

# Mediation Agreement

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**This agreement** is made on the xx day of xx 20xx

Between:

(1) party

of address

[represented by solicitor ]

and:

(2) party

of address

[represented by solicitor ]

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

and:

(3) mediator

of address

(the 'mediator')

and:

(4) Kearns Legal Services Limited

Of Brecon House, 3 Caerphilly Business Park, Caerphilly CF83 3GQ ('Kearns')

[and: xx

of xx

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

and: xx

of xx

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

## Recitals

- A. The parties and the Mediator, agree that Kearns shall administer the mediation and that the mediation shall be conducted on the following terms and conditions:
- B. Disputes have arisen between the parties ('the disputes') as briefly described in schedule 1 to this agreement.
- C. 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 acknowledge that the mediator is independent and neutral, is not an agent or employee of Kearns and that the mediator is not appointed to give legal advice.

### Fees

3. The parties will share equally and will be liable together and separately to Kearns for the mediation 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.
4. VAT is payable on all fees and charges at the prevailing rate from time to time.
5. In the event of late payment of any sum, interest shall accrue on the said sum at the rate of 4% above Barclays Bank base rate from time to time.
6. Additional charges shall be payable by the parties in respect of:
  - (a) overtime beyond the agreed times set out in schedule 2 of this agreement plus any extraordinary travel or accommodation expenses of the mediator which may be incurred due to the over-running of the mediation.
  - (b) additional preparation time by the mediator occasioned by cancellation or adjournment by a party.
  - (c) any agreed expenses of the mediator.
  - (d) any incidental expenses relating to the mediation, including venue hire, catering and any other disbursements validly incurred by Kearns, to the base cost of which Kearns shall be entitled to add a handling fee of 20% plus VAT.
  - (e) any costs of enforcement of the fees payable pursuant to this agreement.

## Cancelling and re-scheduling

7. In the event of cancellation of the mediation, for any reason whatsoever, the parties and the mediator agree that there shall be a cancellation fee payable as follows:
  - (a) 14 days or more prior to the mediation date – administration fee
  - (b) 7-13 days prior to the mediation date, administration fee plus 50% of mediator's fees;
  - (c) less than 7 days' prior to the mediation date – administration fee plus 100% of mediator's fees; and
  - (d) in any event, 100% of any incidental expenses incurred by Kearns pursuant to 6(d) above.
8. In the event of re-scheduling of the mediation, for any reason whatsoever, the parties and the mediator agree that there shall be re-scheduling fees as follows:
  - (a) 14 days or more prior to the mediation date – administration fee plus 25% of mediator's fees;
  - (b) less than 14 days' prior to the mediation date – administration fee plus 50% of mediator's fees; and
  - (c) in any event, 100% of any incidental expenses incurred by Kearns pursuant to 6(d) above.

## Role of the mediator

9. The parties acknowledge that the mediator is not an agent or employee of Kearns and that the mediator does not give legal advice.
10. 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. The mediator will not act as judge or arbitrator in respect of the disputes.
11. 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.
12. The mediator will not make decisions for a party or impose a solution on the parties.
13. 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.
14. 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.

## Cooperation

15. 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

16. 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.
17. 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.
18. Each party may have one or more persons, including legally qualified persons, to assist and advise them at the mediation.

## Conduct of the mediation

19. 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.
20. Without limiting the mediator's powers under clause 19, 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

21. Prior to the mediation, the mediator may, if the mediator considers it appropriate and/or necessary, communicate with a party or the parties orally and/or in writing.
22. 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

23. 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 that the life or safety of any person is or may be at serious risk .
24. 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

25. The parties and the mediator agree that, subject to clause 30, 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

26. The mediator will not accept an appointment in relation to any arbitral or judicial proceeding relating to the disputes or any of them.
27. No party will take action to cause the mediator to breach clause 28.
28. 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

29. 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.
30. 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.
31. The mediation will be terminated upon execution of a settlement agreement in respect of the disputes.
32. Termination of the mediation does not terminate the obligations of the parties pursuant to the terms of this agreement.

### Indemnity and exclusion of liability

33. 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.
34. 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

35. 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 and Wales 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 2 – costs of mediation	Amount Payable	When payable
Mediator's fees (for 7 hour mediation plus travel and 4 hours' preparation)	£xxx	[insert date 14 days' prior to mediation)
Overtime (for any work required beyond 7 hours or for additional preparation)	£ xx per hour	Within 14 days of invoice
Venue hire	£xxx	[insert dated 14 days' prior to mediation]
Catering	£xxx	TBA