



Agreement for Amicable Settlement procedure to resolve contractual dispute.

Entered into between

Party xxx

(Registration number _____)

And

Party xxxx

(Registration number _____)

(Collectively "The Parties")

and

The Amicable Settlement Facilitator (Clause 7)

Name _____

Identity Number _____

Whereby it is agreed as follows:

THE AMICABLE SETTLEMENT PROCEDURE

1. The Parties agree to attempt, in good faith, to settle their Dispute (the details of which are set out in Schedule 1 hereto) by an appropriate Amicable Settlement technique and to conduct the Amicable Settlement in accordance with the terms of this Agreement.
2. The Amicable Settlement shall take place in _____, South Africa and shall be conducted in accordance with the laws of the Republic of South Africa.

AUTHORITY AND STATUS

3. The person signing this Agreement on behalf of each Party warrants having authority to bind that Party and all other persons present on that Party's behalf during the Amicable Settlement procedure and to observe the terms of this Agreement, and also having authority to bind that Party to the terms of any settlement.

CHOOSING THE AMICABLE SETTLEMENT FACILITATOR

4. The Parties shall agree on an Amicable Settlement Facilitator within 5 (five) business days. Should the Amicable Settlement Facilitator be unable to accept the invitation to act as the Amicable Settlement Facilitator, the Parties may, within a further 5 (five) business day period, agree on another Amicable Settlement Facilitator.
5. If the Parties are unable to agree on an Amicable Settlement Facilitator within 5 (five) business days, then any Party may approach the President or his nominee of the South African Institution of Civil Engineers (SAICE) to nominate an Amicable Settlement Facilitator.
6. The Amicable Settlement Facilitator shall then enter its details to this agreement and sign this Agreement, and this Agreement shall become a tri-partite Agreement.
7. The Amicable Settlement Facilitator shall be bound by the SAICE Amicable Settlement Facilitator code of Conduct.

THE AMICABLE SETTLEMENT FACILITATOR'S DUTIES

8. The Amicable Settlement Facilitator shall endeavor to assist the Parties to settle the Dispute by agreement. The Parties hereby agree to using one, or more of the following techniques, but they are not limited to that:
 - a) Facilitative amicable settlement.
 - b) Evaluative amicable settlement.
 - c) Conciliation.
 - d) Neutral mediation.
 - e) Executive panel of senior executives.
 - f) Expert opinion.

- g) Expert determination.
- h) Mini trial.

Once the Parties have agreed to the most appropriate technique(s) to resolve the dispute, such technique(s) shall be recorded by the Parties and be used: Provided that they may at any time during the procedure decide that another more appropriate technique(s) should be followed.

- 9. The Amicable Settlement Facilitator shall conduct the Amicable Settlement in such a manner as s/he determines but whilst complying with the SAICE Amicable Settlement Facilitation Code of Conduct.
- 10. The Amicable Settlement Facilitator shall be responsible for the administration of the Amicable Settlement Facilitation, including the process and conduct of the Amicable Settlement Facilitation, which shall be done in an expeditious and cost-effective manner.

RESPONSIBILITIES OF THE PARTIES

- 11. The Parties own the dispute and the settlement of it.
- 12. As amicable settlement is a consensual process, there must be a willingness and a mandate by the participants to arrive at an amicable settlement outcome.
- 13. Any one of the Parties remains free to withdraw from the amicable settlement procedure at any time and revert to another procedure, like adjudication, arbitration or litigation, depending on the specific provisions of the construction contract.
- 14.
- 15. Prior to and during the procure, the parties shall, as appropriate to each party's circumstances, exercise their best efforts to prepare for and engage in a meaningful and productive amicable Settlement.

CONFIDENTIALITY AND WITHOUT PREJUDICE STATUS

- 16. Every person involved in the Amicable Settlement:
 - 16.1 Will keep confidential all information arising out of or in connection with the settlement including the fact and terms of any settlement, the fact that the settlement is to take place or has taken place unless disclosure is required by law to implement or to enforce terms of settlement; and
 - 16.2 Acknowledges that all such information passing between the Parties and the Amicable Settlement Facilitator is agreed to be without prejudice to any Party's legal position and may not be produced as evidence or disclosed to any judge, arbitrator or other decision-maker in any legal or other formal process, except where otherwise disclosable in law.
- 17. Where a Party privately discloses to the Amicable Settlement Facilitator any information in confidence before, during or after the Amicable Settlement Facilitation, the Amicable Settlement Facilitator will not disclose that information to any other Party or person without the consent of the Party disclosing it, unless required by law to make disclosure.
- 18. The Parties will not call the Amicable Settlement Facilitator as a witness, nor require the Amicable Settlement Facilitator to produce in evidence any records or notes relating to the Amicable Settlement Facilitation, in any

litigation, arbitration or other formal process arising from or in connection with their dispute and the Amicable Settlement Facilitation; nor will the Amicable Settlement Facilitator act or agree to act as a witness, expert, arbitrator or consultant in any such process.

SETTLEMENT

19. In the event that the Parties settle the Dispute or any part thereof in a Settlement Agreement, then that Agreement shall be a final and binding settlement of the Dispute or such part thereof, as applicable.

FEES AND EXPENSES

20. The fee to the request for Amicable Settlement Facilitation is:

- a) Hourly rate: R1800/hour
- b) Travel rate: R5.50/km
- c) Flights, car hire and accommodation at cost plus 5%

21. The parties shall pay the Amicable Settlement Facilitators fees and administrative costs in equal proportions. All expenses of the Amicable Settlement Facilitation, including required traveling and other expenses or charges of the Amicable Settlement Facilitators, shall be borne equally by the parties unless they agree otherwise.

22. The expenses of participants for either side shall be paid by the party requesting the attendance of such participants.

TERMINATION

23. The Amicable Settlement Facilitation of the Dispute shall terminate when:

23.1 The Amicable Settlement Facilitator receives written notice from a Party stating that the Party withdraws from the Amicable Settlement Facilitation provided that no Party shall withdraw from the Amicable Settlement Facilitation without first orally notifying the Amicable Settlement Facilitator and giving the Amicable Settlement Facilitator an opportunity to facilitate on that Party's continued participation in the Amicable Settlement Facilitation.

23.2 The Amicable Settlement Facilitator advises that Parties in writing that the Amicable Settlement Facilitator believes that there is no reasonable prospects of settlement in the Amicable Settlement Facilitation; and

23.3 The Parties conclude a written Settlement Agreement provided that they agree to continue the Amicable Settlement Facilitation in the event of any part of the Dispute that remains unsettled after the conclusion of the Settlement Agreement.



SIGNED AT _____ on _____

For: A

_____ who warrants his/her authority hereto

SIGNED AT _____ on _____

For: B

_____ who warrants his/her authority hereto

SIGNED AT _____ on _____

For: The Amicable Settlement Facilitator



SCHEDULE 1

Details of Dispute

(This must be set out in detail)