

MEDIATION

1. Except as set forth in this Section, each Party to this Agreement (a "Party") agrees that, in the event of a dispute between or among them under this Agreement, in any way concerning or arising out of this Agreement, relating to this Agreement (including, but not limited to, the validity or formation of this Agreement) (a "Dispute"), such Party will not initiate litigation, directly or by way of counterclaim, crossclaim or third party complaint, without first complying with Subsections 2-3, below. In the event a Party initiates litigation in violation of this Section, such action shall be subject to dismissal, with the reasonable fees and expenses of the non-initiating Party or Parties paid by the Party or Parties that initiated the action.
2. Disputes shall be submitted jointly by the Parties having an interest in the Dispute for mediation to the Court of Chancery of the State of Delaware (the "Court") in accordance with the Laws of the State of Delaware and the Rules of the Court. Each Party agrees that, solely with respect to such meditation, such Party shall (a) accept service of process and (b) submit to the jurisdiction of the Court of Chancery to the extent necessary to effectuate this paragraph. No party shall be served with process for litigation while in Delaware for purposes of the mediation. If a Dispute does not qualify for mediation before the Court, or is otherwise ineligible for such mediation, the Dispute shall be submitted jointly to ***[insert name of alternate mediator]*** for mediation. The costs of the mediation assessed by the Court or any private mediator shall be apportioned equally by the Parties having an interest in the Dispute. All applicable statutes of limitation and defenses based upon the passage of time shall be tolled while the procedures specified in Subsections 1, 2 and 3 hereof are pending. The Parties will take such action, if any, required to effectuate such tolling.
3. If the Dispute has not been resolved by such mediation within 15 days of the termination of the mediation conference, any Party to the Dispute may initiate litigation.
4. Nothing in this Section shall limit the right of a Party to seek an order from a court of competent jurisdiction (a) dismissing litigation brought without complying with this Section or (b) compelling a Party to mediate in accordance with this Section. In the event such an order is sought and obtained, the non-prevailing Party shall pay all reasonable fees and expenses of the prevailing party. The Parties stipulate and agree that a violation of this Section shall constitute irreparable harm and that, on proof of a breach, the Party seeking relief from such violation shall be entitled to equitable relief including, but not limited to, an injunction or specific performance.
5. Except to the extent permitted by Chancery Rule 95(b), all offers, promises, conduct and statements, whether oral or written, made in the course of the mediation shall be confidential, privileged and inadmissible for any purpose, 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.