ARBITRATION CLAUSE: LEASE AGREEMENT

[INCLUDING A RIGHT TO APPEAL SEE CLAUSE 14]

1. The parties agree to refer any disputes as defined herein to arbitration.
2. For the purposes of this clause and irrespective of what is recorded herein below the term *“dispute/s”* shall mean all and any disputes in its widest sense directly or indirectly, emanating from the lease agreement and/or the Tenant’s occupancy of the lease premises and no dispute between the Landlord and Tenant shall be excluded.
3. The term *“dispute/s”* shall also include, but shall not be limited to, the following:
   1. whether a valid lease agreement has been entered into between the parties;
   2. any dispute relating to the, rectification, termination, repudiation and/or cancellation of the lease agreement
   3. any dispute relating to the installation, occupancy, improvement and/or reinstatement and the like of or to the leased premises;
   4. any dispute relating to any amount payable or claimed during or after termination of the lease agreement irrespective of when such claim arose;
   5. any dispute in its widest sense, emanating from any annexure or addendum to the lease agreement, and/or any amendment or variation, tacit relocation, renewal of or to the lease agreement and/or the conclusion of any further agreement whatsoever;
   6. any dispute in its widest sense relating to common areas, storage, parking, delivery, usage, house rules and/or rules of conduct or similar type of disputes relating to the use and/or the occupancy and/or any amenities or the like of or to the lease premises;
   7. any dispute relating to the eviction of the Tenant, or any person claiming occupation through or under the Tenant, from the lease premises;
   8. any dispute relating to any lien;
   9. any dispute relating to any other agreement and/or admission of liability including but not limited to the making of payment and/or the complying with such agreement and/or admission of liability
   10. the event of any party to this lease agreement directing a demand, written or otherwise, to the other party to comply with its obligations in terms of this lease agreement and/or relating to occupancy of lease premises and the other party denies liability to comply with the obligation and/or fails to respond to such demand and/or fails to comply with any obligations so demanded;
   11. the event of any party/ies admitting liability to make payment and/or to comply with any obligation, to any other party/parties but fail/s to make payment or comply with any obligation in accordance with the admission of liability.
4. In the event that the lease agreement is renewed, extended, tacitly relocated or tacitly renewed, this Arbitration clause is *mutatis mutandis* incorporated into such renewed or extended or tacitly relocated or tacitly renewed lease agreement and deemed to be incorporated into such agreement, as the case may be;
5. As hereby agreed that the arbitration proceedings shall be facilitated by the **Tribunal for Commercial Property** (*“the Tribunal”*) and the dispute/s shall be heard and resolved by a single Arbitrator to be appointed independently by Justice Willem van der Merwe or his successor in title. The arbitration shall be conducted in accordance to an inquisitorial procedure.
6. Any dispute arising from or in connection with the lease agreement shall be finally resolved in accordance with the Tribunal’s **Commercial Lease Dispute Rules** (“the Rules) as amended from time to time, which are read as if incorporated herein.
7. The parties to a dispute undertake to cooperate with the Arbitrator, Tribunal and case manager and to deal with any request made to the parties constructively, quickly, within the time limits and without delay.
8. 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.
9. Only the Arbitrator shall have the power to grant any orders contemplated in Section 21 of the Arbitration Act 42 of 1965, and the parties shall not be entitled to approach a court of law to obtain any of the relief set out in Section 21 of the Arbitration Act. The Arbitrators are furthermore entitled to grant other interim awards as set out in the Rules.
10. 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 and any appeal (if applicable) has been finalized and the Arbitrator/s has made a final award.
11. 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.
12. The Arbitrator shall ensure the fair, just and expeditious determination or resolution of all the disputes raised in the arbitration proceedings, which power shall include, but not be limited to the power to make an interim or final award.
13. 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 such Act.
14. Any decision and/or award made by the Arbitrator is subject to appeal within 15 (fifteen) days after the award was made, which appeal:
    1. shall be conducted in terms with the Rules;
    2. shall be heard and determined and the award made by three appeal arbitrators,

being senior counsel and/or retired judges of the High Court of South Africa appointed in terms of the Rules;

14.3 award shall be final and binding and not be subject to any further appeal.

1. 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.
2. The party in whose favour any 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.
3. Notwithstanding what is recorded in the lease 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, including but not limited to:
   1. the cost of the Arbitrator;
   2. a cost award on the scale as between attorney and client.
4. 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. The provisions of this arbitration clause:
   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;
   2. are severable from each other and furthermore severable as to the content of each provision contained in this clause;
   3. are severable from the rest of the lease agreement and shall remain in effect despite the termination, repudiation, cancellation, novation (in whole or in part), tacit relocation or tacit renewal, invalidity or alleged invalidity of the lease agreement for any reason whatsoever.
6. Should any statutory or common law affect or regulate the terms and conditions of these provisions or the Rules the parties record that:
   1. the terms and conditions of this clause read with the Rules shall remain unaffected, valid and binding between the parties and only to the extent and limited to such extent (only), shall the provisions of this clause and the Rules be regarded as *pro non scripto;*
   2. the Arbitrator shall have the power to make an award on the aspects referred to in clause 19.1 hereinbefore.