

**PAX ADR LLC MEDIATION AGREEMENT**

\_\_\_\_\_ v. \_\_\_\_\_

**1. Purpose**

This Mediation Agreement is made by the participants (the “Party” or “Parties”) \_\_\_\_\_ and \_\_\_\_\_. The purpose of the mediation is to arrive at a mutually acceptable resolution of the dispute in a cooperative and informal, rather than a legal and formal, manner.

**2. Mediation Process**

**Nancy Lesser of Pax ADR LLC** (“the Mediator”) 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 subsequent to the mediation session.

The mediation session is currently scheduled for \_\_\_\_\_. Mediation submissions are due by close of business on \_\_\_\_\_. The mediation session will be held at \_\_\_\_\_ and will be attended by representatives of the Parties with full settlement authority and by counsel. During the sessions, the Mediator may have joint and separate meetings with the Parties and their counsel. The Parties agree that the Mediator 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**

This entire mediation process is an off-the-record compromise negotiation. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the Parties, their agents, employees, experts and attorneys, and by the Mediator, 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. Disqualification of Mediator, Exclusion of Liability, and Future Relationships**

The Parties agree not to call the Mediator 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. The Parties agree to defend the Mediator and Pax ADR LLC from any subpoenas from third parties arising out of this Agreement or the mediation. The Parties agree that neither Pax ADR LLC nor the Mediator is a necessary party in any arbitral or judicial proceedings relating to the mediation or to the subject matter of the mediation. Neither the Mediator nor any employee or agent of Pax ADR LLC shall be liable to any Party for any act or omission in connection with any mediation conducted under this Agreement.

Neither the mediator nor the mediator's firm shall undertake any work for or against a party regarding the subject matter of the mediation. The mediator's firm may mediate other unrelated matters involving one or more of the parties during the pendency of the mediation and will so advise the parties.

#### **5. Termination of Mediation**

This is a voluntary, non-binding mediation process. Any Party may terminate its participation for any reason by notification to Pax ADR LLC and the other Parties. The Mediator 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.

#### **6. Fees**

Fees for services by the Mediator will be determined by the number of hours (or portion thereof) she spends on the matter, plus expenses. The Mediator will bill for the time spent in initial contacts, electronic communications and pre-mediation telephone conferences, reviewing submissions and material in preparation for the mediation session, out of town travel, conducting the mediation session, and any follow-up activity the Parties request. The Mediator will charge an hourly rate for mediation services of \$\_\_\_\_\_. The Mediator's time is billed in quarter-hour increments. 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 Mediator would otherwise be required to perform in order to effect a cost savings to the Parties.

## **7. Cancellation Policy**

If a mediation session is cancelled more than 30 days before a session, professional fees are fully refundable, except to the extent Mediator preparation or other professional time has already been incurred. If a cancellation or request for rescheduling occurs within 30 days of the mediation, a full day's mediation fee based on an eight-hour day for each reserved day is incurred, unless the Mediator can use some or all of the reserved time on other matters. If a mediation 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.

## **8. Advance Payment**

The Parties have agreed to share the mediation fees and expenses as follows: \_\_\_\_\_. The Mediator has estimated total fees and expenses for the mediation session presently scheduled as \_\_\_\_\_. This is an estimate only, and the Parties are responsible for all fees and expenses incurred. Each Party shall pay an advance amount prior to the mediation session as set forth in an invoice to be forwarded to each Party. All advance fees not used will be returned to the Parties at the conclusion of the mediation. If the retainer account is exhausted prior to the end of the mediation, the Parties may be asked to replenish the account.

**By:** \_\_\_\_\_

**For:**

**Dated:** \_\_\_\_\_

**By:** \_\_\_\_\_

**For:**

**Dated:** \_\_\_\_\_

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