



Alternative Dispute Resolution System

ADR UBUNTU

**RULES FOR
WORKPLACE DISPUTE
MEDIATIONS**

1 November 2024

ADR UBUNTU RULES/2/2024



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1. INTERPRETATION AND PRELIMINARY

1.1. Unless the context otherwise requires:

ADR means all forms of alternative dispute resolution other than litigation or adjudication through the Courts.

ADR Ubuntu means a digital and/or online platform which provides access to individuals and/or entities who wish to resolve their disputes outside of the Courts through a process of mediation.

Deliver means to deliver or send copies to all Parties as provided for in these Rules.

Practitioner means a person (a) who is admitted and enrolled to practise as a legal practitioner in terms of the Legal Practice Act 28 of 2014 and its promulgated Rules, (b) who is an employer, a director or employee of that party, or if it is close corporation, by a member of that close corporation, (c) who is a member of that party's registered trade union or employers' organisation, or an office bearer or official as defined in the Labour Relations Act 1995 (LRA) or an office bearer or official, as defined in the Act, of a registered federation of trade unions or registered federation of employers' organisations, (d) who

is a registered trade union, any member of that trade union, or an office bearer or official as defined in the LRA and authorised to represent that party or an office bearer or official, as defined by the LRA of a registered federation of trade unions and authorised to represent that party, or (e) who is a registered employers' organisation, any director or employee of an employer that is a member of that employers' organisation or any official or office bearer, as defined in the LRA and authorised to represent that party or an office bearer or official, as defined by the Act, of a registered federation of employers' organisations and authorised to represent that party.

Mediation

means an ADR process where Parties agree to appoint a third party (Mediator) to help them resolve disputes between themselves. The Mediator assists and guides the Parties towards their own resolution and does not decide the outcome. The process is confidential.

Pleadings

means documents comprising of and including, a Statement of Case and a Statement of Response.

The Administration

means the group of individuals appointed by ADR Ubuntu to perform the administrative functions as conferred by the Registrar.



The Registrar means the officer appointed by ADR Ubuntu to perform the administrative functions conferred upon him/her under these Rules.

Working Day means Monday to Friday from 08h00 to 20h00, excluding all official public holidays of South Africa.

Workplace Disputes these disputes originate within the workplace and include, but not limited to, employment contracts, performance reviews, disciplinary actions, Employee rights, safety concerns, termination issues, promotion conflicts, policy disagreements, written or verbal warnings, wage issues, harassment issues, grievances and/or collective agreements.

- 1.2. Words importing the singular include the plural and vice versa;
- 1.3. Words importing any gender include any other gender;
- 1.4. Any reference to a “day” or “days” will mean a “Working Day” or “Working Days” as defined in Clause 1.1 above.

2. PURPOSE

- 2.1. ADR Ubuntu (“Platform”) has been developed to facilitate and ensure that everyone in South Africa has access to the benefits and advantages mediation offers when it

comes to settling disputes (“disputes”) without having to litigate or adjudicate through the Courts.

- 2.2. The Platform ensures a simple, effortless and memorable experience for all users with its core focus and belief being to guarantee a transparent and objective mediation process that is confidential, affordable, expedient, accessible and fair.
- 2.3. The Registrar shall identify, screen, appoint and manage a group of individuals to provide the administrative services and support required to ensure that the Platform achieves its purpose and functions optimally.
- 2.4. The Registrar shall also identify, screen and appoint competent and skilled individuals to act as Mediators to assist Parties to resolve referred disputes in accordance with these Rules.
- 2.5. Any steps to be taken, and any decision to be made, and any directions to be given by Administration, in terms of these Rules, shall be taken by the Registrar.
- 2.6. All communications to the Registrar can be sent to the following email address – registrar@adrubuntu.co.za.

3. APPLICABILITY

- 3.1. Workplace disputes arise when an Employer and/or Employees are unable to resolve a dispute through negotiation or discussion or an internal grievance process and require the Platform to assist in resolving the dispute.
- 3.2. Where Parties have agreed in writing that workplace disputes between them shall be referred to the Platform for mediation, then such disputes shall be settled in accordance with these Rules.

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- 3.3. If Parties did not include a dispute referral clause to our Platform in their initial agreement, they are still in their full right to reach an agreement in writing, afterwards, to vary and/or include that should a dispute arise or have arisen that said dispute be referred to our Platform by the Aggrieved Party and be settled in accordance with these Rules.
- 3.4. These Rules shall govern disputes except that where these Rules are in conflict with a provision of any promulgated legislation. If in conflict last-mentioned provision shall prevail.
- 3.6 Parties utilizing our Platform are understood to have read the Privacy Policy and consented to the use, retention, dissemination, and processing of their personal information in accordance with said terms and conditions.

4. PROFILE REGISTRATION

- 4.1. To access the Platform and file a dispute Parties have to register their online profiles.
- 4.2. To register your online profile on the Platform is free of any cost.
- 4.3. Parties wishing to utilize the Platform to resolve their dispute through mediation must go to www.adrubuntu.co.za. Once there the user must click on the **REGISTER NOW** link provided.
- 4.4. Upon completion of the registration process the user will click on the **SEND TO REGISTRAR** button and the Registrar shall then activate the profile. The user shall then receive an email confirmation and must follow the directions provided. Once the process has been finalized the user shall be positioned to access his own profile to file a dispute in accordance with these Rules.

5. SERVICE AND DELIVERY OF PLEADINGS

- 5.1. A notice including notifications, pleadings and communications given between the Parties in respect of mediation proceedings shall be in writing in the English language and shall be sent electronically, email or SMS, through the Platform for the attention of the Receiving Party to the email address and/or to the mobile number provided.
- 5.2. If an email address or mobile number has been designated by a Party specifically for mediation, any notice including notifications, pleadings and communications shall be delivered to that Party at that email address or mobile number.
- 5.3. The designated contact details as provided by the Parties will be accepted as their current contact and service details and the Parties are obligated to inform the Registrar in writing immediately should said contact details for whatever reason change.
- 5.4. An electronic notice, email or SMS, shall be deemed to be received at the time of transmission and to prove service it is sufficient for the forwarding Party and/or the Registrar to prove that the electronic notice was transmitted to either the email address and/or the mobile number of the receiving Party provided in this Agreement.
- 5.5. A notice transmitted by electronic means, email or SMS, through the Platform is deemed to have been received on the day it is sent.
- 5.6. For the purpose of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice is received. If the last day of such period is an official public holiday or a non-working day, the period is extended until the first working day which follows.

6. REPRESENTATION

- 6.1. Parties to the dispute may not be represented during the mediation session by a practitioner.
- 6.2. Should a Party wish to be represented by a practitioner for their own account, they can lodge a written application to the office of the Registrar prior to the mediation session date setting out (a) the details of the representatives (name, surname, title, contact number and email address), (b) reasons why said representative should be present and (c) confirming that said representative is available and will be present on the day set down for the mediation session.
- 6.3. Should the Registrar grant the request the practitioner must avail themselves on the day set aside for the mediation session.

7. REFERRAL

- 7.1. It is imperative that Parties do everything possible to resolve the dispute between themselves before referring it to our Platform to initiate the mediation process.
- 7.2. The Platform will allow an individual person or entity (Applicants) to register a dispute against another individual or entity (Respondent) at no cost once they have logged into their profile.

8. ONLINE VIDEO CONFERENCING

- 8.1. All proceedings referred to the Platform shall, as and when determined by the appointed Mediator, be held by means of an online video conferencing tool hosted, set up and managed by the Platform.



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- 8.2. Should for whatever reason required or upon request by either the Mediator and/or Parties the Registrar has the discretion to host said proceedings at a venue, date and time agreed with the Parties.
- 8.3. All proceedings shall be conducted in private, and a Party shall be entitled to require the Mediator to exclude therefrom any person whose presence is not reasonably required by another Party.
- 8.4. Save as is required by law, unless the Parties in writing agree and notify the Registrar otherwise, all shall maintain confidentiality with regards to all proceedings.

9. NOTICE AND STATEMENT OF DISPUTE

- 9.1. Before filing a dispute, a Party (“Applicant”) must have registered their profile, changed their password and tested their ability to log in through the Platform.
- 9.2. It is imperative that the Party initiating the dispute have all the relevant information and/or documents, in PDF format, he wishes to utilize to substantiate his allegations and/or claims, on hand before proceeding with registering his dispute.
- 9.3. It is also imperative to note that all costs and/or fees relating to the mediation of a dispute shall be for the account of the Applicant unless agreed otherwise in writing between the Parties. The Applicant (or other Party) shall also become liable once the Respondent agrees to utilize then platform to resolve the dispute.
- 9.4. The Applicant initiating a dispute shall log into their profile and click on the **CREATE NEW DISPUTE** button provided. Once clicked on the Applicant shall then follow the instructions and provide the information requested. The information requested will relate to (a) the details of the person and/or entity you are registering the dispute

against (the “Respondent”), (b) the description of the dispute itself and (c) the relief or compensation sought. The Platform will also provide the Applicant direction as to how to upload supporting documentation (PDF format) he would rely on.

- 9.5. Once the information has been made available and documentation uploaded the Applicant will then instruct the Platform to forward the Notice and Statement of Dispute (“FORM 1 MED”) to the Respondent. Once the Applicant clicks on the **SEND TO RESPONDENT** link the Platform immediately sends FORM 1 MED to the Respondent via email and/or SMS.
- 9.6. The message and link in the email and/or SMS sent to the Respondent shall provide the Respondent with the necessary instructions on how to log in, create a new password, amend their profile and lodge a response to the dispute registered.
- 9.7. The Respondent will have the option to respond to the allegations within a period of 3 (three) working days from receiving the email and/or SMS unless said time frame is extended in writing by the Registrar.

10. NOTICE OF RESPONSE

- 10.1. Upon receipt of FORM 1 MED and after logging into their profile, the Respondent can by clicking on the **RESPOND** link and following the instructions provided, tender his response.
- 10.2. It is imperative that the Respondent have all the relevant information and/or documents, in PDF format, he wishes to utilize to substantiate his case before proceeding with filing his response.

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- 10.3. Once the response is submitted, the Respondent shall instruct the Platform to forward the NOTICE OF RESPONSE (“FORM 2 MED”) to the Applicant. Once the Respondent clicks on the **SEND RESPONSE TO APPLICANT** link the Platform immediately sends FORM 2 MED to the Applicant via email and/or SMS.
- 10.4. The message and/or link in the email and/or SMS sent shall provide the Applicant with the necessary instructions to log in and view the **NOTICE OF RESPONSE**.
- 10.5. Once the Respondent has filed his **NOTICE OF RESPONSE** all pleadings relating to the Mediation process will be closed.
- 10.6. The Platform will not allow anyone, once the pleadings are closed, to file any additional information and/or upload any additional supporting documents regarding said dispute.

11. STATEMENT OF ACCOUNT

- 11.1. All costs and/or fees relating to the mediation of a dispute shall be for the account of the Employer unless agreed otherwise in writing between the Parties.
- 11.2. Once the Respondent has agreed to utilize the platform and/or filed his response the Registrar shall forward an invoice to the Applicant (or other Party). Said invoice must be settled within the timeframe indicated on the invoice.
- 11.3. The charges that will be indicated on the invoice will relate to (a) an admin fee charge for usage of the platform, (b) a mediation fee charge relating to the services of the appointed Mediator and (c) a legislative fee charge for VAT.
- 11.4. A Mediator shall only be allocated once the invoice has been settled. If the invoice is not settled within 5 (five) working days from the date it was sent to the Applicant (or

other Party) then the Registrar may remove the dispute and issue a directive that the Parties were unable to resolve the matter through mediation.

- 11.5. The Platform will not allow anyone, once the pleadings are closed, to file any additional information and/or upload any additional supporting documents regarding said dispute.
- 11.6. The Registrar has the sole discretion to deviate from above-mentioned billing, payment and/or allocation rules if the Platform has entered into a subscription service agreement with an Employer.

12. MEDIATION HEARING

- 12.1. Once the Parties agree in writing to utilize the Platform to mediate the dispute and after filing their respective pleadings and payment is received, the Registrar shall appoint a Mediator to assist the Parties in resolving the dispute.
- 12.2. The Registrar shall select, allocate and appoint a sole Mediator to hear all disputes referred to the Platform in terms of these Rules.
- 12.3. The Mediator shall have the discretion to conduct the mediation in such a manner as he determines.
- 12.4. Every person involved in the mediation will keep confidential all information arising out of or in connection with the mediation, including the fact and terms of any settlement, the fact that the mediation is to take place or has taken place unless disclosure is required by law to implement or to enforce terms of settlement.
- 12.5. All Parties involved in the mediation acknowledge that all such information passing between them and the Mediator, 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.

- 12.6. All Parties also acknowledge that where a Party privately discloses to the Mediator any information in confidence before, during or after the mediation, the Mediator 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.
- 12.7. All Parties also agree not to call the Mediator as a witness, nor require the Mediator to produce in evidence any records or notes relating to the mediation, in any litigation, arbitration or other formal process arising from or in connection with their dispute and the mediation, nor will the Mediator act or agree to act as a witness, expert, arbitrator or consultant in any such process.

13. APPOINTMENT OF MEDIATORS

- 13.1. For all mediation hearings the Registrar shall select, allocate and appoint a Mediator to assist the Parties in resolving the disputes referred to the Platform in terms of these Rules.
- 13.2. The Registrar shall utilize the functionality provided for by the Platform to select, allocate and appoint Mediators. Mediators aligned and registered on the Platform shall be informed in writing once a mediation hearing has been allocated to them. To access and view said disputes Mediators will log into their profiles and click on the respective case file.
- 13.3. The appointed Mediators shall the contact the Parties and proceed with the mediation process.

13.4. The Mediator registered on the Platform shall be requested to sign a declaration that they shall immediately, upon receiving and accepting an appointment to hear a specific matter from the Platform, inform the Registrar in writing if they are aware of any circumstances or might reasonably that could give rise to any justified doubts as to his independence or impartiality to act as the Mediator.

14. TERMINATION OF APPOINTED A MEDIATOR

14.1. Once a matter has been allocated to a Mediator, prior to hearing thereof, he shall in writing disclose to the Registrar any facts and circumstances which he is aware of and/or which might reasonably give rise to any doubts as to his independence or impartiality in the eyes of the Parties. Upon receipt of said notice the Registrar shall inform the Parties and appoint a new Mediator.

14.2. A Mediator shall recuse himself when, due to physical, mental, or other disability, he becomes incapable properly to perform his duties, and in circumstances which would require a judicial officer to recuse himself. If the hearing or proceedings has not commenced the Registrar will appoint a new Mediator.

14.3. The Registrar shall be entitled, after a written or oral hearing of the Parties and the Mediator, within 3 (three) working days of said appointment, to terminate the appointment of an Mediator on the grounds that he has become disqualified from acting or continuing to act in terms of these Rules, or his inability or refusal to act, or that he has failed timeously and effectively to perform any of his duties and functions as Mediator. If the hearing or proceedings has not commenced the Registrar will appoint a new Mediator.

14.4. If the hearing or proceedings has commenced and issues as set out in Clauses 14.2 and 14.3 above arise, the Registrar has the discretion, after discussions with all Parties involved, to appoint a new Mediator to proceed with the matter from the start or appoint a substitute Mediator to continue with the hearing or proceedings.

15. FEES FOR MEDIATORS

15.1. Mediators shall charge a fixed fee per dispute, as determined by the Registrar from time to time, or a negotiated fee for their services unless an agreement is reached in writing that said services will be rendered on a pro bono basis (at no cost). The nature of the dispute, as determined by the Registrar from time to time, shall determine the fee to be paid by the Applicant.

15.2. Once the Respondent has agreed that dispute be heard on the Platform, the Registrar shall issue an invoice with regards to the payment of the pre-determined fixed fee. Once the fee is paid the Registrar shall allocate and instruct the appointed Mediator to proceed with the mediation process.

15.3. Once the referred dispute is finalized, either settled or not, the Mediator shall submit his invoice for the fees agreed upon, to the office of the Registrar for payment.

16. POWERS OF MEDIATORS

16.1. The Mediator shall do all that is reasonably possible to assist the parties to settle the dispute by agreement. The Mediator shall not adjudicate the dispute, make any recommendations to and/or advise the Parties on the merits of the dispute.

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- 16.2. The Mediator shall have the discretion to conduct the mediation in such a manner as he determines.
- 16.3. The Mediator shall be responsible for the administration of the mediation including the process and conduct of the mediation, which shall be done in an expeditious and cost-effective manner.

17. RECORDING OF PROCEEDINGS

- 17.1. All proceedings relating to disputes allocated to a Mediator will be recorded and stored on the Platform.
- 17.2. Mediators shall also be responsible for keeping their own written record of proceedings they reside over. These records will be filed by the Mediator on the respective case file.
- 17.3. Mediation sessions are confidential. All recordings, transcriptions and notes will not be made available or distributed between the Parties.

18. SETTLEMENT AGREEMENTS

- 18.1. The Mediator must assist the Parties to amicably resolve the dispute. Once resolved the Mediator will then assist the Parties in drafting, finalizing and signing a Settlement Agreement.
- 18.2. If the Parties agree in writing to settle the dispute or any part thereof in a Settlement Agreement, then that Settlement Agreement shall be a final and binding settlement of the dispute or such part thereof.

19. TERMINATION OF PROCEEDINGS

- 19.1. The mediation shall terminate when the Mediator informs the Parties, in writing, that he believes that there is no reasonable prospect of settling the dispute through mediation.
- 19.2. The mediation shall terminate when the Mediator receives written notice from a Party stating that the Party withdraws from the mediation.

20. GENERAL PROVISIONS

- 20.1. Save for intentional wrongdoing, the Parties waive, to the fullest extent permitted, any claim against the Mediators and the Platform based on any act or omission in connection with the mediation process.
- 20.2. All communications to the Mediator or Registrar by one Party shall be communicated by that Party to all other Parties. Such communications shall be made at the same time, except as otherwise permitted by the Registrar if it may do so under the applicable law.
- 20.3. These Rules may at any time be amended by the Registrar. Such amendments shall be applicable to all future and current, including part-heard, mediations, from date of publication.
- 20.4. It shall be the duty of the Parties, to ascertain such amendments from the Registrar. All amendments shall be announced and posted on www.adrubuntu.co.za