

## MEDIATION AGREEMENT

### Parties

**EMPLOYER:** [Name]

**AND**

**EMPLOYEE:** [Name]

### Mediation Process

1. Mediation is a process in which the mediator, who is an independent and neutral third party, assists the parties to a dispute to explore the issues relating to the dispute and options for the resolution of the dispute (“the Dispute”).
2. This agreement governs the conduct of the mediation.

### Role of Mediator

3. The mediator will be independent, neutral and impartial.
4. The mediator will attempt to assist the parties to resolve the Dispute and may do this by assisting them to:
  - 4.1 identify the issues in dispute;
  - 4.2 develop alternatives and options for the resolution of the Dispute;
  - 4.3 explore the usefulness of each alternative; and
  - 4.4 seek to achieve a resolution that is acceptable to the parties and which meets their interests and needs.
5. The mediator will **not**:
  - 5.1 make any decisions for the parties;
  - 5.2 impose an outcome or solution on the parties; or
  - 5.3 give legal or other professional advice to any of the parties.
6. The mediator can meet with the parties jointly and/or separately, as the mediator determines.

#### LAWYERS

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*Any problem can be resolved*

### **Conflicts of Interest**

7. The mediator must, before the commencement of the mediation, disclose to the parties, to the best of the mediator's knowledge, any prior dealings with any of the parties as well as disclose any interest in the Dispute.
8. If, during 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 must inform the parties of those circumstances. The parties will then decide whether or not the mediation should continue.

### **Commitment to Process**

9. Each party agrees to take part in the mediation in good faith and use their best endeavours to resolve the dispute.
10. Each party will comply with reasonable requests and directions of the mediator in relation to the conduct of the mediation.

### **Pre-Mediation Meeting**

11. Prior to the mediation, the mediator may conduct a pre-mediation meeting (which may be held by telephone) with the parties and/or their legal representatives in order to discuss and agree on the following matters:
  - 11.1 time and venue for the mediation;
  - 11.2 exchange and/or presentation of any documents;
  - 11.3 briefing of the issues;
  - 11.4 confidential statements to the mediator including, if desired, suggested settlement proposals;
  - 11.5 attendees at mediation, including parties, representatives, legal representatives, support persons; and
  - 11.6 any other necessary matters.
12. Unless the parties and the mediator agree otherwise, the parties and their representatives who are to attend the mediation are expected to attend the pre-mediation meeting.

### **Non-Parties present at Mediation**

13. Each party can, with the consent of the mediator, attend the mediation with one or more persons to assist or advise the parties.
14. All non-parties present at the mediation will sign an appropriate confidentiality agreement in **schedule 1**.

### **Authority to Settle at the Mediation**

15. Each party must have in attendance at the mediation a person or persons who will have ultimate authority to settle the Dispute.

16. If that is not reasonably practical, the mediator and other parties are to be notified prior to the mediation and each party must then have in attendance at the mediation a person with sufficient authority to recommend to the ultimate decision maker whether or not and in what manner to settle the Dispute, and whose recommendation is likely to be accepted.

### **Confidentiality of the Mediation**

17. Mediation is a confidential process. This means that all statements and comments made during the mediation, including those made in preparation for the mediation, will remain private and confidential to the parties and mediator, unless disclosure is required by law or agreed between the parties.
18. All communication made as part of the mediation shall be regarded as privileged and without prejudice, unless the parties agree otherwise.
19. Following the mediation, the parties will not seek in any way to have the mediator comment on or give evidence in any possible ensuing proceedings as to what may have occurred within the mediation. Any information disclosed during the mediation process by a party (or that party's representative) in private will be treated by the mediator as confidential, unless the party making the disclosure states otherwise.

### **Termination**

20. A party may terminate its involvement in the mediation at any time, but only after consultation with the mediator.
21. The mediator may suspend or terminate the mediation if she forms the view that mediation is no longer suitable or productive.
22. If the mediator believes she should suspend or terminate the mediation, she will advise of her intention to suspend or terminate the mediation.
23. If the mediator determines that termination is necessary or appropriate, the mediator where appropriate, will encourage the participants to consider alternative procedures for achieving resolution.

### **Records of Settlement**

24. If the parties agree to resolve the Dispute, for there to be a binding settlement a written agreement must be signed by or on behalf of the parties, before they leave the mediation.
25. Parties may wish to consider having a mediator from Mediation Services certify the settlement agreement under section 149 of the Employment Relations Act 2000 for the purposes of enforcement in the employment jurisdiction.

### **Exclusion of Liability and Indemnity**

26. The parties agree that the mediator will not be liable to any party for any act or omission in the performance of the mediator's duties and obligations under this agreement, unless the act or omission is fraudulent.
27. The parties, together and separately, indemnify the mediator against any claim for any act or omission in the performance of the mediator's duties under this agreement, unless the act or omission is fraudulent.

**Costs**

28. The Employer will pay the mediator’s fees in accordance with the terms and conditions in the letter of engagement.

.....  
Signature on behalf of Employer      Signature for Employee

.....  
Date      Date

.....  
Name (please print)      Name (please print)

.....  
Signed by the mediator, Sarah Cates

**SCHEDULE 1 - CONFIDENTIALITY AGREEMENT TO BE SIGNED BY NON-PARTIES ATTENDING THE MEDIATION (INCLUDING REPRESENTATIVES]**

As the condition of my being present or participating in this mediation, I agree that I will, unless otherwise compelled by law, preserve total confidentiality in relation to the mediation and in relation to any exchanges that may come to my knowledge, whether oral or documentary, concerning the dispute between any of the parties and the mediator or between any two or more of the parties during the course of the mediation.

This agreement does not restrict my freedom to disclose and discuss the mediation within the organisation and the legitimate field of intimacy of the party on whose behalf or at whose request I am present at the mediation, including the advisers and insurers of that party provided that any such disclosures and discussions will only be on this same basis of confidentiality.

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