

## ADR FORUM ARBITRATION RULES

### A. **Model Dispute Resolution Clause**

Parties who agree to resolve their disputes by mediation and arbitration under the rules of ADR Forum (Pty) Ltd ("*ADR Forum*") may use this clause in their agreement:

If any dispute, controversy or claim arising out of or relating to the existence, interpretation, validity, application, breach or termination of this agreement occurs between the parties, they agree to attempt resolving such dispute, controversy or claim through mediation with ADR Forum before pursuing any other proceedings. Any party to such dispute, controversy or claim may serve written notice on the other or others of its desire to resolve a particular dispute, controversy or claim by mediation. The mediator shall be appointed by ADR Forum and conducted in Namibia at a place to be determined by the mediator in English according to the mediation rules of ADR Forum. If such dispute, controversy or claim has not been resolved within thirty days of the notice of desire to mediate, any party may terminate the mediation and proceed to arbitration according to the arbitration rules of ADR Forum. Nothing herein shall preclude any party from seeking interim relief in a court pending such mediation and/or arbitration.

### B. **Adaptation of Rules**

Parties may adapt these rules in terms of a written agreement signed by them. The arbitration tribunal may in its discretion adapt these rules to devise a dispute resolution procedure commensurate to the requirements of the case before it.

## TABLE OF CONTENTS

- A. Model Dispute Resolution Clause
- B. Adaptation of Rules
- 1. Purpose
- 2. Definitions
- 3. Application
- 4. Time
- 5. Administrative Fees Schedule
- 6. Delivery of documents
- 7. Communications with tribunal
- 8. Communications between parties
- 9. Address for delivery of documents
- 10. Waiver of the right to object
- 11. Arbitration under agreement
- 12. Arbitration by submission
- 13. Commencement date
- 14. Appointment of tribunal
- 15. Appointment by ADR Forum
- 16. Independence and impartiality
- 17. Substitution
- 18. Challenges
- 19. Representation
- 20. Place of arbitration
- 21. Language of arbitration
- 22. Pre-arbitration meeting

23. Conduct of the arbitration
  24. Jurisdiction
  25. No waiver of right to object
  26. General powers of tribunal
  27. Exchange of statements
  28. Amendment of statements
  29. Production of documents
  30. Pre-hearing examinations and interrogatories
  31. Agreed statement of facts
  32. Arbitration hearings
  33. Confidentiality
  34. Evidence
  35. Witnesses
  36. Tribunal's experts
  37. Default of a party
  38. Formal without prejudice offers of settlement
  39. With prejudice offers
  40. Deposits against costs
  41. Payment out of deposits
  42. Closure of hearings
  43. Settlement
  44. Award
  45. Interest
  46. Costs
  47. Amendments and corrections to award
  48. Immunity
  49. Simplified arbitration procedure
  50. Keeping of documents
  51. Disputes with ADR Forum
- Schedule "A"
- Schedule "B"

## 1. Purpose

The purpose of these rules is to enable the parties to a dispute to achieve a just, expeditious, efficient, effective and economical determination of the matters in dispute.

## 2. Definitions

In these rules:

- **"Act"** means any applicable arbitration legislation of the place of arbitration, unless otherwise agreed by the parties.
- **"ADR Forum"** means ADR Forum (Pty) Ltd.
- **"Arbitrator"** means a person appointed to serve as an arbitrator of a dispute pursuant to these rules.
- **"Chair"** means the person elected or appointed to chair the tribunal.
- **"Commencement date"** means the date the arbitration commences in terms of rule 13.

- **“Counterclaim”** means the counterclaim mentioned in rule 27.
- **“Document”** has an extended meaning to include:
  - a) any note or writing, whether produced by hand or by printing, typewriting or any other similar process;
  - b) any copy, plan, picture, sketch or photographic or other representation of any place or article;
  - c) any disc, tape, card, perforated roll or other device in or on which sound or any signal has been recorded for reproduction.
- **“Rules”** means these rules of ADR Forum and the amendments made thereto by ADR Forum from time to time.
- **“Statement of claim”** means the statement of claim mentioned to in rule 27.
- **“Statement of defence to counterclaim”** means the statement of defence to counterclaim mentioned to in rule 27.
- **“Statement of counterclaim”** means the state of counterclaim mentioned to in rule 27.
- **“Statement of defence”** means the statement of defence mentioned to in rule 27.
- **“Tribunal”** means either a sole arbitrator or a panel of arbitrators, as the case may be, appointed to serve as arbitrator or arbitrators of a dispute pursuant to these rules.

### 3. Application

- 3.1. These rules shall apply where:
  - 3.1.1. the parties have agreed that the ADR Forum Arbitration Rules apply;
  - 3.1.2. the parties have agreed to an arbitration to be administered by ADR Forum with or without reference to the rules of arbitration of ADR Forum.
- 3.2. If these rules are amended by ADR Forum, the rules applicable to any dispute shall be these rules as amended as of the commencement date.
- 3.3. The arbitration shall be conducted under the Act. To the extent that these rules conflict with the Act, the provisions of these rules shall apply except to the extent that the parties may not lawfully contract out of the provisions of the Act.
- 3.4. The parties may agree to vary or exclude any of these rules except rules 3, 5, 7.1, 10, 11, 12, 16.2, 23.2, 40, 41, 46, 48 and Schedule A, which variation or exclusion shall be valid and binding only if reduced to writing and signed by the parties.
- 3.5. A reference in an arbitration agreement to the arbitration rules of ADR Forum shall be deemed to be a reference to these rules.
- 3.6. A failure to comply with these rules is an irregularity and does not render an arbitration or a step, document or award in the arbitration a nullity.

### 4. Time

- 4.1. In these rules, where the time for doing an act falls or expires on a Saturday, Sunday or a public holiday in Namibia, the time is extended to the next day which is not a Saturday, Sunday or public holiday in Namibia.
- 4.2. The parties may modify any period of time by agreement.

### 5. Administrative Fees Schedule

By agreeing to these rules, the parties agree that the arbitration shall be administered by ADR Forum, which shall from time to time prescribe the fees to compensate it for its administration services. The fees in effect when the fee or charge is incurred shall be applicable. The current administrative fees are set out in Schedule “A”. All such fees are payable at the time specified for payment in Schedule “A”.

### 6. Delivery of documents

Any document required by these rules to be delivered may be delivered either by personal delivery, mail, email or fax to the address provided under rule 9. If delivered by personal delivery, delivery shall be deemed to have been effected on the day of such delivery to a party at its principal place of business

or mailing address or that of its legal counsel where applicable. If delivered by mail, delivery shall be deemed to have been effected on the seventh day following the date of the mailing. If delivered by email or fax, delivery shall be deemed to have been effected when sent.

**7. Communications with tribunal**

- 7.1. A copy of any communication between the tribunal and the parties or their representatives shall be delivered to ADR Forum.
- 7.2. No party or person acting on behalf of a party shall have a communication with the tribunal in the absence of any other party concerning the subject matter of the dispute or any contentious matter relating to the proceedings.

**8. Communications between parties**

Parties to an arbitration under the rules may deliver any written communication required or permitted under the rules by personal delivery, mail, email or fax to a party at its principal place of business or mailing address.

**9. Address for delivery of documents**

The parties shall provide to one another and to ADR Forum a full physical address, full postal address, telephone number, fax number and email address, as may be applicable.

- 10. Waiver of the right to object** A party who knows that any provision of or requirement under the rules has not been complied with, but proceeds with the arbitration without promptly stating an objection shall, unless the tribunal otherwise orders, be deemed to have waived its right to object.

- 11. Arbitration under agreement** Where the resolution of a dispute is governed by an arbitration clause or agreement, a party, as claimant, may submit that dispute to arbitration by delivering a written notice of request to arbitrate to each defendant under the agreement or the last known postal address or principal place of business of each defendant and to ADR Forum. The notice of request for arbitration shall contain:

- 11.1. An identification of the arbitration clause or agreement invoked.
- 11.2. A request that the dispute be referred to arbitration.
- 11.3. The names, places of business, physical and postal addresses, telephone numbers, fax numbers and email addresses of the parties to the dispute, if known to the claimant.
- 11.4. A concise statement of the matters in dispute or a statement of claim.
- 11.5. The remedy claimed.
- 11.6. An estimate of the amount claimed, or failing that, of the value of what is in issue in the dispute, unless the claimant cannot make an estimate of such value in which case the reason for this inability must be set out in detail.
- 11.7. The number and names of the arbitrators agreed upon, if any.
- 11.8. The required qualification of the arbitrators.
- 11.9. Any variation of these rules that has been agreed to in writing.
- 11.10. The basis on which the tribunal has jurisdiction to determine the matters in dispute.
- 11.11. Attached to the notice of request to arbitrate shall be a copy of the arbitration clause or agreement relied upon and a copy of the contract, if any, in relation to which the dispute has arisen.

- 12. Arbitration by submission** Parties to a dispute may submit that dispute to arbitration by filing a notice of submission to arbitration with ADR Forum under the rules. The notice of submission to arbitration shall contain the information described in rules 11.1 to 11.11 above.

- 12.1. The notice of submission to arbitration shall be signed by the parties to the dispute.

**13. Commencement date**

The arbitration is deemed to have commenced when a notice of request to arbitrate or a notice of submission to arbitration has been filed with ADR Forum and the filing fee has been paid. ADR Forum shall notify the parties when an arbitration has been commenced and shall deliver to them a notice of commencement of arbitration.

#### 14. **Appointment of tribunal**

- 14.1. If the parties have not agreed on the number of arbitrators within 10 days after the commencement date, the dispute shall be determined by a single arbitrator.
- 14.2. Where a single arbitrator has to be appointment, if the parties cannot agree on the single arbitrator within 14 days after the commencement date, ADR Forum shall make such appointment.
- 14.3. Where the parties have agreed to appoint three arbitrators:
  - 14.3.1. unless otherwise agreed by the parties, each party shall appoint one arbitrator and the two arbitrators shall appoint the third arbitrator who shall act as the chair of the tribunal;
  - 14.3.2. if a party fails to make a required appointment within the time agreed upon between the parties or, if no time is agreed, 21 days from the commencement date, ADR Forum shall make the required appointment or appointments;
  - 14.3.3. if the parties or the arbitrators appointed by the parties or ADR Forum, as the case may be, are unable to agree on the appointment of a third arbitrator within the time agreed by the parties or, if no time is agreed, within 30 days from the commencement date, ADR Forum shall make the required appointment.

15. **Appointment by ADR Forum** In appointing an arbitrator, ADR Forum shall have due regard to the qualifications requested by the parties, the nature of the contract, the nature and circumstances of the dispute and any other considerations likely to secure the appointment of a qualified, independent and impartial arbitrator.

16. **Independence and impartiality** Unless otherwise agreed by the parties, an arbitrator shall be and remain at all times wholly independent.

- 16.1. An arbitrator shall be and remain wholly impartial and shall not act as counsel for any party to the arbitration.
- 16.2. Every person must, before accepting an appointment as arbitrator, sign and deliver to the parties a statement declaring that he or she knows of no circumstances likely to give rise to justifiable doubts as to his or her independence or impartiality and that he or she will disclose any such circumstances to the parties, if they should arise after the time of the statement and before the arbitration is concluded.
- 16.3. No arbitrator shall be disqualified or subject to challenge by reason of one or more of the arbitrator, counsel, party or representative of a party being a member, director, officer or employer of ADR Forum.

#### 17. **Substitution**

- 17.1. If an arbitrator refuses to act, is incapable of acting, withdraws from office, is removed from office by order of court or dies, ADR Forum may, after submission to it of satisfactory evidence, declare the office vacant. A substitute arbitrator shall then be appointed according to the provisions of the rules, or the agreement of the parties, that were applicable to the appointment of the arbitrator being replaced.

- 17.2. Where a single arbitrator or chair is replaced, any hearings previously held shall be repeated. Where any other arbitrator is replaced, any hearing previously held may be repeated at the discretion of the arbitrators.

## 18. Challenges

- 18.1. An arbitrator may be challenged, if circumstances exist that give rise to justifiable doubts as to his or her independence or impartiality, or if he or she does not possess the qualifications agreed upon by the parties.
- 18.2. A party who intends to challenge an arbitrator shall, within 7 days after becoming aware of the appointment, or after becoming aware of any circumstances referred to in this rule, send a written statement of the challenge and the reasons for the challenge to the tribunal, if that has been fully constituted, and to ADR Forum. If the challenged arbitrator withdraws or the other party agrees to the challenge, the mandate of the arbitrator terminates.
- 18.3. In the case of an arbitration with a single arbitrator, if the challenged arbitrator does not withdraw and the other party does not agree to the challenge, the single arbitrator shall decide on the challenge. If there are three arbitrators, the chair, if he or she is not challenged, shall decide on the challenge. If the chair is challenged, the tribunal shall decide on the challenge.

## 19. Representation

Where a party intends to be represented or assisted by a legal practitioner, that party shall in writing advise the other party and ADR Forum of the legal practitioner's name, address, telephone number, fax number, email address and the capacity in which he or she is acting at least 5 days before any scheduled hearing or meeting.

## 20. Place of arbitration

- 20.1. The parties may agree in writing on the place of arbitration. If no place is agreed upon, the place of arbitration shall be at the discretion of the tribunal.
- 20.2. The tribunal may meet at any other place it considers convenient or necessary for consultation, to hear witnesses, evidence, experts or the parties or for the inspection of documents, goods or other property.
- 20.3. Part or all of the arbitration may be conducted by telephone, email, internet or electronic communication, if agreed to by the parties or directed by the tribunal.

## 21. Language of arbitration

The parties may agree, in writing, on the language of the arbitration. If no such language of arbitration is agreed upon, the tribunal may specify the language of the arbitration.

## 22. Pre-arbitration meeting

- 22.1. Within 14 days of its appointment, the tribunal shall convene a pre-arbitration meeting, unless the parties deliver ADR Forum a notice, in writing, that they do not require a pre-arbitration meeting.
- 22.2. At the pre-arbitration meeting the parties shall:
- 22.2.1. identify the issues in dispute;
  - 22.2.2. set the procedure to be followed in the arbitration; and
  - 22.2.3. establish time periods for taking steps that will assist the parties to settle their disputes, controversies or claims, or to conduct the arbitration according to the rules.
- 22.3. The tribunal shall record any agreements or orders made at the pre-arbitration meeting and shall, within 7 days of the meeting, deliver a written record of such agreements or orders to each of the parties and file a copy with ADR Forum.

## 23. Conduct of the arbitration

- 23.1. Subject to the rules, the tribunal may conduct the arbitration in the manner it considers appropriate.
- 23.2. Each party shall be treated equally and fairly and shall be given a fair opportunity to present its case and to respond to the other party's case.
- 23.3. The tribunal shall strive to achieve a just, expeditious and cost effective determination of every proceeding on its merits, taking into account rule 1.
- 23.4. An audio recording and/or transcript of the proceedings shall be made, if requested by any party in writing at least 5 days before the commencement of the hearing. Any such recording and/or transcript shall be at the expense of the party or parties requesting it. If a recording and/or transcript has been requested by a party or parties in terms of this rule, every other party and the tribunal shall be entitled to obtain a copy thereof upon payment of its pro rata share of the costs of making and reproducing the recording and/or transcript.

#### **24. Jurisdiction**

The tribunal may rule on its own jurisdiction, including ruling on any objections regarding the existence or validity of the arbitration agreement, and for that purpose:

- 24.1. an arbitration clause that forms part of a contract shall be treated as an agreement independent of the other terms and conditions of the contract; and
- 24.2. a decision by the tribunal that the contract is null and void shall not apply to the validity of the arbitration clauses, unless specifically held by the tribunal.

#### **25. No waiver of right to object**

A party is not precluded from raising a jurisdictional issue by the fact that it has appointed, or participated in the appointment of, an arbitrator.

#### **26. General powers of tribunal**

The tribunal may:

- 26.1. order an adjournment of the proceedings from time to time;
- 26.2. make an interim award on any matter with respect to which it may make a final award;
- 26.3. grant such interim measures of protection as it deems appropriate, including without limitation an order for security for costs, for the posting of security for the amount claimed or for the preservation of property that is the subject matter of the dispute;
- 26.4. make an award or an interim award granting equitable relief, interdicts or specific performance on such terms as may be just;
- 26.5. order inspection of documents, exhibits or other property;
- 26.6. order the audio recording and/or transcript of any oral hearing;
- 26.7. at any time extend or abridge a period of time fixed or determined by it, or any period of time required in the rules, except the time within which the award is to be made, where it considers it just and appropriate in the circumstances;
- 26.8. empower one member of the tribunal to hear motions and make procedural orders, including the settling of matters at the pre-arbitration hearing, that do not deal with the substance of the dispute;
- 26.9. request further statements clarifying issues in dispute;
- 26.10. give such direction with respect to procedural matters having regard to rule 1; and
- 26.11. request from a court of competent jurisdiction assistance in taking evidence.

#### **27. Exchange of statements**

- 27.1. On the commencement date, or within 14 days thereafter, the claimant must deliver a written statement of claim to each defendant, the tribunal and ADR Forum setting out succinctly the material facts and legal grounds supporting its claim, and the relief or remedy claimed, provided that if no tribunal has been appointed within 14 days of the commencement date,

then a copy of the statement of claim must be delivered to the tribunal forthwith upon its appointment.

- 27.2. Within 14 days after each defendant received the statement of claim, the defendant must deliver a written statement of defence and a written statement of counterclaim, if any, to the claimant, the tribunal and ADR Forum. The statement of defence and statement of counterclaim must set out succinctly the material facts and legal grounds supporting the defence or counterclaim, and the relief or remedy claimed. Any statement of defence or statement of counterclaim shall be accompanied by payment to ADR Forum of the required case service fee calculated in accordance with schedule "A". The claimant shall deliver to the tribunal and ADR Forum a statement of defence to the statement of counterclaim within 14 days after receiving the statement of counterclaim. The statement of defence to the statement of counterclaim shall set out the material facts supporting the defence, the points in issue and the relief or remedy claimed.
- 27.3. Each party shall submit with its statement a preliminary list of relevant documents in accordance with rule 29 taking into account rule 1. The nature, date, author, recipient and subject matter of each document must be specified. Documents not so identified may be subject to exclusion from the proceedings at the discretion of the tribunal.

## **28. Amendment of statements**

The tribunal, upon such terms as it deems appropriate, may allow a party to amend or supplement its statement of claim, statement of defence, statement of counterclaim or statement of defence to counterclaim during the course of the arbitration, unless the tribunal considers the delay in amending or supplementing the statement to be prejudicial to a party or unless it considers that the amendment or supplement goes beyond the terms of the arbitration agreement or submission to arbitration.

## **29. Production of documents**

- 29.1. Each party shall produce to the other party all documents relating to the matters in issue in the arbitration that are or have been in the possession of the party or within the party's control or power, within 14 days after delivery of the statement of defence or the statement of defence to the statement of counterclaim, whichever is the later, unless the tribunal orders otherwise. Where the tribunal considers that the production of all such documents is unnecessary unduly costly or burdensome or for other reasons is inconsistent with rule 1, the tribunal may give instructions to limit the scope of disclosure of documents.
- 29.2. The tribunal may, on application, order a party to produce any documents the tribunal considers relevant to the arbitration within a time it specifies, and where such order is made the other party may inspect those documents and make copies of them.

## **30. Pre-hearing examinations and interrogatories**

The tribunal may, on such terms as it deems just and appropriate, order a party or a representative of a party to submit to an oral examination under oath or to respond by sworn statement to written interrogatories, on such issues as may be ordered by the tribunal taking into account rule 1. The tribunal shall, at the time of making such order, determine the use that may be made of the evidence taken on any such examination or in responses.

## **31. Agreed statement of facts**

The parties shall, within a period of time specified by the tribunal, identify those facts that are not in dispute and submit to the tribunal and file with ADR Forum an agreed statement of facts.

## **32. Arbitration hearings**

The tribunal shall set the dates for any interim hearings or meetings, whether oral or not, and shall, except in cases of urgency, give at least 4 days written notice thereof to the parties and ADR Forum.



The tribunal may direct that all evidence and argument be given in writing and may dispense with an oral hearing.

### **33. Confidentiality**

- 33.1. The parties and their representatives may attend at the arbitration. Other persons may attend at the arbitration only with the consent of the tribunal.
- 33.2. The parties, the witnesses and the arbitrators shall treat all meetings and communications, the proceedings, documents disclosed in the proceedings, discovery and the awards of the tribunal as confidential, except in connection with a judicial challenge to, or enforcement of, an award, and unless otherwise required by law. Nothing in this rule shall preclude disclosure of such information to the insurer of a party, auditor, legal counsel, lawyer or other person with a direct financial interest in the arbitration. The parties shall use such information solely for purposes of the arbitration, and shall not use or allow it to be used for other purposes, unless the parties agree otherwise or unless otherwise required by law.
- 33.3. After the delivery of an award ADR Forum may make a written request to the parties for their consent to the publication by ADR Forum of the award or extracts from it. Should a party fail to respond to such a request within 45 days of the date of the request then it shall be deemed to have consented to the request.

### **34. Evidence**

- 34.1. The parties may offer such evidence as is relevant and material to the dispute and shall produce such evidence under oath as the tribunal may deem necessary to an understanding and determination of the dispute. The tribunal may be guided by the rules of evidence applicable in court proceedings, but conformity with the rules of evidence is not required. All evidence shall be taken in the presence of the tribunal and of all the parties, except where any of the parties is voluntarily absent, in default or has waived the right to be present.
- 34.2. The tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered and may exclude evidence that the tribunal deems to be repetitive.

### **35. Witnesses**

- 35.1. The tribunal may determine the manner in which the witnesses are to be examined, and save for a party or the person nominated as the representative of the party for the purpose of the arbitration, may require witnesses to absent themselves from an oral hearing during the testimony of other witnesses.
- 35.2. Where the evidence of a witness is presented by written statement or sworn declaration, the tribunal may order that the witness be present at an oral hearing for cross-examination.

### **36. Tribunal's experts**

- 36.1. The tribunal may appoint one or more independent experts to report on specific issues to be determined by the tribunal and may require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for its inspection.
- 36.2. The tribunal shall communicate the terms of reference of the expert to the parties. Any dispute as to the terms of reference or the relevance of the required information, or production thereof, shall be referred to the tribunal for decision. The cost of any such expert shall be borne by the parties on a basis determined by the tribunal.
- 36.3. Upon receipt of the written report of the expert, the tribunal shall deliver a copy thereof to the parties, who shall be given the opportunity to challenge all or any part thereof in a manner determined by the tribunal.
- 36.4. The expert shall, on the request of a party, make available to that party for inspection all documents, goods or other property in the possession of the expert that the expert has used to prepare the report and shall provide that party with a list of all documents, goods or other

property not in possession of the expert, but that were provided to prepare the report, and a description of the location of those documents, goods or other property.

- 36.5. An expert shall, after delivery of the report, be required to attend for the purpose of cross-examination on some or all the contents of the report, unless the parties agree that cross-examination is not required.

### **37. Default of a party**

Where a party, without sufficient cause, fails to appear at a hearing, pay fees of ADR Forum, or to produce evidence, the tribunal may continue the arbitration on such terms as the tribunal deems appropriate after satisfying itself that a reasonable attempt has been made to communicate with the defaulting party. The tribunal shall make an award based upon the evidence before it.

### **38. Formal without prejudice offers of settlement**

- 38.1. At any time before the hearing on the merits, a party may deliver to the other party any offer marked “without prejudice” to settle one or more of the issues between it and any other party on the terms set out in the offer. An offer to settle may specify a time within which it may be accepted and it will expire if not accepted within that time.
- 38.2. The tribunal shall take into consideration the offer, the time at which the offer was made and the extent to which it was accepted when dealing with questions of costs and interest in the award.
- 38.3. No party shall inform the tribunal of the fact that an offer had been made under this rule, until after all the issues in the arbitration other than costs have been determined.

### **39. With prejudice offers**

The parties may deliver written offers marked “with prejudice” at any time, and all such offers may be put in evidence at the arbitration hearing.

### **40. Deposits against costs**

- 40.1. The tribunal must on written request by ADR Forum require the parties to make cash deposits to ADR Forum to cover the anticipated costs and expenses of the arbitration, including the fees and expenses of the tribunal.
- 40.2. If the required deposits are not made within 15 days after receipt by the parties of the request of the tribunal, the tribunal or ADR Forum shall inform the parties so that another party may make the required deposit.
- 40.3. If the required deposit is not made within 30 days after receipt by the parties of the request of the tribunal, the tribunal may continue the arbitration under rule 37 or order the suspension or termination of the proceedings.

### **41. Payment out of deposits**

- 41.1. ADR Forum may, from time to time, pay to the tribunal from any deposit it holds, any amount it considers reasonable and appropriate for fees earned or expenses incurred by the tribunal.
- 41.2. After the final award has been made, a settlement has been reached or the arbitration has been abandoned or otherwise finally disposed of, ADR Forum shall apply any deposits it holds to the costs of the arbitration, including any unpaid tribunal fees and administration fees, render an accounting to the parties of the deposits received and applied and return any unexpended balance to the parties in proportion of their contributions or as may be directed by the tribunal in the final award.

### **42. Closure of hearings**

- 42.1. Where the parties have on enquiry, advised that they have no further evidence to give or submissions to make or the tribunal considers further hearings to be unnecessary or inappropriate, the tribunal may close the hearings.

- 42.2. The tribunal may on its own motion, or on application of a party, in exceptional circumstances, reopen the hearings to receive evidence or submissions concerning a matter at any time before issuing a partial final award or final award concerning that matter.

#### 43. Settlement

- 43.1. The tribunal may encourage settlement of the dispute and, with the written agreement of the parties, may order that mediation, conciliation or other procedures be used by the parties at any time during the arbitration proceedings to encourage settlement.
- 43.2. If, during the proceedings the parties settle the dispute, the tribunal shall, upon receiving confirmation of the settlement or determining that there is a settlement, terminate the proceedings and, if requested by the parties, record the settlement in the form of an arbitration award on agreed terms.

#### 44. Award

- 44.1. The tribunal may make a partial final award finally determining an issue or part of a dispute.
- 44.2. The tribunal may make an interim award that shall subsequently be incorporated into and become part of a final award.
- 44.3. The tribunal shall make its final award with respect to the matters determined in the award within 60 days
- 44.4. after the hearings have been closed or such further period as may:
- 44.4.1. be agreed to in writing by the parties; or
- 44.4.2. be directed by a court of competent jurisdiction.
- 44.5. The award of the tribunal shall be in writing and shall, unless the parties otherwise agree, state the reasons upon which they are based. The tribunal shall deliver to ADR Forum sufficient originally signed copies of any award for each party and ADR Forum. Upon payment of all outstanding fees and expenses of ADR Forum and the tribunal, ADR Forum will deliver copies of the award to the parties.
- 44.6. Where the tribunal consists of more than two arbitrators, the award shall be made by a majority of the tribunal. Where there is no majority decision, the decision of the chair of the tribunal shall be the award.

#### 45. Interest

The tribunal may order interest to be paid in an award for such time and in such amount as it considers just and reasonable.

#### 46. Costs

The tribunal shall be entitled to fix the costs and expenses of the arbitration, including reasonable legal fees, the costs and expenses of the arbitration and the tribunal, and the fees of ADR Forum. If costs and expenses are awarded, such costs and expenses shall be made part of the award. The tribunal shall be entitled to make separate awards for legal costs and fees and expenses of the arbitration, and shall be entitled to apportion costs and expenses between the parties.

#### 47. Amendments and corrections to award

- 47.1. A tribunal may, on the application of a party or of its own motion, amend or vary an award or interim award to correct:
- 47.1.1. a clerical or typographical error;
- 47.1.2. an accidental error, slip, or omission or other similar mistake; or
- 47.1.3. an arithmetical error made in computation.
- 47.2. An application by a party to amend or vary shall be made within 15 days after that party is notified of the award.
- 47.3. An amendment or variation shall not, without the consent of the parties, be made more than 30 days after the parties have been notified of the award.

- 47.4. A party may, within 15 days after being notified of the award, apply to the tribunal for clarification of the award, and the tribunal may clarify the award where it considers it appropriate, in which case the clarification becomes part of the award.
- 47.5. A party may, within 30 days after being notified of the award, apply to the tribunal to make an additional award with respect to claims presented in the proceedings, but omitted from the award.
- 47.6. An amended, varied or additional award shall be filed by the tribunal with ADR Forum.
- 47.7. Unless otherwise agreed, in writing, the award of the tribunal shall be final and binding and there shall be no appeal.

#### **48. Immunity**

Neither ADR Forum nor the tribunal shall be liable to any party for any act or omission in connection with any arbitration conducted under the rules. The tribunal and ADR Forum shall have the same protections and immunity as a judge of the high court of Namibia.

#### **49. Simplified arbitration procedure**

- 49.1. Where the parties agree in writing, the arbitration shall be conducted in accordance with this simplified procedure section and schedule "B" to the rules.
- 49.2. The time periods for a simplified procedure arbitration, other than those time period specifically provided for under subrules 49.3, 49.4 and 49.10 of this rule, shall be those set out in schedule "B".
- 49.3. The simplified arbitration shall be conducted by a single arbitrator appointed by ADR Forum within 14 days after the filing of the submission to arbitration or notice of request to arbitrate.
- 49.4. Within 14 days of the appointment of the arbitrator, the arbitrator shall convene a pre-arbitration meeting of the parties which may be held by conference telephone call, video conferencing or other means as the arbitrator may direct, or determine:
  - 49.4.1. a time table for the conduct and completion of all pre-hearing and preliminary matters in a period not exceeding 90 days from the date of the commencement of the arbitration;
  - 49.4.2. the time and place of the hearing; and
  - 49.4.3. such other directions as may be necessary.
- 49.5. Rules 14, 15, 22, 26.8 and 30 shall not apply to the conduct of the arbitration.
- 49.6. Unless agreed by the parties or ordered by the arbitrator, there shall be no formal discovery.
- 49.7. No transcript of the proceedings shall be required, except of the cross-examination and re-examination referred to in rule 49.8.
- 49.8. Sworn statements of evidence shall be filed at the hearing in lieu of examination in chief and shall be subject to cross-examination and re-examination only.
- 49.9. The record of arbitration shall consist of the documents and exhibits produced and filed by the parties and the transcript of the cross-examination and re-examination mentioned to in rule 49.8.
- 49.10. The arbitrator shall deliver the award and reasons for the award within 14 days from the completion of the hearing.

#### **50. Keeping of documents**

- 50.1. The tribunal and/or ADR Forum may destroy any documents submitted by the parties or created in the course of the arbitration, unless a party within 60 days after the termination of the arbitration, whether by award or otherwise, requests in writing the return of such documents.
- 50.2. All costs and expenses relating to the return of documents shall be paid by the party requesting the return thereof.

**51. Disputes with ADR Forum**

Should any dispute arise in the course of any arbitration under the rules between ADR Forum on the one hand, and the tribunal and/or the parties, on the other hand, the dispute shall be referred to summary decision to the board of directors of ADR Forum or a person appointed by it, whose decision shall be final and binding on the tribunal and all the parties in the arbitration.

- 51.1. The filing fee is payable to ADR Forum by each claimant on delivery of the request to arbitration or a notice of submission to arbitration to ADR Forum.
- 51.2. The case service fee is payable to ADR Forum by each defendant on delivery of the state statement of defence or statement of counterclaim.

**SCHEDULE "A"**

<b>Amount of claim (N\$)</b>	<b>Filing fee (N\$)</b>	<b>Case Service fee (N\$)</b>
0 – 50 000	2 000	1 000
50 001 – 100 000	3 000	2 000
100 001 – 500 000	4 000	3 000
500 001 – 1 500 000	5 000	4 000
1 500 001 – 10 000 000	6 000	5 000
10 000 001 – 20 000 000	7 000	6 000
Exceeding 20 000 000 or if the value is determined	8 000	7 000

The arbitrator's fees must be negotiated and agreed with the arbitrator.

**SCHEDULE "B"**

Simplified rule time period

Rule

27

Time Period

*10 days is substitute for 14 days*