

## Referral Clauses for Mediation in Intellectual Property Disputes in South Africa

- 1) **Automatic Referral (mediation only)**
  - a) ‘Unless agreed otherwise in writing, no party may refer any dispute, controversy or claim arising under, out of, or relating to this contract and any amendments thereto or to the interpretation, validity, breach or termination thereof, to adjudication unless:
    - i) that party has first submitted such dispute, controversy or claim to mediation in accordance with the Mediation Rules as prescribed by the South African Institute of Intellectual Property Law and in force at the date of referral to mediation (the “Rules”); and
    - ii) the mediation of such dispute, controversy or claim has been terminated in accordance with Rule 8 of the Rules or a period of [INSERT] days has passed since the date of referral to mediation.’
- 2) **Automatic Referral (mediation followed by arbitration)**
  - a) ‘Unless agreed otherwise in writing, any dispute, controversy or claim arising under, out of, or relating to this contract and any amendments thereto or to the interpretation, validity, breach or termination thereof (the “Dispute”), shall, prior to being submitted to arbitration, be submitted to mediation in accordance with the Mediation Rules as prescribed by the South African Institute of Intellectual Property Law and in force at the date of referral to mediation (the “Mediation Rules”).
  - b) If the Dispute is not resolved by negotiation or mediation within a period of [INSERT] days after the date of referral to mediation, or such longer period as the parties may agree in writing, then the whole or any part of any such Dispute not resolved must, upon the filing of a notice of arbitration by any party, be referred to and finally determined by arbitration by a single arbitrator in accordance with the Arbitration Rules as prescribed by the South African Institute of Intellectual Property Law and in force at the date of referral to arbitration.
  - c) The place of the arbitration shall be [specify place]. The language to be used in the arbitral proceedings shall be [specify language]. The dispute shall be determined in accordance with the law of [specify jurisdiction]. Judgement upon the award rendered by the arbitrator may be enforced by any court having jurisdiction thereof.’
- 3) **Ad Hoc Referral to mediation**
  - a) ‘We, the undersigned parties, hereby agree that the dispute set out hereunder shall be submitted to mediation in accordance with the Mediation Rules as prescribed by the South African Institute of Intellectual Property Law and in force at the date of referral to mediation.
  - b) [Description of the dispute].’