

ADJUDICATION AGREEMENT

between

_____)
(Registration Number: _____)

("the Claimant")

and

_____)
(Registration Number: _____)

("the Respondent")

1. DEFINITIONS & INTERPRETATION

1.1. In this Agreement, unless the context indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings: -

- 1.1.1. **“Act”** means the Arbitration Act, 42 of 1965, as amended;
- 1.1.2. **“Adjudicator”** means the Adjudicator to be appointed as provided for in clause 4 below;
- 1.1.3. **“Agreement”** means this Adjudication Agreement, and the annexures hereto, all as amended, novated or replaced, from time to time;
- 1.1.4. **“Adjudication”** means the adjudication proceedings contemplated herein;
- 1.1.5. **“Award”** means the award of the Adjudicator delivered at the conclusion of the Adjudication, which is to be deemed as final and binding on the Parties, with or without the right of appeal as determined by the Parties;
- 1.1.6. **“Claim”** means the Claimant’s claim, as set out in Annexure **“B”**;
- 1.1.7. **“Claimant”** means the claimant, as set out in Annexure **“A”**;
- 1.1.8. **“Cover Document”** means the document, titled **“Schindlers Attorneys’ Covid-Response Webinar Dispute Adjudication Service”**, to which the Agreement is attached;
- 1.1.9. **“Dispute”** means the dispute between the Claimant and the Respondent in relation to the Claim and **“Disputes”** shall have the concomitant meaning;
- 1.1.10. **“Party”** and **“Parties”** means either respectively or collectively the Claimant and the Respondent, depending on the context;

- 1.1.11. **"Signature Date"** means the date of signature of this MOU by the Party last signing; and
 - 1.1.12. **"the Platform"** means the software or application used for the purposes of conducting the Adjudication, including webinar services, Zoom, or any other software as determined by the Adjudicator;
 - 1.1.13. **"the Respondent"** means the Respondent, as detailed in Annexure **"A"**;
 - 1.1.14. **"Rules"** means the Uniform Rules of Court.
- 1.2. In the interpretation of this Agreement, the *contra proferentem* rule of construction shall not apply.

2. **RECORDAL**

- 2.1. The Parties are currently embroiled in the Dispute.
- 2.2. The Parties agree to refer the Dispute to Adjudication, to be determined by the Adjudicator on the terms as agreed herein.

WHEREFORE THE PARTIES AGREE AS FOLLOWS:

3. **REFERRAL TO ADJUDICATION**

- 3.1. The Parties agree that the Dispute is capable of being adjudicated and hereby refer them to Adjudication.

4. **THE ADJUDICATOR AND ADJUDICATION**

- 4.1. Schindlers Attorneys ("Schindlers") shall appoint an Adjudicator to the matter with sufficient expertise and experience to adjudicate the matter in terms of the rules and procedures to be determined by the Adjudicator in the interests of expedited and fair determination of the Dispute and with reference to the Cover Document.

- 4.2. The Adjudication shall be conducted as soon as reasonably practicable after Signature Date, at a time and location to be agreed between the Parties.

5. **POWERS OF THE ADJUDICATOR**

- 5.1. The Adjudicator shall determine the Disputes in accordance with the substantive and procedural laws of the Republic of South Africa, mindful of the discretion to determine own procedure afforded the Adjudicator in terms of clause **Error! Reference source not found.** above.
- 5.2. The Adjudicator shall have all such powers as are conferred by the Act and as set out herein and, as between the Parties, shall have the same powers and jurisdiction as would a High Court Judge presiding in a court of first-instance.

6. **PROCEDURE**

- 6.1. The length of the parties' written submissions will be restricted, as per paragraphs 2.3.1. and 2.5.1. of the Cover Document.
- 6.2. All notifications and other documents served prior to the Adjudication and the conclusion of this Agreement will be deemed to have been served in the Adjudication.
- 6.3. The service of documentation relating to the Adjudication may be effected by way of email or through the Platform as determined by the Adjudicator.
- 6.4. Documents will be provided to the Adjudicator electronically.
- 6.5. The Adjudicator shall, in his sole and absolute discretion, determine further procedural steps to be taken in the course of the Adjudication.

7. TRANSCRIPT AND DISBURSEMENT OF COSTS PENDING AN AWARD THEREOF

- 7.1. The Adjudication shall be electronically recorded and transcribed only upon request by, and at the cost of the Parties.
- 7.2. The costs of recording and preparation of the transcript will be subject to the Adjudicator making such award as he deems appropriate in regard thereto when handing down the award.
- 7.3. Should a Party (“the Non-Paying Party”) fail to pay any amount in connection herewith promptly on due date, the other Party (“the Innocent Party”) will be entitled to make such payment and, upon making such payment, will forthwith be entitled to recover such from the Non Paying Party.

8. THE AWARD

- 8.1. The Parties agree to waive the provisions of Section 23 of the Arbitration Act.
- 8.2. The Adjudicator shall, as soon as possible after hearing both Parties’ submissions, make the Award in the form of a brief written judgment, with reasons, to be handed down and explained via the Platform.

9. APPEAL, POWERS OF THE APPEAL ADJUDICATORS AND THE APPEAL AWARD

- 9.1. The parties agree that there shall be a right of appeal.

- 9.2. The Parties agree that there shall be no right of appeal.

(tick the applicable box and initial)

- 9.3. In the event of an appeal, the Party referring the matter to appeal shall be entitled to approach (the decision of which shall be final and binding, with no further right of appeal):

- 9.3.10. an arbitrator with no less than years' experience; or
- 9.3.11. a panel of arbitrators, each with no less than years' experience.

(complete and both initial next to whichever is agreed)

10. **CONFIDENTIALITY**

10.1. The content and record of the Adjudication proceedings will be kept confidential as between the parties and may only be disclosed in pursuance of one of the parties' rights or obligations as may be required by law, provided however that the Parties shall not be precluded from disclosing:

10.1.10. the fact that the Adjudication is happening;

10.1.11. the date(s) upon which the Adjudication is to proceed; and

10.1.12. any award(s) arising from the Adjudication.

11. **COSTS**

11.1. The costs of the Adjudication (each Party being liable initially for 50% thereof), including the costs of the Adjudicator, the recording and transcription of the proceedings, and the costs of either Party in preparing for and conducting the Adjudication, shall be costs in the cause until determined by the Adjudicator.

11.2. The principles applicable to the taxation of fees and expenses shall apply in respect of the costs awarded by the Adjudicator in respect of the Adjudication.

11.3. In the event of the parties failing to agree thereon, the costs will be determined by Jordan Beagle Legal Costs Consultant after hearing representations from the Parties, who shall act as a taxing master.

11.4. The decision of Jordan Beagle Legal Costs Consultant shall be final and binding on the Parties, unless appealed.

12. **DISPUTES**

- 12.1. Any dispute arising from or in connection with this Agreement shall be finally resolved by the Adjudicator. In the event of such a dispute, the fees of the Adjudicator will be borne equally by the Parties, or as may otherwise be directed by the Adjudicator.

13. **NOTICES AND *DOMICILIA***

- 13.1. The Parties to this Agreement choose their domicilia citandi et executandi as their respective addresses as set out in Annexure "A" hereto.

14. **GENERAL PROVISIONS**

- 14.1. The Parties acknowledge that neither of the Parties shall be entitled to resile from this Agreement or claim at any proceedings in terms thereof that it is not bound by this Agreement.
- 14.2. Neither Party shall be entitled to avail itself of the provisions of Section 20 of the Act.
- 14.3. No extension of time or indulgence granted by either of the Parties to the other shall be deemed in any way to affect, prejudice or derogate from the rights of such Party in any respect under the Agreement, nor shall it in any way be regarded as a waiver of any rights hereunder or a novation of the Agreement.
- 14.4. No variation of this Agreement shall be of any force and effect unless such variation is reduced to writing and signed by the Parties hereto.
- 14.5. The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this

14.6. This Agreement will in all respects be governed by and construed under the laws of the Republic of South Africa.

14.7. This Agreement shall be finally concluded upon its collective signature by the Parties.

SIGNED AT _____ ON _____ 2020

For and on behalf of

THE CLAIMANT

Signature

Name of Signatory

Designation of Signatory

SIGNED AT _____ ON _____ 2020

For and on behalf of

THE RESPONDENT

Signature

Name of Signatory

Designation of Signatory

ANNEXURE A

PARTY DETAILS

CLAIMANT:

FULL NAME	
REGISTRATION / IDENTITY NUMBER	
REGISTERED / RESIDENTIAL ADDRESS	
EMAIL ADDRESS	
DOMICILIUM ADDRESS	
TELEPHONE NUMBER	
NAME OF PERSON AND DESIGNATION CONCLUDING THE AGREEMENT ON BEHALF OF THE CLAIMANT	

RESPONDENT:

FULL NAME	
REGISTRATION / IDENTITY NUMBER	
REGISTERED / RESIDENTIAL ADDRESS	
EMAIL ADDRESS	
DOMICILIUM ADDRESS	
TELEPHONE NUMBER	
NAME OF PERSON AND DESIGNATION CONCLUDING THE AGREEMENT ON BEHALF OF THE CLAIMANT	

ANNEXURE B**NATURE OF CLAIM****TO BE COMPLETED BY CLAIMANT**

AMOUNT CLAIMED	
NATURE OF CLAIM (BRIEFLY)	
INTEREST	