

SCHEDULE 11

DISPUTE RESOLUTION PROCEDURE

Part 1 – Liaison Procedure

1. The purpose of the Liaison Procedure is to have in place a mechanism by which any matters relating to the Franchise can be discussed between the Parties (which for the purpose of this schedule shall mean the Franchisee and DLR Limited) with the intention of avoiding Disputes.
2. If any matter arises which any Party anticipates may give rise to a Dispute, a liaison committee shall forthwith be constituted between the Parties comprising such equal and appropriate representation as shall be reasonable in the circumstances.
3. All discussions of the liaison committee shall be without prejudice to each Party's position but anything which is agreed between the Parties and reduced to writing and acknowledged in writing by the Parties as being agreed between them will no longer be of a without prejudice nature.
4. The liaison committee shall forthwith convene after notice by one Party to the other and, thereafter at such frequency as its members may determine as being appropriate and the Parties shall procure that members of the liaison committee shall correspond with one another as often as necessary to facilitate the avoidance of any Dispute.
5. Each meeting of the liaison committee shall be convened, chaired and minuted by the Party who anticipates the Dispute (who shall also propose the agenda) or otherwise as the Parties may agree.
6. The liaison committee shall produce a report as frequently as shall be reasonable in the circumstances setting out in detail the matters that have been discussed between the members and identifying areas of agreement and disagreement.
7. Each Party shall be entitled to call for an explanation from the liaison committee as to the nature and extent of the matters which may give rise to a Dispute and may make suggestions as to methods of resolving the same. If at any time (whether during the course of the Liaison Procedure or otherwise) either Party elects to do so, the Party may refer a matter or Dispute for resolution in accordance with the Dispute Resolution Procedure and the Liaison Procedure shall terminate with effect from receipt by the other Party of that Party's notice referring the Dispute to the Dispute Resolution Procedure in which event the provisions of part 2 of this schedule 11 shall apply.
8. Should the Parties agree that the best interests of the Franchise would be served by the removal of one or more members of the liaison committee, they may so direct in writing and any relevant Party will put forward to the other the name(s) of alternative members of the liaison committee.

Part 2 – Disputes Resolution Procedure

1. DISPUTES

Save where:

- (a) any Dispute is, at any time, referred to an Adjudicator by either Party in accordance with paragraph 4; or
- (b) any Dispute is, at any time, referred to Arbitration in accordance with paragraph 5 by agreement between the Parties,

any Dispute which arises whether before or after termination of this Agreement shall be referred by either Party to the decision of Representatives in accordance with paragraph 2 and, if necessary and the Parties so agree, to Alternative Dispute Resolution in accordance with paragraph 3.

2. SENIOR REPRESENTATIVES

- 2.1 Subject to paragraph 1 either Party shall refer a Dispute, by notice in writing to the other Party, to the Representative of each Party who shall meet and endeavour to resolve the Dispute between them. The joint written decision of the Representatives shall be binding upon the Parties.
- 2.2 If the Representatives of the Parties are unable to resolve the Dispute within five business days of the reference to them, then either Party may refer the Dispute to Alternative Dispute Resolution in accordance with paragraph 3. In the event the Representatives do not agree to refer the Dispute to the Alternative Dispute Resolution procedure, either Party may refer the Dispute to Adjudication in accordance with paragraph 4 and/or Arbitration in accordance with paragraph 5.

3. ALTERNATIVE DISPUTE RESOLUTION

- 3.1 In the event that the Representatives are unable to settle the Dispute within the period of 5 business days referred to in paragraph 2 but agree to refer the Dispute to Alternative Dispute Resolution in accordance with this paragraph 3, either Party may then refer the Dispute to mediation by written notice to the other initiating a mediation under this paragraph 3. The notice initiating mediation shall describe generally the nature of the Dispute. If the other Party agrees to seek to resolve the Dispute by way of mediation then, subject to any contrary agreement in writing in relation to the mediation, the procedure set out in this paragraph 3 shall apply.
- 3.2 Each Party will nominate at least one authorised representative (an "**Authorised Representative**") who shall attend and participate in the mediation with authority to negotiate a settlement on behalf of the Party so represented.
- 3.3 The Parties shall appoint by agreement a neutral third person to act as a mediator (the "**Mediator**") to assist them in resolving the Dispute. If the Parties are unable to agree on the identity of the Mediator within fourteen days after notice initiating mediation, either Party may request the Centre for Dispute Resolution ("**CEDR**") to appoint a Mediator.
- 3.4 The Parties will agree the terms of appointment of the Mediator within seven days of his appointment pursuant to paragraph 3.3. If they are unable to agree on such terms they shall be deemed to have withdrawn from participating in the mediation for the purposes of paragraph 3.9(b) below. Such appointment shall be subject to the Parties entering into a formal written agreement with the Mediator regulating all the terms and conditions of the Mediator's appointment including payment of fees.

- 3.5 If the appointed Mediator is or becomes unable or unwilling to act, either Party may within five business days of the Mediator being or becoming unable or unwilling to act, initiate the process at paragraph 3.3 to appoint a replacement Mediator and paragraph 3.4 to settle the terms of the appointment of the replacement Mediator.
- 3.6 The Parties shall, with the assistance of the Mediator, seek to agree the Mediation procedure. In default of such agreement, the Mediator shall act in accordance with CEDR rules. The Parties shall within seven days of the appointment of the Mediator, meet with the Mediator in order to agree a programme for the exchange of any relevant information and the structure to be adopted for the mediation.
- 3.7 The mediation may be terminated should any Party so wish by written notice to the Mediator and to the other Party to that effect. Notice to terminate may be served at any time after the first meeting has taken place in the mediation pursuant to paragraph 3.6.
- 3.8 If any agreement is reached with the assistance of the Mediator which resolves the Dispute, such agreement shall be set out in a written agreement (the "**Settlement Agreement**") and executed by both Parties' Authorised Representatives and shall not be legally binding unless and until both Parties have observed and complied with the requirements of this paragraph 3.8. Once the Settlement Agreement is legally binding, it may be enforced by either Party taking action in the High Court.
- 3.9 In the event that:
- (a) the Dispute has not been resolved to the satisfaction of either Party within twenty eight days after the appointment of the Mediator; or
 - (b) either Party fails or refuses to participate in or withdraws from participating in the mediation; or
 - (c) either Party serves written notice terminating the mediation under paragraph 3.7 then either Party may refer the Dispute to Adjudication in accordance with paragraph 4 or Arbitration in accordance with paragraph 5.
- 3.10 Neither Party shall seek to retain the Mediator as consultant or expert or call the Mediation as a witness in any other proceedings whatever concerning any aspect of the Dispute.
- 3.11 All rights of the Parties in respect of the Dispute during the course of discussions pursuant to paragraph 2 between the Representatives of each of the Parties and in the course of the mediation pursuant to this paragraph 3 are and shall remain fully reserved and the entire discussions pursuant to paragraph 2 and the entire mediation pursuant to this paragraph 3 including all documents produced or to which reference is made, discussions and oral presentations shall be strictly confidential to the Parties and shall be conducted on the same basis as "without prejudice" negotiations, so as to be privileged, inadmissible, not subject to disclosure or discovery in any subsequent Adjudication, Arbitration or other legal proceedings whatever and shall not constitute any waiver or privilege whether between the Parties or between either of them and a third party. Nothing in this paragraph 3.11 shall make any document privileged, inadmissible or not subject to disclosure or discovery save for its production in the Mediation or for reference to it in the Mediation which would have been subject to disclosure or discovery in any Adjudication, Arbitration or other legal proceedings before such production or reference.

4. ADJUDICATION

- 4.1 Subject to any express contrary provision elsewhere in this Agreement, either Party may at any time give notice of its intention to refer any Dispute to any Adjudicator by notice in writing from that Party to the other Party. Such notice shall include the identity of the

proposed Adjudicator who shall have no interest financial or otherwise in any matter relating to the Dispute.

- 4.2 Within two business days of receipt of any such notice, the Party receiving the notice shall notify in writing the Party giving the notice if he objects to the identity of the proposed Adjudicator and, if so, shall propose an alternative. In default of agreement within four business days of the notice saved under paragraph 4.1, either Party may apply to the President for the time being of the Chartered Institute of Arbitrators who shall appoint the Adjudicator with the intention that such appointment shall be made within seven days of the service of the notice under paragraph 4.1 and the Parties shall accept its choice.
- 4.3 Upon the appointment of the Adjudicator pursuant to paragraph 4.2 the Dispute shall be referred to the Adjudicator.
- 4.4 The Adjudicator to whom the Dispute is referred under this paragraph 4 shall settle the Dispute by notifying the Parties of his decision together with the reasons within twenty eight days of referral of the Dispute or such longer period as may be agreed by the Parties after the Dispute has been referred or if requested by the Adjudicator and subject to the agreement of the Party by whom the Dispute was referred within forty two days of referral of the Dispute. The Adjudicator's decision is binding unless and until finally determined by Arbitration in accordance with paragraph 5 or by agreement.
- 4.5 The Party submitting the Dispute to the Adjudicator shall within seven days of the appointment of the Adjudicator provide his submission upon the Dispute to be considered by the Adjudicator with a copy by fax to the other Party. Any submission from the other Party to be considered by the Adjudicator shall be provided within seven days from the first submission. The Parties shall comply with any request of the Adjudicator in relation to the Dispute.
- 4.6 The Adjudicator shall settle the Dispute as Independent Adjudicator and not as arbitrator and shall owe the Parties a duty to act impartially in so doing. The Adjudicator shall be entitled to take the initiative in ascertaining the facts and the law relating to or concerning the Dispute. His decision shall be enforceable and binding upon the Parties as a matter of contractual obligation unless and until finally determined by Arbitration in accordance with paragraph 5 or by agreement of the Parties.
- 4.7 Any communication, between the Party and the Adjudicator shall be communicated contemporaneously also to the other Party.
- 4.8 The Parties shall bear their own costs and expenses incurred in the Adjudication. All parties to any adjudication shall be jointly and severally responsible for the Adjudicator's fees and expenses but in his decision the Adjudicator may direct a Party to pay all or part of his fees and expenses. If he makes no such direction the parties to the adjudication shall pay the Adjudicator's fees and expenses in equal shares.
- 4.9 The Parties may jointly terminate the Adjudicator's appointment and appoint a replacement by agreement. In the event that:
 - (a) the Adjudicator resigns or is unable to act; or
 - (b) the Adjudicator has not given notice of his decision and the period referred to in paragraph 4.4 (as extended) has expired,

then either Party may require the other to concur in the termination of the Adjudicator's appointment and if the Parties have not agreed a replacement Adjudicator within two business days of the appointment of the Adjudicator being terminated either Party may request the President for the time being of the Chartered Institute of Arbitrators to appoint a replacement Adjudicator with the intention that such appointment shall be made within two business days of the expiry of the said period of two business days and the

Parties shall accept his choice. The Adjudicator shall have power to determine any Dispute that was submitted to his predecessor but had not been determined at the time when his predecessor's appointment was terminated.

4.10 If

- (a) one of the Parties is dissatisfied with the decision after the Adjudicator notifies his decision; or
- (b) the Adjudicator has not notified his decision and the time provided by paragraph 4.4 has expired,

then either Party may by written notice inviting the other to concur in the appointment of an arbitrator refer the Dispute to Arbitration.

4.11 If:

- (a) 56 days have elapsed since the decision of the Adjudicator was notified to the Parties and neither Party has given the other written notice inviting the other to concur in the appointment of an arbitrator to resolve the Dispute; or
- (b) the Franchisee has given a notice pursuant to clause 37.5.1 agreeing to be bound by the decision and DLR Limited agrees also to be bound by the decision,

then the decision of the Adjudicator shall be final and binding upon the Parties.

4.12 The Adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith and any employee or agent of the Adjudicator shall be similarly protected from liability.

5. SUBMISSION OF THE PARTIES TO ARBITRATION

5.1 Any dispute to be referred to Arbitration pursuant to paragraph 4.9 or pursuant to the agreement of the Parties to refer the Dispute directly to Arbitration shall, subject to the provisions of this paragraph 5, be referred to be finally resolved by arbitration before a single Arbitrator.

5.2 Any reference to Arbitration shall be resolved in London or such other place as the Parties may agree in accordance with the LCIA Rules governing arbitration or any amendment or modification thereof in force at the time of the appointment of the Arbitrator but subject to this paragraph 5 which shall take precedence if there is a conflict. The seat of the Arbitration shall be England and Wales. Notwithstanding any provision in the LCIA Rules and save as provided in paragraph 6 of this schedule 10, the Arbitrator shall not have power to direct that one or more third persons be joined in the arbitration as a party in the absence of written consent from both Parties.

5.3 Reference to a Dispute to Arbitration shall be commenced by notice in writing (the "Request") from one Party to the other Party which shall include the identity of the person proposed to act as the Arbitrator and shall be served simultaneously on the registrar of the LCIA.

5.4 Within seven days of receipt of the Request, the Party receiving the Request shall notify in writing the Party serving the Request if he objects to the identity of the proposed Arbitrator and, if so, shall propose an alternative. If no such notification is given then the Parties shall jointly request the LCIA Court to appoint the proposed Arbitrator as the Arbitrator.

- 5.5 If the Arbitrator becomes unwilling or unable to act, the provisions for the appointment of an Arbitrator shall again have effect with the time for giving the notice in paragraph 5.4 being ten business days after notification to the Parties of the Arbitrator being unable or unwilling to act.
- 5.6 Without prejudice to any of his powers, the Arbitrator shall have full power to open up review or revise any certificate, decision, opinion, decision, requirement, direction, valuation or notice and to order such measurements and valuations as may in his opinion be necessary in order to determine the respective rights of the Parties and to determine all matters in dispute which shall be submitted to him in the same manner as if no such certificate, decision, opinion, requirement, direction, valuation or notice had been given.

6. **DECISION**

The Parties agree to be bound by and joint and unanimous decision of the Representatives or any legally binding Settlement Agreement achieved through mediation of the Dispute and the Related Dispute or any decision of the Adjudicator or any award of the Arbitrator (respectively) appointed under this Agreement in respect of the Dispute and the Related Dispute.

7. **PERFORMANCE**

Unless this Agreement has already been repudiated or terminated, the Franchisee shall continue to perform its obligations in accordance with the provisions of this Agreement and DLR Limited shall continue to comply with all its obligations under this Agreement regardless of the nature of the Dispute. The provisions of this schedule 11 shall continue to apply to any Dispute notwithstanding the repudiation or termination of this Agreement.