

AGREEMENT TO MEDIATE

This agreement is between:-

- (1)
- (2)
- (3) Charles Middleton-Smith (the "mediator") of 34 Perryn Road London W3 7NA

AGREEMENT

1. and (jointly referred to as "the parties") agree to use their best endeavours to resolve the Dispute (details of which are set out in Schedule 1 to this Agreement) by mediation and to the appointment of Charles Middleton-Smith as mediator.
2. The representatives of the parties at the mediation will be:
 - (1)
 - (2)
3. The representatives (or such other representatives as the parties may from time to time appoint) will represent the respective parties at the mediation and will have full authority to settle the dispute.
4. The parties will co-operate in good faith with the mediator and each other during the mediation.
5. The mediation will take place at on the , at 9.30am. If the issues are unresolved at the end of the meeting, then with the unanimous agreement of the parties and the mediator, the mediation may be adjourned to such time and place as may be agreed.
6. Prior to the mediation both parties will have submitted to the mediator a written summary of their case and relevant background documentation.
7. Procedure at the mediation will be determined by the mediator, in consultation with the parties.

CONCLUSION OF THE MEDIATION

8. The mediation will continue during the day agreed until agreement is reached; or one of the parties withdraws from the mediation; or the mediator is of the view that further efforts at mediation would not be worthwhile, or at his discretion, withdraws from the mediation.

SETTLEMENT

9. No agreement as to the terms of any settlement reached during the mediation shall be legally binding unless and until it is reduced to writing and signed by the representatives for and on behalf of the parties. The parties shall however be legally bound by any settlement so reduced to writing and signed and undertake to give effect to such settlement in accordance with its terms.
10. All parties reserve their respective rights should the mediation not result in a settlement agreement being reached between them.

CONFIDENTIALITY

11. By taking part in the mediation the parties, their advisers, and the mediator undertake to each other and agree that:
 - (a) The entire mediation is and will be kept confidential (save for the fact that the mediation is to take place or has taken place);
 - (b) They shall keep all statements and other matters whether oral or written including any settlement agreement relating to the mediation confidential except insofar as disclosure is necessary to implement and enforce such settlement agreement or as may be required by law;
 - (c) The entire process of the mediation shall be treated as privileged and will be conducted on the same basis as without prejudice negotiation in an action in the courts (or similar proceedings). All documents, submissions and statements made or produced for the purposes of the mediation whether oral or written shall be inadmissible and not subject to discovery in any arbitration, legal or other similar proceedings except that evidence which is otherwise admissible or discoverable shall not become inadmissible or non-discoverable by reason of its use in connection with this mediation.
 - (d) No recording or formal transcript shall be made of the mediation process but the parties shall be free to make their own notes during the mediation, which shall remain privileged and confidential.

PROVIDED THAT this clause shall not apply to the mediator where he is required under the general law to make disclosure, or the mediator reasonably considers that there is a serious risk of harm to the life or safety of any person if the information in question is not disclosed or the mediator reasonably considers that there is a serious risk of his being subject to criminal proceedings unless the information in question is disclosed.

12. The mediator may not act for either party individually in any capacity with regard to the subject matter of the mediation, and the parties acknowledge that in acting under this agreement, the mediator is not representing or giving legal advice to, nor assessing, upholding or protecting (or attempting to assess, uphold or protect) any rights of any of the parties. The parties are encouraged to take legal advice in respect of all matters pertaining to the mediation and any agreement reached. The mediator and the parties agree that the mediator is neutral and independent from the parties and the Dispute.
13. Neither party may have access to either the mediator's notes or call the mediator as a witness in any proceedings relating to any of the issues between them. If any party applies to the Court that party will fully indemnify the mediator in respect of any costs incurred 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 any such application.

COSTS

14. Unless the parties and the mediator otherwise agree, the fees and expenses of the mediator will be borne by the parties in equal shares. Each party will also pay its own expenses of individual representation in the mediation. The parties agree to pay (in equal shares) the fees of the mediator for all reasonable time spent in preparation for the mediation and all of the time spent by the mediator at the mediation at a rate of £ plus VAT until 7.00pm and thereafter at an hourly rate of £ plus VAT. In addition, the parties agree to pay all reasonable expenses incurred by the mediator. Payment will be made by the parties' respective solicitors, to whom the mediator will address VAT invoices for payment, within 14 days of the date of the invoice, and who agree to accept liability for the fee.

CANCELLATION

15. Once a mediation date has been confirmed, parties may cancel at up to 14 days' notice without charge, up to 7 days' notice at a cost of 50% of the fee, and up to 24 hours' notice at a cost of 75% of the fee.

EXCLUSION OF LIABILITY

16. The mediator shall not be liable to the parties or either of them for any act or omission whatsoever in connection with the services to be provided by him unless the act or omission is shown to have been in bad faith.

JURISDICTION

17. This agreement shall be governed by and construed in accordance with English law under the jurisdiction of the English courts.

Dated this

SIGNED:

For and on behalf of

SIGNED:

For and on behalf of

SIGNED:

Mediator

Charles Middleton-Smith

SCHEDULE 1