

**Mediation Agreement[[1]](#footnote-1)**

**Between:**

1. [name and address of first party]
2. [names and addresses of subsequent parties]

(the “Parties” and each “Party”)

and [name of mediator] of Keating Chambers, 15 Essex Street, London, WC2R 3AA (the “Mediator”)

**A dispute has arisen between the Parties and they have agreed to attempt to resolve it by mediation (the “Mediation”).** The dispute concerns [brief details of dispute].

The Mediation will take place at [time] on [date] at [place].

**The persons attending on behalf of each Party will be as follows:**

[First party]:

[list attendees]

[subsequent parties]:

[list attendees]

**By signing this Mediation Agreement each Party agrees to be bound by the terms of this Mediation Agreement and that all those attending the Mediation on its behalf will be similarly bound.**

**Terms of the Mediation Agreement**

1. It is essential that each Party is able to agree a settlement at the Mediation. This means that each Party needs to have present at the Mediation someone with full authority to settle the dispute without the need to consult anyone not present. If this presents any difficulty for a Party the Mediator must be informed at the earliest opportunity, and before the day of the Mediation. If a Party needs to consult with persons who will not be at the Mediation, they will ensure that they are able to communicate with those persons throughout the duration of the Mediation.
2. The Mediation is confidential between the Parties. Each Party and everyone attending the Mediation will keep confidential all information, correspondence and documents arising out of or in connection with the Mediation provided that it shall not be a breach of this clause:
   1. to make any disclosure required by law;
   2. to disclose any information for the purpose of notifying brokers and insurers and in relation to any associated processes;
   3. to make any necessary disclosure to accountants or auditors; or
   4. to make such disclosure as is necessary for the purpose of enforcing any settlement agreed as part of the Mediation.

Each attendee at the Mediation shall sign the confidentiality form annexed to this Mediation Agreement prior to their participation at the Mediation.

1. Except for information which would have been admissible or disclosable in proceedings if the Mediation had not taken place, all information and communications (whether oral, in writing or otherwise) made in, or in connection with, the Mediation will be without prejudice, privileged and not admissible as evidence or disclosable in any current or subsequent litigation or other proceedings.[[2]](#footnote-2)
2. Any settlement agreed at or as a result of the Mediation shall not be valid or enforceable until reduced to writing and signed by or on behalf of the Parties.[[3]](#footnote-3)
3. The Mediation will terminate upon settlement being concluded, the Mediator retiring from the Mediation, or one of the Parties withdrawing (save that, where there are more than two parties, they may agree that the Mediation will continue as between them until terminated). For the avoidance of doubt, clauses 2, 3 and 4 above apply to all communications and negotiations conducted with, through and with the assistance of the Mediator after the day of the Mediation.
4. By signing this Mediation Agreement each Party agrees to the Mediator’s agreed terms and conditions which include the fees payable to the Mediator.
5. Each Party agrees in the first instance to share the Mediator’s fees and expenses equally and to bear its own costs and expenses of preparing for and attending the Mediation. Notwithstanding this agreement, each Party further agrees that if the dispute is not settled but proceeds to be resolved in litigation or arbitration, the court or tribunal may treat the Mediator’s fees and expenses and any legal costs incurred by the Parties in connection with the Mediation as costs in the case.
6. The Mediator is acting as an independent contractor and is not an agent of Keating Chambers. He/she is not the agent of any of the Parties, nor is he/she acting for them in any capacity. He/she cannot be called as a witness in any proceedings related to the dispute which is the subject of the Mediation, and he/she agrees that he/she will not at any time act for any of the Parties individually in connection with that dispute.
7. The referral of the dispute to mediation does not affect any of the Parties’ rights under Article 6 of the European Convention on Human Rights. If the dispute is not settled by the Mediation, the Parties' rights to a fair trial remain unaffected.
8. This Mediation Agreement is subject to English law. In the event of any dispute relating to the interpretation, meaning, effect or enforcement of any settlement reached during the Mediation, the Parties will attempt to settle that dispute by mediation, failing which the courts of England shall have exclusive jurisdiction to settle any claim, dispute or matter of difference which may arise out of, or in connection with, the Mediation.
9. The footnotes to this document do not form part of this Mediation Agreement.

**Signed:**

…………………………………………………………. [name] on behalf of the [first party]

…………………………………………………………. [name] on behalf of the [subsequent parties]

…………………………………………………………. [Mediator]

Dated ……………………………………………………

**CONFIDENTIALITY ANNEXURE**

By signing this form each of the persons below agrees that in consideration of being permitted to attend the Mediation they will be personally bound by the without prejudice nature of the Mediation and the confidentiality provisions of the Mediation Agreement.

Party Name Signature

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1. This form is provided without responsibility, for use or adaptation by the Parties. The Parties must satisfy themselves as to the form and terms of the Mediation Agreement. [↑](#footnote-ref-1)
2. The Parties’ attention is drawn to Brown v Rice [2007] EWHC 625 in which it was held that the without prejudice rule does not apply where the court is considering whether a without prejudice communication has resulted in a settlement. Circumstances may therefore arise in which some communications during the Mediation cannot be fully protected. See also Farm Assist v Secretary of State [2009] EWHC 1102 and Ferster v Ferster & Ors [2016] EWCA Civ 717 [↑](#footnote-ref-2)
3. Notwithstanding this term, it should be noted that Brown v Rice contemplated the possibility that such a requirement might be varied or waived. The Parties should be aware of this possibility. [↑](#footnote-ref-3)