

Sample mediation agreement

This agreement is made on _____ 200__

Between:

of

and:

of

(each a 'party' and together 'the parties')

and:

of

(the 'mediator')

and:

of

(the 'co-mediator', and together 'the mediator')

and:

of

(the 'pupil mediator', and together 'the mediator')

Recitals

- A. Disputes have arisen between the parties ('the disputes') as briefly described in schedule 1 to this agreement.
- B. The parties have requested the mediator, and the mediator has agreed, on the terms and conditions of this agreement to assist the parties to resolve, if possible, the disputes.

Agreement

Appointment of the mediator

1. The parties appoint the mediator, and the mediator accepts the appointment, to mediate the disputes ('the mediation') in accordance with the terms of this agreement.

2. The parties will share equally and will be liable together and separately to the mediator for the mediator's fees and all the other costs of the mediation, as described in schedule 2 to this agreement. The timing of payment of those fees and other costs are also set out in schedule 2 to this agreement.
3. If the mediation does not result in an agreement to resolve the disputes, the costs of the mediation, including costs of advisers retained under clauses 7 or 14, will be costs in the cause, that is, paid by the party who loses the action to the party who wins the action, if an order for costs is made in that party's favour.

Role of the mediator

4. The mediator will be neutral and impartial. The mediator will assist the parties to isolate the issues, develop and explore options for resolution of these issues and, if possible, achieve expeditious resolution of the disputes by agreement between them.
5. The mediator makes no representation that any such agreement between the parties will equate with any result which might be achieved by a contested trial of the disputes or any part of them.
6. The mediator will not make decisions for a party or impose a solution on the parties. If the parties request, and the mediator agrees, the mediator may, if the parties reach impasse, provide the parties with a non-binding recommendation based on the mediator's own knowledge of the subject matter and law.
7. The mediator will not obtain from any independent person advice or an opinion as to any aspect of the disputes, unless the parties agree in writing and then only from such person agreed by the parties. The cost of the advice or opinion will be paid in accordance with clauses 2 and 3 and schedule 2 of this agreement.
8. The mediator acknowledges that, prior to commencement of the mediation, the mediator has disclosed to the parties any prior dealings that the mediator has had with any of the parties and any interest that the mediator has in the disputes.
9. If in the course of the mediation the mediator becomes aware of any circumstances that might reasonably be considered to affect the mediator's capacity to act impartially the mediator will immediately inform the parties of those circumstances. The parties will then decide whether the mediation will continue with that mediator, or with a new mediator appointed by the parties. In the absence of agreement by the parties, the new mediator will be appointed by

[_____].

Cooperation

10. Each party must use its best endeavours to comply with reasonable requests made by the mediator to promote the efficient and expeditious resolution of the disputes. If either party does not do so, the mediator may terminate the mediation.

Authority and representation

11. In the absence of consent by the other parties and the mediator, if a party is a natural person, that party must attend the mediation. If a party is not a natural person or is not present in person, it must be represented at the mediation by a person with knowledge of the relevant issues and with authority to settle within any range that can reasonably be anticipated and to make agreements binding on that party in settling the disputes.

12. Without limiting the responsibility of the parties under clause 11, if any party has any limitation on their authority to settle, this must be disclosed to the mediator before the commencement of the mediation.
13. Each party may have one or more persons, including legally qualified persons, to assist and advise them at the mediation.

Conduct of the mediation

14. The mediation, including all preliminary steps, shall be conducted in such manner as the mediator considers appropriate having due regard to the nature and circumstances of the disputes, the agreed goal of an efficient and expeditious resolution of the disputes and the view of each party as to the conduct of the mediation.
15. Without limiting the mediator's powers under clause 14, the mediator may give directions as to:
 - (a) the exchange of brief written outlines of the issues raised by the disputes and a supporting bundle of documents which are relevant to those issues
 - (b) providing the mediator prior to the mediation with any such outlines and documents, and any further information or documents that the mediator may request following perusal of the outlines and supporting documents and
 - (c) preliminary conferences, by phone or meeting, prior to the mediation

Communication between the mediator and a party

16. The mediator may meet as frequently as the mediator deems appropriate with the parties together or with a party alone.
17. The mediator may communicate with a party or the parties orally and/or in writing.
18. Except as the parties may otherwise agree in writing, anything said or done by any person at the mediation is said or done without prejudice and no party shall be entitled to call evidence of anything said or done by any person at the mediation.

Confidential information

19. Information, whether oral or written, disclosed to the mediator in private will be treated as confidential by the mediator unless:
 - (a) the party making the disclosure states otherwise
 - (b) the law imposes an obligation of disclosure, or
 - (c) the mediator believes believe that the life or safety of any person is or may be at serious risk
20. The parties and the mediator agree in relation to all confidential information disclosed to them during the mediation, including the preliminary steps:
 - (a) to keep that information confidential
 - (b) not to disclose that information except to a party or a representative of that party participating in the mediation or if compelled by law to do so, and

- (c) not to use that information for a purpose other than the mediation

Each representative in signing this agreement is deemed to be agreeing to this provision on behalf of the party he/she represents and all other persons present on behalf of that party at the mediation.

Privilege

21. The parties and the mediator agree that, subject to clause 31, all documents or statements produced, used or made in the mediation, not otherwise available or known or subject to other obligations of discovery, will be privileged and will not be disclosed in or relied upon or be the subject of a summons to give evidence or to produce documents in any arbitral or judicial proceeding in respect of the disputes.

Subsequent proceedings

22. The mediator will not accept an appointment in relation to any arbitral or judicial proceeding relating to the disputes or any of them.
23. No party will take action to cause the mediator to breach clause 22.
24. No party will summons the mediator to give evidence or to produce documents in any arbitral or judicial proceeding in respect of the disputes.

Termination

25. If a party does not wish to continue the mediation, the mediator must terminate the mediation in so far as it relates to that party and may terminate the mediation as regards all the parties.
26. The mediator may terminate the mediation if:
- (a) after consultation with the parties, the mediator feels unable to assist the parties to achieve resolution of the disputes
 - (b) the mediator receives, from a source outside the mediation, confidential information relevant to the disputes or any party
 - (c) the mediator receives confidential information relevant to a client during the mediation
 - (d) the mediator considers it appropriate for any other reason, which the mediator may decline to give to the parties
27. The mediation will be terminated upon execution of a settlement agreement in respect of the disputes.
28. Termination of the mediation does not terminate the operation of clauses 18–33.

Settlement

29. Unless otherwise agreed by the parties, a settlement reached at the mediation will need to be written down and signed by the parties or their representatives in order to be binding on the parties. If the mediation has been ordered by a court the parties will advise the court of the outcome of the mediation if required by the court rules to do so.

Enforcement

30. In the event that one or more of the disputes is or are settled, as the case may be, either party may:
- (a) enforce the terms of the settlement agreement by judicial proceedings, and
 - (b) in such proceedings adduce evidence of and incidental to the settlement agreement (other than matters which are privileged by reason of clauses 18–20)

Indemnity and exclusion of liability

31. The mediator will not be liable to a party, except in the case of fraud by the mediator, for any act or omission (whether negligent or misleading or otherwise) in the performance or purported performance of the mediator's obligations under this agreement.
32. The parties together and separately indemnify the mediator against all claims, except in the case of fraud by the mediator, arising out of or in any way connected with any act or omission by the mediator in the performance or purported performance of the mediator's obligations under this agreement.

Governing law and jurisdiction

33. This agreement is governed by, and is construed and takes effect in accordance with, English law. Unless otherwise specified in any settlement agreement, the courts of England will have exclusive jurisdiction to settle any claim, dispute or matter of difference that may arise out of or in connection with the mediation.

Schedule 1 – Description of the disputes

(Insert brief description of the disputes)

Schedule 1 – Costs of the mediation

Item	Amount payable	When payable
Mediator fees		
(a) for preparation time	£ _____ for up to five hours £ _____ per hour for any extra preparation time required	Preparation time payable prior to commencement of the mediation
(b) for mediation time	£ _____ for the first day of mediation £ _____ for each additional day of mediation	Cost of first day of mediation payable prior to commencement of the mediation The cost for any additional days of mediation will be invoiced after the mediation and will be payable within 14 days of the date of the invoice
Mediator expenses		
Eg – travel, hotel, postage, copying	At cost	Within 14 days of the date of the invoice
Venue for mediation	At cost	As agreed with the venue administrator
Advice/opinion pursuant to clause 7	At cost	As agreed with adviser

Signed:

On behalf of [party]

Print name

On behalf of [party]

Print name

**On behalf of [mediator]
[co-mediator]
[pupil mediator]**

Print name