

### Mediation then Mandatory Arbitration

(a) *Mediation.*

(i) The parties agree that any and all disputes, claims or controversies arising out of or relating to this Agreement shall be submitted to a mediator for mediation, and if the matter is not resolved through mediation, then it shall be submitted to final and binding arbitration in accordance with subsection (b)(i) below.

(ii) Any party may commence mediation by providing to the other party a written request for mediation, setting forth the subject of the dispute and the relief requested.

(iii) The parties will cooperate with one another in selecting a mediator and in scheduling the mediation proceedings. The parties agree that they will participate in the mediation in good faith and that they will share equally in its costs.

(iv) 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 or any of the mediator's employees or other agents, are confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

(b) *Arbitration.*

(i) Either party may initiate arbitration with respect to the matters submitted to mediation by filing a written demand for arbitration at any time following the initial mediation session or at any time following 45 days from the date of filing the written request for mediation, whichever occurs first ("Earliest Initiation Date"). The arbitration shall be administered by the American Arbitration Association (or its successor) under its Commercial Arbitration Rules, unless the parties mutually agree to another arbitrator and/or set of rules. The mediation may continue after the commencement of arbitration if the parties so desire. Judgment upon the arbitration award rendered by the arbitrator(s) may be entered in any court having competent jurisdiction.

(ii) At no time prior to the Earliest Initiation Date shall either side initiate an arbitration or litigation related to this Agreement except to pursue a provisional remedy that is authorized by law or by agreement of the parties. However, this time limitation is inapplicable to a party if the other party refuses to comply with the requirements of subsection (a)(iii) above.