

AGREEMENT TO MEDIATE

THIS AGREEMENT is made between the Parties (“the Parties” or a “Party”) set out in Schedule 1, the Mediator (“the Mediator”) and Consensus Mediation Limited (“Consensus”), and is made on the date shown in Schedule 1.

APPOINTMENT OF MEDIATOR

1. The Parties agree to appoint the Mediator to mediate their Dispute (“the Dispute”) at a mediation meeting (“the Mediation”) on the date shown in Schedule 1 (“the Mediation Date”).
2. Consensus and or the Mediator may appoint a mediator’s assistant at no cost to the Parties and the word ‘Mediator’ in this Agreement shall include any such assistant.

ATTENDEES

3. Each Party may be represented at the Mediation by such individuals as they choose, attending as either Representatives, Advisors, or as Companions to a Party.
4. Any individual Companion who is not a member of a Party, such that they would not contractually be bound by the agreement of that Party to any term of this Agreement, shall nevertheless be subject to clauses 7 and 8 and permission to attend the Mediation is deemed to be adequate and sufficient consideration for their being so bound. In the event that any such individual breaches clauses 6 and or 7 (confidentiality etc) then the Party with whom they are connected will be jointly and severally liable with that individual for any damage or loss caused to any other Party as a result of such breach.
5. At least one of the Representatives of every Party attending the Mediation will have either full authority from their respective organisation to settle the Dispute or reliable communication with one or more persons who has such authority.

CONFIDENTIALITY

6. The Parties, the Mediator and Consensus agree that they and any Representatives, Advisors and Companions will at all times keep confidential all facts, matters, written or oral statements, documents, or other items produced or disclosed for the purposes of the Mediation. However it is agreed that material that is otherwise admissible or disclosable in law shall not become inadmissible or non-disclosable by reason of this Agreement.
7. The Parties agree that the entire Mediation process, including all related discussions and correspondence taking place before, during and after the Mediation, shall have at least the same status as ‘without prejudice’ negotiations, and shall be privileged.
8. The Parties warrant that to the best of their knowledge and belief the matters to be considered at the Mediation do not arise out of or concern any criminal activity. The Parties hereby release Consensus and the Mediator from their obligations under clauses 6 and 7 should a representative of Consensus or the Mediator at any time form the view that the activities or intentions of one or more of the Parties are, or might reasonably be construed to be, unlawful.

POSITION PAPERS

9. In accordance with Schedule 1, the Parties:
 - 9.1. will each prepare and send to Consensus a written statement of their position (“Position Paper”) no later than the date specified in Schedule 1 or as otherwise agreed between the Parties;
 - 9.2. may by the same date or as otherwise agreed serve that Position Paper on any other Party;
 - 9.3. will between them prepare and send to Consensus a bundle of documents (“the Mediation Bundle”) no later than the date specified in Schedule 1. The Mediation Bundle may be submitted on paper or electronically;
 - 9.4. may individually submit directly to the Mediator any other documents whether or not agreed by the other Party or Parties.

THE MEDIATION

10. The procedure to be adopted at the Mediation shall be at the discretion of the Mediator.
11. The Mediation will continue until terms resolving all or any part of the Dispute are agreed (“the Settlement Terms”), or until any Party withdraws from the Mediation, or until the Mediator declares that the Mediation shall end or, if agreed by the Parties, adjourned.

COSTS

12. The Parties agree to pay to Consensus the fee (“Fee”) and expenses (“Expenses”) specified in Schedule 1.
13. The Fee and Expenses will be paid by the Parties to Consensus no later than the date or dates specified in Schedule 1 unless expressly agreed otherwise with Consensus. Failure to pay by any Party or Parties will not relieve the liability of any other Party to pay its share of the Fee and Expenses on time or at all.
14. As between themselves the Parties may agree a different division of the liability to pay the Fee and Expenses as part of the Mediation, but any such agreement will not relieve any Party from its liability to pay to Consensus the amount or proportion set out in Schedule 1.
15. If the Parties do not settle the Dispute on the first date fixed for the Mediation and a second mediation day or part of a day is agreed, then the fee for such second day will be, unless otherwise agreed, 65% of the original Fee plus 100% of the Mediator’s additional expenses.
16. Consensus will pay the Mediator the sums agreed between Consensus and the Mediator, but will not be liable to the Mediator for more than a pro rata amount in the event that one or more Parties fails to pay to Consensus any part of that Party’s proportion of the Fee or Expenses.
17. Except as expressly agreed, any payment not made by a Party to Consensus by the due date will attract interest at 2% per annum above the Bank of England Base Rate for the time being until payment.

18. If the Parties fail to attend the Mediation, or reach a settlement before the Mediation Date, or otherwise withdraw from the Mediation, then the Fee will remain payable except in the discretion of Consensus. Expenses will remain payable by the Parties if the Mediator or Consensus has already incurred liability to pay such expenses.
19. If the Mediation does not result in settlement between the Parties for any reason, including the termination of the Mediation by the Mediator, the Parties will not be entitled to the recovery of any portion of the Fee or Expenses.

LIABILITY

20. The Parties acknowledge that the Mediator is an independent contractor and not an agent, servant or employee of Consensus. The Mediator may be a limited company. The Mediator warrants the truth of the information set out in the Mediator's CV on the Consensus website. In selecting the Mediator the Parties agree that they have satisfied themselves of the suitability of the Mediator for this appointment from the Mediator's CV and or their own independent enquiries and have not relied upon any express or implied representation made by Consensus.
21. The Parties agree that if the Mediator assists in any way with the drafting of the Settlement Terms that the Mediator does so only secretarially and not in any professional capacity and will not be liable for any error or omission whatsoever.
22. No Party may have access to the Mediator's notes or other materials prepared by or for the Mediator or Consensus in relation to the Mediation (including material provided to the Mediator by the Parties) for any purpose whatsoever. No Party may compel the Mediator nor any representative of Consensus to give evidence in any proceedings.

LAW

23. This Agreement is governed by the law of England and Wales and the courts of England and Wales shall have exclusive jurisdiction to determine any issues arising in connection with this Agreement.

CONSENSUS MEDIATION

COMMERCIAL DISPUTE RESOLUTION SINCE 1999

PRINT NAME SIGNED for Party A	PRINT NAME SIGNED for Party B
PRINT NAME SIGNED for Party C	PRINT NAME SIGNED for Party D
Non-party attendees PRINT NAME SIGNED For the consideration of my attendance I agree to be bound by the above confidentiality provisions as if I were a party.	Non-party attendees PRINT NAME SIGNED For the consideration of my attendance I agree to be bound by the above confidentiality provisions as if I were a party.
PRINT NAME SIGNED for Consensus	PRINT NAME SIGNED Mediator

Schedule 1

Date of this Agreement	
The Parties	
(Party A)	
(Party B)	
(Party C)	
The Dispute	[Case number or brief description]
The Mediator	
The Mediation Date	
Maximum size of Mediation Bundle	No more than one standard lever arch file of documents (or its electronic equivalent) between all Parties
Send Position Papers and Mediation Bundle:	contact@consensusmediation.co.uk
By no later than:	
Payment	
Fee (per party)	£ + VAT £
Expenses (per party)	£ + VAT £
Due no later than:	
Payable by BACS to	Consensus Mediation Limited Sort Code 09-06-66 Account number 41240809