

Mediation agreement

Between:

Party 1

Represented by:

Party 2

Represented by:

("The parties")

A dispute has arisen between the parties and they have agreed to attempt to resolve the dispute by way of mediation. The dispute concerns [Brief description]

The mediation will take place on: OR The mediation shall be conducted by online virtual conference on:

Date:

Commencing at:

Venue:

By signing this agreement each party agrees to be bound by the terms and conditions of this agreement and that all those attending the mediation on its behalf will be similarly bound.

Terms and conditions of the 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 and each party to the mediation and everyone attending the mediation will be bound to keep that confidentiality. Each attendee at the mediation shall sign a confidentiality form in the form annexed to this agreement prior to their participation at the mediation.
3. 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.
4. 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.

5. The Parties agree to appoint Gary Pettit of PBC Business Recovery and Insolvency, 9/10 Scirocco Close, Moulton Park, Northampton, NN3 6EP as the Mediator (“The Mediator”).
6. The Mediator is acting as an independent contractor and is not an agent of PBC Business Recovery and Insolvency. He is not an agent of any of the Parties, nor is he acting for them in any capacity. He cannot be called as a witness in any proceedings related to the dispute which is subject of mediation and he agrees that he 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’ legal rights. If the dispute is not settled by the mediation, the Parties are at liberty to commence, or continue, with court intervention. However, the Parties acknowledge reference to the mediation may be made when the court are considering the awarding of costs.
8. This 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.

Role of the mediator

9. The Mediator is not an advisor for either party but a neutral facilitator assisting the parties in reaching a negotiated settlement.

In this respect, the Mediator will follow the process of mediation, including:

- the provision of all relevant information required for pre-submission.
- Unless otherwise arranged, secure an appropriate venue for the mediation or, where the mediation is to be conducted online, the Mediator will arrange the Zoom meeting facility.
- Telephone the representative of each Party to discuss how the mediation will be conducted. This will only be done once both parties have signed the mediation agreement and fulfilled their engagement requirements.
- Telephone the representatives immediately prior to the date of mediation to ensure everything is in readiness for the mediation to take place.
- Assist the Parties in drafting the settlement agreement or, where appropriate, the tomlin order.
- All other reasonable matters requiring my assistance to ensure the efficiency of mediation process and any resulting settlement.

The obligations of the Parties

10. The obligations of each party are provided in this agreement and all accompanying documents relating to the mediation. To this end, the following points are brought to the attention of each party and their representatives:

- a) The Parties shall sign and return one copy of this agreement to the Mediator.
- b) Each party shall pay their proportion of the mediation costs prior to steps being taken to convene the mediation meeting.
- c) Each party shall pay their allocation of subsequent mediation costs incurred under the terms of this engagement.
- d) The Parties shall provide copies of all documentation they intend to rely upon in the mediation.

Mediation Fees & expenses

- 11. The Parties acknowledge receipt of a copy of the mediation fee rates and expenses policy and agree with those terms.
- 12. The fee for this mediation is £3,000 plus VAT and expenses (to be confirmed).
- 13. Unless otherwise agreed, each party shall pay one-half of the agreed fees and expenses by electronic transfer to:

Bank:	Lloyds Bank Plc
Branch:	Northampton
Sort code:	30-96-09
Account number:	57519868
Account name:	PBC Business Recovery & Insolvency Ltd
- 14. A receipted invoice shall be sent to each party upon the Mediator receiving cleared funds.
- 15. Any additional costs will be paid by the Parties upon receipt of an invoice that will be raised in respect of those agreed additional costs.
- 16. Expenses are calculated in accordance with the fee policy and shall be payable upon receipt of an appropriate invoice rendered by this office.

Termination of instructions

- 17. In the event of the termination of my instructions for any reason I shall be entitled to be paid on a quantum meruit basis for any services already provided and any fees and expenses properly incurred by me in connection with this engagement notwithstanding that the purpose of the engagement may not have been achieved.

Complaints

- 18. At PBC Business Recovery and Insolvency we always strive to provide a professional and efficient service, however we recognise that it is in the nature mediation proceedings for disputes to arise from time to time. If you should have cause to complain about the way that we are acting, you should, in the first instance, put details of your complaint in writing to our complaints officer, Mr Nicholas Bonser, Suite 9/10 Scirocco Close, Moulton Park, Northampton, NN3 6AP. This will formally invoke our complaints procedure and we will endeavor to

deal with your complaint under the supervision of a senior partner unconnected with the appointment.

Miscellaneous

19. In order to comply with the Provision of Services Regulations 2009, the practice's professional indemnity insurance is provided by Bluefin Professions, Castlemead, Lower Castle Street, Bristol, BS1 3AG. This professional indemnity insurance provides worldwide coverage, excluding professional business carried out from an office in the United States of America or Canada, and any action for a claim brought in any court in the United States of America or Canada.
20. This letter, together with the enclosed terms and conditions, comprise the terms of engagement on which PBC will act for the mediation and I should be grateful if a representative will sign and return the enclosed copy of this letter as confirmation that you understand and accept those terms.
21. The footnotes to this document do not form part of the agreement and are for general reference only.

Signed

[Name]
on behalf of first party

Date:

[Name]
on behalf of second
party

Date:

Mediator

Date:

Footnotes

- a) This form is provided without responsibility, for the use or adaptation by the Parties. The Parties must satisfy themselves as to the form and terms of the mediation agreement.
- b) 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.

- c) 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.
- d) Further, in the decision of *Willers v Gubay decd* and others [2019] EWHC 937 (Ch) the court held subsequent correspondence marked, "Without prejudice and subject to costs" amounted to agreement between the parties that they could both use otherwise privileged mediation material in evidence at any costs hearing.
- e) In *DSN v Blackpool Football Club Limited* the judge said,

"The reasons given for refusing to engage in mediation were inadequate. They were, simply, and repeatedly, that the Defendant "continues to believe that it has a strong defence". No defence, however strong, by itself justifies a failure to engage in any kind of alternative dispute resolution."