



PAX ADR LLC MEDIATION/ARBITRATION AGREEMENT

1. Purpose

This Mediation/Arbitration Agreement is made by the participants (the “Party” or “Parties”) The purpose of the Agreement is to arrive at a mutually acceptable resolution of the dispute with the assistance of Nancy F. Lesser of Pax ADR (the “Neutral”) in a Mediation/Arbitration process.

Should the matter not resolve in mediation, the Parties have requested that the Mediator then serve as Arbitrator. The Neutral may terminate the Mediation at any time if, in her judgment, no further value exists to continuing the process or other circumstances exist rendering the Mediation unproductive. Should that occur, the Parties have agreed that the Arbitration process, which will be final and binding on the Parties, shall commence before the Neutral according to a separate schedule set for prehearing and hearing matters. All proceedings shall be conducted under the applicable ____ Rules.

2. Mediation/Arbitration Process

The Neutral will:

- Review written information submitted by the Parties.
- Have private, confidential conversations with the participants to develop information about the Parties’ contentions and objectives.
- Conduct the Mediation with the Parties and their counsel.
- As necessary and if requested, conduct follow-up conferences with the participants after the Mediation session.
- If necessary, serve as Arbitrator in a binding, evidentiary Arbitration process pursuant to a schedule entered after the conclusion of the Mediation.

The Mediation/Arbitration session is currently scheduled for ____commencing at 9:00 am. Mediation submissions, both confidential to the Mediator only and non-confidential among the Parties, are due by close of business on _____. The session will be held at a location in____ to be mutually agreed upon between the Parties and will be attended by representatives of the Parties with full settlement authority and by counsel. During the sessions, the Neutral may have joint and separate meetings with the Parties and their counsel. The Neutral may ask for and receive confidential information from both Parties during the Mediation. The Parties agree that the Neutral is not acting as an attorney or providing legal advice or representation on behalf of any Party. No Party shall be bound by anything said or done at any Mediation session unless a

settlement is reached. All settlement agreements shall be written and, when signed, shall be binding upon all Parties to the agreement.

3. Confidentiality of Mediation/Arbitration

The entire process is to be held in strict confidence by the Parties and the Neutral. All offers, promises, conduct and statements, whether oral or written, made during the Mediation phase by any of the Parties, their agents, employees, experts, and attorneys, and by the Neutral, are confidential and off-the-record. Such offers, promises, conduct, and statements will not be disclosed to third persons, except persons associated with the participants in the process (e.g., a Party's agent, employee, or attorney) and are privileged and inadmissible for any purpose, including impeachment, notwithstanding Rule 408 of the Federal Rules of Evidence and any applicable federal or state statute, rule or common law provision. If this matter does not settle in Mediation, no Party may provide any details or otherwise disclose what happened in the Mediation. However, evidence previously disclosed or known to a Party, or that is otherwise admissible or discoverable, shall not be rendered confidential, inadmissible, or not discoverable solely as a result of its use in the Mediation.

4. Exclusion of Liability and Waiver of Conflicts

The Parties understand and agree that in the course of the Mediation, the Neutral will receive confidential information from both sides. The Neutral may also express her thoughts, views, and opinions about the case to one or both Parties and share information authorized to be shared by the other Party. The Parties understand and agree that the Neutral cannot eliminate the possibility that confidential information, analyses, views and other matters learned by her in the course of the Mediation may affect her views of the merits of one or both Parties' case when she then serves as Arbitrator and must render a binding and final decision. The Parties therefore waive the right to assert any claim, complaint or cause of action against Nancy F. Lesser and Pax ADR with respect to the role as Mediator or Arbitrator, whether such claims are based upon any allegation of conflict, bias, ethics violations, misuse of confidential information or otherwise. Should such claims be nonetheless asserted by one Party, the other Party agrees to defend and indemnify the Mediator/Arbitrator in any such proceedings.

The Parties also agree not to call the Neutral as a witness or as an expert in any pending or subsequent litigation or arbitration involving the Parties and relating in any way to the dispute which is the subject of the Mediation or Arbitration. The Parties agree to defend the Neutral and Pax ADR from any subpoenas from third parties arising out of this Agreement, the Mediation or Arbitration. The Parties agree that neither Pax ADR nor the Neutral is a necessary party in any arbitral or judicial proceedings relating to the mediation or to the subject matter of the Mediation or Arbitration. Neither the Neutral nor any employee or agent of Pax ADR shall be liable to any Party for any act or omission in connection with any Mediation or Arbitration conducted under this Agreement.

5. Fees

Fees for services by the Neutral shall be assessed pursuant to the fee schedule attached. Fees will be determined by the number of hours (or portion thereof) spent on the matter, plus expenses. The Neutral will bill for the time spent in initial contacts, electronic communications and telephone conferences, reviewing submissions and material in preparation for a session or hearing, out of town travel, conducting a session or hearing, and any follow-up activity the Parties request. Expenses, such as conference room and meal charges, long distance telephone, transportation or copying charges, will be billed at cost, which in some cases may be estimated.

Other personnel, such as a paralegal or law clerk, may be utilized to perform certain tasks that the Neutral would otherwise be required to perform to effect a cost savings to the Parties.

6. Cancellation Policy

If a Mediation or Arbitration session is cancelled or rescheduled more than 30 days before a session, professional fees are fully refundable, except to the extent Neutral preparation or other professional time has already been incurred. If a cancellation or request for rescheduling occurs within 30 days of the session, a cancellation fee based upon the daily fee for each reserved day as well as any preparation or other professional time already incurred will be charged. If a session is completed in less time than was budgeted, the actual time reserved but not used will be billed unless the time can be rescheduled for another matter.

By: _____

For: **Dated:** _____

By: _____

For:
Dated: _____

By: _____

For:

Dated: _____