

# **Model Mediation Agreement**

**Mediation service for the resolution of disputes  
arising from claims for legal costs**

**National Health Service (NHS) Mediation**

**July 2023**

# Mediation Agreement National Health Service (NHS) Mediation

**THIS AGREEMENT** dated \_\_\_\_\_ **IS MADE BETWEEN**

**Party A**

Claimant Name Data \_\_\_\_\_ of Claimant Address Data \_\_\_\_\_

**Party B**

Defendant Name Data \_\_\_\_\_ of Defendant Address Data \_\_\_\_\_

(together referred to as “**the Parties**”)

**The Mediator**

Mediator Name Data \_\_\_\_\_ of Mediator Address Data \_\_\_\_\_

(a term which includes any agreed **Assistant Mediator**)

**and**

(The Mediation Service Provider)

in relation to a mediation to be held

on Data Data \_\_\_\_\_

Online Platform Data \_\_\_\_\_

Data Venue \_\_\_\_\_

(“**the Mediation**”)

IT IS AGREED by those signing this Agreement THAT:

**The Mediation**

1. The Parties agree to attempt in good faith to settle their dispute at the Mediation and to conduct the Mediation in accordance with this Agreement and consistent with the Mediation Procedure for the National Health Service and the Civil Mediation Code of Conduct for Mediators current at the date of this Agreement.
2. The Mediation may take place in person, remotely using telephone or video conferencing technology, or any combination of the aforementioned as agreed by the Parties and the Mediator.

### **Online/Remote Mediations**

3. Where all or part of the mediation takes place online:
  - 3.1. the use of the Communications Service Provider will be governed by the terms and conditions of that platform.
  - 3.2. Each Party will ensure that the mediator is provided in advance of the date of the Mediation with:
    - 3.2.1. the name each attendee which will display on the device used to connect to the platform;
    - 3.2.2. a contact telephone number and a contact email address.

### **Authority and status**

4. The person signing this Agreement on behalf of each Party warrants having authority to bind that Party and all other persons present on that Party's behalf at the Mediation to observe the terms of this Agreement, and also having authority to bind that Party to the terms of any settlement.
5. Neither the Mediator nor [mediation supplier organisation] shall be liable to the Parties for any act or omission in relation to the Mediation unless the act or omission is proved to have been fraudulent or involved wilful misconduct.

### **Confidentiality and without prejudice status**

6. Every person involved in the Mediation:
  - 6.1. will keep confidential all information arising out of or in connection with the Mediation, but not including:
    - 6.1.1. the fact that the Mediation is to take place or has taken place;
    - 6.1.2. the fact or terms of settlement unless otherwise agreed by the parties;
    - 6.1.3. where disclosure is required by law to implement or to enforce terms of settlement;
    - 6.1.4. to notify their member organisation or the Department of Health.
  - 6.2. acknowledges that all such information passing between the Parties, the Mediator and/or [mediation supplier organisation] however communicated, is agreed to be without prejudice to any Party's legal position and may not be produced as evidence or disclosed to any judge, arbitrator or other decision-maker in any legal or other

formal process, except where otherwise disclosable in law.

- 6.3. will not make any attempt to, or make any audio or video recording of any part of the Mediation;
  - 6.4. will ensure that where the Mediation or a portion thereof is taking place using video conferencing software or other remote means of communication, the only person(s) present in the room where the computer, phone or other communication device is located will be those persons notified in writing as attending to the Mediator and any and all other Party or Parties; and
  - 6.5. will only share the Communications Service Provider call details including any links or passwords with the Mediator, the Parties and the Parties' legal representatives. Any non-parties who wish to join the mediation must be identified in advance, it must be agreed by both Parties that they can attend and they must sign the schedule to the Mediation Agreement for non-parties so that they are bound by the confidentiality of the process.
7. Where a Party privately discloses to the Mediator any information in confidence before, during or after the Mediation, the Mediator will not disclose that information to any other Party or person without the consent of the Party disclosing it, unless required by law to make disclosure.
  8. The Parties will not call the Mediator or any employee or consultant of [mediation supplier organisation] as a witness, nor require them to produce in evidence any records or notes relating to the Mediation, in any litigation, arbitration or other formal process arising from or in connection with their dispute and the Mediation; nor will the Mediator nor any [mediation supplier organisation] employee or consultant act or agree to act as a witness, expert, arbitrator or consultant in any such process. If any Party does make such an application, that Party will fully indemnify the Mediator or the employee or consultant of [mediation supplier organisation] in respect of any costs any of them incur in resisting and/or responding to such an application, including reimbursement at the Mediator's standard hourly rate for the Mediator's time spent in resisting and/or responding to such application.

### **Settlement formalities**

9. No terms of settlement reached at the Mediation will be legally binding until set out in writing and signed by or on behalf of each of the Parties.

### **Fees and costs of the Mediation**

9 NHS Resolution will be responsible for the fees and expenses of [name of mediation supplier] and the Mediator (“the Mediation Fees”) including any provision for additional hours if the mediation process extends beyond the allocated hours. Each party, however, will bear its own legal and other costs and expenses of preparing for and attending the Mediation (“each Party's Legal Costs”) prior to the Mediation.

10. The fee for the allocated hours will include the review of all reasonable documentation provided in advance of the Mediation, reasonable administration and set-up of the video conference(s), the first thirty (30) minutes of any initial phone or video call with each of the Parties or their representatives and attendance on the scheduled Mediation Day.
11. In the event that the Mediation date is vacated at any Party's request then the following fees apply:
  - 11.1. in the event notice is provided 5 or more Working Days prior to the Mediation and at least one of the pre-Mediation calls has taken place then 30% of the total Mediation fee is payable.
  - 11.2. in the event notice is provided 2 or more, but less than 5 Working Days prior to the Mediation then 50% of the total Mediation fee is payable.
  - 11.3. in the event notice is provided less than 2 Working days prior to the Mediation then 100% of the total Mediation fee is payable.
12. Each Party further agrees that the Mediation Fees and each Party's Legal Costs relating to the Mediation should not be treated as costs in the case by any court or tribunal in the case where that court or tribunal has power to assess or make orders as to costs, whether or not the Mediation results in settlement of their dispute.

#### **Legal status and effect of the Mediation**

13. This Agreement is governed by the law of England and Wales and the courts of England and Wales shall have exclusive jurisdiction to decide any matters arising out of or in connection with this Agreement and the Mediation.
14. The referral of the dispute to the Mediation does not affect any rights that exist under Article 6 of the European Convention of Human Rights, and if their dispute does not settle through the Mediation, the Parties' right to a fair trial remains unaffected.
15. This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one contract.

#### **Signed**

for and on behalf of Party A

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for and on behalf of Party B

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Mediator

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**DETAILS OF PERSONS ATTENDING THE MEDIATION OTHER THAN THE PARTIES and  
CONFIDENTIALITY AGREEMENT**

The Mediation Agreement between the Parties includes an agreement that the mediation and all discussions and documents relating to the mediation are private and confidential. Anyone attending this mediation is required to enter into an agreement that matters relating to the mediation will remain confidential. Accordingly, anyone attending the Mediation who is not a Party or a legal representative of a Party is required to enter into the following agreement

**I the undersigned, in consideration of my having been given permission by the Parties or their Representatives to attend the mediation referred to in this document, hereby agree that I will not refer to anything that I hear, see, or learn at this mediation at any time or in any place and that I will keep confidential everything that takes place during the mediation and shall not give evidence about nor discuss the same.**

Name	Address	Signed

Date:	Date Data
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