

## ANNEXURE X1

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### SAKELIGA'S TERMS AND CONDITIONS OF REFERRAL TRIAL READY ARBITRATION PLATFORM

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#### DEFINITIONS

- 1 “**agreed duration**” means the estimated trial duration agreed upon by the parties in the minute of pre-trial conference to which this document is an annexure, which may not exceed the maximum trial duration.
- 2 “**dispute**” refers to the dispute between the parties as pleaded in the pleadings filed under the case number set out in the heading of the minute of pre-trial conference to which this document is an annexure.
- 3 “**maximum trial duration**” refers to a maximum trial duration of not more than three days.
- 4 “**Sakeliga**” refers to Sakeliga NPC (2012/043725/08).
- 5 “**parties**” refers to the parties as listed in the heading of the minute of pre-trial conference to which this document is an annexure.
- 6 “**pro deo arbitrator**” refers to the arbitrator to be nominated in terms of the Sakeliga Trial Ready Arbitration Platform, and appointed on the terms and conditions set out herein.

#### CONFIRMATION OF TRIAL READINESS

- 7 The parties record that the dispute is deemed trial-ready and that:
  - 7.1 the pleadings are considered closed in terms of rule 29.
  - 7.2 both parties are ready to proceed to trial and confirm that:

- 7.2.1 there are no outstanding interlocutory disputes between the parties;
  - 7.2.2 all pre-trial preparation has been completed;
  - 7.2.3 the plaintiff has prepared the CaseLines file to the satisfaction of both parties;
  - 7.2.4 none of the parties requires any further discovery, inspection and production of documentation in terms of rule 35;
  - 7.2.5 the parties have given proper notice to the other regarding any special or expert evidence, inspections or expert testimony which they wish to rely on during the trial, as is required by rule 36;
  - 7.2.6 none of the parties is at this stage prejudiced because the other party failed to comply with the rules of court;
  - 7.2.7 there are no issues that will require that such issues be decided separately in terms of rule 33 (4);
  - 7.2.8 the matter is not currently subject to any case management directions;
- 7.3 the parties agree that the dispute will be finalised within the agreed duration and that said duration will not exceed the maximum trial duration.

## **REFERRAL TO ARBITRATION**

- 8 The parties record that they desire to have the matter determined by an independent arbitrator.
- 9 The parties agree to refer this matter to the *Sakeliga Trial Ready Arbitration Platform* to appoint a *pro deo* arbitrator.

- 10 The appointment of a *pro deo* arbitrator will be conducted in terms of *this* document as supplemented by the minute of pre-trial conference to which this is an annexure. In the event of a conflict between the minute of pre-trial conference and this document, the parties agree that this document shall prevail.
- 11 In the event of the parties receiving notice in writing of the acceptance of the appointment by the *pro deo* arbitrator, the parties agree that the entire dispute between the parties has been referred for arbitration in terms of rule 37 (6) (d), on the terms and conditions set out in this minute.

### **ARBITRATION AGREEMENT**

- 12 The parties agree that this minute, incorporating Sakeliga's *Terms and Conditions of Referral* shall constitute a binding arbitration agreement in terms of section 3 of the Arbitration Act 42 of 1965.
- 13 However, this arbitration agreement is subject to the condition that a *pro deo* arbitrator accepts the appointment within 45 days of this matter being referred to the *Sakeliga Trial Ready Arbitration Platform*. If the parties fail to procure an appointment, either party may at any time thereafter terminate the arbitration agreement by written notice to the other.
- 14 The parties acknowledge that Sakeliga will only act as a facilitator in the referral process and that Sakeliga will have no further role or interest in the arbitration process once the written notice of appointment of the *pro deo* arbitrator is given to the parties.
- 15 The parties acknowledge and accept that they shall have no claim of whatsoever nature against Sakeliga. Sakeliga does not accept responsibility for the actions or omissions of any party, including that of the *pro deo* arbitrator.
- 16 The parties also acknowledge and accept that Sakeliga cannot guarantee the appointment or availability of a *pro deo* arbitrator.

**CONFIRMATION OF DISPUTE**

- 17 The parties agree and confirm that a dispute exists between them.
- 18 The parties agree that the disputes to be arbitrated between them shall be the disputes and issues contained in the pleadings.

**PROCEDURE**

- 19 Subject to the *pro deo* arbitrator having an overriding discretion regarding the procedure to be adopted during the arbitration, the parties agree that the uniform rules of the High Court shall apply.
- 20 The *pro deo* arbitrator shall determine all interlocutory applications and disputes in relation to the arbitration.
- 21 The ordinary rules and laws of evidence as are applicable in South Africa shall apply to the arbitration.

**ARBITRATION DATE AND VENUE**

- 22 In consultation with the *pro deo* arbitrator, the parties agree that an arbitration date shall be arranged between the parties and the *pro deo* arbitrator.
- 23 Subject to the *pro deo* arbitrator's discretion to direct otherwise, the arbitration will be held on business days, during such hours as may be agreed between the parties, and in the absence of agreement, during such hours as may be determined by the *pro deo* arbitrator.
- 24 The arbitration is to be conducted *via* an electronic platform or physically.
- 25 A virtual hearing will require the permission of the arbitrator.

- 26 In the event of the arbitration being conducted physically, then the plaintiff / applicant will be responsible, unless otherwise agreed in writing, for arranging a suitable venue and the means of recording the proceedings.
- 27 Unless otherwise agreed with the *pro deo* arbitrator and on such terms determined by the *pro deo* arbitrator, the arbitration shall be held at Pretoria.

### **PRE-ARBITRATION MEETING**

- 28 On receiving notice of the appointment of the *pro deo* arbitrator, the plaintiff / applicant will arrange a pre-arbitration meeting between the parties and the *pro deo* arbitrator in order for the parties to arrange the arbitration and deal with any specific issues relating to the dispute.
- 29 At the pre-arbitration meeting, the parties will provide the *pro deo* arbitrator with a list of witnesses and expert witnesses they intend to call.
- 30 At the pre-arbitration meeting, each party must provide the arbitrator with all witness summonses, which that party requires the *pro deo* arbitrator to issue in terms of section 16 of the Arbitration Act 42 of 1965.
- 31 It is the responsibility of the plaintiff /applicant to prepare a pre-arbitration minute, unless otherwise agreed.
- 32 It is the responsibility of the plaintiff /applicant to ensure that suitable recording facilities are available at the hearing of the matter and that a recording of the proceedings is made available to all parties as well as the *pro deo* arbitrator on request.

### **REMUNERATION OF THE ARBITRATOR**

- 33 The parties acknowledge that the *pro deo* arbitrator's availability to conduct work *pro deo* is limited to a maximum hearing duration (or any part thereof). The *pro deo* services

of the *pro deo* arbitrator also include the costs of writing the arbitration award and a single pre-arbitration meeting.

34 If the hearing exceeds the agreed duration and/or the maximum hearing duration (or any part thereof), the *pro deo* arbitrator shall automatically become entitled to charge a fee for all further work done in the arbitration (excluding the costs of writing the main award), which fees will be calculated as follows:

34.1 Senior Counsel - A day fee of R25 000.00 per day or any part thereof / R2 500 per hour actually spent;

34.2 Senior Junior Counsel / Senior Attorney ( with 15 years plus experience) – A day fee of R15 000.00 per day or any part thereof / R1 500.00 per hour actually spent;

34.3 Junior Counsel / Junior Attorney (with less than 15 years' experience) – A day fee of R10 000.00 per day or any part thereof / R1 000.00 per hour actually spent;

35 Unless otherwise directed by the *pro deo* arbitrator, the parties shall be jointly liable for the due payment of any fees due to the *pro deo* arbitrator.

36 The *pro deo* arbitrator may at any time require that the parties security for the due payment of any foreseeable future fees once it has become apparent that the matter will not be finalised within the agreed duration.

37 If at the pre-arbitration meeting held in terms of paragraphs 28 it becomes apparent to the *pro deo* arbitrator that the dispute between the parties is, within the discretion of the arbitrator, unlikely to finalise within the maximum trial duration, the *pro deo* arbitrator may require that the parties agree to give security to the satisfaction of the *pro deo* arbitrator for the estimated additional costs of the arbitration before allowing the matter

to proceed. If the parties are unwilling to give equal security for the estimated additional costs of the arbitration, the *pro deo* arbitrator may withdraw his notice of acceptance as *pro deo* arbitration and withdraw from the agreement. In such an event, any one of the parties may also withdraw from the agreement or, if they remain in agreement to arbitrate the dispute, the parties may request Sakeliga to assist with a new referral.

## **COSTS OF ARBITRATION**

- 38 The *pro deo* arbitrator may, within his/her discretion, award costs in connection with the arbitration and shall, if costs are awarded, give directions as to the scale on which such costs are to be taxed.
- 39 If the matter exceeds the estimated duration or the maximum trial duration, the arbitrator may award costs as between attorney and client against the party responsible for the increase in costs, which costs may also include the costs of the *pro deo* arbitrator
- 40 The *pro deo* arbitrator may make any further or auxiliary cost orders which *pro deo* arbitrator deems meet, which includes the right to order that a party pay the attorney and client costs of the other.
- 41 The parties agree that the costs of the arbitration and award shall be taxable by the taxing master of the above Honourable Court as provided for in terms of section 35(3) of the Arbitration Act 42 of 1965.
- 42 It shall be the duty of the party in whose favour a cost order is made, to recover any costs accruing the *pro deo* arbitrator, if any.
- 43 Any costs due to the *pro deo* arbitrator shall be paid within seven (7) days from invoice date and may be recovered against any of the parties, who will be held jointly and severally liable for the prompt payment thereof.

**PREPARATION OF RECORD**

- 44 The parties confirm that the record has been properly prepared in terms of the directives of the Gauteng Division of the High Court.
- 45 The parties also confirm that they have agreed upon the preparation of all bundles of evidence and that said records have also been prepared and agreed upon in preparation for trial.
- 46 The plaintiff shall provide the *pro deo* arbitrator with copies of the record and the bundles of evidence, alternatively, if so agreed upon with the *pro deo* arbitrator, provide the *pro deo* arbitrator with access to the virtual case file.

**ARBITRATION AWARD**

- 47 The parties agree that the *pro deo* arbitrator's award may be made an order of court in terms of section 31 of the Arbitration Act 43 of 1965.

**AMMENDMENT OF THIS ANNEXURE**

- 48 The parties may only amend the terms and condition for arbitration set out in this document in writing and with the written approval of the *pro deo* arbitrator.
- 49 Paragraphs 9,14,15, and 16 have been entered specifically to the benefit of Sakeliga and may only be amended with the written approval of Sakeliga.

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