



Agreement to Mediate

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Mediation

Mediation is a process that involves a structured discussion between two or more parties with the assistance of a neutral third party – the mediator. The process is designed to create a safe environment for parties to discuss their concerns and to identify their options. Mediation is not about deciding who is right or wrong or about apportioning blame. It is about thinking about your needs and interests, as well as those of the other party to attempt to increase understanding and reach agreements.

The Process

Each party attends a confidential pre-mediation interview, usually of about one hour in which the mediator will explain the process, get an understanding of the person's issues, check that the person has the capacity to communicate and negotiate within the mediation setting, and discuss logistics such as a suitable time and date.

The joint mediation session is a meeting which all parties attend with the mediator. Parties will be asked to sign an 'Agreement to Mediate' document. The structure of the session is:

- Parties' opening statements – describing very briefly the issues as you see them which you would like to address in the mediation session(s).
- A summary back from the mediator and the setting of agreed topics for discussion.
- A facilitated discussion of the issues.
- Options and agreements negotiated between the parties.
- Brief and separate private session for each party with the mediator (as needed).
- Writing up a mediation agreement.

The Role of the Mediator

The mediator will assist to identify issues; facilitate discussion between the parties about the issues; assist the parties to explore the usefulness and feasibility of possible outcomes; and act as a 'scribe' in the forming and writing up of agreements. In conducting the process the mediator is neutral and impartial.

The mediator will not:

- give legal, professional or any other form of advice to any party
- impose an outcome on any party
- make any decision for any party.

The mediator can meet with the parties jointly or separately, as is deemed necessary by the mediator.

Confidentiality

Mediation is confidential, as far as the law allows. The mediator will not voluntarily disclose to anyone outside mediation anything said in the mediation, unless specifically authorised by the parties or unless compelled by law to do so. Equally, the parties must agree not to disclose anything that is said in the mediation session(s).

Voluntariness

The process is voluntary and the parties and the mediator have the right to withdraw at any time. The mediator requires that parties speak to the mediator if they wish to withdraw from the process.

Authority to settle

Each party is asked to attend the mediation with full authority to reach agreement. If any one party has a need to check with anyone else before agreement can be reached, this should be discussed with the mediator and the other party before the mediation commences. There is opportunity for parties to contact the necessary people before any agreements are signed, if they so desire.

Agreement to Mediate

An 'Agreement to Mediate' is signed before commencement of the mediation. This Agreement is provided at the pre-mediation interview, and should be read prior to the mediation session. It is signed between the mediator and the parties at the commencement of the mediation.

Guidelines for the conduct of the mediation

The simple guideline is that each party participating in mediation will be given an opportunity to speak and to be heard. The mediator will speak to the parties before commencement of the mediation about this guideline and about any other guidelines that will be appropriate.

Agreements reached in mediation

Agreements reached in mediation are as binding as the parties wish them to be. They are not legally binding, but are made in good faith for the resolution of the issue(s). Parties can document their agreements by signing off on written statements.

Indemnity and Exclusion of Liability

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 obligation under this agreement, unless the act or omission is fraudulent.



Mediation Acknowledgement and Undertaking

and

(name of party) (name of party)

and

(name of party) (name of party)

and

(name of mediator) on

(date)

have entered into an Agreement to Mediate in accordance with which the mediator will conduct a mediation.

1. The undersigned acknowledge by their signatures that they attend the mediation on the basis of their agreement to the terms of this document.
2. Each of the undersigned undertakes to the parties and mediator:
 - (a) to keep confidential all information disclosed during the mediation;
 - (b) not to act contrary to the undertaking in relation to the confidentiality unless compelled by law to do so or with the consent of the party who disclosed the confidential information;
 - (c) not to use confidential information for a purpose other than the mediation.
3. Each of the undersigned undertakes to the parties and the mediator that the following will be privileged and will not be disclosed in or relied upon or be the subject of any subpoena to give evidence or to produce documents in any arbitral or judicial proceedings between the parties to the mediation:
 - (a) any settlement proposal;
 - (b) the willingness of a party to consider any such proposal;
 - (c) any admission or concession made by a party;
 - (d) any statement or document made by the mediator.

Signature of party Date

Signature of party Date

Signature of party Date

Signature of party Date

Signature of mediator Date