragraph 3 above shall be determined through arbitration. This agreement is contained in the document attached as ANNEXURE 4.
9. These Arbitration Proceedings will be conducted in accordance with The Arbitration Board Committee's General Arbitration Rules. The Arbitration Board Committee is an independent and impartial provider of case management services for arbitration matters. Further details, and a copy of the General Arbitration Rules, may be obtained from The Arbitration Board Committee by contacting the Case Manager identified in the FIRST MEETING NOTICE, or at [www](http://www).
10. The Arbitration Proceedings are less formal and technical than proceedings in the Courts. You can present your own case or may elect to be represented by your lawyers during these Arbitration Proceedings.
11. The Claimant will accept delivery of documents in any of the following manners:
  - 11.1 By Hand at the following address: \_\_\_\_\_  
\_\_\_\_\_
  - 11.2 By Registered Mail, at the following address: \_\_\_\_\_

11.3 By Fax, at the following number: \_\_\_\_\_

11.4 By e-mail, at the following address: \_\_\_\_\_

*(Complete at least one of the above. Those that remain incomplete will not apply)*

Signed at \_\_\_\_\_ on \_\_\_\_\_

\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Full Name  
\_\_\_\_\_  
Capacity

**ANNEXURE 1 THE RELIEF CLAIMED**

Claimant is to provide full particulars of the relief claimed against the Defendant. This document should set out the terms of the arbitration award (the “court order”) that the Claimant seeks against the Defendant.

**ANNEXURE 2 PARTICULARS OF CLAIM**

Claimant is to provide full particulars of the grounds upon which the relief claimed, is based. These particulars shall include:

- i. Full particulars of the Claimant;
- ii. Full particulars of the Defendant;
- iii. Full particulars of the contractual relationship between the parties;
- iv. A copy of the contract that the Claimant relies on for his/her relief;
- v. Full particulars of the facts that the Claimant relies on in support of his/her claim;
- vi. Full particulars of the legal principles that the Claimant relies on in support of his/her claim;
- vii. Full particulars of the arbitration agreement relied on by the Claimant.

**ANNEXURE 3 CONSENT TO JUDGEMENT**

Annexure 3 is to be substantially in the following format:

**“CONSENT TO JUDGEMENT”**

In the event that the Defendant admits the validity of the Claimant’s claim, or a portion of that claim, he/she should complete this form and fax it to the fax number indicated above.

**TO:**

Per Fax No .....

**PLEASE TAKE NOTICE THAT:**

I, \_\_\_\_\_ (full name of the Defendant) admit that:

I am liable to the Claimant as claimed in the Arbitration Commencement Notice

**OR**

I am liable to the Claimant in the amount of \$ \_\_\_\_\_ (amount that the Defendant admits to) plus the costs to date

*(delete the paragraph that is not applicable)*

and I consent to an arbitration award and a Court Judgement being entered in respect of this liability.

Dated at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

\_\_\_\_\_ Signature

\_\_\_\_\_ Full Name

\_\_\_\_\_ Capacity

*Please take note that where only a portion of the Claimant’s claim is admitted, the Claimant may nevertheless continue with the arbitration proceedings. In the event that the Claimant continues with the arbitration proceedings, such consent to judgement will constitute an offer of settlement in terms of Rule 20.*

**ANNEXURE 4 THE ARBITRATION AGREEMENT**

A copy of the arbitration agreement which stipulates that the present dispute may be referred to arbitration and be conducted in accordance with The Arbitration Board’s Committee General Arbitration Rules, shall be attached as Annexure 4.



**SCHEDULE 2**

**REQUEST FOR A FIRST MEETING NOTICE**

The request for a First Meeting Notice shall be substantially in the format herein set out:

**“REQUEST FOR A FIRST MEETING NOTICE”**

TO:

Per Fax No \_\_\_\_\_

**Kindly provide a First Meeting Notice in respect of the following matter:**

**CLAIMANT’S DETAILS**

1. Claimant’s Name:

\_\_\_\_\_

2. Claimant’s Address

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

3. The Claimant will accept delivery of documents in any of the following manners:

a) By Hand at the following address: \_\_\_\_\_

\_\_\_\_\_

*(to be no more than 10 miles from the First Meeting Venue)*

b) By Registered Mail, at the following address: \_\_\_\_\_

\_\_\_\_\_

c) By Fax, at the following number: \_\_\_\_\_

d) By e-mail, at the following address: \_\_\_\_\_

***(Complete at least one of the above. Those that remain incomplete will not apply)***

**DEFENDANT'S DETAILS**

1. Defendant's Name:

\_\_\_\_\_

2. Defendant's Address

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**FIRST MEETING DETAILS**

Proposed First Meeting Date: \_\_\_\_\_

Proposed First Meeting Venue \_\_\_\_\_ *(appropriate meeting place)*

**PAYMENT DETAILS**

Attached please find payment (cash / cheque) in the amount of \$ \_\_\_\_\_.

Signed at \_\_\_\_\_ on \_\_\_\_\_

\_\_\_\_\_ Signature

\_\_\_\_\_ Full Name

\_\_\_\_\_ Capacity

**SCHEDULE 3**

**FIRST MEETING NOTICE**

The First Meeting Notice shall be substantially in the format herein set out:

**“FIRST MEETING NOTICE”**

ABC CASE NO: \_\_\_\_\_

IN THE MATTER BETWEEN

\_\_\_\_\_  
(Name)  
\_\_\_\_\_  
(Address)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(herein referred to as “the Claimant”)

AND

\_\_\_\_\_  
(Name)  
\_\_\_\_\_  
(Address)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(herein referred to as “the Defendant”)

---

***IT IS IN YOUR OWN INTEREST TO STUDY THE CONTENTS OF THIS DOCUMENT, AND TO RESPOND TO IT. YOUR FAILURE TO RESPOND MAY RESULT IN A COURT JUDGEMENT BEING GRANTED AGAINST YOU***

---

1. The Arbitration Commencement Notice that was served on you has notified you of the fact that the Claimant has now instituted formal Arbitration Proceedings against you.
2. In the event that you want to oppose the claim instituted against you by the Claimant, you are require to take the following steps:
  - 2.1 Complete the Notice of Participation that is attached to this form. This notice is to be returned to The Arbitration Board Committee by no later than \_\_\_\_\_;

**AND**

2.2 Attend the First Meeting. This meeting is the first procedural step in these Arbitration Proceedings, and is to be attended by the Claimant and you, the Defendant. This meeting will be chaired by a Convenor (a case manager) appointed by The Arbitration Board Committee.

**3. Please take notice that the First Meeting has been convened as follows:**

- 2.1 **First Meeting Date** \_\_\_\_\_
- 2.2 **First Meeting Time** \_\_\_\_\_
- 2.4 **First Meeting Venue** \_\_\_\_\_

4. The purpose of the First Meeting will be as follows:

- 3.1 To allow structured negotiations between you and the Claimant in respect of his/her claim; and
- 3.2 To attempt to resolve any dispute between you and the Claimant; and
- 3.3 To obtain the award of an independent Arbitrator on any unresolved disputes.

**5. Please take notice that:**

- 5.1 *If you do not enter a Notice of Participation prior to the date of the First Meeting, and also fail to attend at the First Meeting, the Claimant will request that a default award be entered against you in the terms claimed by the Claimant. That default award, if granted, will be made an order of the Court, and be executed against you;*
- 5.2 *If you do not enter a Notice of Participation prior to the date of the First Meeting, but attend the First Meeting, that First Meeting will proceed as normal, provided that where the Claimant is absent, the meeting may be postponed by the Convenor;*
- 5.3 *If you have entered a Notice of Participation but do not attend the First Meeting, the meeting shall proceed in your absence, provided that the Convenor may on good cause shown postpone the meeting for a period of no more than 10 days.*

6. These Arbitration Proceedings will be conducted in accordance with The Arbitration Board Committee General Arbitration Rules. The Arbitration Board Committee is an independent and impartial provider of case management services for arbitration matters. Further details, and a copy of the General Arbitration Rules, may be obtained from The Arbitration Board Committee by contacting the Convenor (Case Manager) at the address or telephone number given below, or at www.

Dated at \_\_\_\_\_ on \_\_\_\_\_

\_\_\_\_\_  
**Convenor**

TO: The Arbitration Board Committee  
Per Fax No: .....

AND TO: The Claimant  
Per fax no: .....

**“NOTICE OF PARTICIPATION”**

ABC CASE NO: \_\_\_\_\_

IN THE MATTER BETWEEN

\_\_\_\_\_(Name)  
(herein referred to as “the Claimant”)

AND

\_\_\_\_\_(Name)  
(herein referred to as “the Defendant”)

Kindly take notice that the Defendant hereby gives notice of his/her intention to oppose the claim instituted by the Claimant.

The Defendant will accept delivery of documents in any of the following manners:

- i. By Hand at the following address: \_\_\_\_\_  
\_\_\_\_\_  
*(to be no more than 10 miles from the First Meeting Venue)*
- ii By Registered Mail, at the following address: \_\_\_\_\_  
\_\_\_\_\_
- iii. By Fax, at the following number: \_\_\_\_\_
- iv. By e-mail, at the following address: \_\_\_\_\_

***(Complete at least one of the above. Those that remain incomplete will not apply)***

Signed at \_\_\_\_\_ on \_\_\_\_\_

\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Full Name  
\_\_\_\_\_  
Capacity

**SCHEDULE 4**

**NOTICE OF CONVERSION TO ARBITRATION**

The Notice of Conversion to Arbitration shall:

- a) be signed by the Claimant or his/her representative;
- b) contain the following information; and
- c) be substantially in the format herein set out:

**“NOTICE OF CONVERSION TO ARBITRATION”**

ABC CASE NO:.....

IN THE MATTER BETWEEN

\_\_\_\_\_  
(Enter the Name of the party referring the dispute to arbitration)

\_\_\_\_\_(Address)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(herein referred to as “the Claimant”)

AND

\_\_\_\_\_(Name)

(Enter the Name of the other party to the Court Proceedings)

\_\_\_\_\_(Address)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(herein referred to as “the Defendant”)

---

***IT IS IN YOU OWN INTEREST TO STUDY THE CONTENTS OF THIS DOCUMENT, AND TO RESPOND TO IT.  
YOUR FAILURE TO RESPOND WILL PROBABLY RESULT IN A COURT JUDGEMENT BEING GRANTED AGAINST YOU***

---

1. This document serves to notify you that the Claimant (delete that which is inappropriate) hereby refers the dispute which was the subject of the legal action between the above parties, instituted in the \_\_\_\_\_ division / district of the \_\_\_\_\_ Court, under case number \_\_\_\_\_, to formal Arbitration Proceedings.

2. The Claimant was the Plaintiff / Defendant in the legal action referred to in paragraph 1.
3. The Defendant was the Plaintiff / Defendant in the legal action referred to in paragraph 1.
4. The purpose of these Arbitration Proceedings are:
  - 4.1 To attempt to resolve the dispute between the parties; and
  - 4.2 To obtain the award of an independent Arbitrator on any unresolved disputes.  
Subject to what is said in paragraph 8 below, any agreement, or Arbitrator's award arrived at through this process will be legally binding, and may be made an order of Court that is executable.
5. Details of the dispute between the parties are contained in the pleadings filed of record in the legal action referred to in paragraph 1. A copy of these pleadings is attached hereto as ANNEXURE 1.
6. Should you wish to participate in the Arbitration Proceedings, you are required to complete and return the Notice of Participation that is contained in the FIRST MEETING NOTICE (attached to this document), as per the instructions contained therein.
7. Should you be in agreement that the Claimant is entitled to the relief being claimed against you, please complete and return ANNEXURE 2 without any delay. This will result in a judgement being entered against you in the terms claimed by the Claimant, but may save you additional legal costs.
8. **PLEASE NOTE that should you fail to comply with the instructions contained in the FIRST MEETING NOTICE, the Claimant will request that a default award be made against you by the Arbitrator, which award will be enforced by the Court of the United States of America.**
9. Arbitration Proceedings are authorised by the Act. In terms of this Act parties may by agreement refer a dispute to arbitration for a legally binding determination of that dispute. You and the Claimant have already agreed that the claim referred to in paragraph 3 above may be determined through arbitration. This agreement is contained in the document attached as ANNEXURE 3.
10. These Arbitration Proceedings will be conducted in accordance with The Arbitration Board Committee's General Arbitration Rules. The Arbitration Board Committee is an independent and impartial provider of case management services for arbitration matters. Further details, and a copy of the General Arbitration Rules, may be obtained from The Arbitration Board Committee by contacting the Case Manager identified in the FIRST MEETING NOTICE.
11. The Arbitration Proceedings are less formal and technical than proceedings in the Court and Magistrates. You may present your won case, or elect to be represented by your lawyers during these Arbitration Proceedings.
12. The Claimant will accept delivery of documents in any of the following manners:
  - 12.1 By Hand at the following address: \_\_\_\_\_  
\_\_\_\_\_
  - 12.2 By Registered Mail, at the following address: \_\_\_\_\_  
\_\_\_\_\_
  - 12.3 By Fax, at the following number: \_\_\_\_\_

12.4 By e-mail, at the following address: \_\_\_\_\_

*(Complete at least one of the above. Those that remain incomplete will not apply)*

Signed at \_\_\_\_\_ on \_\_\_\_\_

\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Full Name  
\_\_\_\_\_  
Capacity

**ANNEXURE 1 THE PLEADINGS**

Claimant is to provide a copy of the pleadings filed of record in the Court Proceedings.

**ANNEXURE 2 CONSENT TO JUDGEMENT**

Annexure 2 is to be substantially in the following format:

**“CONSENT TO JUDGEMENT”**

In the event that the Defendant admits the validity of the Claimant’s claim, or a portion of that claim, he/she should complete this form and fax it to the fax number indicated above.

**TO:**

Per Fax No .....

**PLEASE TAKE NOTICE THAT:**

I, \_\_\_\_\_ (full name of the Defendant) admit that:

I am liable to the Claimant as claimed in the Arbitration Commencement Notice

**OR**

I am liable to the Claimant in the amount of R \_\_\_\_\_ (amount that the Defendant admits to) plus the costs to date

*(delete the paragraph that is not applicable)*



and I consent to an arbitration award and a Court Judgement being entered in respect of this liability.

Dated at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_ Signature

\_\_\_\_\_ Full Name

\_\_\_\_\_ Capacity

*Please take note that where only a portion of the Claimant's claim is admitted, the Claimant may nevertheless continue with the arbitration proceedings. In the event that the Claimant continues with the arbitration proceedings, such consent to judgement will constitute an offer of settlement in terms of Rule 20.*

### **ANNEXURE 3 THE ARBITRATION AGREEMENT**

A copy of the arbitration agreement which stipulates that the present dispute may be referred to arbitration and be conducted in accordance with The Arbitration Board Committee's General Arbitration Rules shall be attached as Annexure 2.

**SCHEDULE 5**

**REQUEST FOR DEFAULT AWARD  
IN TERMS OF RULE 5.7**

The request for a default award by reason of the Defendant’s non-participation shall be substantially in the format herein set out:

**“REQUEST FOR DEFAULT AWARD”**

ABC CASE NO:.....

IN THE MATTER BETWEEN

\_\_\_\_\_  
(herein referred to as “the Claimant”)

AND

\_\_\_\_\_  
(Name)  
(herein referred to as “the Defendant”)

The Claimant hereby applies that an award be given against the Claimant on the basis set out in the Arbitration Commencement Notice, and for:

- i. The amount of \$.....;
- ii. Interest thereon at the amount of ....., from .....
- iii. Costs on the Court scale (*delete that which is not applicable*), and as between party and party / attorney and client (*delete that which is not applicable*).

The Claimant submits that:

- a. The Arbitration Commencement Notice and First Meeting Notice were duly served on the Defendant;
- b. The Defendant did not enter a Notice of Participation the matter;
- c. The Defendant did not attend at the First Meeting, which meeting was held after expiry of the required time period;
- d. The claim is for a debt or liquidated amount.

OR

Attached hereto is evidence on affidavit in support of the quantum claimed  
(*where the claim is not for a debt or liquidated amount*)

Dated at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Full Name

\_\_\_\_\_  
Capacity