

## **A GUIDE TO ONLINE MEDIATION FOR PARTIES AND THEIR REPRESENTATIVES**

Conflicts and disputes do not end in these times of coronavirus and lockdown. Indeed, with the CCMA closed and the courts only hearing enrolled matters access to justice in the legal system will be severely curtailed and delays will set in. These statutory dispute resolution forums have not yet evolved to provide their services in a remote manner to accommodate the limitations imposed by the lockdown conditions in South Africa. This situation is not unusual at the moment in many jurisdictions around the world.

Mediation is however a flexible process and mediators are able to innovate using a variety of online platforms to continue to provide mediation services so that parties to disputes can maintain social distance and interact remotely in the safety and comfort of their homes or offices, wherever these may be.

Conflict Dynamics had extended its CD Direct mediation service from a face-to-face service to offering mediation services using Zoom, a secure online platform which has the ability to replicate the face-to-face mediation experience very effectively.

The way it works is that the mediator, who is trained to use Zoom, arranges to meet the parties via Zoom video conferencing. This is done in private meetings involving the mediator and the parties only, and also with the mediator facilitating discussions between the parties jointly with everybody able to talk to one another.

Conflict Dynamics will firstly facilitate the process of choosing the mediator, the arrangements for the mediation meetings and the signing of the Agreement to Mediate. Once this is done the mediator will take over and contact the parties to arrange the mediation meetings. After a private preparation video conference with each party, the mediation day will be arranged.

Parties will need a steady broadband connection and a PC/laptop/iPad with a camera. Enhancements include a headset with a microphone, a large screen or double monitor and a stylus to mark-up documents.

The mediator will use a secure Zoom account to video conference with the parties and will host the meeting, keeping control of the process and guiding the parties each step of the way. Parties do not need to have a Zoom account; the mediator will have this and will invite the parties to a meeting which they can join by simply clicking a link provided by the mediator.

Confidentiality is key in mediation. It is possible to maintain confidentiality in video conferencing using the breakout room facility. The mediator may choose to use a variety of channels of communication during the mediation for conversations in different formats, including WhatsApp and telephone calls. A specially prepared Agreement to Mediate that addresses questions of confidentiality and data protection is used to ensure that the parties and the mediator work within a safe and legal framework.

It is even possible to share documents remotely during the mediation using the usual method of email, but also using screen share functions that the mediator controls. The Settlement Agreement can be signed in this way with very little difficulty.

Take one look at LinkedIn or the websites of any of the major mediation provider organisations around the world such as CEDR and the International Mediation Institute and the growing use of remote or online mediation is immediately evident.

The mediator will help parties prepare for the video conference by giving tips on the use of the technology and best practice guidelines on how to come across well in a video conference considering that body language is such an important aspect of our communication especially when we communicate remotely. The mediator will also assist the parties prepare for each stage of the mediation process, including making opening statements, exploring and bargaining, and moving towards conclusion.

The experience of mediators in the UK who are now regularly using Zoom video conferencing to mediate is very positive. They say a mediation by Zoom video conference is about 95% the same as a face-to-face mediation. Perhaps this will become our 'new normal' way of mediating.

CD Direct mediators have experience of handling a variety of types of conflicts and disputes in a variety of industries both in South Africa and internationally. Many of our mediators have experience of working in complex multi-party industrial disputes, as well as high-value commercial disputes.

To discuss the appointment of a mediator, contact Craig Hulscher at [craig@conflictdynamics.co.za](mailto:craig@conflictdynamics.co.za) OR go online <https://www.conflictdynamics.co.za/Mediators>