

# COVID-19 RENTAL ASSESSMENT ARBITRATION AGREEMENT

between

.....[Full name of Company]

Registration Number:.....

(hereinafter referred to as "*the Landlord*")

and

.....[Full name of Company]

Registration Number:.....

(hereinafter referred to as "*the Tenant*")

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## ANNEXURES

**Annexure “A” – Arbitration: Commercial Lease Dispute Rules**

**Annexure “B” – Resolution**

**Annexure “C” – Resolution**

## WHEREBY THE PARTIES AGREE AS FOLLOWS –

### 1 DEFINITIONS

1.1 In this Agreement and in the annexes to this Agreement other than documents prepared before the Effective Date -

1.1.1 clause headings are for convenience only and are not to be used in its interpretation;

1.1.2 an expression which denotes -

1.1.2.1 any gender includes the other genders;

1.1.2.2 a natural person includes a juristic person and *vice versa*;

1.1.2.3 the singular includes the plural and *vice versa*;

1.2 In this Agreement, unless clearly inconsistent with or otherwise indicated by the context, the following words and expressions shall have the meaning allocated to them:

1.2.1 “*Agreement*” means this agreement entered into between the parties together with Annexures hereto which Annexures is incorporated herein as forming an integral part of this agreement.

1.2.2 “*Arbitrator*” refers to an Arbitrator as defined in the Rules.

1.2.3 “*Case Manager*” means the person appointed by the Tribunal to perform the functions conferred upon him/her in terms of the Rules.

1.2.4 “*Contact details*” shall include the Domicilium physical address, electronic mail address, land line number, cellular phone numbers and facsimile numbers.

1.2.5 “*Day*” means any day, excluding Saturdays, Sundays or any Public Holiday.

- 1.2.7 “*Dispute/s*” shall mean the Dispute/s in its widest sense, emanating from the Lease Agreement but limited only to the dispute of determining whether the Tenant is entitled to a reduction of the rent and/or other imposts as a resulting from the outbreak of the Coronavirus pandemic, and if indeed the quantification thereof.
- 1.2.8 “*Effective Date*” means .....
- 1.2.9 “Lease Agreement” shall mean the Agreement of Lease between [*describe party – must be similar to parties to this Agreement*] and [describe party – must be similar to parties to this Agreement] in respect of the following premises [*describe premises – must be similar to premises to this Agreement*].
- 1.2.10 “*Party or Parties*” means the party or parties to this Agreement.
- 1.2.11 “*Prime Rate*” means the rate set out in the Prescribed Rate of Interest Act, 1975.
- 1.2.12 “*Regional Case Manager*” refers to the person appointed by the Tribunal to perform the functions conferred under the Rules.
- 1.2.13 “*Rules*” means the Commercial Lease Dispute Rules attached hereto marked Annexure “A”.
- 1.2.14 “*Settlement*” means a written agreement in terms of which a Dispute/s is settled.
- 1.2.15 “*Tribunal*” refers to the Tribunal for the Commercial Property Industry.
- 1.2.16 “*VAT*” means Value Added Tax payable in terms of the Value Added Tax Act 1991.
- 1.3 Any substantive provision conferring rights or imposing obligations on any Party in the interpretation clause shall be given effect to as if it were a substantive provision in the body of the Agreement.

- 1.4 Words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this Agreement.
- 1.5 No provision herein shall be construed against or interpreted to the disadvantage of any Party hereto by reason of such Party having or being deemed to have structured, drafted or introduced such provision.
- 1.6 The *eiusdem generis* rule shall not apply and whenever a term is followed by the word "including" which is then followed by specific examples, such examples shall not be construed so as to limit the meaning of that term.
- 1.7 A reference to any statutory enactment shall be construed as a reference to that enactment as at the Signature Date and as amended or re-enacted from time to time.
- 1.8 This Agreement incorporates the annexures which annexures shall have the same force and effect as if set out in the body of this Agreement. In this Agreement the word "**Agreement**" refers to this Agreement and the words "**clause**" or "**clauses**" refer to clauses and the words "**annexe**" or "**annexures**" refer to annexures to this Agreement.
- 1.9 Insofar as there is a conflict between this Agreement and the Arbitrations Act 42 of 1965, and in so far as legally permissible, then this Agreement shall take preference.

## 2. **RECORDAL**

- 2.1 Whereas the parties are unable to settle the Dispute/s between them; and
- 2.2 Whereas the parties agree to the Resolution of such Dispute/s by arbitration as facilitated by the Tribunal in accordance with this Agreement and Annexures hereto, as contemplated in the Arbitrations Act No. 42 of 1965 as amended.

## 3. **APPOINTMENT OF THE TRIBUNAL**

The parties hereby appoint the Tribunal to facilitate any Dispute/s referred to the Tribunal in terms of this Agreement.

## 4. **DURATION**

- 4.1 This Agreement shall commence on the Effective Date and shall continue indefinitely until the Dispute/s is finally resolved between the parties.
- 4.2 Any termination of the Agreement will not affect the validity of any award granted or any process including but not limited to the process to make an award an Order of Court if necessary.

## 5. **ARBITRATION**

- 5.1 Any such Dispute/s shall be finally resolved in accordance with the rules.
- 5.2 As hereby agreed the arbitration proceedings shall be facilitated by the Tribunal and the Dispute/s shall be heard and resolved by a single Arbitrator to be appointed by Judge Willem Van Der Merwe or his nominee or successor in title.
- 5.3 The arbitration shall be conducted in accordance to an inquisitorial procedure, as recorded in the Rules.

- 5.4 The parties shall conduct the arbitration constructively, expeditiously, within the time limits and without delay.
- 5.5 The parties to the Dispute/s undertake to co-operate with the Arbitrator, the Tribunal, and/or the Case Manager.
- 5.6 The Arbitrator has the widest discretion and powers allowed by law, and shall have the same powers as a Judge of the High Court of the Republic of South Africa.
- 5.7 Only the Arbitrator shall have the power to grant any orders contemplated in Section 21 of the Arbitration Act, 42 of 1965, and none of the parties shall be entitled to approach a Court of law to obtain any of the relief set out in Section 21 of the Arbitration Act. The Arbitrator is furthermore entitled to grant other interim awards as set out in the Rules.
- 5.8 Any finding by the Arbitrator in terms of Section 21 of the Arbitration Act 42 of 1965 is final and is not subject to appeal. Any party wishing to take the Arbitrator on review regarding any award in terms of Section 21 of the Arbitration Act shall only be entitled to do so after the arbitration has been finalized and the Arbitrator has made a final award.
- 5.9 The Arbitrator shall ensure the fair, just and expeditious determination or resolution of all the Dispute/s raised in the arbitration proceedings, which power shall include, but not be limited to the power to make an interim or final award.
- 5.10 All powers and functions exercised by the Arbitrator shall be in accordance to the provisions of the Arbitration Act, 42 of 1965 (as amended from time to time), and/or if repealed and substituted by another Act, in terms of the such Act.
- 5.11 Any decision and/or award made by the Arbitrator shall be final and binding on the parties to the Dispute/s, and shall not be subject to any appeal.
- 5.12 The parties undertake, notwithstanding the fact that any award has not been made an Order of Court, to obey and give immediate effect to any interim or final award of the Arbitrator.

5.13 The party in whose favour the award has been made shall be entitled to have the award made an Order of Court and shall be entitled to the costs of having the award made an Order of Court, on the scale as between attorney and client.

5.14 Notwithstanding what is recorded in this agreement the Arbitrator has the authority (and the parties agree to give effect thereto), to make an award regarding the costs of the arbitration, as recorded in the Rules, on the scale as between attorney and client.

5.15 The parties hereby irrevocably consent that the Arbitrator fix or determine the costs, simultaneously with making the award, or at any time thereafter, as provided in Section 35(1) of the Arbitration Act, 42 of 1965 which fixing and/or determination shall be final and binding and not be subject to any appeal.

5.16 The provisions of this arbitration clause:

5.16.1 constitute an irrevocable consent by the parties to the arbitration proceedings provided for in this arbitration clause and none of the parties shall be entitled to withdraw from the provisions of this clause or claim at any such proceedings that it is not bound by this clause or such proceedings;

5.16.2 are severable from each other and furthermore severable as to the content of each provision contained in this clause.

## 6. **PAYMENT OF AWARDS**

The Parties agree to make payment of any amount awarded within 14 (fourteen) days after the date of such award, free of deduction or set off into the respective account as reflected hereunder.

## 7. **INTEREST**

Should any party fail to make payment on the due date in terms of this Agreement or the due date in terms of any settlement agreement interest will be calculated



and paid at the Prime Rate calculated from the due date for payment until the date of final payment.

**8. DOMICILIUM AND NOTICES**

8.1 The Parties hereto select as their respective *domicilia citandi et executandi* the following physical addresses, and for the purposes of giving or sending any notice provided for or required hereunder, the following -

<u>Name</u>		
<u>Physical Address</u>	<u>Telefax No</u>	<u>Email</u>
[to be inserted]	[to be inserted]	[to be inserted]

Marked for the attention of .....  
(insert full names)

<u>Name</u>		
<u>Physical Address</u>	<u>Telefax No</u>	<u>Email</u>
[to be inserted]	[to be inserted]	[to be inserted]

Marked for the attention of the Claims Manager

or such other address as may be substituted by notice given as required herein. Each Party shall be entitled from time to time by written notice to the others, to vary its *domicilium* to any other physical address within the Republic of South Africa.

8.2 Any notice addressed to a Party at its physical address shall delivered by hand.

8.3 Any notice shall be rebuttably presumed to have been given during business hours on a business day, on the day of delivery.

- 8.4 The Parties agree that for the purpose of Sub-Rule 3.5 of the Rules, a Notice of Claim may be send by telefax or electronic mail.

9. **GENERAL**

This Agreement correctly reflects the intention of the Parties and embodies the entire agreement between the Parties regarding the subject matter thereof, and the Parties acknowledge that there are no oral or collateral written agreements which in any way vary or modify this Agreement or suspend the operation of the same; and

10. **WARRANTY OF AUTHORITY**

Each Party warrants to each of the other Parties that it has the power, authority and legal right to sign and perform this Agreement and that this Agreement has been duly authorised by all necessary actions of its directors and constitutes valid and binding obligations on it in accordance with the terms of this Agreement.

11. **INDEPENDENT ADVICE**

Each Party acknowledges that it has been free to secure independent legal advice as to the nature and effect of all of the provisions of this Agreement and that it has either taken such independent advice or dispensed with the necessity of doing so. Further, each Party acknowledges that all of the provisions of this Agreement are reasonable in all the circumstances and are part of the overall intention of the Parties in connection with the matters dealt with herein.

12. **IMPLEMENTATION**

The Parties undertake to do all such things, perform all such acts and take all steps to procure the doing of all such things and the performance of all such acts, as may be necessary or incidental to give or be conducive to the giving of effect to the terms, conditions and import of this Agreement.

**13. CESSION OF RIGHTS**

No rights which any Party may have in terms of this Agreement shall be capable of cession or transfer without the prior written consent of the other Party.

**14. WHOLE AGREEMENT**

This Agreement constitutes the whole agreement between the Parties as to the subject matter hereof and no agreement, representations or warranties between the Parties other than those set out herein are binding on the Parties. This Agreement supersedes and replaces all prior agreements, commitments, undertakings or representations, whether oral or written, between the Parties in respect of the subject matter hereof.

**15. VARIATION**

No addition to or variation, consensual cancellation or novation of this Agreement and no waiver of any right arising from this Agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by all the Parties or their duly authorised representatives.

**16. RELAXATION**

No latitude, extension of time or other indulgence which may be given or allowed by any Party to any of the other Parties in respect of the performance of any obligation hereunder or enforcement of any right arising from this Agreement and no single or partial exercise of any right by any Party shall under any circumstances be construed to be an implied consent by such Party or operate as a waiver or a novation of, or otherwise affect any of that Party's rights in terms of or arising from this Agreement or *estop* such Party from enforcing, at any time and without notice, strict and punctual compliance with each and every provision or term hereof.

**17. GOVERNING LAW**

This Agreement shall be governed by and construed and interpreted in

accordance with the laws of the Republic of South Africa.

SIGNED AT \_\_\_\_\_ ON THIS \_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_

AS WITNESSES:

1. \_\_\_\_\_

\_\_\_\_\_  
Per:

2. \_\_\_\_\_

\_\_\_\_\_  
Who warrants that he is duly  
authorised thereto

SIGNED AT \_\_\_\_\_ ON THIS \_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_

AS WITNESSES:

1. \_\_\_\_\_

\_\_\_\_\_  
Per:

2. \_\_\_\_\_

\_\_\_\_\_  
Who warrants that he is duly  
authorised thereto

## **The Commercial Lease Dispute Rules**

ANNEXURE "B"

RESOLUTION OF THE BOARD OF .....(REGISTRATION  
NUMBER.....) (*the Company*) PASSED AT  
.....ON THIS DAY OF .....  
20.....

RESOLVED THAT:

1. The Company enters into an Arbitration Agreement (hereinafter referred to as "*the Agreement*").
2. That .....identity number .....is duly authorised and empowered to :
  - (a) Sign the said Agreement and all other deeds or documents which may be necessary for the implementation of the above mentioned Agreement and Annexures; and
  - (b) Generally do everything that may be necessary for the implementation of the above mentioned Agreement.

and any Agreement, Deeds or documents signed by him acting under authority of this Resolution, shall conclusively be deemed to be the Agreement, Deeds and documents authorised by this.

CERTIFIED A TRUE COPY

ANNEXURE "C"

RESOLUTION OF THE BOARD OF .....(REGISTRATION  
NUMBER.....) ("THE COMPANY") PASSED AT  
.....ON THIS DAY OF .....  
20.....

RESOLVED THAT:

1. The Company enters into an Arbitration Agreement (hereinafter referred to as "the Agreement").
2. That .....identity number .....is duly authorised and empowered to :
  - (a) Sign the said Agreement and all other deeds or documents which may be necessary for the implementation of the above mentioned Agreement and annexures; and
  - (b) Generally do everything that may be necessary for the implementation of the above mentioned Agreement.

and any Agreement, Deeds or documents signed by him acting under authority of this resolution, shall conclusively be deemed to be the Agreement, Deeds and documents authorised by this.

CERTIFIED A TRUE COPY