

ANNEXURE “B”

DISPUTE RESOLUTION

1. DISPUTE

A dispute is any disagreement relating to matters of interest or right between:-

- 1.1 two or more Parties to this Constitution or
- 1.2 an individual Employer(s) and any Eligible Employee(s) or
- 1.3 SARPBAC by way of its Agents or any other person so appointed by SARPBAC and an Employer and/or Employee and/or Employers' Organisation(s) and/or Trade Union(s) for failure to comply with the provisions of this Constitution and/or one or more of the SARPBAC's Agreements or:

in connection with the interpretation and/or application of SARPBAC's Constitution and/or Collective Agreements, organizational rights, disputes about unfair dismissals or unfair labour practices and all other disputes required, in law, to be resolved by SARPBAC.

2. DISPUTE RESOLUTION AGENCY

SARPBAC may appoint a dispute resolution agency or agencies to assist with the management of the dispute resolution function of SARPBAC and reference in this appendix to SARPBAC shall, where such agency or agencies have been appointed, be read as reference to such appointed agency or agencies.

3. DISPUTE RESOLUTION PANELS

- 3.1 SARPBAC shall establish and maintain regional panels of Commissioners, who are accredited conciliators and/or arbitrators, to carry out the conciliation and/or arbitration functions of SARPBAC.
- 3.2 The panels shall have a sufficient number of properly qualified Commissioners to handle disputes without undue delay and in an effective and efficient manner.
- 3.3 The appointed dispute agency or agencies shall provide names of possible Commissioners from which SARPBAC will select the various regional panels.
- 3.4 SARPBAC may, at any stage and after a thorough investigation as to the reasons submitted for the removal of a Commissioner by any Party, decide to remove an individual from a panel.

4. REFERRAL OF DISPUTES

- 4.1. Parties to SARPBAC, as also Parties who fall within the registered scope SARPBAC, may refer a dispute to SARPBAC should the dispute not be

resolved at plant level and a Party to the dispute wish to take the matter further.

- 4.2. Disputes shall only be referred to SARPBAC after Parties to the dispute have complied with and exhausted all plant level dispute resolution procedures and failed to resolve the dispute.
- 4.3. A Party may refer a dispute to SARPBAC if:-
 - 4.3.1 there is no plant level Collective Agreement or if the plant level Collective Agreement does not provide dispute procedures
 - 4.3.2 the procedure provided for in the plant level Agreement is inoperative
 - 4.3.3 a Party to the dispute has frustrated the resolution of the dispute in terms of the plant level procedures
- 4.4. A Party wishing to refer a dispute to SARPBAC for conciliation, Conciliation/Arbitration and/or arbitration must do so in writing, by completing SARPBAC's referral form setting out the details of the dispute and lodging the referral form, duly signed, together with all other required documentation with SARPBAC within the allowed time frame.
- 4.5. The referring Party must, when lodging a dispute with SARPBAC, attach documented proof that a copy of the referral form has been served on all other Parties to the dispute.
- 4.6. SARPBAC shall, on receipt of a referral and having satisfied itself as to the compliance of the referral with agreed procedures and time frames, appoint a Commissioner from the panel to conciliate, conciliate/arbitrate or arbitrate the dispute, as the case may be, and arrange the venue, date and time for the matter to be heard.
- 4.7. Disputes, including dismissal disputes, must be lodged with SARPBAC within thirty (30) days of the date on which the Act giving rise to the dispute occurred or, if at a later date, within thirty (30) days of all the plant level, internal dispute resolution procedures have been complied with and exhausted.
- 4.8. Unfair labour practice disputes must be lodged with SARPBAC within ninety (90) days of the date that the alleged unfair labour practice occurred.
- 4.9. SARPBAC shall refuse to accept a late referral unless, and until, an application for Condonation has been lodged with SARPBAC in terms of Clause 6 of this appendix.

5. TIME PERIODS

For the purpose of calculating any period of time in terms of these dispute resolution procedures:-

- 5.1 a day means any day of the week including Saturdays, Sundays and Public Holidays but excludes the period from the 16th December of any year to the 7th January of the following year, both days inclusive.

- 5.2 the first day is excluded and the last day is included, subject to Clause 5.1 above.

6. CONDONATION FOR LATE REFERRAL

- 6.1 Late referral applies to any document, including a referral or an application document, lodged with SARPBAC outside of the time period prescribed in the Act or this appendix.
- 6.2 A Party lodging a late referral and/or document must apply for Condonation at the same time as lodging such late referral and/or document.
- 6.3 An application for Condonation must set out the grounds for seeking Condonation and must include details of the following:-
- 6.3.1 the degree of lateness
 - 6.3.2 the reasons for the lateness and degree of fault
 - 6.3.3 the referring Party's prospects of succeeding with the dispute and obtaining the relief sought against the other Party or Parties
 - 6.3.4 any prejudice to the other Parties and
 - 6.3.5 all other relevant factors.
- 6.4. SARPBAC shall not accept any late referral without a Condonation application being attached to such late referral together with documented proof that all other Parties to the dispute have been notified about the late referral and application for Condonation.
- 6.5. Once a Condonation application has been submitted the responding Party or Parties must, should they wish to oppose such application, lodge written objections thereto within fifteen (15) days of receipt of the notice of such Condonation application.
- 6.6. A Commissioner will be appointed and will consider the late application and any objections lodged against the said application within fifteen (15) days after the date allowed, in terms of Clause 6.5 above, for submission of objections to such late referral and Condonation application.

7. SERVING OF DOCUMENTS ON PARTIES

The Party referring a dispute to SARPBAC must serve copies of such referral on each and every other Party to the dispute by:-

- 7.1. handing a copy of the referral documents to the person(s) that is Party to the dispute or
- 7.2. handing a copy of the referral document to the person(s) authorised in writing to accept service on behalf of each of the Parties to the dispute or

- 7.3. faxing a copy of the referral document to all other Parties to the dispute or
- 7.4. sending a copy of the referral document by registered post to each of the other Parties to the dispute or
- 7.5. sending a copy of the referral document by courier to each of the other Parties to the dispute or
- 7.6. sending a copy of the referral document by e-mail to each of the other Parties to the dispute.

8. LODGING DOCUMENTS WITH SARPBAC

- 8.1 The Party declaring the dispute must lodge the required dispute referral document and all supporting documentation with SARPBAC by:-
 - handing the documents to an Official of SARPBAC or
 - faxing the documents to SARPBAC or
 - sending the documents by registered post to SARPBAC or
 - sending the documents by Courier to SARPBAC or
 - sending a copy of the documents by e-mail to SARPBAC.
- 8.2 Documents will only be considered lodged with SARPBAC on the date on which SARPBAC actually receives such referral documents.
- 8.3 It is the sole responsibility of the referring Party to ensure the timely delivery of the documents to SARPBAC and to verify receipt of the documents by SARPBAC.

9. REPRESENTATION AT DISPUTE PROCEEDINGS

- 9.1. A Party to a dispute must appear in person at the dispute proceedings before SARPBAC but may, in addition, be represented by:-
 - 9.1.1. a Legal Practitioner or labour law consultant subject to agreement between the Parties or
 - 9.1.2. a member, Official or office bearer of a registered Trade Union, that the Party was a member of at the time the dispute arose or
 - 9.1.3. an Official or office bearer of a registered employer's association that the Party was a member of at the time the dispute arose or
 - 9.1.4. a director, employee, trustee or partner of the Employer Party or
 - 9.1.5. if proceedings are brought, or opposed, by more than one Party by another party to the dispute.
- 9.2. Despite clause 9.1.1 above, if the dispute is about the fairness of a dismissal and a Party has alleged that the reason for the dismissal relates to the

employee's conduct or incapacity, the Parties are not entitled to be represented by a Legal Practitioner in the proceedings unless:-

- 9.2.1. the Commissioner and the other Parties consent to such an arrangement;
- 9.2.2. the Commissioner concludes that it is unreasonable to expect the Party to deal with the dispute without legal representation, after considering the nature of the questions of law raised by the dispute, complexity of the dispute, public interest and/or the comparative ability of the opposing Parties or their representatives to deal with the dispute.

10. JOINING OF PARTIES TO PROCEEDINGS

- 10.1. SARPBAC or a Commissioner may join any number of persons as Parties in proceedings, if the right to relief depends on substantially the same question of law or fact.
- 10.2. A Commissioner may make an order joining any person as a Party in the proceedings if the Party to be joined has a substantial interest in the subject matter of the proceedings.
- 10.3. A Commissioner may make an order in terms of Clause 10(2) above
 - 10.3.1 on the Commissioner's own accord or
 - 10.3.2 on application by a Party or
 - 10.3.3 if a person entitled to join the proceedings applies at any time during the proceedings to intervene as a Party.
- 10.4. An application to join any person as a Party to proceedings must be accompanied by copies of all documents previously delivered unless the person concerned or that person's representative is already in possession of the documents.
- 10.5. Subject to any order made in terms of Clause 10.2 above, a joiner in terms of this clause does not affect any steps already taken in the proceedings.

11. CORRECTING THE CITATION OF A PARTY

If a Party to any dispute proceedings has been incorrectly or defectively cited, SARPBAC may, on application by the Parties and on notice to the Parties concerned, correct the error or defect.

12. CONSOLIDATION OF DISPUTES

- 12.1. SARPBAC or Commissioner, of their own accord or on application, may consolidate more than one dispute so that the disputes may be dealt with at the same dispute proceedings.
- 12.2. Disputes will be consolidated if they are of a similar nature and/or originating from the same incident.

13. DISCLOSURE OF DOCUMENTS

Any Party may request a Commissioner at a dispute hearing to make an order requiring any other Party to the dispute to disclose all relevant documents.

14. FAILURE TO ATTEND PROCEEDINGS

- 14.1. The Parties to a dispute must attend the conciliation, Conciliation/Arbitration or arbitration in person, irrespective of whether or not they are represented by third parties.
- 14.2. If a Party to a dispute fails to attend the dispute proceedings before SARPBAC, and that part
 - 14.2.1. has referred the dispute to SARPBAC, a Commissioner may dismiss the matter by issuing a written ruling or
 - 14.2.2. has not referred the matter to SARPBAC, the Commissioner may:-
 - 14.2.2.1. continue with the proceedings in the absence of that Party or
 - 14.2.2.2. adjourn the proceedings to a later date not more than sixty (60) days from such adjourned proceedings
- 14.3. A Commissioner must be satisfied that all Parties have been properly notified of the date, time and venue of the proceedings, before making any decision in terms of Clause 14(2).
- 14.4. If a Party or Parties fail to appear at the time scheduled for commencement of the arbitration hearing the Commissioner will postpone the proceedings for thirty (30) minutes. If a Party or Parties, after expiry of thirty (30) minutes, still fail to appear, the Commissioner will make a decision in terms of Clause 14(2).
- 14.5. If a matter is dismissed, SARPBAC must send a copy of the ruling to the parties.
- 14.6. The Commissioner may award costs in accordance with the provisions of Section 138(10) of the LRA, and shall be obliged to award costs against the Party whose non-attendance results in the matter being postponed, in the absence of such party providing compelling reasons for non-attendance

15. UNREPRESENTED APPLICANTS WITHOUT CONTACT DETAILS

- 15.1 An unrepresented applicant who intends to refer a dispute to SARPBAC and who does not have a postal address or fax number must hand deliver the referral form to SARPBAC.
- 15.2 If a referral form as contemplated in clause 15.1 above is received SARPBAC must provide the applicant with a case number and written instructions to contact SARPBAC by telephone or in person, within seven days of the date of referral, in order for SARPBAC to notify the applicant of the details of the hearing.
- 15.3 The administrator who notifies the applicant of the hearing in terms of clause 15(2) above must record on the case file and on the case management system that the applicant has been notified of the details of the hearing.
- 15.4 The record made in terms of clause 15.3 above will constitute proof that the applicant was notified of the hearing.

16. RECORDINGS OF DISPUTE PROCEEDINGS

- 16.1 The Commissioner must keep a record of:-
 - 16.1.1 evidence given in an arbitration hearing
 - 16.1.2 sworn testimony given in any proceedings before the Commissioner;
and
 - 16.2.3 any arbitration award or ruling made by the Commissioner.
- 16.2 The record may be kept by legible hand-written notes or by means of an electronic recording
- 16.3 A Party may request a copy of the transcript of a record or a portion of a record kept in terms of Clause 16(1) above, on payment of the costs of the transcription
- 16.4 After the person who makes the transcript of the record has certified that it is correct, the record must be returned to SARPBAC
- 16.5 The transcript of a record certified as correct in terms of Clause 16(4) above is presumed to be correct, unless the Labour Court decides otherwise.

17. ISSUING OF A SUBPOENA

- 17.1 Any Party, who requires SARPBAC or a Commissioner to subpoena a person in terms of section 142(1) of the Act, must file a completed subpoena form, requesting a subpoena together with a written motivation setting out why the evidence of the person to be subpoenaed is necessary
- 17.2 An application in terms of Clause 17(1) above must be lodged with SARPBAC at least ten (10) days before the arbitration hearing, or as directed by the Commissioner hearing the arbitration

- 17.3 SARPBAC or a Commissioner may refuse to issue a subpoena if:-
- 17.3.1. the Party does not establish why the evidence of the person is necessary or
 - 17.3.2. the Party subpoenaed does not have a reasonable period in which to comply with the subpoena
 - 17.3.3. SARPBAC or a Commissioner is not satisfied that the Party has made arrangements to pay the reasonable travel costs of the person subpoenaed
- 17.4. A subpoena must be served on the witness that is subpoenaed:-
- 17.4.1 by the person who has requested the subpoena or by the Sheriff at least seven (7) days before the scheduled date of the arbitration and
 - 17.4.2 if so directed by SARPBAC, accompanied by payment of the prescribed witness fees for one day in accordance with the tariff of allowances published by notice in the Gazette in terms of section 142(7) of the Act and the witnesses' reasonable travel costs
 - 17.4.3. Clauses 17.3.3 and 17.4.2 above do not apply if SARPBAC in terms of section 142(7)(c) of the Act has waived the requirement for the Party to pay witness fees.

18. **CONCILIATION OF DISPUTES OF INTEREST**

This section applies to Disputes of Interest referred to SARPBAC. SARPBAC's jurisdiction in Disputes of Interest is limited to conciliation. In regard to conciliation of such disputes the following shall apply:

- 18.1 Notice by SARPBAC of a conciliation meeting
- 18.1.1 After receiving a referral in terms of Clause 4, SARPBAC must give the Parties at least twenty-one (21) days' notice in writing of a conciliation hearing, unless the Parties agree to a shorter period of notice.
 - 18.1.2 SARPBAC will give notice by fax, registered post or email, depending on the information provided by the Parties.
- 18.2 Failure to attend conciliation by a Party
- 18.2.1 The Parties to a dispute must attend the conciliation.
 - 18.2.2. If a Party to a dispute fails to attend conciliation, the Commissioner may deal with it in terms of Clause 14.
- 18.3 If conciliation fails to resolve a Dispute of Interest that has been referred to SARPBAC in terms of Clause 4 of this appendix and a certificate has

been issued by the Commissioner stating that the dispute has not been resolved then:-

- 18.3.1. after of a cooling-off period of thirty (30) days from the date of such certificate, or any extension of this period agreed to between the parties to the dispute.
- 18.3.2. every employee, involved in the dispute who has the right to strike in terms of Section 64 of the Act, may embark on such strike action subject to at least forty-eight (48) hours' written notice of the commencement of such strike action being given to the Employer that is party to the dispute or, where more than one Employer is party to the same dispute, to SARPBAC and to the Employers' Organisation to which such Employers are members.
- 18.3.3. every Employer, involved in the dispute who has the right to lock-out in terms of Section 64 of the Act, may commence with such lock-out action subject to at least forty-eight (48) hours' written notice of the commencement of such lock-out action being given to the Trade Union (s) that is party to the dispute or, if there is no such Trade Union, to the Employees concerned unless the issue in dispute relates to a Collective Agreement to be concluded in SARPBAC in which case notice must also be given to SARPBAC.
- 18.3.4 if the issue in dispute concerns a refusal to bargain, as contemplated in Section 64(2) of the Act, an advisory award must have been made in terms of Section 135(3)(c) of the Act before the notice as provided for in Clauses 18.3.2 and/or 18.3.3 above may be given

19. CONCILIATION / ARBITRATION OF DISPUTES OF RIGHT

All unresolved Disputes of Right, including disputes about the fairness of a dismissal or a dispute about an unfair labour practice, may be referred to SARPBAC. In regard to such referrals, the following shall apply:

- 19.1 All unresolved Disputes of Right that are referred to SARPBAC in terms of Clause 4 of this appendix will be scheduled for Conciliation/Arbitration subject to Clause 19.2 below
- 19.2 Where a Party objects to the Conciliation/Arbitration process, the matter will proceed directly to arbitration on the day that it is scheduled for the Conciliation/Arbitration proceedings
- 19.3 SARPBAC must give the Parties at least twenty-one (21) days' notice in writing that a matter has been scheduled for Conciliation/Arbitration, unless the Parties agree to a shorter period of notice.
- 19.4 The provisions of the Act and the provisions set out in this appendix that are applicable to conciliation and arbitration respectively apply, with the changes required by the context, to Conciliation/Arbitration Proceedings.

19.5 If the arbitration does not commence on the dates specified in terms of the notice in Clause 19(3) above, SARPBAC must, subject to clause 14 above, reschedule the matter.

20. PRE-ARBITRATION CONFERENCE

20.1 The Parties to an arbitration shall hold a pre-arbitration conference dealing with the relevant matters prior to the Conciliation/Arbitration or arbitration proceedings taking place.

20.2 The Parties should endeavour to hold a pre-arbitration conference at least seven (7) days before the scheduled date for the commencement of the conciliation/arbitration or arbitration proceedings.

21. POSTPONEMENT OF PROCEEDINGS

21.1 Any Party may apply for a postponement of conciliation, Conciliation/Arbitration or arbitration proceedings by serving an application for postponement on the other Parties to the dispute and lodging a copy with SARPBAC at least seven (7) days before the scheduled date of such proceedings.

21.2 SARPBAC must postpone proceedings without the Parties appearing if

21.2.1 all the Parties to the dispute agree in writing to the postponement and the written agreement for the postponement is received by SARPBAC at least seven (7) day's prior to the scheduled date of the such proceedings; or

21.2.2 there are compelling reasons to postpone.

21.3 Upon postponement of any proceedings, the Commissioner must reschedule such proceedings to a later date not more than sixty (60) days from such postponement.

21.4 Any Party who seeks or causes a postponement in circumstances other than those provided for in clauses 21.1 or 21.2 above shall bear the costs of the postponement regardless of the cause.

22. ARBITRATION OF DISPUTES

22.1 SARPBAC must give the Parties at least twenty-one (21) days notice in writing of an arbitration hearing, unless the Parties agree to a shorter period of notice.

22.2 The Commissioner shall conduct the arbitration proceedings as stipulated in Section 138 of the Act.

22.3 In arbitrating disputes referred to SARPBAC, a Commissioner will have the powers provided for in Section 142 of the Act read with the charges required by the context.

- 22.4 An Commissioner conducting an arbitration may make an appropriate award, including, but not limited to, an award:-
- 22.4.1 ordering any person to pay any amount owing in terms of a Collective Agreement.
 - 22.4.2 confirming, varying or setting aside a compliance order issued by SARPBAC.
 - 22.4.3 any award as contemplated in section 138(9) of the Act.
- 22.5 The Commissioner may make an order for the payment of costs against a Party or Parties if requested to do so and if the Commissioner deems the actions of the Party or Parties, against whom such costs award has been requested, to have unduly delayed or frustrated the resolution of the dispute or that such Party or Parties have acted in a frivolous or vexatious manner regarding the dispute.
- 22.6 An arbitration award made by a Commissioner is final and binding and may be enforced as if it were an order of the Labour Court, unless it is an advisory arbitration award.
- 22.7 Arbitration awards are subject to Sections 143(2) and 143(4) (as amended), of the Act.
- 22.8 Arbitration awards may be varied or rescinded as contemplated in Section 144 of the Act.
- 22.9 Any Party to a dispute who alleges a defect in any arbitration proceedings may, in terms of Section 145 of the Act, apply to the Labour Court for an order setting aside the arbitration award.
- 22.10 The Commissioner must, within fourteen (14) days of the conclusion of the arbitration proceedings, issue a signed arbitration award with brief reasons for the award.
- 22.11 The Commissioner must provide a copy of the award to SARPBAC and each Party to the dispute.

23. Costs

- 23.1 The *Council* must, subject to paragraph 23.2, pay the fees and costs of the *conciliators* and *arbitrators* in the proceedings. Each party to the *dispute* must pay its own costs with regard to travelling, meals, legal representation (if applicable), witness fees (if applicable) and other related expenses.
- 23.2 Costs may be awarded on application of a party, or of the panellist's own accord after hearing the parties. Costs may be awarded on the following grounds:
- (a) If the panellist is satisfied that the referral was made or defended vexatiously or without reasonable cause; or

- (b) Any time during the proceedings, where a party has caused unreasonable delays; or
- (c) If the panellist is satisfied that a party, or a person who represented that party in the proceedings acted in a manner seriously compromising the proceedings; or
- (d) If a proceeding is adjourned or dismissed because a party to the dispute failed to attend or to be represented at the proceedings; or
- (e) Enforcement cost as directed through Arbitration process.
- (f) Any other grounds specified in the SARPBAC Rules for the Conduct of Proceedings

23.3 Costs awarded may include—

- (a) the costs of the hearing, including the panellist's' and interpreters fee;
- (b) legal and professional costs of the parties;
- (c) other expenses which a party has incurred in the conduct of the *dispute*;
and
- (d) expenses of witnesses.

23.4 If a party to a *dispute* withdraws a referral less than 5 workings days before the scheduled date of the conciliation or arbitration, that party must bear the cost of the *conciliator* or *arbitrator*, unless the withdrawal is the result of a settlement agreement.

24. PEACE OBLIGATION

The parties to this Constitution, and those bound in law to this Constitution, undertake not to strike, lockout or engage in any other form of industrial action that is in conflict with the dispute resolution procedures set out in this annexure and will, should such action take place, do everything within their power to normalize the situation and ensure continuation of services throughout the processing of the dispute.