



ASSOCIATION OF ARBITRATORS (SOUTHERN AFRICA) NPC

MEDIATION RULES (FEBRUARY 2023)

CONTENTS

1.	AGREEMENT	3
2.	REQUEST FOR MEDIATION	3
3.	REPRESENTATION	3
4.	APPOINTMENT OF A MEDIATOR	3
5.	MEDIATOR’S IMPARTIALITY	4
6.	DUTY TO DISCLOSE	4
7.	MEDIATOR’S POWERS AND DUTIES	4
8.	RESPONSIBILITIES OF THE PARTIES	4
9.	CONFIDENTIALITY AND WITHOUT PREJUDICE STATUS	5
10.	FEES AND EXPENSES	5
11.	TERMINATION	5
12.	SETTLEMENT	6
13.	LIMITATION OF LIABILITY	6

1. AGREEMENT

Where Parties have agreed to mediate existing or future disputes, unless agreed otherwise in writing, these procedural guidelines, as may be amended by the Parties, shall be incorporated into the agreement to mediate. If any of these Rules, as amended, conflicts with a provision of law from which the Parties cannot derogate, that provision shall prevail. The Parties designate the Association of Arbitrators (Southern Africa) NPC (“the Association”) as the administrator of their mediation.

2. REQUEST FOR MEDIATION

- 2.1. Any party to a dispute may initiate mediation by making a written request for mediation to the Association.
- 2.2. The party initiating the mediation shall simultaneously notify the other party/ies of the request.
- 2.3. The initiating party shall provide the following information to the Association and to the other party:
 - 2.3.1. A copy of the mediation provision in the contract between the Parties alternatively, if a contract does not exist, a party may invite the other Party or Parties to agree to mediation. The mediation process however cannot proceed from this point unless the other Party or Parties agree to such invitation;
 - 2.3.2. The names, email addresses, and telephone numbers of all Parties to the dispute;
 - 2.3.3. A brief statement of the nature of the dispute and the relief requested;
 - 2.3.4. The Party may request a particular Mediator on the Association’s panel or state the specific qualifications the Mediator should possess.

3. REPRESENTATION

- 3.1. The Parties may be represented.
- 3.2. However, should the Parties wish to be represented, the Parties’ representatives agree to be bound by the Rules set out herein and, wherever reference is made to the Parties themselves, this shall include their representatives.

4. APPOINTMENT OF A MEDIATOR

- 4.1. The Parties shall agree on a Mediator within five (5) business days. Should the Mediator be unable to accept the invitation to act as Mediator, the Parties may, within a further five (5) business day period, agree on another mediator.
- 4.2. If a mediator is not appointed as above then any Party may approach the Chairman of the Association to submit to each Party a list of names of potential mediators.
- 4.3. The Parties will then have a further five (5) business day period within which to agree on a mediator. Should they be unable to agree, the Association will be asked to appoint a suitable mediator.

5. MEDIATOR'S IMPARTIALITY

The Association's mediators are required to abide by its Code of Ethics, a copy of which can be found on the Association's website by clicking [here](#). Mediators are expected to be impartial and independent of the Parties and/or their representatives. Mediators are required to sign the [Declaration](#).

6. DUTY TO DISCLOSE

- 6.1. Prior to accepting an appointment, Mediators are required to make a reasonable inquiry to determine whether there are any facts that a reasonable individual would consider likely to create a potential or actual conflict of interest for the Mediator and make disclosure to the Parties of such possible conflicts.
- 6.2. The Mediator shall have a continuing obligation promptly to disclose any change of circumstance relevant to the [Declaration](#).
- 6.3. The Parties then have the discretion to reject the Mediator's appointment or waive such potential conflict and proceed with the mediation. If rejected, a new mediator will be appointed by the Chairman of the Association.
- 6.4. If any Mediator becomes unwilling or unable to serve, the Association will appoint an alternate mediator.

7. MEDIATOR'S POWERS AND DUTIES

- 7.1. The Mediator shall endeavour to assist the Parties in reaching a mutually acceptable resolution of all or part of the issues in dispute. The Mediator shall have no authority to impose a resolution of the dispute on the Parties.
- 7.2. The Mediator shall have the discretion to conduct the mediation in such a manner as s/he determines most appropriate and consistent with good faith. This may include requiring the Parties to submit initial statements regarding the dispute/s; obtaining expert advice with the agreement of the Parties; and/or making written or oral recommendations for the resolution of any issues being mediated.
- 7.3. 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. Each Party shall be treated equally and provided with a reasonable opportunity to participate in the mediation.
- 7.4. The Mediator may meet and communicate with the Parties jointly or separately. Such communication may be in person or in writing and by any appropriate means. Information received from one Party shall not be disclosed to the other Party without authorisation from the disclosing Party.

8. RESPONSIBILITIES OF THE PARTIES

The Parties shall co-operate with the Mediator and each other and shall conduct the mediation in good faith and in an expeditious and cost-effective manner.

9. CONFIDENTIALITY AND WITHOUT PREJUDICE STATUS

- 9.1. The Mediator shall endeavor to assist the Parties to settle the dispute.
- 9.2. Every person involved in the Mediation:
 - 9.2.1. Will keep confidential all information arising out of or in connection with the mediation, including the facts 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; and
 - 9.2.2. Acknowledges that all such information passing between the Parties and the Mediator is agreed to 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 dispute resolution process, except where otherwise disclosable in law.
- 9.3. The Parties will not 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 dispute resolution 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.

10. FEES AND EXPENSES

- 10.1. The applicant shall pay the Association's application/administrative fee for the appointment of a mediator. Click [here](#) to download an Application Form.
- 10.2. The Parties shall pay the Mediator's fees and administrative costs in equal proportions. All expenses of the mediation, including required travelling and other expenses or charges of the Mediator, shall be borne equally by the Parties unless they agree otherwise.
- 10.3. The expenses of participants for either side shall be paid by the Party requesting the attendance of such participants.

11. TERMINATION

- 11.1. The mediation of the dispute shall terminate when:
 - 11.1.1. The Mediator receives written notice from a Party stating that the Party withdraws from the mediation, provided that no Party shall withdraws from the mediation without first orally notifying the Mediator and giving the Mediator an opportunity to mediate on that Party's continued participation in the mediation;
 - 11.1.2. The Mediator advises Parties in writing that the Mediator believes that there are no reasonable prospects of settlement in the mediation; or
 - 11.1.3. The Parties conclude a written Settlement Agreement in respect of all disputes referred to mediation.

12. SETTLEMENT

In the event that the Parties 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, as applicable and shall be enforceable in any court having jurisdiction

13. LIMITATION OF LIABILITY

Except to the extent that any limitation of liability is prevented by law, no mediator shall be liable for any act or omission in connection with the exercise of their functions save in the case of fraudulent or wilful misconduct.