Memorandum

January 18, 2021

Re: Model Dispute Prevention and Resolution Provisions[1]

I. Introduction

Despite the general acceptance of alternative dispute *resolution* provisions in contractual arrangements, to date, there has been little attention given to contractual dispute *prevention* protocols. In an effort to shift the paradigm, the International Institute for Conflict Prevention & Resolution ("CPR"), with the assistance of outside and inside counsel from highly respected firms and corporations, has developed the accompanying Model Dispute Prevention and Resolution provisions. The primary goals of the model provisions are to establish a framework to identify potential conflicts early and to operationalize a turnkey solution for dispute avoidance over the life of a contractual relationship, with binding arbitration (or, if the parties prefer, litigation), as a last resort.

II. General Overview of the Model Provisions

CPR has provided three iterations of the Model Dispute Prevention and Resolution provisions—the "Standing Neutral," "Standby Neutral" and "No Neutral" provisions. The "Standing Neutral" and "Standby Neutral" provisions envision the appointment of an independent third-party expert in the subject matter of the business relationship (a "neutral" or "Relationship Facilitator") who would assist the parties with identifying and resolving business conflicts before they ripen into full-blown disputes that result in litigation or binding arbitration. The provisions allow the parties to decide whether the Relationship Facilitator, at the outset of the contractual relationship, takes an active role assisting the parties in managing their relationship and resolving any potential conflicts (*i.e.*, the "Standing Neutral" provisions), or the Relationship Facilitator becomes involved only when a legal dispute arises and the parties need the assistance of the Relationship Facilitator to resolve that legal dispute (*i.e.*, the "Standby Neutral" provisions). By contrast, the accompanying "No Neutral" provisions utilize similar procedures and processes for identifying and resolving conflicts, but without the assistance of an impartial Relationship Facilitator.

Parties may choose which model is appropriate for their needs based on factors such as the length of the contemplated relationship, the value of the contract and the size and capacity of their organizations. Further, the provisions are crafted with the flexibility to modify terms to fit the particular relationship, address specific concerns of any of the parties, or to add terms specific to the relevant industry.

III. Value of Implementing the Model Provisions

CPR believes the accompanying Model Dispute Prevention and Resolution provisions will provide counsel the necessary tools to implement dispute prevention provisions in their key contractual arrangements and educate their clients on the value of utilizing such provisions. In this regard, CPR believes business

[1] Please note that neither this memorandum nor the accompanying Model Dispute Prevention and Resolution provisions are or should be construed or interpreted as legal advice.

professionals and counsel should incorporate dispute prevention provisions similar to the model provisions into their key contractual agreements for the following reasons:

A. Cost-Savings

While parties may question the cost of utilizing a Relationship Facilitator to help them manage their relationship or the resources called for in utilizing the "No Neutral" approach, the relatively modest costs involved far outweigh the costs that would be incurred in the event a business conflict results in arbitration or litigation proceedings, not to mention the business disruption impact of such a conflict. Additionally, a small proactive investment made equally by the parties to maintain their mutually beneficial relationship at the outset of the contract will demonstrate that the parties are serious about dispute prevention and sends a strong message of collaboration to each party's staff.

B. Recognition of the Importance of a Cooperative Working Relationship

The beginning of the relationship is the optimal time for the parties to establish a mutual commitment for dispute prevention and to implement contractual provisions that will help them prevent, identify, reduce and resolve conflicts. In this regard, the model provisions articulate the parties' clear intention to maximize the mutual benefits associated with the underlying contractual arrangement and include a mutual pledge to maintain open communication channels, work constructively and honestly with each other and approach the resolution of conflicts in good faith.

C. Business Continuity

By committing to work through conflicts collectively, constructively and in good faith, the parties are more likely to maintain business continuity and avoid the disruptive effects, costs and expenses that arise from full-blown business legal disputes. Even in instances where the parties are unable to prevent a conflict from ripening into a full-blown legal dispute, the model provisions include an acknowledgement that fulfilling each party's underlying contractual obligations is critical to the operations of all parties and a corresponding commitment by each party to continue performance of their respective contractual obligations during the pendency of any unresolved disputed matter.

IV. Potential Objections to the Model Provisions

Notwithstanding the benefits of the model provisions described above, we recognize that counsel and business professionals may object to or question the use of these provisions. The following are objections that may be raised by clients or opposing parties in respect of the model provisions and our responses:

A. These Provisions Won't Really Prevent Disputes

We acknowledge that no contractual provisions will prevent all legal disputes. However, including the model provisions in a contract and making an investment in the parties' relationship by either implementing the "No Neutral" approach or engaging a Relationship Facilitator sets the expectation that conflicts will be addressed in a constructive and proactive manner, with an emphasis on dispute prevention. In fact, companies that have implemented

similar provisions in their contracts have found that these types of provisions have actually prevented business conflicts from escalating into full-blown arbitration or litigation.[2] If the parties choose a Relationship Facilitator who is an expert in their industry and respected by the parties, the fact that this expert will play an active role in the business relationship or simply be readily available to address each and every conflict that arises during the term of the contract will often cause the parties to engage with each other in a timely and constructive manner, without gamesmanship or behavior intended to increase pressure or leverage.

Even when the parties select the "No Neutral" model provision, the inclusion of the provision sets the expectation that executives, senior managers and subordinates of each party will adhere to a policy and set of procedures intended to prevent legal disputes.

B. These Provisions Could Result in Delay and Increase the Time and Costs for Resolving a Dispute

We recognize that issues which may arise during the term of an important contract will vary in size, complexity and importance and that the escalation procedures embedded in the model provisions result in additional procedures which may not be the desired approach for resolving every potential dispute. As noted in the attached term sheet, parties can choose which of the procedures they wish to incorporate into their arrangements. But, even within the model provisions, we have provided for the flexibility for any party to shorten or entirely bypass any step in the process and, if necessary, begin arbitration or litigation proceedings without engaging in any of the dispute resolution steps. We believe that the likelihood that a party would short-circuit the dispute prevention and resolution process is low because of the commitment of the parties to work together to avoid these types of business disputes in the first place. However, in an effort to ensure that a party who would like to bypass the dispute prevention procedures thinks twice before doing so, we have included a provision that provides the arbitrator or judge the discretion to award payment of the other party's attorneys' fees in the event the party who bypassed the dispute prevention procedures losses the arbitration or litigation.

C. These Provisions are "Not Market"

While these provisions may not be market today, we believe they are best and next practices and that, more broadly, dispute prevention is an issue that needs to be addressed. We recognize that typically the focus of negotiations does not include conversations about legal disputes and how the parties might prevent them. After all, who wants to talk about legal disputes when you are negotiating what the parties expect will be a mutually beneficial contractual relationship. But as the saying goes, an ounce of prevention is worth a pound of cure and our hope is that, over time, these provisions will become widely adopted and utilized such that they become "market." So in these early days, we encourage those who see the benefits in these model provisions to socialize them with their counterparties early on in negotiations so as to give the other side sufficient time to digest and consider them. We believe the proposed language and

[2] For example, Intel reports having successfully avoided arbitration and litigation proceedings through the use of dispute prevention provisions.

the flexibility for parties to amend the provisions to their needs will result in more efficient business relationships for the provisions' first adopters, which benefits all parties.

V. Conclusion

We encourage you to review the accompanying Model Dispute Prevention and Resolution provisions and consider incorporating them into your key contractual agreements, whether in the context of commercial arrangements, joint ventures or even M&A transactions. We believe that when parties commit to work collaboratively to prevent conflicts and, if appropriate, engage an independent third-party Relationship Facilitator to help them manage their relationship, they will materially increase the likelihood that they achieve the intended results of their contractual commitments and *prevent* costly and damaging legal disputes. At the end of the day, we believe that the cost of implementing these arrangements will be outweighed by the benefit to the parties and their working relationship with each other.

Finally, we welcome your input and insights based on your experience in implementing frameworks such as those described in this memo and your perspectives regarding the results of such arrangements.

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CPR Model Dispute Prevention and Resolution Provisions Term Sheet

This term sheet is intended to provide a summary of key concepts included in the Model Dispute Prevention and Resolution Provisions. These concepts can be tailored based on each party's needs and the circumstances. Furthermore, parties need not take an "all or nothing" approach to these concepts and may decide that only certain concepts would be beneficial for their particular contractual arrangement. Attached to this term sheet, CPR has provided three iterations of the Model Dispute Prevention and Resolution provisions, the "Standing Neutral," "Standby Neutral" and "No Neutral" provisions, which propose language that can be included in transaction documents to operationalize a turn-key solution for dispute prevention and avoidance.

A.	**Relationship Maintenance & Dispute Prevention**	1. Intention of the Parties: An acknowledgement that, in order to maximize mutual benefits derived from the relationship, each party will need to (i) maintain open channels of communications and regularly discuss with the other party the status of their business relationship, and (ii) identify facts and circumstances that may result in disagreements or conflicts. 2. Business Partner Pledge: A non-binding pledge of the parties to cooperate and collaborate with each other in the spirit of dispute avoidance and prevention. 3. Party Representatives: Appointment of employee representative responsible for (i) monitoring the performance of the party's obligations (ii) managing the business relationship with the other party and (iii) identifying any issue that has or may become a basis for a disagreement or conflict.
		4. Relationship Facilitator: Used only in "Standing Neutral" and "Standby Neutral" provisions, the Relationship Facilitator is an impartial neutral who is engaged by the parties to assist them with managing their business relationship and/or resolving conflicts.
		5. Meeting of the Representatives (and Relationship Facilitator): Regular meetings between parties' representatives (and the Relationship Facilitator, if the parties so choose) to discuss the performance of the parties and any potential conflicts. ○ Progress Report: Draft reports provided to other party (and Relationship Facilitator) outlining the performance of its own obligations, including any areas of concern or difficulty, and an assessment of the business relationship.
B.	**Dispute Resolution**	1. Dispute Notice: Delivery of written notice of a disputed matter to other party, which provides the basis for the dispute, the provisions of the underlying agreement that the claimant believes were breached and, to the extent then known, the amount of losses.
		2. Representative Consultation: Consideration of the disputed matter by the parties' representatives (and the Relationship Facilitator, if desired), who meet and attempt to resolve the dispute within a specified timeframe.
		3. Executive Consultation: If the parties' representatives are unsuccessful is resolving the dispute, it is escalated to executive officers of each party. These executive officers (and the Relationship Facilitator, if desired), meet and attempt to resolve the dispute within a specified timeframe.
		4. Mediation: If the executive officers are unsuccessful in resolving the dispute, the parties submit the dispute to a mediator (who would be the Relationship Facilitator, if desired) to help the parties resolve the dispute through confidential mediation under the terms of CPR's Mediation Procedure, except to the extent the Model Provisions differ. If the parties are still unable to successfully resolve their dispute, and in accordance with applicable law, the mediator may in his/her discretion issues a report with a proposed settlement, which the parties may choose to accept or continue onto arbitration.
		5. Binding Arbitration: The parties utilize binding arbitration as the last resort in the dispute resolution process.
		6. Acceleration of Process. If either party, in good faith, believes a specific step in the dispute resolution process outlined above will not resolve the dispute or add material value to the process, then such party may deliver written notice to the other party to bypass all or a portion of the escalation process.

As of Jan. 12, 2021

FORM OF STANDING NEUTRAL DISPUTE PREVENTION & RESOLUTION PROVISIONS

EXHIBIT A[3]

FORM OF STANDING NEUTRAL DISPUTE PREVENTION & RESOLUTION PROVISIONS

The Parties desire to prevent disputes arising between them under and in respect of the [NAME OF DEFINITIVE AGREEMENT AND DATE] (the "Agreement"). Notwithstanding their best efforts to prevent disputes, in the event a dispute between the Parties does arise under the Agreement, the Parties desire to resolve such dispute in an efficient and productive manner. Accordingly, this Exhibit A is incorporated into, and made a part of the Agreement as if this Exhibit A had been fully set forth in the Agreement.

ARTICLE I

RELATIONSHIP MAINTENANCE & DISPUTE PREVENTION

1. Intention of the Parties. The Parties acknowledge the strategic business relationship between them as expressed in the Agreement and the mutual benefits (economic and otherwise) that will be derived from that relationship. The Parties also acknowledge that, in order to maximize these mutual benefits, each Party will need to (i) maintain open channels of communications and regularly discuss with the other Party the status of their business relationship, and (ii) identify facts and circumstances that may result in disagreements or conflicts between them in respect of the Agreement. Accordingly, the Parties have adopted the provisions in Sections 2 through 6 of this Article I in an effort to nurture their strategic business relationship, to realize the mutual benefits arising from such relationship, to prevent impairment of such benefits and to prevent any disagreements or conflicts from ripening into a legal dispute and/or arbitration proceeding.

2. Business Partner Pledge. Each Party pledges to the other Party as set forth below in this Section 2. Notwithstanding anything in the Agreement to the contrary, the pledges below are not intended to be legally binding obligations of the Parties, but rather an expression of the spirit in which they will interact with each other under the Agreement:

a) Each Party will be honest with and respectful of the other Party, its representatives and the Relationship Facilitator (as defined below) at all times;

b) Each Party will listen to the ideas, suggestions, criticisms and concerns of the other Party, its representatives and the Relationship Facilitator and consider them in good faith;

c) Each Party will work constructively with the other Party, its representatives and the Relationship Facilitator to resolve any disagreements arising under or in respect of the Agreement; and

[3] **Note to Drafter**: These model provisions have been drafted as an exhibit to the main transaction agreement, but the provisions can be easily incorporated into the body of the main transaction agreement if that is what the parties would prefer.

d) Each Party will perform its obligations under the Agreement in good faith and in a timely manner.

3. Party Representatives. Each Party shall appoint one of its employees (each, a "Representative" and collectively, the "Representatives") who shall have overall responsibility for (i) monitoring the performance of such Party's obligations under the Agreement (ii) managing the business relationship with the other Party in respect of the Agreement and (iii) identifying any issue that has or may become a basis for a disagreement or conflict between the Parties and attempting to resolve the same. The Representative of each Party shall be an employee with sufficient seniority and authority to make and implement decisions on behalf of such Party. Subject to the immediately foregoing sentence, each Party may, in its sole discretion and upon written notice to the other Party, select another employee to serve in the capacity of its Representative during the term of the Agreement.

4. Relationship Facilitator.[4] The Parties have engaged [INSERT NAME OF RELATIONSHIP FACILITATOR], a member of one of the Panels of Distinguished Neutrals of the International Institute for Conflict Prevention & Resolution, Inc. ("CPR"), to assist the Parties with managing their business relationship under the Agreement (such individual and any successor appointed in accordance with the terms hereof, the "Relationship Facilitator"). Without limiting the generality of the foregoing, the Relationship Facilitator shall (x) assist the Parties with (i) facilitating continued open and regular communications between the Parties and encouraging the Parties to honor and abide by their respective pledges under Section 2 of Article I, (ii) exploring the facts and circumstances related to any disagreements or conflicts between the Parties, including any Disputed Matter (as defined in Section 6), and (iii) finding ways to prevent, mitigate or resolve any disagreements or conflicts between the Parties, including any Disputed Matter, and (y) serve as a mediator in connection with any Mediation and issue a Mediation Report, if applicable, as provided in Section 4 of Article II. The Parties acknowledge and agree that the Relationship Facilitator shall not (A) decide the outcome of any disagreement or conflict between the Parties, including any Disputed Matter, unless specifically requested to do so by the Parties or as otherwise provided in Section 4 of Article II, or (B) provide legal advice to the Parties. Each Party shall provide the Relationship Facilitator with copies of its books, records, data and other documentation and access to its officers, employees and agents, in each case, as may be reasonably requested by the Relationship Facilitator from time to time; provided that neither Party nor any of its officers, employees or agents shall be required to violate any obligation of confidentiality or applicable Law to which it is subject or to waive any privilege it may possess in discharging its obligations hereunder. The Relationship Facilitator may resign at any time upon written notice to the Parties, and may be removed by the Parties at any time upon mutual written agreement of the Parties; provided that any such resignation or removal shall not be effective unless and until a successor

[4] **Note to Drafter**: The parties may wish to consider whether any work product or other output of the Relationship Facilitator should be subject to confidentiality provisions similar to those set forth in Section 6 of Article II below, including whether such work product or other output should or should not be admissible in any subsequent arbitration.

Relationship Facilitator has been appointed by the Parties and accepts such position and the terms hereof. Any successor Relationship Facilitator shall be selected by mutual written agreement of the Parties within [ten (10)] business days of such resignation or removal. In the event that the Parties are unable to agree on the identity of any successor Relationship Facilitator within such [ten (10)] business day period, then CPR shall select one of its neutrals to serve as the Relationship Facilitator, which selection shall be final and binding on the Parties. The individual to serve as the Relationship Facilitator shall have experience mediating complex commercial disputes and in [INSERT DESCRIPTION OF THE RELEVANT INDUSTRY OF THE PARTIES] and shall not have any material conflict of interest with either Party. Any potential conflicts of interest of any candidate to become the Relationship Facilitator shall be disclosed to the Parties, so that they can be evaluated by the Parties. The Relationship Facilitator's fees and costs and any CPR selection costs in connection with their services under the Agreement shall be borne equally by the Parties.

5. Meetings of the Representatives and Relationship Facilitator.

a) The Representatives and the Relationship Facilitator shall meet in-person (except as provided below) at least once each calendar quarter (each, a "Quarterly Meeting"), to discuss the performance of the Parties under the Agreement, including, but not limited to, any issue that has become or may become a basis for a disagreement or conflict between the Parties. At each Quarterly Meeting, each Party will make a progress report (a "Progress Report") to the other Party and the Relationship Facilitator, which will include, without limitation, a report on the performance of its obligations under the Agreement, including any areas of concern or difficulty, and an assessment of the business relationship between the Parties under the Agreement. The Representatives, with help from the Relationship Facilitator when and as needed, will discuss in good faith each Party's Progress Report, and constructive ways to alleviate areas of conflict or difficulty, if any, including any potential amendments or supplements to the Agreement that may be necessary to address any areas of conflict or difficulty, in an effort to prevent any disagreements between the Parties or prevent any such disagreements ripening into a legal dispute and/or arbitration proceeding. At the last Quarterly Meeting of each calendar year, the Representatives and the Relationship Facilitator shall agree on the dates, times and locations of each Quarterly Meeting for the upcoming calendar year. In recognition of the importance of the Quarterly Meetings, each Representative and the Relationship Facilitator shall use their respective commercially reasonable efforts to attend each Quarterly Meeting, as and when scheduled.

b) In addition to the Quarterly Meetings, a Party (the Requesting Party") may, at any time, deliver to the other Party (the "Recipient") and the Relationship Facilitator written notice (each, a "Meeting Notice") for the Representatives and the Relationship Facilitator to meet and discuss any matters arising from or related to the Agreement (each, an "Additional Meeting"). Each Additional Meeting shall occur via video conference or phone (or if the Parties and the Relationship Facilitator mutually agree,

in-person) on the date and time as mutually agreed in good faith by the Parties and the Relationship Facilitator; provided that if the Parties and the Relationship Facilitator are not able to mutually agree on such date and time within three (3) business days after the date the Recipient and the Relationship Facilitator receive such Meeting Notice, such Additional Meeting shall occur at 5:00 p.m. (Eastern Time) on the fifth business day after the Recipient and the Relationship Facilitator receive such Meeting Notice. Notwithstanding the foregoing, a Requesting Party shall not request more than [five (5)] Additional Meetings in any calendar quarter (and the Parties and the Relationship Facilitator shall not be required to attend more than [ten (10)] Additional Meetings in any calendar quarter (*i.e.*, if each Party requests [five (5)] Additional Meetings during such calendar quarter)).

6. Disputed Matters. In the event that any disagreement or conflict arising under or relating to this Agreement or the breach, termination or validity thereof cannot be resolved in the ordinary course by the Parties (a "Disputed Matter"), the Parties desire to resolve such Disputed Matter in accordance with the procedures set forth in Article II below, including the order of such procedures (except as provided in Section 5 of Article II below), which shall be the exclusive procedures for the resolution of all Disputed Matters.

ARTICLE II

DISPUTE RESOLUTION

1. Dispute Notice. In the event that any Disputed Matter arises, the Party alleging such Disputed Matter (the "Claimant") shall promptly deliver written notice of such Disputed Matter to the other Party and the Relationship Facilitator, which notice shall set forth in reasonable detail the basis for the Disputed Matter, the provisions of the Agreement that the Claimant claims have been breached by the other Party and to the extent then known, the amount of losses arising from such Disputed Matter (a "Dispute Notice"). Notwithstanding the foregoing, no delay on the part of the Claimant in notifying the other Party and the Relationship Facilitator of a Disputed Matter shall relieve the other Party from any obligation or liability under the Agreement, except to the extent that the other Party can demonstrate that it has been actually and materially prejudiced by such delay.

2. Representative Consultation. Subject to Section 5 below, the Disputed Matter shall be considered first by the Representatives and the Relationship Facilitator. Unless one of the Parties has elected to forego the Representative Consultation, the Representatives and the Relationship Facilitator shall meet at least once [in person] and attempt in good faith to resolve the Disputed Matter within [fifteen (15)] days after the date of the Dispute Notice (the "Representative Consultation"). If the Disputed Matter is not finally resolved within such [fifteen (15)] day period, then either Party may at any time thereafter, deliver written notice (an "Executive Consultation Notice") to the other Party and the Relationship Facilitator that it is electing for the Disputed Matter to be referred to the Executive Consultation. Notwithstanding the foregoing, if at any time the Parties

mutually agree that the Relationship Facilitator should not participate in the Representative Consultation, then the Parties shall deliver written notice thereof to the Relationship Facilitator, and from and after the date such notice is delivered to the Relationship Facilitator, the Relationship Facilitator shall not participate in the Representative Consultation.[5]

3. Executive Consultation. Subject to Section 5 below, upon election by either Party to escalate the Disputed Matter, the Disputed Matter shall next be considered by an executive officer of each Party, each of whom shall have an equivalent level of authority for such Party as the executive officer appointed by the other Party and shall be the Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, General Counsel or equivalent of such Party (the "Executives") and the Relationship Facilitator. Unless one of the Parties has elected to forego the Executive Consultation, the Executives and the Relationship Facilitator shall meet at least once [in person] and attempt in good faith to resolve the Disputed Matter within [thirty (30)] days after the date of the Executive Consultation Notice or Escalation Notice (the "Executive Consultation"). If the Disputed Matter is not finally resolved within such [thirty (30)] day period, then either Party may at any time thereafter, and upon written notice to the other Party (a "Mediation Notice"), elect for the Disputed Matter to be referred to the Relationship Facilitator. Notwithstanding the foregoing, if at any time the Parties mutually agree that the Relationship Facilitator should not participate in the Executive Consultation, then the Parties shall deliver written notice thereof to the Relationship Facilitator, and from and after the date such notice is delivered to the Relationship Facilitator, the Relationship Facilitator shall not participate in the Executive Consultation.

4. Relationship Facilitator and Mediation.

a) *Mediation Procedures.* Subject to Section 5 below, upon election by either Party, the Disputed Matter shall next be considered by the Relationship Facilitator as the "mediator" by confidential mediation under the then current CPR Mediation Procedure, except to the extent provided herein. Unless one of the Parties has elected to forego the Mediation, the Parties and the Relationship Facilitator shall attempt in good faith to resolve the Disputed Matter within [sixty (60)] days after the date of the Mediation Notice or the Escalation Notice (the "Mediation" and such [sixty (60)] day period, the "Mediation Period"). In lieu of the mediation statement provided for in Section 5 of the CPR Mediation Procedure, within [fifteen (15)] days after the date of the Mediation Notice, each Party may (but neither shall be obligated to) submit to the Relationship Facilitator a written position paper setting forth its positions regarding the Disputed Matter and any supporting data and documentation, which position paper and supporting data and documentation shall be concurrently delivered to the other Party. At any time during the Mediation Period, upon reasonable advanced written notice by

[5] **Note to Drafter**: The Representative Consultation provision can be customized to exclude the Relationship Facilitator from this portion of the Dispute Resolution process under the Standing Neutral regime.

the Relationship Facilitator to the Parties, the Relationship Facilitator may request a meeting with the Parties to discuss and ask questions about the Disputed Matter. The Parties agree to use their respective commercially reasonable efforts to participate in the Mediation and to cooperate with the Relationship Facilitator. Without limiting the foregoing, during the Mediation Period, each Party shall make available to the Relationship Facilitator (x) all books, records, data and other documentation of such Party related to the Disputed Matter reasonably requested by the Relationship Facilitator, including any records arising from or related to the Representative Consultation or the Executive Consultation and any settlement proposals made by either Party in connection with such consultations and (y) any officer, employee or agent of such Party who has knowledge of the Disputed Matter; provided, that in the case of the immediately foregoing clause (x) and clause (y), neither Party nor any of its officers, employees or agents shall be required to violate any obligation of confidentiality or applicable Law to which it is subject or to waive any privilege it may possess in discharging its obligations hereunder.

b) *Decision of the Relationship Facilitator.*

i. If the Parties are able to resolve the Disputed Matter through the Mediation, the Parties shall as promptly as reasonably practicable thereafter (and in any event, within [thirty (30)] days after the end of the Mediation Period (the date that is [thirty (30)] days after the end of the Mediation Period, the "Settlement Deadline")) use their commercially reasonable efforts to execute and deliver a written settlement agreement (a "Settlement Agreement") memorializing the terms and conditions of such resolution. In the event the Parties are not able to resolve the Disputed Matter through the Mediation or do not execute and deliver a Settlement Agreement on or before the Settlement Deadline, subject to the last sentence of this paragraph, and in lieu of the evaluation contemplated in the penultimate paragraph of Section 6 of the CPR Mediation Procedure, and to the extent consistent with applicable law, the Relationship Facilitator may in his/her discretion issue to the Parties a written report with respect to the Disputed Matter and setting forth a proposed settlement of the Disputed Matter (collectively, the "Mediation Report"), which Mediation Report shall be delivered to the Parties within [XX days from the end of the Mediation Period]. In the event the Parties enter into a Settlement Agreement before the issuance of the Mediation Report, the Relationship Facilitator shall not issue the Mediation Report.

ii. In the event that the Parties are not able to resolve the Disputed Matter through the Mediation and the Relationship Facilitator issues the Mediation Report and the Parties agree to the Relationship Facilitator's proposed settlement of the Disputed Matter as reflected in the Mediation Report, the

Parties shall use their commercially reasonable efforts to execute and deliver a Settlement Agreement memorializing such settlement as promptly as reasonably practicable after the issuance of the Mediation Report (and in any event, no later than [thirty (30)] days after the date of the Mediation Report).

iii. If the Disputed Matter is not finally resolved as provided in this Section 4, then either Party may at any time after the [Mediation Period], and upon written notice to the other Party (an "Arbitration Notice"), elect for the Disputed Matter to be resolved through binding arbitration. For the avoidance of doubt, the Relationship Facilitator shall have no adjudicatory authority and shall act solely as a mediator working with the Parties.

5. Escalation. Notwithstanding anything herein to the contrary, if either Party (an "Escalating Party"), in good faith, believes that, based on the prior meetings of the Representatives and the Relationship Facilitator and the nature, scope and severity of the Disputed Matter, the Representative Consultation, the Executive Consultation and/or the Mediation will not resolve the Disputed Matter or add material value to the dispute resolution process, then the Escalating Party may, at any time, deliver written notice (each, an "Escalation Notice") to the other Party, that the Disputed Matter is being referred to (a) Executive Consultation (in the event the Escalating Party desires to skip or truncate the Representative Consultation); (b) Mediation (in the event the Escalating Party desires to skip or truncate the Representative Consultation and/or the Executive Consultation); or (c) Arbitration (in the event the Escalating Party desires to skip or truncate the Representative Consultation, the Executive Consultation and/or the Mediation).

6. Confidentiality. The Representative Consultation, the Executive Consultation and the Mediation, including the Mediation Report, if any, shall be subject to Rule 9 of the CPR Mediation Procedure.[6]

7. Binding Arbitration as Last Resort. Upon delivery of an Arbitration Notice or Escalation Notice by either Party to the other Party, such Disputed Matter shall be finally resolved by arbitration in accordance with the then current CPR Rules for Administered Arbitration by [a sole arbitrator] [three arbitrators, of whom each party shall designate one, with the third arbitrator to be appointed by CPR] [three arbitrators, of whom each party shall designate one, with the third arbitrator to be designated by the two party-appointed arbitrators] [three arbitrators, of whom each party shall designate one in accordance with the screened appointment procedure provided in Rule 5.4] [three arbitrators, none of whom shall be designated by either party]. The arbitration shall be governed by the Federal

[6] **Note to Drafter**: The parties may wish to consider whether provisions expressly addressing privileged information should be included (*for example*, adding a provision to maintain any attorney-client privilege that may be applicable to communications and information that are inadvertently disclosed to the other party during the Representative Consultation, Executive Consultation or the Mediation).

Arbitration Act, 9 U.S.C. §§ 1 et seq., and judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. The place of the arbitration shall be (city, state). In the event the Escalating Party (i) elects to skip or truncate the Executive Consultation and/or the Mediation and (ii) is not the prevailing party, as determined by the Tribunal, in the Arbitration, the parties acknowledge that under Rule 19 of the CPR Rules of Administered Arbitration, the Tribunal may, in its discretion and as part of its award, require the Escalating Party to reimburse the prevailing party for all or any portion of the reasonable out-of-pocket costs and expenses, including the reasonable attorneys' fees and disbursements, that were incurred by the prevailing party in connection with the Arbitration.

8. Continuity. Each Party acknowledges and agrees that the timely and complete performance of its obligations pursuant to the Agreement, and any other agreements between the Parties, is critical to the business and operations of the other Party. Accordingly, in the event of a Disputed Matter, both Parties shall continue to perform their respective obligations under and in accordance with the terms of the Agreement, and any other agreements between the Parties, in good faith during the pendency of such Disputed Matter.

As of Jan. 12, 2021

FORM OF STANDBY NEUTRAL DISPUTE PREVENTION & RESOLUTION PROVISIONS

EXHIBIT A[7]

FORM OF STANDBY NEUTRAL DISPUTE PREVENTION & RESOLUTION PROVISIONS

The Parties desire to prevent disputes arising between them under and in respect of the [NAME OF DEFINITIVE AGREEMENT AND DATE] (the "Agreement"). Notwithstanding their best efforts to prevent disputes, in the event a dispute between the Parties does arise under the Agreement, the Parties desire to resolve such dispute in an efficient and productive manner. Accordingly, this Exhibit A is incorporated into, and made a part of the Agreement as if this Exhibit A had been fully set forth in the Agreement.

ARTICLE I

RELATIONSHIP MAINTENANCE & DISPUTE PREVENTION

1. Intention of the Parties. The Parties acknowledge the strategic business relationship between them as expressed in the Agreement and the mutual benefits (economic and otherwise) that will be derived from that relationship. The Parties also acknowledge that, in order to maximize these mutual benefits, each Party will need to (i) maintain open channels of communications and regularly discuss with the other Party the status of their business relationship, and (ii) identify facts and circumstances that may result in disagreements or conflicts between them in respect of the Agreement. Accordingly, the Parties have adopted the provisions in Sections 2 through 5 of this Article I in an effort to nurture their strategic business relationship, to realize the mutual benefits arising from such relationship, to prevent impairment of such benefits and to prevent any disagreements or conflicts from ripening into a legal dispute and/or arbitration proceeding.

2. Business Partner Pledge. Each Party pledges to the other Party as set forth below in this Section 2. Notwithstanding anything in the Agreement to the contrary, the pledges below are not intended to be legally binding obligations of the Parties, but rather an expression of the spirit in which they will interact with each other under the Agreement:

a) Each Party will be honest with and respectful of the other Party, its representatives and the Relationship Facilitator (as defined below) at all times;

b) Each Party will listen to the ideas, suggestions, criticisms and concerns of the other Party, its representatives and the Relationship Facilitator and consider them in good faith;

c) Each Party will work constructively with the other Party, its representatives and the Relationship Facilitator to resolve any disagreements arising under or in respect of the Agreement; and

[7] **Note to Drafter**: These model provisions have been drafted as an exhibit to the main transaction agreement, but the provisions can be easily incorporated into the body of the main transaction agreement if that is what the parties would prefer.

d) Each Party will perform its obligations under the Agreement in good faith and in a timely manner.

3. Party Representatives. Each Party shall appoint one of its employees (each, a "Representative" and collectively, the "Representatives") who shall have overall responsibility for (i) monitoring the performance of such Party's obligations under the Agreement (ii) managing the business relationship with the other Party in respect of the Agreement and (iii) identifying any issue that has or may become a basis for a disagreement or conflict between the Parties and attempting to resolve the same. The Representative of each Party shall be an employee with sufficient seniority and authority to make and implement decisions on behalf of such Party. Subject to the immediately foregoing sentence, each Party may, in its sole discretion and upon written notice to the other Party, select another employee to serve in the capacity of its Representative during the term of the Agreement.

4. Meetings of the Representatives.

a) The Representatives shall meet in-person (except as provided below) at least once each calendar quarter (each, a "Quarterly Meeting"), to discuss the performance of the Parties under the Agreement, including, but not limited to, any issue that has become or may become a basis for a disagreement or conflict between the Parties. At each Quarterly Meeting, each Party will make a progress report (a "Progress Report") to the other Party, which will include, without limitation, a report on the performance of its obligations under the Agreement, including any areas of concern or difficulty, and an assessment of the business relationship between the Parties under the Agreement. The Representatives will discuss in good faith each Party's Progress Report, and constructive ways to alleviate areas of conflict or difficulty, if any, including any potential amendments or supplements to the Agreement that may be necessary to address any areas of conflict or difficulty, in an effort to prevent any disagreements between the Parties or prevent any such disagreements ripening into a legal dispute and/or arbitration proceeding. At the last Quarterly Meeting of each calendar year, the Representatives shall agree on the dates, times and locations of each Quarterly Meeting for the upcoming calendar year. In recognition of the importance of the Quarterly Meetings, each Representative shall use his or her commercially reasonable efforts to attend each Quarterly Meeting, as and when scheduled.

b) In addition to the Quarterly Meetings, a Party (the Requesting Party") may, at any time, deliver to the other Party (the "Recipient") written notice (each, a "Meeting Notice") for the Representatives to meet and discuss any matters arising from or related to the Agreement (each, an "Additional Meeting"). Each Additional Meeting shall occur via video conference or phone (or if the Parties mutually agree, in-person) on the date and time as mutually agreed in good faith by the Parties; provided that if the Parties are not able to mutually agree on such date and time within three (3) business days after the

date the Recipient receives such Meeting Notice, such Additional Meeting shall occur at 5:00 p.m. (Eastern Time) on the fifth business day after the Recipient receives such Meeting Notice. Notwithstanding the foregoing, a Requesting Party shall not request more than [five (5)] Additional Meetings in any calendar quarter (and the Parties shall not be required to attend more than [ten (10)] Additional Meetings in any calendar quarter (*i.e.*, if each Party requests [five (5)] Additional Meetings during such calendar quarter)).

5. Disputed Matters. In the event that any disagreement or conflict arising under or relating to this Agreement or the breach, termination or validity thereof cannot be resolved in the ordinary course by the Parties (a "Disputed Matter"), the Parties desire to resolve such Disputed Matter in accordance with the procedures set forth in Article II below, including the order of such procedures (except as provided in Section 5 of Article II below), which shall be the exclusive procedures for the resolution of all Disputed Matters.

ARTICLE II

DISPUTE RESOLUTION

1. Dispute Notice. In the event that any Disputed Matter arises, the Party alleging such Disputed Matter (the "Claimant") shall promptly deliver written notice of such Disputed Matter to the other Party, which notice shall set forth in reasonable detail the basis for the Disputed Matter, the provisions of the Agreement that the Claimant claims have been breached by the other Party and to the extent then known, the amount of losses arising from such Disputed Matter (a "Dispute Notice"). Notwithstanding the foregoing, no delay on the part of the Claimant in notifying the other Party of a Disputed Matter shall relieve the other Party from any obligation or liability under the Agreement, except to the extent that the other Party can demonstrate that it has been actually and materially prejudiced by such delay.

2. Representative Consultation. Subject to Section 5 below, the Disputed Matter shall be considered first by the Representatives. Unless one of the Parties has elected to forego the Representative Consultation, the Representatives shall meet at least once [in person] and attempt in good faith to resolve the Disputed Matter within [fifteen (15)] days after the date of the Dispute Notice (the "Representative Consultation"). If the Disputed Matter is not finally resolved within such [fifteen (15)] day period, then either Party may at any time thereafter, deliver written notice (an "Executive Consultation Notice") to the other Party that it is electing for the Disputed Matter to be referred to Executive Consultation.

3. Executive Consultation. Subject to Section 5 below, upon election by either Party to escalate the Disputed Matter, the Disputed Matter shall next be considered by an executive officer of each Party, each of whom shall have an equivalent level of authority for such Party as the executive officer appointed by the other Party and shall be the Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, General Counsel or equivalent of such Party (the "Executives"). Unless one of the Parties has elected to forego the Executive Consultation, the

Executives shall meet at least once [in person] and attempt in good faith to resolve the Disputed Matter within [thirty (30)] days after the date of the Executive Consultation Notice or Escalation Notice (the "Executive Consultation"). If the Disputed Matter is not finally resolved within such [thirty (30)] day period, then either Party may at any time thereafter, and upon written notice to the other Party (a "Mediation Notice"), elect for the Disputed Matter to be referred to the Relationship Facilitator.

4. Relationship Facilitator and Mediation.

a) *Selection of the Relationship Facilitator*.

i. Upon election by either Party to refer the Disputed Matter pursuant to clause (c) above, the Disputed Matter shall next be considered by the Relationship Facilitator. The Parties have engaged [INSERT NAME OF RELATIONSHIP FACILITATOR], a member of one of the panels of neutrals of the International Institute for Conflict Prevention & Resolution, Inc. ("CPR"), to act as the Relationship Facilitator under the Agreement (such individual and any successor appointed in accordance with the terms hereof, the "Relationship Facilitator"). The Relationship Facilitator shall serve as a mediator and assist the Parties with (i) facilitating open communications between the Parties in respect of the Disputed Matter and encouraging the Parties to honor and abide by their respective pledges under Section 2 of Article I, (ii) exploring the facts and circumstances related to the Dispute Matter, (iii) finding ways to resolve the Disputed Matter. The Parties acknowledge and agree that the Relationship Facilitator shall not (A) decide the outcome of any disagreement or conflict between the Parties, including any Disputed Matter, unless specifically requested to do so by the Parties or as otherwise provided in Section 4, or (B) provide legal advice to the Parties.

ii. The Parties acknowledge that the Relationship Facilitator may not be available or otherwise not able to serve as a mediator at the time the Parties need the Relationship Facilitator to assist with the resolution of a Disputed Matter. The Parties further acknowledge that the Relationship Facilitator may resign at any time upon written notice to the Parties, and may be removed by the Parties at any time upon mutual written agreement of the Parties; provided that any such resignation or removal shall not be effective unless and until a successor Relationship Facilitator has been appointed by the Parties and accepts such position and the terms hereof. Any successor Relationship Facilitator shall be selected by mutual written agreement of the Parties within [ten (10)] business days of the date the Parties are informed that the Relationship Facilitator is not available to serve as a mediator or the date of the resignation or removal of the Relationship Facilitator. In the event that the Parties are unable to agree on the identity of any successor Relationship Facilitator within the applicable [ten

(10)] business day period, then CPR shall select one of its neutrals to serve as the Relationship Facilitator, which selection shall be final and binding on the Parties. The individual to serve as the Relationship Facilitator shall have experience mediating complex commercial disputes and in [INSERT DESCRIPTION OF THE RELEVANT INDUSTRY OF THE PARTIES] and shall not have any material conflict of interest with either Party. Any potential conflicts of interest of any candidate to become the Relationship Facilitator shall be disclosed to the Parties, so that they can be evaluated by the Parties. The Relationship Facilitator's fees and costs in connection with the Mediation shall be borne equally by the Parties.

b) *Mediation Procedures.* Subject to Section 5 below, the Parties and the Relationship Facilitator shall attempt in good faith to resolve the Disputed Matter within [sixty (60)] days after the Relationship Facilitator is retained as the "mediator" by the Parties by confidential mediation under the then current CPR Mediation Procedure, except to the extent provided herein (the "Mediation" and such [sixty (60)] day period, the "Mediation Period"). In lieu of the mediation statement provided for in Section 5 of the CPR Mediation Procedure, within [fifteen (15)] days after the date of the Mediation Notice, each Party may (but neither shall be obligated to) submit to the Relationship Facilitator a written position paper setting forth its positions regarding the Disputed Matter and any supporting data and documentation, which position paper and supporting data and documentation shall be concurrently delivered to the other Party. At any time during the Mediation Period, upon reasonable advanced written notice by the Relationship Facilitator to the Parties, the Relationship Facilitator may request a meeting with the Parties to discuss and ask questions about the Disputed Matter. The Parties agree to use their respective commercially reasonable efforts to participate in the Mediation and to cooperate with the Relationship Facilitator. Without limiting the foregoing, during the Mediation Period, each Party shall make available to the Relationship Facilitator (x) all books, records, data and other documentation of such Party related to the Disputed Matter reasonably requested by the Relationship Facilitator, including any records arising from or related to the Representative Consultation or the Executive Consultation and any settlement proposals made by either Party in connection with such consultations and (y) any officer, employee or agent of such Party who has knowledge of the Disputed Matter; provided, that in the case of the immediately foregoing clause (x) and clause (y), neither Party nor any of its officers, employees or agents shall be required to violate any obligation of confidentiality or applicable Law to which it is subject or to waive any privilege it may possess in discharging its obligations hereunder.

c) *Decision of the Relationship Facilitator.*

i. If the Parties are able to resolve the Disputed Matter through the Mediation, the Parties shall as promptly as reasonably practicable thereafter (and in any

event, within [thirty (30)] days after the end of the Mediation Period (the date that is [thirty (30)] days after the end of the Mediation Period, the "Settlement Deadline")) use their commercially reasonable efforts to execute and deliver a written settlement agreement (a "Settlement Agreement") memorializing the terms and conditions of such resolution. In the event the Parties are not able to resolve the Disputed Matter through the Mediation or do not execute and deliver a Settlement Agreement on or before the Settlement Deadline, subject to the last sentence of this paragraph, and in lieu of the evaluation contemplated in the penultimate paragraph of Section 6 of the CPR Mediation Procedure, and to the extent consistent with applicable law, the Relationship Facilitator may in his/her discretion issue to the Parties a written report with respect to the Disputed Matter and setting forth a proposed settlement of the Disputed Matter (collectively, the "Mediation Report"), which Mediation Report shall be delivered to the Parties within [XX days from the end of the Mediation Period]. In the event the Parties enter into a Settlement Agreement before the issuance of the Mediation Report, the Relationship Facilitator shall not issue the Mediation Report.

ii. In the event that the Parties are not able to resolve the Disputed Matter through the Mediation and the Relationship Facilitator issues the Mediation Report and the Parties agree to the Relationship Facilitator's proposed settlement of the Disputed Matter as reflected in the Mediation Report, the Parties shall use their commercially reasonable efforts to execute and deliver a Settlement Agreement memorializing such settlement as promptly as reasonably practicable after the issuance of the Mediation Report (and in any event, no later than [thirty (30)] days after the date of the Mediation Report).

iii. If the Disputed Matter is not finally resolved as provided in this Section 4, then either Party may at any time after the [Mediation Period], and upon written notice to the other Party (an "Arbitration Notice"), elect for the Disputed Matter to be resolved through binding arbitration. For the avoidance of doubt, the Relationship Facilitator shall have no adjudicatory authority and shall act solely as a mediator working with the Parties.

5. Escalation. Notwithstanding anything herein to the contrary, if either Party (an "Escalating Party"), in good faith, believes that, based on the prior meetings of the Representatives and the nature, scope and severity of the Disputed Matter, the Representative Consultation, the Executive Consultation and/or the Mediation will not resolve the Disputed Matter or add material value to the dispute resolution process, then the Escalating Party may, at any time, deliver written notice (each, an "Escalation Notice") to the other Party, that the Disputed Matter is being referred to (a) Executive Consultation (in the event the Escalating Party desires to skip or truncate the

Representative Consultation); (b) Mediation (in the event the Escalating Party desires to skip or truncate the Representative Consultation and/or the Executive Consultation); or (c) Arbitration (in the event the Escalating Party desires to skip or truncate the Representative Consultation, the Executive Consultation and/or the Mediation).

6. Confidentiality. The Representative Consultation, the Executive Consultation and the Mediation, including the Mediation Report, if any, shall be subject to Rule 9 of the CPR Mediation Procedure.[8]

7. Binding Arbitration as Last Resort. Upon delivery of an Arbitration Notice or Escalation Notice by either Party to the other Party, such Disputed Matter shall be finally resolved by arbitration in accordance with the then current CPR Rules for Administered Arbitration by [a sole arbitrator] [three arbitrators, of whom each party shall designate one, with the third arbitrator to be appointed by CPR] [three arbitrators, of whom each party shall designate one, with the third arbitrator to be designated by the two party-appointed arbitrators] [three arbitrators, of whom each party shall designate one in accordance with the screened appointment procedure provided in Rule 5.4] [three arbitrators, none of whom shall be designated by either party]. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq., and judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. The place of the arbitration shall be (city, state). In the event the Escalating Party (i) elects to skip or truncate the Executive Consultation and/or the Mediation and (ii) is not the prevailing party, as determined by the Tribunal, in the Arbitration, the parties acknowledge that under Rule 19 of the CPR Rules of Administered Arbitration, the Tribunal may, in its discretion and as part of its award, require the Escalating Party to reimburse the prevailing party for all or any portion of the reasonable out-of-pocket costs and expenses, including the reasonable attorneys' fees and disbursements, that were incurred by the prevailing party in connection with the Arbitration.

8. Continuity. Each Party acknowledges and agrees that the timely and complete performance of its obligations pursuant to the Agreement, and any other agreements between the Parties, is critical to the business and operations of the other Party. Accordingly, in the event of a Disputed Matter, both Parties shall continue to perform their respective obligations under and in accordance with the terms of the Agreement, and any other agreements between the Parties, in good faith during the pendency of such Disputed Matter.

[8] **Note to Drafter**: The parties may wish to consider whether provisions expressly addressing privileged information should be included (*for example*, adding a provision to maintain any attorney-client privilege that may be applicable to communications and information that are inadvertently disclosed to the other party during the Representative Consultation, Executive Consultation or the Mediation).

As of Jan. 12, 2021

FORM OF NO NEUTRALS DISPUTE PREVENTION & RESOLUTION PROVISIONS

EXHIBIT A[9]

FORM OF NO NEUTRALS DISPUTE PREVENTION & RESOLUTION PROVISIONS

The Parties desire to prevent disputes arising between them under and in respect of the [NAME OF DEFINITIVE AGREEMENT AND DATE] (the "Agreement"). Notwithstanding their best efforts to prevent disputes, in the event a dispute between the Parties does arise under the Agreement, the Parties desire to resolve such dispute in an efficient and productive manner. Accordingly, this Exhibit A is incorporated into, and made a part of the Agreement as if this Exhibit A had been fully set forth in the Agreement.

ARTICLE I

RELATIONSHIP MAINTENANCE & DISPUTE PREVENTION

1. Intention of the Parties. The Parties acknowledge the strategic business relationship between them as expressed in the Agreement and the mutual benefits (economic and otherwise) that will be derived from that relationship. The Parties also acknowledge that, in order to maximize these mutual benefits, each Party will need to (i) maintain open channels of communications and regularly discuss with the other Party the status of their business relationship, and (ii) identify facts and circumstances that may result in disagreements or conflicts between them in respect of the Agreement. Accordingly, the Parties have adopted the provisions in Sections 2 through 5 of this Article I in an effort to nurture their strategic business relationship, to realize the mutual benefits arising from such relationship, to prevent impairment of such benefits and to prevent any disagreements or conflicts from ripening into a legal dispute and/or arbitration proceeding.

2. Business Partner Pledge. Each Party pledges to the other Party as set forth below in this Section 2. Notwithstanding anything in the Agreement to the contrary, the pledges below are not intended to be legally binding obligations of the Parties, but rather an expression of the spirit in which they will interact with each other under the Agreement:

a) Each Party will be honest with and respectful of the other Party and its representatives at all times;

b) Each Party will listen to the ideas, suggestions, criticisms and concerns of the other Party and its representatives and consider them in good faith;

c) Each Party will work constructively with the other Party and its representatives to resolve any disagreements arising under or in respect of the Agreement; and

[9] **Note to Drafter**: These model provisions have been drafted as an exhibit to the main transaction agreement, but the provisions can be easily incorporated into the body of the main transaction agreement if that is what the parties would prefer.

d) Each Party will perform its obligations under the Agreement in good faith and in a timely manner.

3. Party Representatives. Each Party shall appoint one of its employees (each, a "Representative" and collectively, the "Representatives") who shall have overall responsibility for (i) monitoring the performance of such Party's obligations under the Agreement (ii) managing the business relationship with the other Party in respect of the Agreement and (iii) identifying any issue that has or may become a basis for a disagreement or conflict between the Parties and attempting to resolve the same. The Representative of each Party shall be an employee with sufficient seniority and authority to make and implement decisions on behalf of such Party. Subject to the immediately foregoing sentence, each Party may, in its sole discretion and upon written notice to the other Party, select another employee to serve in the capacity of its Representative during the term of the Agreement.

4. Meetings of the Representatives.

a) The Representatives shall meet in-person (except as provided below) at least once each calendar quarter (each, a "Quarterly Meeting"), to discuss the performance of the Parties under the Agreement, including, but not limited to, any issue that has become or may become a basis for a disagreement or conflict between the Parties. At each Quarterly Meeting, each Party will make a progress report (a "Progress Report") to the other Party, which will include, without limitation, a report on the performance of its obligations under the Agreement, including any areas of concern or difficulty, and an assessment of the business relationship between the Parties under the Agreement. The Representatives will discuss in good faith each Party's Progress Report, and constructive ways to alleviate areas of conflict or difficulty, if any, including any potential amendments or supplements to the Agreement that may be necessary to address any areas of conflict or difficulty, in an effort to prevent any disagreements between the Parties or prevent any such disagreements ripening into a legal dispute and/or arbitration proceeding. At the last Quarterly Meeting of each calendar year, the Representatives shall agree on the dates, times and locations of each Quarterly Meeting for the upcoming calendar year. In recognition of the importance of the Quarterly Meetings, each Representative shall use his or her commercially reasonable efforts to attend each Quarterly Meeting, as and when scheduled.

b) In addition to the Quarterly Meetings, a Party (the Requesting Party") may, at any time, deliver to the other Party (the "Recipient") written notice (each, a "Meeting Notice") for the Representatives to meet and discuss any matters arising from or related to the Agreement (each, an "Additional Meeting"). Each Additional Meeting shall occur via video conference or phone (or if the Parties mutually agree, in-person) on the date and time as mutually agreed in good faith by the Parties; provided that if the Parties are not able to mutually agree on such date and time within three (3) business days after the date the Recipient receives such Meeting Notice, such Additional Meeting shall occur

at 5:00 p.m. (Eastern Time) on the fifth business day after the Recipient receives such Meeting Notice. Notwithstanding the foregoing, a Requesting Party shall not request more than [five (5)] Additional Meetings in any calendar quarter (and the Parties shall not be required to attend more than [ten (10)] Additional Meetings in any calendar quarter (*i.e.*, if each Party requests [five (5)] Additional Meetings during such calendar quarter)).

5. Disputed Matters. In the event that any disagreement or conflict arising under or relating to this Agreement or the breach, termination or validity thereof cannot be resolved in the ordinary course by the Parties (a "Disputed Matter"), the Parties desire to resolve such Disputed Matter in accordance with the procedures set forth in Article II below, including the order of such procedures (except as provided in Section 5 of Article II below), which shall be the exclusive procedures for the resolution of all Disputed Matters.

ARTICLE II

DISPUTE RESOLUTION

1. Dispute Notice. In the event that any Disputed Matter arises, the Party alleging such Disputed Matter (the "Claimant") shall promptly deliver written notice of such Disputed Matter to the other Party, which notice shall set forth in reasonable detail the basis for the Disputed Matter, the provisions of the Agreement that the Claimant claims have been breached by the other Party and to the extent then known, the amount of losses arising from such Disputed Matter (a "Dispute Notice"). Notwithstanding the foregoing, no delay on the part of the Claimant in notifying the other Party of a Disputed Matter shall relieve the other Party from any obligation or liability under the Agreement, except to the extent that the other Party can demonstrate that it has been actually and materially prejudiced by such delay.

2. Representative Consultation. Subject to Section 5 below, the Disputed Matter shall be considered first by the Representatives. Unless one of the Parties has elected to forego the Representative Consultation, the Representatives shall meet at least once [in person] and attempt in good faith to resolve the Disputed Matter within [fifteen (15)] days after the date of the Dispute Notice (the "Representative Consultation"). If the Disputed Matter is not finally resolved within such [fifteen (15)] day period, then either Party may at any time thereafter, deliver written notice (an "Executive Consultation Notice") to the other Party that it is electing for the Disputed Matter to be referred to the Executive Consultation.

3. Executive Consultation. Subject to Section 5 below, upon election by either Party to escalate the Disputed Matter, the Disputed Matter shall next be considered by an executive officer of each Party, each of whom shall have an equivalent level of authority for such Party as the executive officer appointed by the other Party and shall be the Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, General Counsel or equivalent of such Party (the "Executives"). Unless one of the Parties has elected to forego the Executive Consultation, the Executives shall meet at least once [in person] and attempt in good faith to resolve the Disputed

Matter within [thirty (30)] days after the date of the Executive Consultation Notice or the Escalation Notice (the "Executive Consultation"). If the Disputed Matter is not finally resolved within such [thirty (30)] day period, then either Party may at any time thereafter, and upon written notice to the other Party (a "Mediation Notice"), elect for the Disputed Matter to be referred to Mediation.

4. Mediation. Unless one of the Parties has elected to forego the Mediation pursuant to Section 5 below, the Parties shall attempt in good faith to resolve the Disputed Matter through mediation under the International Institute for Conflict Prevention & Resolution, Inc.'s ("CPR") Mediation Procedure then in effect (the "Mediation"). Notwithstanding anything to the contrary in the CPR Mediation Procedure, the Parties agree to participate in the Mediation in good faith for a period of at least [sixty (60)] days. The Parties will select a mediator in accordance with the CPR Mediation Procedure, and the fees and costs of the mediator shall be borne equally by the Parties. If the Disputed Matter is not finally resolved within such [sixty (60)] day period, then either Party may at any time thereafter, and upon written notice to the other Party (an "Arbitration Notice"), elect for the Disputed Matter to be resolved through binding arbitration.

5. Escalation. Notwithstanding anything herein to the contrary, if either Party (an "Escalating Party"), in good faith, believes that, based on the prior meetings of the Representatives and the nature, scope and severity of the Disputed Matter, the Representative Consultation, the Executive Consultation and/or the Mediation will not resolve the Disputed Matter or add material value to the dispute resolution process, then the Escalating Party may, at any time, deliver written notice (each, an "Escalation Notice") to the other Party, that the Disputed Matter is being referred to (a) Executive Consultation (in the event the Escalating Party desires to skip or truncate the Representative Consultation); (b) Mediation (in the event the Escalating Party desires to skip or truncate the Representative Consultation and/or the Executive Consultation); or (c) Arbitration (in the event the Escalating Party desires to skip or truncate the Representative Consultation, the Executive Consultation and/or the Mediation).

6. Confidentiality. The Representative Consultation, the Executive Consultation and the Mediation shall be subject to Rule 9 of the CPR Mediation Procedure.[10]

7. Binding Arbitration as Last Resort. Upon delivery of an Arbitration Notice or Escalation Notice by either Party to the other Party, such Disputed Matter shall be finally resolved by arbitration in accordance with the then current CPR Rules for Administered Arbitration by [a sole arbitrator] [three arbitrators, of whom each party shall designate one, with the third arbitrator to be appointed by CPR] [three arbitrators, of whom each party shall designate one, with the third arbitrator to be designated by the two party-appointed arbitrators] [three arbitrators, of whom each party shall designate one in accordance with the screened appointment procedure provided in Rule

[10] **Note to Drafter**: The parties may wish to consider whether provisions expressly addressing privileged information should be included (*for example*, adding a provision to maintain any attorney-client privilege that may be applicable to communications and information that are inadvertently disclosed to the other party during the Representative Consultation, Executive Consultation or the Mediation).

5.4] [three arbitrators, none of whom shall be designated by either party]. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq., and judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. The place of the arbitration shall be (city, state). In the event the Escalating Party (i) elects to skip or truncate the Executive Consultation and/or the Mediation and (ii) is not the prevailing party, as determined by the Tribunal, in the Arbitration, the parties acknowledge that under Rule 19 of the CPR Rules of Administered Arbitration, the Tribunal may, in its discretion and as part of its award, require the Escalating Party to reimburse the prevailing party for all or any portion of the reasonable out-of-pocket costs and expenses, including the reasonable attorneys' fees and disbursements, that were incurred by the prevailing party in connection with the Arbitration.

8. Continuity. Each Party acknowledges and agrees that the timely and complete performance of its obligations pursuant to the Agreement, and any other agreements between the Parties, is critical to the business and operations of the other Party. Accordingly, in the event of a Disputed Matter, both Parties shall continue to perform their respective obligations under and in accordance with the terms of the Agreement, and any other agreements between the Parties, in good faith during the pendency of such Disputed Matter.