

PRACTICENOTES

Alternative Dispute Resolution

Alternative Dispute Resolution clause

A dispute concerning or arising out of this Agreement exists once a party notifies the others in writing of the nature of the dispute and requires it to be resolved under this clause. The parties must refer any dispute to be resolved by:

- negotiation; failing which
- mediation; failing which
- arbitration

Within ten Business Days of notification, the parties must seek an amicable resolution to the dispute by referring it to designated and authorised representatives of each of the parties to negotiate and resolve it by the parties signing an agreement resolving it within 15 Business Days.

If negotiation fails, the parties must refer the dispute for resolution by mediation under the rules of the Arbitration Foundation of Southern Africa (or its successor or body nominated in writing by it in its stead) ("[AFSA](#)")¹.

If mediation fails, the parties must refer the dispute within 15 Business Days for resolution by arbitration (including any appeal against the arbitrator's decision) by one arbitrator (appointed by agreement between the parties) as an expedited arbitration in Sandton under the then current [rules for expedited arbitration](#) of AFSA. If the parties cannot agree on any arbitrator within a period of ten Business Days after the referral, the arbitrator will be appointed by the Secretariat of AFSA.

The periods for negotiation or mediation may be shortened or lengthened by written agreement between the parties.

This clause will not preclude any party from access to an appropriate court of law for interim relief in respect of urgent matters by way of an interdict, or mandamus pending finalisation of this dispute resolution process, for which purpose the parties irrevocably submit to the jurisdiction of a division of the High Court of the Republic of South Africa.

This clause is a separate, divisible agreement from the rest of this Agreement and must remain in effect even if the Agreement terminates, is nullified, or cancelled for any reason or cause.

¹ Parties are entitled to use any dispute resolution administrator, but AFSA is recommended by the IoDSA. If another administrator is appointed, then its name must be inserted in place of AFSA.

