

**ADROIT®**

*Alternative Dispute Resolution Options In Technology*

*A Service of Technology Practice Group, LLC (“TPG”)*

**PROCEDURES AND RULES**

**FOR**

**SOLUTION STRUCTURING**

**CONFLICT COUNSELING**

**MEDIATION**

**ADVISORY OPINION**

**MINI-TRIAL**

**&**

**ARBITRATION**

TPG's *ADROIT* ADR Services encompasses the entire panoply of dispute resolution programs and provides complete case administration. TPG ADR programs include:

**Solution Structuring?** : The Solution Structuring program allows the parties to meet with a Neutral to jointly determine which procedure is best suited to the issues in controversy: *conflict counseling, mediation, advisory opinion, mini-trial or arbitration*. In some cases, Solution Structuring may yield a resolution in a few short hours.

**Conflict Counseling:** The Conflict Counseling Program enables the parties to meet at an early stage with a Neutral to discuss and resolve issues in controversy while work proceeds under the applicable agreement. The objective of Conflict Counseling is to limit the dispute's negative ramifications in connection with ongoing contract implementation.

**Mediation:** The Mediation program is structured to enable the Neutral to elicit the issues, facts, positions and most importantly the objectives of the parties and, when appropriate, bring the parties together to discuss settlement or propose a solution. Evidentiary hearings are not conducted and the parties must consent to the settlement.

**Advisory Opinion:** The Advisory Opinion program is structured to allow each party to present the salient facts of the dispute. The Neutral then issues a non-binding opinion which in many cases helps crystallize and focus the perceptions of one or both of the parties, enabling them to reach a resolution.

**Mini-Trial:** The Mini-Trial program is structured to allow for the presentation of information to the parties' senior executives in the presence of a Neutral which usually facilitates settlement. If a settlement cannot be reached, the Neutral may issue a non-binding opinion as to the likely outcome of the case if it were litigated in court.

**Arbitration:** The Arbitration program is structured to allow the parties to submit their dispute on a fast-track basis to a binding decision on the merits of their respective claims. Arbitration rules are designed to limit the scope of discovery and include *Best Offer* and *High-Low Arbitration*.

Rules for each ADR program are provided in the following pages.

## SOLUTION STRUCTURING RULES

### 1. Eligibility

Solution Structuring and these Rules shall only be applicable to disputes and/or claims which relate to or arise out of the use, implementation, purchase, sale, license or development of technology and intellectual property, including computer, information, communication, medical and bio-technology together with the related areas of patent, trade secret, confidential know-how and copyright.

### 2. Invoking Solution Structuring

#### 2.1 Required

(a) When an agreement grants the parties the right to resolve disputes through *TPG* but does not specify the ADR procedure, the parties shall submit to a Solution Structuring Conference by filing with *TPG* and the other parties a **Notice for Solution Structuring** (in conformance with **Form 1** appended to these Rules).

(b) Within five (5) business days after the first filing of a Notice for Solution Structuring, each party shall serve upon *TPG* and the other parties a **Statement of Claims** in accordance with Section 2.4 of these Rules.

#### 2.2 Agreement of the Parties

(a) When an agreement grants the parties the right to resolve disputes through one of the specified dispute resolution programs administered by *TPG*, either party may nevertheless request a Solution Structuring Conference at any time prior to the date which is five (5) business days after the Close of Pleadings (as defined in by the Rules of the respective ADR program) by filing with *TPG* and the other parties a **Request for Solution Structuring** (in conformance with **Form 2** appended to these Rules).

(b) Unless the parties have served and filed pleadings in accordance with a mediation, arbitration or other dispute resolution program administered by *TPG* relating to the same issues, within five (5) business days after filing the Request for Solution Structuring, each party shall serve upon *TPG* and the other parties a **Statement of Claims** in accordance with Section 2.4 of these Rules.

#### 2.3 Upon Demand

(a) When the parties are not subject to an agreement where they are required to resolve disputes through *TPG*, any party may serve upon the other parties a **Demand for Solution Structuring** (in conformance with **Form 3**

appended to these Rules) and, at the same time, shall file two (2) copies thereof with *TPG*. Upon consent of all parties to a Solution Structuring conference, they shall execute a **Consent to Solution Structuring** (in accordance with **Form 4** appended to these Rules) and each party shall serve upon *TPG* and the other parties a **Statement of Claims** in accordance with Section 2.4 of these Rules.

#### **2.4 Statement of Claims**

The Statement of Claims shall:

- (i) identify the parties, including the name, address, telephone and facsimile numbers of each party. The Statement of Claims shall also identify the name, address, telephone and facsimile numbers of each party's attorney or other representative;
- (ii) identify and provide a brief summary (not to exceed two pages) of the applicable agreement(s), if any, between the parties giving rise to the dispute; and
- (iii) specify in reasonable detail the basis and nature of the claims, defenses and remedies sought.

### **3. Solution Structuring Panel**

#### **3.1 Neutral**

(a) Within ten (10) business days after the Statement of Claims have been filed with *TPG*, *TPG* shall appoint a Neutral to assist the parties in evaluating and selecting the appropriate program for the resolution of their dispute.

(b) A Neutral appointed by *TPG* shall promptly disclose to *TPG* any conflict of interest or appearance of impropriety which may result from their serving on the Solution Structuring Panel, including without limitation, (i) any financial interest in the parties, the matter in dispute or its outcome or (ii) personal or business relationship with any of the parties (including its directors or officers) either past or present. Upon receipt of such information by *TPG*, either from the respective Neutral or any other source, notice thereof shall be given to all parties. In the event that a party objects to the continued service on the Panel by such individual and notice of such objection together with the underlying basis therefor is given within five (5) business days after receipt of *TPG's* notice advising of such conflict of interest, *TPG* shall decide whether the individual should be disqualified from continued service on the Solution Structuring Panel, which decision shall be final.

### **3.2 Party Appointed Representatives**

The Solution Structuring Panel shall be comprised of at least one (but not to exceed three) management personnel of each of the parties (“Management Representatives”) who shall be appointed within five (5) business days after the Statement of Claims have been filed with *TPG*. Each party shall have the same number of Management Representatives. Management Representatives shall have the authority to settle the dispute and bind their companies to the terms of any settlement agreement. Each person’s authority to act in the capacity of a Management Representative shall be memorialized in the Authorization Agreement in conformance with **Form 5** appended to these Rules.

### **4. Solution Structuring Conference**

(a) Within ten (10) business days after all appointments have been made to the Solution Structuring Panel, the Panel shall meet to consider which of *TPG*’s dispute resolution programs would best facilitate a resolution of the dispute.

(b) The Neutral shall advise the Management Representatives as to the procedures, rules, benefits and related aspects of each dispute resolution program. In advising the Management Representatives, the Neutral shall take into account, *inter alia*, the nature of the dispute, objectives of the parties and any ongoing relationship between the parties. The Neutral shall have the authority to meet privately with each of the parties, but shall not discuss the merits of the dispute with either party.

(c) Unless the Management Representatives initially decide to resolve the dispute through arbitration, the Management Representatives shall consider (with the assistance of the Neutral), whether they will be obligated to refer the dispute for resolution in accordance with the Rules of the next more structured dispute resolution program in the event they fail to reach a settlement agreement as a result of the dispute resolution program initially adopted. For purposes of this Rule, *TPG*’s alternative dispute resolution programs, in order of structure, are as follows: conflict counseling, mediation, advisory opinion, mini-trial and arbitration.

(d) In the event that the parties fail to agree with respect to which dispute resolution program to invoke, the Neutral shall have the authority to select the program s/he deems most likely to result in a speedy resolution.

### **5. Settlement**

At the conclusion of the Solution Structuring Conference, the Neutral or the Management Representatives may suggest that the Management Representatives meet to discuss possible settlement of the dispute before proceeding with the selected dispute resolution program. If the Neutral suggests or the Management Representatives agree to a settlement conference, the

Representatives shall meet at least once, with or without the Neutral, to discuss settlement.

## **6. Procedural Matters**

### **6.1 Service of Notice**

Notices required to be served under these Rules shall be given by: (a) personal delivery to the person to be served or its counsel; (b) certified mail, return receipt requested mailed to the person to be served or its counsel; or (c) as otherwise allowed by the Solution Structuring Panel. Proof of service shall be promptly filed with *TPG* in conformance with **Form 6** appended to these Rules. Service of notice shall be deemed to have occurred on the date of delivery, if personally served or three (3) business days after deposit in the mails, if served by mail.

### **6.2 Representation by Counsel**

Each party may elect to be represented by counsel in connection with the Solution Structuring Process. A party shall give *TPG* and each other party notice of its representation by counsel immediately upon the appointment of such counsel, which notice shall include the counsel's name, address, telephone and fax numbers.

### **6.3 Confidentiality**

The Solution Structuring process and all information disclosed or given in connection therewith shall be kept confidential by the Neutral and the Management Representatives.

### **6.4 Location**

Within five (5) calendar days after the Solution Structuring Panel has been selected, it shall determine the location where the Solution Structuring Conference is to be held. If requested by the Panel, *TPG* shall make conference and meeting room facilities at its offices in New York City available to the parties at no additional fee. The Solution Structuring Conference may be conducted by way of video conferencing or telephone conference calls.

### **6.5 Neutral's Participation In Subsequent Proceeding**

Unless agreed to the contrary by the Management Representatives, the Neutral appointed for the Solution Structuring process shall not serve in any subsequent dispute resolution proceeding between the parties.

## **6.6 Rules**

Upon submission of the dispute for resolution administered by *TPG*, the parties shall be deemed to have submitted to the Rules set forth herein as the same may be amended, supplemented or otherwise modified from time to time. Any reference by the parties to these Rules shall mean the those Rules in effect at the Close of Pleadings.

## **6.7 Liability**

Except in cases of intentional wrongful conduct committed by *TPG* or a Neutral, neither *TPG*, any of its directors, officers, employees or any Neutral shall have liability to the parties.

## **6.8 Stay of Proceedings**

Upon the filing of a Notice, Request or Demand for Solution Structuring, all Proceedings administered by *TPG* relating to the same issues underlying the dispute between the parties shall be stayed pending termination of the Solution Structuring process.

## **7. Fees & Expenses**

### **7.1 Fees**

*TPG's* fees associated with the Solution Structuring process are outlined in the Fee Schedule appended to these Rules. Unless agreed to the contrary between the parties, the parties shall pay *TPG's* fees in equal percentages.

### **7.2 Expenses**

Expenses incurred by *TPG's* or on behalf of the parties shall be reimbursed to *TPG* by the parties. Unless agreed to the contrary between the parties, the parties shall reimburse *TPG's* expenses in equal percentages.

### **7.3 Neutral's Compensation**

*TPG* shall compensate the Neutral for services rendered.

### **7.4 Retainer**

Upon commencement of the Solution Structuring Process, each party shall deposit with *TPG* a retainer in an amount determined by *TPG* not to exceed five thousand dollars (\$5,000) per party. *TPG's* fees and expenses shall be deducted from the retainer balance as incurred. Upon notice to the parties, the retainer amount shall be replenished as required by *TPG*.

## **7.5 Suspension of Proceedings**

In the event that the parties have failed to make payments as specified in this Rule 7, *TPG* in its sole discretion and without obligation or liability to the parties may suspend the Solution Structuring process until appropriate arrangements have been made to pay all amounts owed to *TPG* as well as security for the payment of amounts payable for services to be provided in the future.



**FORM 1**

**NOTICE FOR SOLUTION STRUCTURING CONFERENCE**

DATE:

TO: Technology Practice Group, LLC  
1010 Northern Blvd.  
Suite 414  
Great Neck, NY 11021

Please take notice that in accordance with [identify agreement or other document which subjects the parties to a TPG administered dispute resolution process], the undersigned hereby submit to a Solution Structuring Conference with a Neutral to be designated by TPG for the purposes of selecting and agreeing upon the method of alternative dispute resolution for the resolution of their dispute.

**This form is to be executed by the duly authorized officer of each party before a notary public and returned to TPG.**

**FORM 2**

**REQUEST FOR SOLUTION STRUCTURING CONFERENCE**

DATE:

TO: [Identify contact person, name address and telephone number of the other party(s)]

Please take notice that in accordance with [identify agreement or other document which subjects the parties to a TPG administered dispute resolution process], the undersigned hereby requests that you attend a Solution Structuring Conference administered by a TPG designated Neutral for the purposes of selecting and agreeing upon the method of alternative dispute resolution for the resolution of the dispute between our companies.

**This form is to be executed by the duly authorized officer of the party requesting Solution Structuring before a notary public and served upon the other party(s) as well as TPG.**

**FORM 3**

**DEMAND FOR SOLUTION STRUCTURING CONFERENCE**

DATE:

TO: [Identify contact person, name address and telephone number of the other party(s)]

Please take notice that in connection with the dispute which has arisen between our firms relating to [briefly describe dispute for which Solution Structuring is requested] the undersigned hereby requests that you consent to and attend a Solution Structuring Conference administered by TPG, Inc. for the purposes of selecting and agreeing upon the method of alternative dispute resolution for the resolution of the dispute between our companies.

**This form is to be executed by the duly authorized officer of the party requesting Solution Structuring before a notary public and served upon the other party(s) as well as TPG.**

**FORM 4**

**CONSENT TO SOLUTION STRUCTURING CONFERENCE**

DATE:

TO: Technology Practice Group, LLC  
1010 Northern Blvd.  
Suite 414  
Great Neck, NY 11021

Please take notice that the parties hereby agree to a Solution Structuring Conference with a Neutral to be designated by TPG for the purposes of selecting and agreeing upon the method of alternative dispute resolution for the resolution of their dispute relating to [briefly describe dispute] .

**This form is to be executed by the duly authorized officer of each party before a notary public and returned to TPG.**

**FORM 5**

**AUTHORIZATION AGREEMENT**

DATE:

TO: Technology Practice Group, LLC  
1010 Northern Blvd.  
Suite 414  
Great Neck, NY 11021

This shall confirm that the individuals listed below (“Management Representatives”) are authorized by [enter name of party] to represent [enter name of party] with respect to a Solution Structuring Conference for the resolution of a dispute with [enter name of other party(s)].

All necessary board of director and other approvals have been obtained granting the Management Representatives the authority to act on behalf of and bind [enter name of party] with respect to any procedural, settlement or other matter arising in connection with the Solution Structuring Conference or other disposition with respect to the dispute.

[Enter name, title, address, telephone and fax number for each Management Representative]

**This form is to be executed by the duly authorized officer of the party before a notary public and returned to TPG.**

**FORM 6**

**PROOF OF SERVICE**

DATE:

The undersigned hereby confirms that on [enter date] he/she deposited in the United States mail an envelope containing the [enter name of document] to be delivered by certified mail, return receipt requested, addressed to [enter name of receiving party] and had the necessary postage affixed thereto.

- alternative -

The undersigned hereby confirms that on [enter date] he/she personally delivered to [enter name of receiving party] an envelope containing the [enter name of document].

**This form is to be executed by the person affirming the foregoing before a notary public. The original should be returned to TPG and one copy should be sent to each party.**

## CONFLICT COUNSELING RULES

### 1. Authority

#### 1.1 Eligibility

The alternative methods of dispute resolution administered by *TPG* and these Rules shall only be applicable to disputes and/or claims which relate to or arise out of the use, implementation, purchase, sale, license or development of technology and intellectual property, including computer, information, communication, medical and bio-technology together with the related areas of patent, trade secret, confidential know-how and copyright.

### 2. Invoking Conflict Counseling

#### 2.1 Agreement of the Parties

In the event that the parties have entered into an agreement requiring them to submit disputes to *TPG* for Conflict Counseling or at any time prior to the filing of a pleading seeking to invoke mediation, arbitration or any other alternative dispute resolution process, the parties may request *TPG* to provide Conflict Counseling services upon the filing of a **Consent to Conflict Counseling** (in conformance with **Form 1** appended to these Rules) signed by each of the parties.

#### 2.2 Statement of Issues

Unless the parties have previously filed Statements of Claims in accordance with *TPG's* Solution Structuring Rules, within five (5) business days after execution of the Consent to Conflict Counseling by all parties, each party shall serve upon *TPG* and the other parties a Statement of Issues which shall:

- (i) identify the parties, including the name, address, telephone and facsimile numbers of each party;
- (ii) identify and provide a brief summary (not to exceed two pages) of the applicable agreement(s), if any, between the parties giving rise to the dispute; and
- (iii) specify in reasonable detail the basis and nature of the claims, defenses and the remedial action sought.

### 3. Conflict Counseling Panel

#### 3.1 Neutral

(a) Within five (5) business days after the Statement of Issues has been filed with *TPG*, *TPG* shall appoint a Neutral to assist the parties in negotiating a resolution of their dispute.

(b) A Neutral appointed by *TPG* shall promptly disclose to *TPG* any conflict of interest or appearance of impropriety which may result from their serving on the Conflict Counseling Panel, including without limitation, (i) any financial interest in the parties, the matter in dispute or its outcome or (ii) personal or business relationship with any of the parties (including its directors or officers) either past or present. Upon *TPG*'s receipt of such information, either from the respective Neutral or any other source, notice thereof shall be given to all parties. In the event that a party objects to the continued service on the Panel by such individual and notice of such objection together with the underlying basis therefor is given within five (5) business days after receipt of *TPG*'s notice advising of such conflict of interest, *TPG* shall decide whether the individual should be disqualified from continued service on the Conflict Counseling Panel, which decision shall be final.

#### 3.2 Party Appointed Representatives

The Conflict Counseling Panel shall be comprised of at least one (but not to exceed three) management personnel of each of the parties ("Management Representatives") who shall be appointed within five (5) business days after the Statement of Issues has been filed with *TPG*. Each party shall have the same number of Management Representatives. Management Representatives shall have the authority to settle the dispute and bind their companies to the terms of any settlement agreement. Each person's authority to act in the capacity of a Management Representative shall be memorialized in the **Authorization Agreement** in conformance with **Form 2** appended to these Rules.

### 4. Conflict Counseling Conference

Within ten (10) business days after all appointments have been made to the Conflict Counseling Panel, the Panel shall meet to discuss the issues in dispute. Each party, through its Management Representative, will summarize their view of the circumstances underlying the dispute and possible settlement options.

Management Representatives shall then meet, either with or without the Neutral to discuss settlement of the dispute. If requested by the Management Representatives, the Neutral shall facilitate the settlement discussions by, *inter alia*, suggesting settlement options. The Neutral shall have the authority to meet privately with each of the parties in order to elicit the issues, facts, positions and objectives of the parties and then bring the parties together to discuss



settlement options. The Neutral shall not have the authority to impose a settlement upon the parties.

**5 Confidentiality & Protective Orders**

The Conflict Counseling Proceeding and all information disclosed or given in connection therewith shall be kept confidential by the Neutral and the parties and shall be used only for purposes of the Proceeding. The Neutral shall have the right to issue orders as are necessary or advisable to maintain confidentiality.

**6. Discovery**

There shall be no discovery in any Conflict Counseling Proceeding.

**7. Procedural Matters**

**7.1 Service of Notice**

Notices required to be served under these Rules shall be given by: (a) personal delivery to the person to be served or its counsel; (b) certified mail, return receipt requested mailed to the person to be served or its counsel; or (c) as otherwise allowed by the Neutral. Proof of service shall be promptly filed with *TPG* in conformance with **Form 3** appended to these Rules. Service of notice shall be deemed to have occurred on the date of delivery, if personally served or three (3) business days after deposit in the mails, if served by mail.

**7.2 Representation by Counsel**

The parties shall not be entitled to representation by counsel unless otherwise agreed to by the parties. If the parties agree that counsel may participate in the Proceeding, each party shall give *TPG* and each other party notice of its representation by counsel within three (3) calendar days of the appointment of such counsel, which notice shall include the counsel's name, address, telephone and fax numbers.

**7.3 Location**

Within five (5) calendar days after the Conflict Counseling Panel has been selected, it shall determine the location where the Conflict Counseling Conference(s) are to be held taking into account the residence of the parties, location of relevant evidence and convenience to all parties. If requested by the Conflict Counseling Panel, *TPG* shall make conference and meeting room facilities at its offices in New York City available to the parties at no additional fee. The Conference(s) may be conducted by way of video conferencing or telephone conference calls.

**8. Equitable Relief**

Any party may seek equitable relief to a court of competent jurisdiction during the pendency of the Proceeding. Such application by a party shall not be deemed or construed to have vitiated the jurisdiction of *TPG* or the Conflict Counseling Panel.

**9. Decision**

The Conflict Counseling Panel shall not have the authority to impose a settlement upon the parties.

**10. Termination of Conflict Counseling Proceeding**

**10.1 Agreement of the Parties**

Upon the filing with *TPG* of a written agreement between the parties, the Proceeding shall be discontinued.

**10.2 Conversion to Alternative ADR Process**

Upon the filing with *TPG* of a written agreement, at any time during the Proceeding, the parties may discontinue Conflict Counseling in favor of an alternative method of dispute resolution including without limitation, mediation, advisory opinion, mini-trial, or arbitration. Unless agreed to the contrary by the parties, the Neutral serving on the Conflict Counseling Panel shall not serve in any alternative dispute resolution proceeding between the parties.

**10.3 Settlement Not Possible**

In the event that the Neutral believes that there is no reasonable likelihood that a settlement can be reached between the parties, it can terminate or suspend any further Proceedings or, if the parties have so agreed, require the Parties to proceed to Mediation, Advisory Opinion, Mini-Trial or Arbitration in accordance with *TPG's* applicable Rules.

**10.4 Settlement**

In the event that the parties have agreed to a settlement of the dispute, the terms and conditions of the settlement shall be memorialized in writing and filed with *TPG*. The settlement agreement shall be binding and enforceable against the parties.

## **11. Jurisdiction, Powers & Liability**

### **11.1 Authority**

(a) When the parties agree to negotiate a settlement of their dispute under these Rules, they thereby authorize *TPG* to administer the Proceeding. The Neutral appointed to the Conflict Counseling Panel shall have the sole authority to consider and decide any jurisdictional challenge.

(b) All issues relating the existence, validity or scope of an agreement subject to a Conflict Counseling clause, including without limitation, the clause itself, shall be determined by the Neutral appointed to the Conflict Counseling Panel.

(c) Except as permitted under Rule 8, a party shall not commence or prosecute any suit or action against another party to the Proceeding during the pendency of the Proceeding which relates to any of the issues to be settled through conflict counseling.

### **11.2 Rules**

Upon submission of the dispute for resolution administered by *TPG*, the parties shall be deemed to have submitted to the Rules set forth herein as the same may be amended, supplemented or otherwise modified from time to time. Any reference by the parties to these Rules shall mean the those Rules in effect at the time the parties filed the Consent to Conflict Counseling with *TPG*.

### **11.3 Liability**

Except in cases of intentional wrongful conduct committed by *TPG* or the Neutral, neither *TPG*, any of its directors, officers, employees or the Neutral shall have liability to the parties.

### **11.4 Interpretation of Rules**

(a) Any disagreement between the parties in connection with the application of these Rules shall be resolved by the Neutral whose decision shall be final.

(b) In all matters not expressly provided for in these Rules, the Neutral shall act in the spirit of these Rules in order to reach a fair and equitable resolution of the dispute in an expedited manner.

## **12. Fees & Expenses**

### **12.1 Fees**

*TPG's* fees associated with the Proceeding are outlined in the Fee Schedule appended to these Rules. Unless agreed to the contrary between the parties, the parties shall pay *TPG's* fees in equal percentages.

#### **12.2 Expenses**

Expenses incurred by *TPG's* or on behalf of the parties shall be reimbursed to *TPG* by the parties in equal percentages.

#### **12.3 Neutral's Compensation**

*TPG* shall compensate the Neutral for services rendered.

#### **12.4 Retainer**

Upon commencement of the Proceeding, each party shall deposit with *TPG* a retainer in an amount determined by *TPG* not to exceed ten thousand dollars (\$10,000) per party. *TPG's* fees and expenses shall be deducted from the retainer balance as incurred. Upon notice to the parties, the retainer amount shall be replenished as required by *TPG*.

#### **12.5 Suspension of Proceedings**

In the event that the parties have failed to make payments as specified in this Rule 12, *TPG* in its sole discretion and without obligation or liability to the parties may suspend the Proceeding until appropriate arrangements have been made to pay all amounts owed to *TPG* as well as security for the payment of amounts payable for services to be provided in the future.

**FORM 1**

**CONSENT TO CONFLICT COUNSELING**

DATE:

TO: Technology Practice Group, LLC  
1010 Northern Blvd.  
Suite 414  
Great Neck, NY 11021

Please take notice that the parties hereby agree to a Conflict Counseling with a Neutral to be designated by TPG for the purposes of resolving their dispute relating to [briefly describe dispute] .

**This form is to be executed by the duly authorized officer of each party before a notary public and returned to TPG.**

**FORM 2**

**AUTHORIZATION AGREEMENT**

DATE:

TO: Technology Practice Group, LLC  
1010 Northern Blvd.  
Suite 414  
Great Neck, NY 11021

This shall confirm that the individuals listed below (“Management Representatives”) are authorized by [enter name of party] to represent [enter name of party] with respect to a Conflict Counseling in connection with the resolution of a dispute with [enter name of other party(s)].

All necessary board of director and other approvals have been obtained granting the Management Representatives the authority to act on behalf of and bind [enter name of party] with respect to any procedural, settlement or other matter arising in connection with the Conflict Counseling or other disposition with respect to the dispute.

[Enter name, title, address, telephone and fax number for each Management Representative]

**This form is to be executed by the duly authorized officer of the party before a notary public and returned to TPG.**

**FORM 3**

**PROOF OF SERVICE**

DATE:

The undersigned hereby confirms that on [enter date] he/she deposited in the United States mail an envelope containing the [enter name of document] to be delivered by certified mail, return receipt requested, addressed to [enter name of receiving party] and had the necessary postage affixed thereto.

- alternative -

The undersigned hereby confirms that on [enter date] he/she personally delivered to [enter name of receiving party] an envelope containing the [enter name of document].

**This form is to be executed by the person affirming the foregoing before a notary public. The original should be returned to TPG and one copy should be sent to each party.**

## MEDIATION RULES

### 1. Authority

#### 1.1 Eligibility

The alternative methods of dispute resolution administered by *TPG* and these Rules shall only be applicable to disputes and/or claims which relate to or arise out of the use, implementation, purchase, sale, license or development of technology and intellectual property, including computer, information, communication, medical and bio-technology together with the related areas of patent, trade secret, confidential know-how and copyright.

#### 1.2 Standing

(a) When an agreement grants the parties the right to have disputes in connection therewith resolved through mediation administered by *TPG*, either party may file a **Submission to Mediation** (as provided for under Rule 2.1) upon the other party and submit such claim(s) for settlement discussions in accordance with the Rules set forth herein.

(b) When an agreement to mediate does not exist between the parties or the parties have not designated *TPG* as the entity authorized to administer the Proceeding in an agreement between them, any party to a dispute may file a **Request To Mediate** (as provided for under Rule 2.2) in accordance with the Rules set forth herein. Upon the consent of each of the other parties (as provided for in Rule 2.2(c)), all parties shall submit the claim(s) for settlement discussions in accordance with the Rules set forth herein.

(c) When an agreement to mediate does not exist between the parties or the parties have not designated *TPG* as the entity authorized to administer the Proceeding, upon execution of a **Consent to Mediate** (as provided for under Rule 2.3), the parties shall submit the dispute to *TPG* for settlement discussions in accordance with the Rules set forth herein.



## 2. Invoking Mediation

### 2.1 Submission to Mediation

(a) When an agreement grants the parties thereto the right to have disputes in connection therewith resolved through mediation administered by *TPG*, a party (the “Petitioner”) may commence a Proceeding by serving a Submission to Mediation upon the other parties (the “Responding Party(s)”) and at the same time shall file two (2) copies thereof with *TPG*.

(b) The Submission To Mediation shall be in conformance with **Form 1** appended to these Rules and shall:

(i) identify the parties, designating applicable Petitioner(s) and Responding Party(s) including the name, address, telephone and facsimile numbers of each party. The Petitioner shall also identify the name, address telephone and facsimile numbers of its attorney or other representative;

(ii) identify and provide a brief summary (not to exceed two pages) of the applicable agreement(s) between the parties giving rise to the dispute;

(iii) identify the mediation provision of the applicable agreement(s); and

(iv) specify in reasonable detail the basis and nature of the claim(s) and the remedy sought.

### 2.2 Request to Mediate

(a) When an agreement to mediate does not exist between the parties or the parties have not designated *TPG* as the entity authorized to administer the Proceeding, a party seeking to invoke a mediation Proceeding administered by *TPG* shall serve a Request to Mediate upon the other parties and at the same time shall file two (2) copies thereof with *TPG*.

(b) The Request to Mediate shall be in conformance with **Form 2** appended to these Rules and shall:

(i) identify the parties, designating applicable Petitioner(s) and Responding Party(s) including the name, address, telephone and facsimile numbers of each party. The Petitioner shall also identify the name, address telephone and facsimile numbers of its attorney or other representative;

(ii) identify and provide a brief summary (not to exceed two pages) of the applicable agreement(s) between the parties giving rise to the dispute;

(iii) if applicable, identify the mediation provision of the applicable agreement(s); and

(iv) specify in reasonable detail the basis and nature of the claim(s) and the remedy sought.

(c) Upon consent of all parties to mediation administered by *TPG*, the Petitioner shall file a Consent to Mediate in conformance with **Form 3** appended to these Rules, executed by each party to the dispute. The Consent to Mediate must be filed with *TPG* not later than thirty (30) calendar days from the date the Request to Mediate was filed with *TPG*.

### **2.3 Consent to Mediate**

(a) When an agreement to mediate does not exist between the parties or the parties have not previously designated *TPG* as the entity authorized to administer the Proceeding, upon execution of a Consent to Mediate by each party, the dispute shall be submitted to *TPG* for settlement discussions in accordance with the Rules set forth herein.

(b) The Consent to Mediate shall be in conformance with **Form 3** appended to these Rules and shall:

(i) identify the parties, designating Petitioner(s) and Responding Party(s), where applicable, including the name, address, telephone and facsimile numbers of each party. The Consent to Mediate shall also identify the name, address telephone and facsimile numbers of each party's attorney or other representative;

(ii) identify and provide a brief summary (not to exceed two pages) of the applicable agreement(s) between the parties giving rise to the dispute; and

(iii) specify in reasonable detail the basis and nature of the claim(s) and the remedy sought.

### **2.4 Commencement**

A Proceeding shall be deemed to have Commenced upon the filing with *TPG* of a Submission To Mediation or Consent to Mediate, as applicable.

**3. Answer**

**3.1 Response Time**

Not later than fifteen (15) calendar days after Commencement of the Proceeding, the Responding Party(s) shall serve upon the Petitioner(s) an answer to the claim(s) which shall include all affirmative defenses thereto together with any counterclaims. Two (2) copies of the answer, inclusive of affirmative defenses and counterclaims shall be filed with *TPG* within such fifteen (15) day period.

**3.2 Affirmative Defenses & Counterclaims**

The answer shall specify in reasonable detail the basis and nature of the Responding Party(s) defenses to the claim(s) and, in the event counterclaim(s) are asserted, shall specify in reasonable detail the basis and nature of the counterclaim(s) and the remedy sought.

**3.3 Answer to Counterclaims**

Not later than fifteen (15) calendar days after service of counterclaim(s), the Petitioner(s) shall serve an answer to counterclaims upon Responding Party(s) which shall include all affirmative defenses thereto. Two (2) copies of the answer to counterclaims, inclusive of affirmative defenses shall be filed with *TPG* within such fifteen (15) day period.

**3.4 Failure to Answer**

In the event an answer to the claim(s) or counterclaim(s) is not served within the time frames specified in Rules 3.2 and 3.3, it will be deemed a denial of such claims and the Proceeding shall continue in accordance with these Rules.

**3.5 Close of Pleadings**

The Close of Pleadings shall be deemed to have occurred upon the later of: (a) service of an answer; (b) answer to counterclaim(s); or (c) if an answer or answer to counterclaims is not served, the time period allowed for service of the foregoing.

**4. Mediation Panel**

**4.1 Number**

Unless specified in the agreement or otherwise agreed to between the parties, the Mediation Panel shall be comprised of one (1) individual.

#### **4.2 Panel of Neutrals**

*TPG* shall maintain a Panel of Neutrals competent in various disciplines relating to technology. Biographical and professional information shall be contained for each individual listed in the Panel of Neutrals.

#### **4.3 Contract Identifies Mediator(s)**

Where the agreement between the parties has identified the individual(s) to serve as Mediator(s), within ten (10) calendar days after the Close of Pleadings, the Petitioner shall file a Consent to Serve as a Neutral executed by each Mediator, in conformance with **Form 4**, appended to these Rules.

#### **4.4 Parties Stipulate**

(a) Where the agreement between the parties either (i) allows each party to appoint an individual to serve as a Mediator; or (ii) requires the parties to mutually agree upon and appoint the individual(s) to serve as a Mediator(s), they shall do so and file with *TPG* a Consent to Serve as a Neutral, as executed by each Mediator, within ten (10) calendar days after the Close of Pleadings. If the parties request, *TPG* shall provide the names of individuals listed in its Panel of Neutrals from which a Mediator may be selected.

(b) Where the agreement between the parties allows each party to appoint a Mediator and requires the Mediators so appointed to select a third Mediator, the party appointed Mediators shall do so and cause a Consent to Serve as a Neutral to be filed with *TPG* within twenty (20) calendar days after the Close of Pleadings. If the party appointed Mediators request, *TPG* shall provide the names of individuals listed in its Panel of Neutrals from which the third Mediator may be selected. The individual selected by the party appointed Mediators shall serve as the panel's chairperson.

#### **4.5 TPG Appoints**

(a) Where the agreement between the parties provides for *TPG* to appoint the Mediators, within ten (10) calendar days after the Close of Pleadings, *TPG* shall:

- (i) when the Panel is to consist of one (1) Mediator, nominate one (1) individual from its Panel of Neutrals together with two (2) alternates; and
- (ii) when the Panel is to consist of three (3) Mediators, nominate three (3) individuals from its Panel of Neutrals together with seven (7) alternates.

(b) *TPG* shall provide each of the parties with names, biographical and professional information of each individual nominated as well as the alternates. Not later than twenty (20) calendar days after the Close of Pleadings, each party shall indicate its approval or rejection of the individuals nominated by *TPG* as well as the alternates. In the event that all parties approve the individuals nominated by *TPG*, the Mediation Panel shall consist of such person(s). If the individuals nominated by *TPG* are not accepted by all parties, *TPG* shall select the Mediation Panel from among the alternates accepted by all the parties. In the event that there are not sufficient acceptable alternates to comprise the Mediation Panel, *TPG* shall select other individuals from its Panel of Neutrals to serve as Mediators and *TPG's* selection (subject to Rule 4.7) shall be final.

(c) If the parties or the party appointed Mediators fail to agree upon acceptable individuals to serve as Mediator(s) or Consent(s) to Serve as a Neutral are not filed within the time periods set forth in this Rule, *TPG* shall appoint a Mediator(s) from its Panel of Mediators within fifteen calendar (15) days after expiration of the last day that the respective party was required to file the Consent to Serve as a Neutral. Subject to Rule 4.7, *TPG's* selection shall be final.

#### **4.6 Unavailability of Mediators & Vacancies**

(a) If any member of the Mediation Panel is unable to act as a Mediator for any reason at any time:

(i) when the Mediation Panel consists of one or more individuals who were appointed upon the mutual agreement of the parties, the parties shall mutually agree upon and appoint replacement Mediator(s) and file a Consent to Serve as a Neutral executed by such individual(s) within ten (10) calendar days after the vacancy has occurred on the Mediation Panel;

(ii) when a party had the right to select the individual(s) who is no longer available to serve as a Mediator, such party shall be entitled to select and appoint a replacement Mediator and shall file a Consent to Serve as a Neutral executed by such individual(s) within ten (10) calendar days after the vacancy has occurred on the Mediation Panel; and

(iii) When the agreement between the parties required *TPG* to select and appoint the Mediator(s) who is no longer available to serve on the Mediation Panel, *TPG* shall be entitled to select and appoint a replacement Mediator and shall give the parties notice of its selection within ten (10) calendar days after the vacancy has occurred on the Mediation Panel. Subject to Rule 4.7, *TPG's* appointment shall be final.

(b) In the event that Consent(s) to Serve as Neutral(s) for replacement Mediator(s) are not filed within the time periods set forth above in Rule 4.6, *TPG* shall appoint a Mediator(s) from its Panel of Neutrals within fifteen (15) days after expiration of the last day that the parties were required to file the Consent to Serve as a Neutral. Subject to Rule 4.7, *TPG*'s appointment shall be final.

#### **4.7 Qualifications, Conflicts of Interest & Disqualification**

(a) Each Mediator shall be independent and impartial and, subject to Rule 7.3, shall be bound by these Rules. An individual shall not accept appointment as a Mediator unless such person can devote the time necessary to facilitate a speedy and proper resolution of the dispute.

(b) Mediators appointed either by *TPG*, or the parties shall promptly disclose to *TPG* any conflict of interest or appearance of impropriety which may result from their serving on the Mediation Panel, including without limitation, (i) any financial interest in the parties, the matter in dispute or its outcome or (ii) personal or business relationship with any of the parties (including its directors or officers) either past or present. Upon receipt of such information by *TPG* either from the respective Mediator or any other source, notice thereof shall be given to all parties. In the event that a party objects to the continued service on the Mediation Panel by such individual and notice of such objection together with the underlying basis therefor is given within five (5) business days after receipt of *TPG*'s notice advising of such conflict of interest, *TPG* shall decide whether the individual should be disqualified from continued service on the Mediation Panel, which decision shall be final.

### **5 Confidentiality & Protective Orders**

The Proceeding and all information disclosed or given in connection therewith shall be kept confidential by the Mediator(s) and the parties and shall be used only for purposes of the Proceeding. The Mediation Panel shall have the right to issue orders as are necessary or advisable to maintain confidentiality as well as the integrity, preservation and availability of evidence.

### **6. Discovery**

There shall be no discovery in any mediation Proceeding.

### **7. Procedural Matters**

#### **7.1 Service of Notice**

Notices required to be served under these Rules shall be given by: (a) personal delivery to the person to be served or its counsel; (b) certified mail, return receipt requested mailed to the person to be served or its counsel; or (c) as otherwise allowed by the Mediation Panel. Proof of service shall be promptly filed with *TPG* in conformance with **Form 5** appended to these Rules. Service of notice

shall be deemed to have occurred on the date of delivery, if personally served or three (3) business days after deposit in the mails, if served by mail.

#### **7.2 Representation by Counsel**

Each party may elect to be represented by counsel in connection with the Proceeding. A party shall give *TPG* and each other party notice of its representation by counsel within three (3) calendar days of the appointment of such counsel, which notice shall include the counsel's name, address, telephone and fax numbers.

#### **7.3 Contractual Mandates/Agreement of Parties**

The Mediation Panel shall abide by the terms and conditions agreed to between the parties as it relates to the conduct of the Proceeding.

#### **7.4 Stenographic Record**

There shall be no written record of the Proceedings.

#### **7.5 Meeting with Parties**

The Mediation Panel shall have the authority to meet privately with each of the parties in order to elicit the issues, facts, positions and objectives of the parties. If and when appropriate, the Mediation Panel may bring the parties together to discuss settlement options.

#### **7.6 Location**

Within five (5) calendar days after the Mediation Panel has been selected, it shall determine the location where the mediation sessions are to be held taking into account the residence of the parties, location of relevant evidence and convenience to all parties and the Mediation Panel. If requested by the Mediation Panel, *TPG* shall make conference and meeting room facilities at its offices in New York City available to the parties at no additional fee.

### **8. Equitable Relief**

Any party may seek equitable relief to a court of competent jurisdiction during the pendency of the Proceeding. Such application by a party shall not be deemed or construed to have vitiated the jurisdiction of *TPG* or the Mediation Panel.

### **9. Decision**

The Mediation Panel shall not have the authority to impose a settlement upon the parties.





## **10. Termination of Mediation Proceeding**

### **10.1 Agreement of the Parties**

Upon the filing with *TPG* of a written agreement between the parties, the Proceeding shall be discontinued.

### **10.2 Conversion to Alternative ADR Process**

Upon the filing with *TPG* of a written agreement, at any time during the Proceeding, the parties may discontinue the mediation in favor of an alternative method of dispute resolution including without limitation, Advisory Opinion, Mini-Trial and Arbitration. Unless agreed to the contrary by the parties, the Neutral(s) in any subsequent Proceeding shall be different from those comprising the Mediation Panel.

### **10.3 Settlement Not Possible**

In the event that the Mediation Panel believes that there is no reasonable likelihood that a settlement can be reached between the parties, it can terminate or suspend any further Proceedings or, if the parties have so agreed, require the parties to submit the dispute for resolution pursuant to an Advisory Opinion, Mini-Trial or Arbitration Proceeding in accordance with *TPG's* applicable Rules.

### **10.4 Settlement**

In the event that the parties have agreed to a settlement of the dispute, the terms and conditions of the settlement shall be memorialized in writing and filed with *TPG*. The settlement agreement shall be binding and enforceable against the parties.

## **11. Powers & Liability**

### **11.1 Rules**

Upon submission of the dispute for resolution administered by *TPG*, the parties shall be deemed to have submitted to the Rules set forth herein as the same may be amended, supplemented or otherwise modified from time to time. Any reference by the parties to these Rules shall mean the Rules in effect at the time the Proceeding is Commenced unless otherwise agreed to by the parties. Except as permitted under Rule 8, a party shall not commence or prosecute any suit or action against another party to the Proceeding during the pendency of the Proceeding which relates to any of the issues to be settled through mediation.

## **11.2 Liability**

Except in cases of intentional wrongful conduct committed by *TPG* or a Neutral, neither *TPG*, any of its directors, officers, employees or any Neutral shall have liability to the parties.

## **11.3 Interpretation of Rules**

(a) Any disagreement between the parties in connection with the application of these Rules shall be resolved by the Neutral whose decision shall be final.

(b) In all matters not expressly provided for in these Rules, the Neutral shall act in the spirit of these Rules in order to reach a fair and equitable resolution of the dispute in an expedited manner.

## **12. Fees & Expenses**

### **12.1 Fees**

*TPG's* fees associated with the Proceeding are outlined in the Fee Schedule appended to these Rules. Unless agreed to the contrary between the parties, the parties shall pay *TPG's* fees in equal percentages.

### **12.2 Expenses**

Expenses incurred by *TPG's* or on behalf of the parties shall be reimbursed to *TPG* by the parties in equal percentages.

### **12.3 Neutral's Compensation**

*TPG* shall compensate the Neutral for services rendered.

### **12.4 Retainer**

Upon Commencement of the Proceeding, each party shall deposit with *TPG* a retainer in an amount determined by *TPG* not to exceed ten thousand dollars (\$10,000) per party. *TPG's* fees and expenses shall be deducted from the retainer balance as incurred. Upon notice to the parties, the retainer amount shall be replenished as required by *TPG*.

### **12.5 Suspension of Proceedings**

In the event that the parties have failed to make payments as specified in this Rule 12, *TPG* in its sole discretion and without obligation or liability to the parties may suspend the Proceeding until appropriate arrangements have been

made to pay all amounts owed to *TPG* as well as security for the payment of amounts payable for services to be provided in the future.

**FORM 1**

**SUBMISSION TO MEDIATION**

DATE:

TO: [Identify contact person, name address and telephone number of the other party(s)]

Please take notice that in accordance with [identify agreement or other document which subjects the parties to a TPG administered mediation process], the undersigned hereby invokes non-binding mediation for the purposes of resolving the dispute between our companies.

[The following information should be included:]

- (i) identify the parties, designating applicable Petitioner(s) and Responding Party(s) including the name, address, telephone and facsimile numbers of each party. The Petitioner shall also identify the name, address telephone and facsimile numbers of its attorney or other representative;
- (ii) identify and provide a brief summary (not to exceed two pages) of the applicable agreement(s) between the parties giving rise to the dispute;
- (iii) identify the mediation provision of the applicable agreement(s); and
- (iv) specify in reasonable detail the basis and nature of the claim(s) and the remedy sought.

**This form is to be executed by the duly authorized officer of the party invoking mediation before a notary public and served upon the other party(s) as well as *TPG*.**

**FORM 2**

**REQUEST FOR MEDIATION**

DATE:

TO: [Identify contact person, name address and telephone number of the other party(s)]

Please take notice that in connection with the dispute which has arisen between our firms relating to [briefly describe dispute for which mediation is requested] the undersigned hereby requests that you consent to non-binding mediation administered by TPG, Inc. for the purposes of resolving the dispute between our companies.

[The following information should be included:]

- (i) identify the parties, designating applicable Petitioner(s) and Responding Party(s) including the name, address, telephone and facsimile numbers of each party. The Petitioner shall also identify the name, address telephone and facsimile numbers of its attorney or other representative;
- (ii) identify and provide a brief summary (not to exceed two pages) of the applicable agreement(s) between the parties giving rise to the dispute;
- (iii) if applicable, identify the mediation provision of the applicable agreement(s); and
- (iv) specify in reasonable detail the basis and nature of the claim(s) and the remedy sought.

**This form is to be executed by the duly authorized officer of the party requesting mediation before a notary public and served upon the other party(s) as well as TPG.**

**FORM 3**

**CONSENT TO MEDIATION**

DATE:

TO: Technology Practice Group, LLC  
1010 Northern Blvd.  
Suite 414  
Great Neck, NY 11021

Please take notice that the parties hereby agree to non-binding mediation for the purposes of resolving their dispute relating to [briefly describe dispute].

[The following information should be included:]

- (i) identify the parties, designating, where applicable, Petitioner(s) and Responding Party(s) including the name, address, telephone and facsimile numbers of each party. The Consent to Mediate shall also identify the name, address telephone and facsimile numbers of each party's attorney or other representative;
- (ii) identify and provide a brief summary (not to exceed two pages) of the applicable agreement(s) between the parties giving rise to the dispute; and
- (iii) specify in reasonable detail the basis and nature of the claim(s) and the remedy sought.

**This form is to be executed by the duly authorized officer of each party before a notary public and returned to *TPG*.**

**FORM 4**

**CONSENT TO SERVE AS NEUTRAL**

DATE:

TO: Technology Practice Group, LLC  
1010 Northern Blvd.  
Suite 414  
Great Neck, NY 11021

The undersigned hereby agrees to serve a Neutral in connection with the non-binding mediation proceeding between [identify parties]. In serving as a Neutral the undersigned agrees to comply with *TPG's* Mediation Rules.

[Name, signature, office address, telephone and fax number of Neutral]

**FORM 5**

**PROOF OF SERVICE**

DATE:

The undersigned hereby confirms that on [enter date] he/she deposited in the United States mail an envelope containing the [enter name of document] to be delivered by certified mail, return receipt requested, addressed to [enter name of receiving party] and had the necessary postage affixed thereto.

- alternative -

The undersigned hereby confirms that on [enter date] he/she personally delivered to [enter name of receiving party] an envelope containing the [enter name of document].

**This form is to be executed by the person affirming the foregoing before a notary public. The original should be returned to *TPG* and one copy should be sent to each party.**



## ADVISORY OPINION RULES

### 1. Authority

#### 1.1 Eligibility

The alternative methods of dispute resolution administered by *TPG* and these Rules shall only be applicable to disputes and/or claims which relate to or arise out of the use, implementation, purchase, sale, license or development of technology and intellectual property, including computer, information, communication, medical and bio-technology together with the related areas of patent, trade secret, confidential know-how and copyright.

#### 1.2 Standing

(a) When an agreement grants the parties the right to have disputes in connection therewith resolved by means of an Advisory Opinion administered by *TPG*, either party may file a **Notice of Claim** (as provided for under Rule 2.1) against the other and submit such claim(s) for resolution in accordance with the Rules set forth herein.

(b) When an agreement for the resolution of disputes by means of an Advisory Opinion does not exist between the parties or the parties have not designated *TPG* as the entity authorized to administer the Proceeding in an agreement between them, any party to a dispute may file a **Demand for Advisory Opinion** (as provided for under Rule 2.2) in accordance with the Rules set forth herein. Upon the consent of each of the other parties (as provided for in Rule 2.2(c)), all parties shall submit the claim(s) for resolution in accordance with the Rules set forth herein.

(c) When an agreement for the resolution of disputes by means of an Advisory Opinion does not exist between the parties or the parties have not designated *TPG* as the entity authorized to administer the Proceeding, upon execution of a **Consent to Advisory Opinion** process (as provided for under Rule 2.3), the parties shall submit the dispute to *TPG* for resolution in accordance with the Rules set forth herein.

## 2. Invoking the Advisory Opinion Process

### 2.1 Notice of Claim

(a) When an agreement grants the parties thereto the right to have disputes in connection therewith resolved by means of an Advisory Opinion administered by *TPG*, a party (the “Petitioner”) may commence a Proceeding by serving a Notice of Claim upon the other parties (the “Responding Party(s)”) and at the same time shall file two (2) copies of the Notice of Claim with *TPG*.

(b) The Notice of Claim shall be in conformance with **Form 1** appended to these Rules and shall:

(i) identify the parties, designating applicable Petitioner(s) and Responding Party(s) including the name, address, telephone and facsimile numbers of each party. The Petitioner shall also identify the name, address telephone and facsimile numbers of its attorney or other representative;

(ii) identify and provide a brief summary (not to exceed two pages) of the applicable agreement(s) between the parties giving rise to the dispute;

(iii) identify the Advisory Opinion provision of the applicable agreement(s); and

(iv) specify in reasonable detail the basis and nature of the claim(s) and the remedy sought.

### 2.2 Demand for Advisory Opinion

(a) When an agreement for the resolution of disputes by means of an Advisory Opinion does not exist between the parties or the parties have not designated *TPG* as the entity authorized to administer the Proceeding, a party seeking to invoke an Advisory Opinion Proceeding administered by *TPG* shall serve a Demand for Advisory Opinion upon the other parties and at the same time shall file two (2) copies thereof with *TPG*.

(b) The Demand for Advisory Opinion shall be in conformance with **Form 2** appended to these Rules and shall:

(i) identify the parties, designating applicable Petitioner(s) and Responding Party(s) including the name, address, telephone and facsimile numbers of each party. The Petitioner shall also identify the name, address telephone and facsimile numbers of its attorney or other representative;

(ii) identify and provide a brief summary (not to exceed two pages) of the applicable agreement(s) between the parties giving rise to the dispute;

(iii) if applicable, identify the Advisory Opinion provision of the applicable agreement(s); and

(iv) specify in reasonable detail the basis and nature of the claim(s) and the remedy sought.

(c) Upon consent by all parties to an Advisory Opinion Proceeding administered by *TPG*, the Petitioner shall file a Consent to Advisory Opinion process in conformance with **Form 3** appended to these Rules, executed by each party to the dispute. The Consent to Advisory Opinion process must be filed with *TPG* not later than thirty (30) calendar days from the date the Demand for Advisory Opinion was filed with *TPG*.

### **2.3 Consent to Advisory Opinion**

(a) When an agreement to resolve disputes by means of an Advisory Opinion does not exist between the parties or the parties have not previously designated *TPG* as the entity authorized to administer the Proceeding, upon execution of a Consent to Advisory Opinion by each party, the dispute shall be submitted to *TPG* for resolution in accordance with the Rules set forth herein.

(b) The Consent to Advisory Opinion shall be in conformance with **Form 3** appended to these Rules and shall:

(i) identify the parties, designating applicable Petitioner(s) and Responding Party(s) including the name, address, telephone and facsimile numbers of each party. The Consent to Advisory Opinion shall also identify the name, address telephone and facsimile numbers of each party's attorney or other representative;

(ii) identify and provide a brief summary (not to exceed two pages) of the applicable agreement(s) between the parties giving rise to the dispute; and

(iii) specify in reasonable detail the basis and nature of the claim(s) and the remedy sought.

### **2.4 Commencement**

A Proceeding shall be deemed to have Commenced upon the filing with *TPG* of a Notice of Claim or Consent to Advisory Opinion, as applicable.

### **3. Answer**

#### **3.1 Response Time**

Not later than fifteen (15) calendar days after Commencement of the Proceeding, the Responding Party(s) shall serve upon the Petitioner(s) an answer to the claim(s) which shall include all affirmative defenses thereto together with any counterclaims. Two (2) copies of the answer, inclusive of affirmative defenses and counterclaims shall be filed with *TPG* within such fifteen (15) day period.

#### **3.2 Affirmative Defenses & Counterclaims**

The answer shall specify in reasonable detail the basis and nature of the Responding Party(s) defenses to the claim(s) and, in the event counterclaim(s) are asserted, shall specify in reasonable detail the basis and nature of the counterclaim(s) and the remedy sought.

#### **3.3 Answer to Counterclaims**

Not later than fifteen (15) calendar days after service of counterclaim(s), the Petitioner(s) shall serve an answer to counterclaims upon Responding Party(s) which shall include all affirmative defenses thereto. Two (2) copies of the answer to counterclaims, inclusive of affirmative defenses shall be filed with *TPG* within such fifteen (15) day period.

#### **3.4 Failure to Answer**

In the event an answer to the claim(s) or counterclaim(s) is not served within the time frames specified in Rules 3.2 and 3.3, it will be deemed a denial of such claims and the Proceeding shall continue in accordance with these Rules.

#### **3.5 Close of Pleadings**

The Close of Pleadings shall be deemed to have occurred upon the later of: (a) service of an answer; (b) answer to counterclaim(s); or (c) if an answer or answer to counterclaims is not served, the time period allowed for service of the foregoing.

### **4. Advisory Opinion Panel**

#### **4.1 Number**

Unless specified in the agreement or otherwise agreed to between the parties, the Advisory Opinion Panel shall be comprised of one (1) individual.

#### **4.2 Panel of Neutrals**

*TPG* shall maintain a Panel of Neutrals competent in various disciplines relating to technology. Biographical and professional information shall be contained for each individual listed in the Panel of Neutrals.

#### **4.3 Contract Identifies Neutral(s)**

Where the agreement between the parties has identified the individual(s) to serve as Neutral(s), within ten (10) calendar days after the Close of Pleadings, the Petitioner shall file a Consent to Serve as a Neutral, executed by the individual(s) serving in such capacity, in conformance with **Form 4** appended to these Rules.

#### **4.4 Parties Stipulate**

(a) Where the agreement between the parties either (i) allows each party to appoint an individual to serve as a Neutral; or (ii) requires the parties to mutually agree upon and appoint the individual(s) to serve as a Neutral(s), they shall do so and file with *TPG* a Consent to Serve as a Neutral, as executed by the individual(s) serving in such capacity, within ten (10) calendar days after the Close of Pleadings. If the parties request, *TPG* shall provide the names of individuals listed in its Panel of Neutrals from which a Neutral may be selected.

(b) Where the agreement between the parties allows each party to appoint a Neutral and requires the Neutrals so appointed to select a third Neutral, the party appointed Neutrals shall do so and cause a Consent to Serve as a Neutral to be filed with *TPG* within twenty (20) calendar days after the Close of Pleadings. If the party appointed Neutrals request, *TPG* shall provide the names of individuals listed in its Panel of Neutrals from which the third Neutral may be selected. The individual selected by the party appointed Neutrals shall serve as the Panel's chairperson.

#### **4.5 TPG Appoints**

(a) Where the agreement between the parties provides for *TPG* to appoint the Neutrals, within ten (10) calendar days after the Close of Pleadings, *TPG* shall:

- (i) when the Panel is to consist of one (1) Neutral, nominate one (1) individual from its Panel of Neutrals together with two (2) alternates; and
- (ii) when the Panel is to consist of three (3) Neutrals, nominate three (3) individuals from its Panel of Neutrals together with seven (7) alternates.

(b) *TPG* shall provide each of the parties with names, biographical and professional information of each individual nominated as well as the alternates. Not later than twenty (20) calendar days after the Close of Pleadings, each party shall indicate its approval or rejection of the individuals nominated by *TPG* as well as the alternates. In the event that all parties approve the individuals nominated by *TPG*, the Advisory Opinion Panel shall consist of such person(s). If the individuals nominated by *TPG* are not accepted by all parties, *TPG* shall select the Panel from among the alternates accepted by all the parties. In the event that there are not sufficient acceptable alternates to comprise the Panel, *TPG* shall select other individuals from its Panel of Neutrals to serve as Neutrals and *TPG's* selection (subject to Rule 4.7) shall be final.

(c) If the parties or the party appointed Neutrals fail to agree upon acceptable individuals to serve as Neutral(s) or Consent(s) to Serve as a Neutral are not filed within the time periods set forth in this Rule, *TPG* shall appoint a Neutral(s) from its Panel of Neutrals within fifteen calendar (15) days after expiration of the last day that the respective party was required to file the Consent to Serve as a Neutral. Subject to Rule 4.7, *TPG's* selection shall be final.

#### **4.6 Unavailability of Neutrals & Vacancies**

(a) If any member of the Advisory Opinion Panel is unable to act as a Neutral for any reason at any time:

(i) when the Advisory Opinion Panel consists of one or more individuals who were appointed upon the mutual agreement of the parties, the parties shall mutually agree upon and appoint replacement Neutral(s) and file a Consent to Serve as a Neutral executed by the individual(s) serving in such capacity within ten (10) calendar days after the vacancy has occurred on the Panel;

(ii) when a party had the right to select the individual(s) who is no longer available to serve as an Neutral, such party shall be entitled to select and appoint a replacement Neutral and shall file a Consent to Serve as a Neutral executed by the individual(s) serving in such capacity within ten (10) calendar days after the vacancy has occurred on the Panel; and

(iii) When the agreement between the parties required *TPG* to select and appoint the Neutral(s) who is no longer available to serve on the Advisory Opinion Panel, *TPG* shall be entitled to select and appoint a replacement Neutral and shall give the parties notice of its selection within ten (10) calendar days after the vacancy has occurred on the Panel. Subject to Rule 4.7, *TPG's* appointment shall be final.

(b) In the event that Consent(s) to Serve as Neutral(s) for replacement Neutral(s) are not filed within the time periods set forth above in Rule 4.6, *TPG* shall appoint a Neutral(s) from its Panel of Neutrals within fifteen (15) calendar days after expiration of the last day that the parties were required to file the Consent to Serve as a Neutral. Subject to Rule 4.7, *TPG's* appointment shall be final.

#### **4.7 Qualifications, Conflicts of Interest & Disqualification**

(a) Each Neutral shall be independent and impartial and, subject to Rule 9.3, shall be bound by these Rules. An individual shall not accept appointment as a Neutral unless such person can devote the time necessary to facilitate a speedy and proper resolution of the dispute.

(b) Neutrals appointed either by *TPG* or the parties shall promptly disclose to *TPG* any conflict of interest or appearance of impropriety which may result from their serving on the Advisory Opinion Panel, including without limitation, (i) any financial interest in the parties, the matter in dispute or its outcome or (ii) personal or business relationship with any of the parties (including its directors or officers) either past or present.

(c) Upon receipt of such information by *TPG*, either from the respective Neutral or any other source, notice thereof shall be given to all parties. In the event that a party objects to the continued service on the Advisory Opinion Panel by such individual and notice of such objection together with the underlying basis therefor is given within five (5) business days after receipt of *TPG's* notice advising of such conflict of interest, *TPG* shall decide whether the individual should be disqualified from continued service on the Advisory Opinion Panel, which decision shall be final.

### **5. Preliminary Hearing**

A preliminary hearing shall be held before the Advisory Opinion Panel during which procedural matters will be decided, including without limitation, (a) issues for resolution, (b) discovery, if any, and the scope thereof (c) bifurcation of issues, if necessary, (d) calling and scheduling of witnesses and presentation of each party's case and rebuttal, (e) schedule and length of hearings and (f) protective orders. The preliminary hearing shall be held no later than ten (10) business days after the Advisory Opinion Panel has been selected.

### **6. Discovery**

The scope of discovery shall be decided by the Advisory Opinion Panel. The Panel shall have the sole discretion to prescribe the allowable methods of discovery, relevant issues and time frames within which discovery must be

completed, taking into account the needs of the parties and the desirability of making discovery expeditious and cost effective.

**7. Subpoena Powers**

At the request of a party or on its own initiative, the Advisory Opinion Panel shall have the authority, subject to applicable law, to issue subpoenas for the production of persons and/or material.

**8. Evidence**

**8.1 Rules of Evidence**

Rules of evidence shall not be applicable to the Proceeding however, the parties may object to any item of evidence proffered by another party. The Advisory Opinion Panel shall have sole discretion to rule upon the admission and relevancy of each item of evidence proffered by the parties. The Panel shall receive and consider all such evidence found to be relevant, material and credible.

**8.2 Neutrals' Instruction**

Upon the instruction of the Advisory Opinion Panel, the parties shall produce documents, material (including without limitation computer programs in either source code or object code format) and witnesses deemed relevant by the Panel.

**8.3 Receipt of Evidence**

(a) Evidence shall be received by the entire Advisory Opinion Panel in the presence of all parties during scheduled hearings unless otherwise agreed to by the Panel and the parties.

(b) Material received into evidence shall be appropriately marked for identification. The names, addresses and telephone numbers (personal and business) of all witnesses shall be made part of the Proceeding's record.

**8.4 Expert Witnesses**

Upon the request of a party or upon instruction by the Advisory Opinion Panel, expert testimony may be admitted.

**8.5 On-Site Inspection**

When the Advisory Opinion Panel deems it necessary or advisable to view premises, locations or material which cannot be readily transported to the hearing room, the Panel may personally inspect the site or material upon notice to all parties of the date, time and place of inspection.



## **8.6 Confidentiality & Protective Orders**

The Proceeding and all information disclosed and testimony given in connection therewith shall be kept confidential by the Advisory Opinion Panel and the parties and shall be used only for purposes of the Proceeding. The Panel shall have the right to issue orders as are necessary or advisable to maintain confidentiality as well as the integrity, preservation and availability of evidence.

## **9. Procedural Matters**

### **9.1 Service of Notice**

Notices required to be served under these Rules shall be given by: (a) personal delivery to the person to be served or its counsel; (b) certified mail, return receipt requested mailed to the person to be served or its counsel; or (c) as otherwise allowed by the Advisory Opinion Panel. Proof of service shall be promptly filed with *TPG* in conformance with **Form 5** appended to these Rules. Service of notice shall be deemed to have occurred on the date of delivery, if personally served or three (3) business days after deposit in the mails, if served by mail.

### **9.2 Representation by Counsel**

Each party may elect to be represented by counsel in connection with the Proceeding. A party shall give *TPG* and each other party notice of its representation by counsel within three (3) calendar days of the appointment of such counsel, which notice shall include the counsel's name, address, telephone and fax numbers.

### **9.3 Contractual Mandates/Agreement of Parties**

The Advisory Opinion Panel shall abide by the terms and conditions agreed to between the parties as it relates to the conduct of the Proceeding.

### **9.4 Schedule/Postponements**

Prior to the commencement of hearings, the Advisory Opinion Panel shall prepare a schedule, to be strictly adhered to, for the Proceeding which shall include (a) the duration of discovery, if any, (b) commencement and duration of hearings, (c) length of closing arguments (d) and presentation of closing memoranda, if any. Upon agreement of the parties or upon the request of one party, the Panel may postpone a hearing or otherwise modify the schedule upon good cause shown.

### **9.5 Oaths**

Prior to the taking of any testimony, each witness shall undertake an oath that the information s/he will provide is truthful.

## **9.6 Stenographic Record**

*TPG* shall provide a stenographer for all hearings. Transcripts of the hearings shall be promptly furnished to the parties and unless objected to within five (5) calendar days after such party's receipt, shall be deemed accepted as accurate. Except as may be decided by the Advisory Opinion Panel to the contrary or upon agreement of the parties, the costs associated with obtaining a stenographic record shall be borne by the parties in equal percentages.

## **9.7 Interpreters**

At the request of a party, *TPG* shall provide qualified interpreters for a party or witness as well as translation services for documents in a foreign language. The associated cost shall be borne by the party requiring the services.

## **9.8 Communication with Neutrals**

Except as otherwise permitted in these Rules, requested or permitted by the Advisory Opinion Panel, no party or anyone acting on a party's behalf shall communicate with a member of the Panel except during the time in which a hearing is being conducted. Notwithstanding the foregoing, a party and a Neutral appointed by such party may confer regarding the selection of the third Neutral.

(b) In all matters not expressly provided for in these Rules, the Advisory Opinion Panel shall act in the spirit of these Rules in order to reach a fair and equitable resolution of the dispute in an expedited manner.

## **9.9 Decision of Neutrals**

In all cases where the Advisory Opinion Panel is comprised of more than one Neutral, decisions required to be made by the Neutral shall be made by a majority of the Neutrals.

# **10. Hearing**

## **10.1 Requirement & Waiver**

A hearing shall be required in all Proceedings.

## **10.2 Summary of Claims & Defenses**

(a) Unless completed during the Preliminary Hearing, the Advisory Opinion Panel shall determine the manner in which the parties present their cases. Unless otherwise specified by the Panel, the presentation of a party's case shall include the submission of a pre-hearing memorandum including the following elements:

- (i) statement of facts;
- (ii) statement of each claim or defense being asserted;
- (iii) statement of the applicable law upon which a party relies;
- (iv) statement of the evidence to be presented, including the name capacity and subject of testimony of any witness to be called and an estimate of the amount of time required for the witnesses direct testimony; and
- (v) statement of the relief requested, including the basis for any damages claimed.

(b) One (1) copy of the pre-hearing memorandum shall be given to each party, *TPG* and each member of the Advisory Opinion Panel.

### **10.3 Presentation of Cases**

The Petitioner shall first present witnesses and evidence in support of its claim followed by the Responding Party's presentation of defenses thereto. In the event counterclaims have been asserted against the Petitioner, witnesses and evidence in support of such counterclaims shall be presented immediately thereafter followed by Petitioner's defenses thereto. Each party shall have a reasonable opportunity to ask questions of the opposing party's witnesses. Although the Advisory Opinion Panel may vary this procedure, each party shall be afforded a fair and complete opportunity to present all relevant and material evidence.

### **10.4 Attendance at Hearings**

(a) Each party or its counsel shall be present at all hearings. In the event that a party or its counsel is not present, the Advisory Opinion Panel shall determine whether to proceed with the hearing or reschedule.

(b) The Advisory Opinion Panel shall have the discretion of allowing individuals other than parties attend the hearings, taking into account that the Proceedings are to be maintained as confidential.

### **10.5 Video Conferencing & Conference Calls**

Upon mutual agreement of the parties and the Advisory Opinion Panel, hearings may be conducted by way of video conferencing or telephone conference calls.

## **11. Amendments to Claims**

### **11.1 As of Right**

At any time prior to the date which is seven (7) calendar days prior to the Preliminary Hearing, either party may amend its claim(s) against the other party by serving notice and a copy of the amended pleading upon the other party within the aforementioned time frame. Two (2) copies of the amended pleading shall be filed with *TPG* at the same time. The other party shall have ten (10) calendar days to serve its answer. Two (2) copies of the answer shall also be filed with *TPG*. The amended pleading shall specify in reasonable detail the basis and nature of the amended claim(s) as well as the remedy sought.

### **11.2 Upon Consent**

Upon expiration of the applicable seven (7) day period specified in Rule 11.1, a party may only amend its claim(s) upon permission of the Advisory Opinion Panel, whose decision shall be final.

## **12. Decision**

At the conclusion of the hearing the Advisory Opinion Panel shall review all of the evidence and other material submitted by the parties and shall render a non-binding opinion as to how the dispute could be decided if arbitrated or litigated. The Advisory Opinion Panel shall not have the authority to impose a settlement upon the parties.

## **13. Settlement Discussions**

If the Advisory Opinion Panel believes a voluntary settlement of the dispute can be reached between the parties, the Panel shall have the authority to meet privately with each of the parties in order to elicit the issues, facts, positions and objectives of the parties and then bring the parties together to discuss settlement options.

## **14. Pre-Decision Relief**

### **14.1 Court Ordered**

Any party may seek equitable relief to a court of competent jurisdiction during the pendency of the Proceeding. Such application by a party shall not be deemed or construed to have vitiated the jurisdiction of *TPG* or the Advisory Opinion Panel.

### **14.2 TPG Ordered**

Any party to the Proceeding may request the Advisory Opinion Panel to grant such interim relief as the Panel deem appropriate.

## **15. Sanctions**

At the discretion of the Advisory Opinion Panel, sanctions may be assessed against a party or its counsel for failure to comply with orders of the Panel or other dilatory actions taken by the party or its counsel which improperly delays the Proceeding.

## **16. Location**

Within five (5) calendar days after the Advisory Opinion Panel has been selected, it shall determine the location where hearings are to be held taking into account the residence of the parties, location of relevant evidence and convenience to all parties and the Advisory Opinion Panel. If requested by the Panel, *TPG* shall make conference and meeting room facilities at its offices in New York City available to the parties at no additional fee.

## **17. Termination of Advisory Opinion Proceeding**

The Proceeding shall terminate in the event that:

### **17.1 Agreement of the Parties**

Upon the filing with *TPG* of a written agreement between the parties, the Proceeding shall be discontinued. The record of the Proceeding shall be preserved and either party may reinstate the Proceeding unless stipulated to the contrary between the parties.

### **17.2 Conversion to Alternative ADR Process**

Upon the filing with *TPG* of a written agreement, at any time during the Proceeding, the parties may discontinue the Advisory Opinion Proceeding in favor of an alternative method of dispute resolution including without limitation, mediation, mini-trial or arbitration. The record of the Proceeding shall be preserved and either party may reinstate the Proceeding unless stipulated to the contrary between the parties. Unless agreed to the contrary by the parties, the Neutral(s) in such other Proceeding shall be different from those comprising the Advisory Opinion Panel.

### **17.3 Settlement**

In the event that the parties have agreed to a settlement of the dispute, the terms and conditions of the settlement shall be memorialized in writing and filed with *TPG*. The settlement agreement shall be binding and enforceable against the parties.

### **17.4 Settlement Not Possible**

In the event that the Advisory Opinion Panel believes that there is no reasonable likelihood that a settlement can be reached between the parties, it can terminate or suspend any further Proceedings or, if the parties have so agreed, require the Parties to proceed to Mini-Trial or Arbitration in accordance with *TPG's* Rules.

## **18. Jurisdiction, Powers & Liability**

### **18.1 Authority**

(a) When the parties agree to an Advisory Opinion process under these Rules, they thereby authorize *TPG* to administer the Proceeding. The Advisory Opinion Panel shall have the sole authority to consider and decide any challenge to its jurisdiction.

(b) All issues relating the existence, validity or scope of an agreement subject to an Advisory Opinion clause, including without limitation, the Advisory Opinion clause, shall be determined by the Advisory Opinion Panel.

(c) Except as permitted under Rule 14.1, a party shall not commence or prosecute any suit or action against another party to the Proceeding during the pendency of the Proceeding which relates to any of the issues to be resolved in the Proceeding.

### **18.2 Rules**

Upon submission of the dispute for resolution administered by *TPG*, the parties shall be deemed to have submitted to the Rules set forth herein as the same may be amended, supplemented or otherwise modified from time to time. Any reference by the parties to these Rules shall mean the Rules in effect at the time the Proceeding is Commenced (as provided in Rule 2.4) unless otherwise agreed to be the parties.

### **18.3 Liability**

Except in cases of intentional wrongful conduct committed by *TPG* or a member of the Advisory Opinion Panel, neither *TPG*, any of its directors, officers, employees or any Neutral shall have liability to the parties.

### **18.4 Interpretation of Rules**

(a) Any disagreement between the parties in connection with the application of these Rules shall be resolved by the Advisory Opinion Panel whose decision shall be final. Any disagreement between the members of the Panel in connection with the application of these Rules shall be resolved by *TPG*.

## **19. Fees & Expenses**

### **19.1 Fees**

*TPG's* fees associated with the Proceeding are outlined in the Fee Schedule appended to these Rules. Unless agreed to the contrary between the parties, the parties shall pay *TPG's* fees in equal percentages.



## **19.2 Expenses**

The expenses of witnesses called by the parties shall be paid by the party producing such witness. Expenses incurred by *TPG's* or on behalf of the parties shall be reimbursed to *TPG* by the parties. Unless agreed to the contrary between the parties or set forth to the contrary elsewhere in these Rules, the parties shall reimburse *TPG's* expenses in equal percentages.

## **19.3 Neutral's Compensation**

*TPG* shall compensate the Neutral(s) for their services.

## **19.4 Retainer**

Upon Commencement of the Proceeding, each party shall deposit with *TPG* a retainer in an amount determined by *TPG* not to exceed twenty thousand dollars (\$20,000) per party. *TPG's* fees and expenses shall be deducted from the retainer balance as incurred. Upon notice to the parties, the retainer amount shall be replenished as required by *TPG*.

## **19.5 Suspension of Proceedings**

In the event that the parties have failed to make payments as specified in this Rule 19, *TPG* in its sole discretion and without obligation or liability to the parties may suspend the Proceeding until appropriate arrangements have been made to pay all amounts owed to *TPG* as well as security for the payment of amounts payable for services to be provided in the future.

**FORM 1**

**NOTICE OF CLAIM**

DATE:

TO: [Identify contact person, name address and telephone number of the other party(s)]

Please take notice that in accordance with [identify agreement or other document which subjects the parties to a TPG administered advisory opinion process], the undersigned hereby requests an advisory opinion for the purposes of resolving the dispute between our companies.

[The following information should be included:]

- (i) identify the parties, designating applicable Petitioner(s) and Responding Party(s) including the name, address, telephone and facsimile numbers of each party. The Petitioner shall also identify the name, address telephone and facsimile numbers of its attorney or other representative;
- (ii) identify and provide a brief summary (not to exceed two pages) of the applicable agreement(s) between the parties giving rise to the dispute;
- (iii) identify the advisory opinion provision of the applicable agreement(s); and
- (iv) specify in reasonable detail the basis and nature of the claim(s) and the remedy sought.

**This form is to be executed by the duly authorized officer of the party requesting an advisory opinion before a notary public and served upon the other party(s) as well as TPG.**

**FORM 2**

**DEMAND FOR ADVISORY OPINION**

DATE:

TO: [Identify contact person, name address and telephone number of the other party(s)]

Please take notice that in connection with the dispute which has arisen between our firms relating to [briefly describe dispute for which an advisory opinion is requested] the undersigned hereby requests that you consent to a non-binding advisory opinion process administered by TPG, Inc. for the purposes of resolving the dispute between our companies.

[The following information should be included:]

- (i) identify the parties, designating applicable Petitioner(s) and Responding Party(s) including the name, address, telephone and facsimile numbers of each party. The Petitioner shall also identify the name, address telephone and facsimile numbers of its attorney or other representative;
- (ii) identify and provide a brief summary (not to exceed two pages) of the applicable agreement(s) between the parties giving rise to the dispute;
- (iii) if applicable, identify the advisory opinion provision of the applicable agreement(s); and
- (iv) specify in reasonable detail the basis and nature of the claim(s) and the remedy sought.

**This form is to be executed by the duly authorized officer of the party requesting an advisory opinion before a notary public and served upon the other party(s) as well as TPG.**

**FORM 3**

**CONSENT TO ADVISORY OPINION**

DATE:

TO: Technology Practice Group, LLC  
1010 Northern Blvd.  
Suite 414  
Great Neck, NY 11021

Please take notice that the parties hereby agree to a non-binding advisory opinion process for the purposes of resolving their dispute relating to [briefly describe dispute].

[The following information should be included:]

- (i) identify the parties, designating, where applicable, Petitioner(s) and Responding Party(s) including the name, address, telephone and facsimile numbers of each party. The Consent to an advisory opinion shall also identify the name, address telephone and facsimile numbers of each party's attorney or other representative;
- (ii) identify and provide a brief summary (not to exceed two pages) of the applicable agreement(s) between the parties giving rise to the dispute; and
- (iii) specify in reasonable detail the basis and nature of the claim(s) and the remedy sought.

**This form is to be executed by the duly authorized officer of each party before a notary public and returned to *TPG*.**

**FORM 4**

**CONSENT TO SERVE AS NEUTRAL**

DATE:

TO: Technology Practice Group, LLC  
1010 Northern Blvd.  
Suite 414  
Great Neck, NY 11021

The undersigned hereby agrees to serve a Neutral in connection with the non-binding advisory opinion proceeding between [identify parties]. In serving as a Neutral the undersigned agrees to comply with *TPG's* Advisory Opinion Rules.

[Name, signature, office address, telephone and fax number of Neutral]

**FORM 5**

**PROOF OF SERVICE**

DATE:

The undersigned hereby confirms that on [enter date] he/she deposited in the United States mail an envelope containing the [enter name of document] to be delivered by certified mail, return receipt requested, addressed to [enter name of receiving party] and had the necessary postage affixed thereto.

- alternative -

The undersigned hereby confirms that on [enter date] he/she personally delivered to [enter name of receiving party] an envelope containing the [enter name of document].

**This form is to be executed by the person affirming the foregoing before a notary public. The original should be returned to *TPG* and one copy should be sent to each party.**

## MINI-TRIAL RULES

### 1. Authority

#### 1.1 Eligibility

The alternative methods of dispute resolution administered by *TPG* and these Rules shall only be applicable to disputes and/or claims which relate to or arise out of the use, implementation, purchase, sale, license or development of technology and intellectual property, including computer, information, communication, medical and bio-technology together with the related areas of patent, trade secret, confidential know-how and copyright.

#### 1.2 Standing

(a) When an agreement grants the parties the right to have disputes in connection therewith resolved through a Mini-Trial process administered by *TPG*, either party may file a **Notice of Claim** (as provided for under Rule 2.1) against the other and submit such claim(s) for resolution in accordance with the Rules set forth herein.

(b) When an agreement for the resolution of disputes through a Mini-Trial process does not exist between the parties or the parties have not designated *TPG* as the entity authorized to administer the Proceeding in an agreement between them, any party to a dispute may file a **Demand for Mini-Trial** (as provided for under Rule 2.2) in accordance with the Rules set forth herein. Upon the consent of each of the other parties (as provided for in Rule 2.2(c)), all parties shall submit the claim(s) for resolution in accordance with the Rules set forth herein.

(c) When an agreement for the resolution of disputes through a Mini-Trial process does not exist between the parties or the parties have not designated *TPG* as the entity authorized to administer the Proceeding, upon execution of a **Consent to Mini-Trial** (as provided for under Rule 2.3), the parties shall submit the dispute to *TPG* for resolution in accordance with the Rules set forth herein.

### 2. Invoking Mini-Trial

#### 2.1 Notice of Claim

(a) When an agreement grants the parties thereto the right to have disputes in connection therewith resolved through a Mini-Trial administered by *TPG*, a party (the “Petitioner”) may commence a Proceeding by serving a Notice of Claim upon the other parties (the “Responding Party(s)”) and at the same time shall file two (2) copies of the Notice of Claim with *TPG*.

(b) The Notice of Claim shall be in conformance with **Form 1** appended to these Rules and shall:

(i) identify the parties, designating applicable Petitioner(s) and Responding Party(s) including the name, address, telephone and facsimile numbers of each party. The Petitioner shall also identify the name, address telephone and facsimile numbers of its attorney or other representative;

(ii) identify and provide a brief summary (not to exceed two pages) of the applicable agreement(s) between the parties giving rise to the dispute;

(iii) identify the Mini-Trial provision of the applicable agreement(s); and

(iv) specify in reasonable detail the basis and nature of the claim(s) and the remedy sought.

## **2.2 Demand for Mini-Trial**

(a) When an agreement for the resolution of disputes through a Mini-Trial process does not exist between the parties or the parties have not designated *TPG* as the entity authorized to administer the Proceeding, a party seeking to invoke a Mini-Trial Proceeding administered by *TPG* shall serve a Demand for Mini-Trial upon the other parties and at the same time shall file two (2) copies of the Demand for Mini-Trial with *TPG*.

(b) The Demand for Mini-Trial shall be in conformance with **Form 2** appended to these Rules and shall:

(i) identify the parties, designating applicable Petitioner(s) and Responding Party(s) including the name, address, telephone and facsimile numbers of each party. The Petitioner shall also identify the name, address telephone and facsimile numbers of its attorney or other representative;

(ii) identify and provide a brief summary (not to exceed two pages) of the applicable agreement(s) between the parties giving rise to the dispute;



(iii) if applicable, identify the Mini-Trial provision of the applicable agreement(s); and

(iv) specify in reasonable detail the basis and nature of the claim(s) and the remedy sought.

(c) Upon consent of all parties to a Mini-Trial administered by *TPG*, the Petitioner shall file a Consent to Mini-Trial in conformance with **Form 3** appended to these Rules, executed by each party to the dispute. The Consent to Mini-Trial must be filed with *TPG* not later than thirty (30) calendar days from the date the Demand for Mini-Trial was filed with *TPG*.

### **2.3 Consent to Mini-Trial**

(a) When an agreement to a Mini-Trial does not exist between the parties or the parties have not previously designated *TPG* as the entity authorized to administer the Proceeding, upon execution of a Consent to Mini-Trial by each party, the dispute shall be submitted to *TPG* for resolution in accordance with the Rules set forth herein.

(b) The Consent to Mini-Trial shall be in conformance with **Form 3** appended to these Rules and shall:

(i) identify the parties, designating applicable Petitioner(s) and Responding Party(s) including the name, address, telephone and facsimile numbers of each party. The Consent to Mini-Trial shall also identify the name, address telephone and facsimile numbers of each party's attorney or other representative;

(ii) identify and provide a brief summary (not to exceed two pages) of the applicable agreement(s) between the parties giving rise to the dispute; and

(iii) specify in reasonable detail the basis and nature of the claim(s) and the remedy sought.

### **2.4 Commencement**

A Proceeding shall be deemed to have Commenced upon the filing with *TPG* of a Notice of Claim or Consent to Mini-Trial, as applicable.

## **3. Answer**

### **3.1 Response Time**

Not later than fifteen (15) calendar days after Commencement of the Proceeding, the Responding Party(s) shall serve upon the Petitioner(s) an answer to the claim(s) which shall include all affirmative defenses thereto together with any counterclaims. Two (2) copies of the answer, inclusive of affirmative defenses and counterclaims shall be filed with *TPG* within such fifteen (15) day period.

### **3.2 Affirmative Defenses & Counterclaims**

The answer shall specify in reasonable detail the basis and nature of the Responding Party(s) defenses to the claim(s) and, in the event counterclaim(s) are asserted, shall specify in reasonable detail the basis and nature of the counterclaim(s) and the remedy sought.

### **3.3 Answer to Counterclaims**

Not later than fifteen (15) calendar days after service of counterclaim(s), the Petitioner(s) shall serve an answer to counterclaims upon Responding Party(s) which shall include all affirmative defenses thereto. Two (2) copies of the answer to counterclaims, inclusive of affirmative defenses shall be filed with *TPG* within such fifteen (15) day period.

### **3.4 Failure to Answer**

In the event an answer to the claim(s) or counterclaim(s) is not served within the time frames specified in Rules 3.2 and 3.3, it will be deemed a denial of such claims and the Proceeding shall continue in accordance with these Rules.

### **3.5 Close of Pleadings**

The Close of Pleadings shall be deemed to have occurred upon the later of: (a) service of an answer; (b) answer to counterclaim(s); or (c) if an answer or answer to counterclaims is not served, the time period allowed for service of the foregoing.

## **4. Mini-Trial Panel**

### **4.1 Composition**

The Mini-Trial Panel shall be comprised of one (unless otherwise agreed to by the parties, but in no event more than 3) Neutral (who shall serve as chairperson) and at least one (but not to exceed three) management personnel of each of the parties (“Management Representatives”). Management Representatives shall be appointed within five (5) business days after the Close of Pleadings and shall not have been involved in any aspect to the transaction(s) underlying the dispute, unless agreed to by the Neutral(s). Each party shall have the same number of Management Representatives. Management Representatives must have the authority to settle the dispute and bind their companies to the terms of any settlement agreement. Each person’s authority to act in the capacity of a

Management Representative shall be memorialized in the Authorization Agreement in conformance with **Form 4** appended to these Rules.

#### **4.2 Panel of Neutrals**

*TPG* shall maintain a Panel of Neutrals competent in various disciplines relating to technology. Biographical and professional information shall be contained for each individual listed in the Panel of Neutrals.

#### **4.3 Contract Identifies Neutral(s)**

Where the agreement between the parties has identified the individual(s) to serve as Neutral(s), within ten (10) calendar days after the Close of Pleadings, the Petitioner shall file a Consent to Serve as a Neutral, as executed by each individual to serve in such capacity, in conformance with **Form 5**, appended to these Rules.

#### **4.4 Parties Stipulate**

(a) Where the agreement between the parties either (i) allows each party to appoint an individual to serve as a Neutral; or (ii) requires the parties to mutually agree upon and appoint the individual(s) to serve as a Neutral(s), they shall do so and file with *TPG* a Consent to Serve as a Neutral, as executed by each individual to serve in such capacity, within ten (10) calendar days after the Close of Pleadings. If the parties request, *TPG* shall provide the names of individuals listed in its Panel of Neutrals from which an Neutral may be selected.

(b) Where the agreement between the parties allows each party to appoint a Neutral and requires the Neutrals so appointed to select a third Neutral, the party appointed Neutrals shall do so and cause a Consent to Serve as a Neutral to be filed with *TPG* within twenty (20) calendar days after the Close of Pleadings. If the party appointed Neutrals request, *TPG* shall provide the names of individuals listed in its Panel of Neutrals from which the third Neutral may be selected. The individual selected by the party appointed Neutrals shall serve as the Mini-Trial Panel's chairperson.

#### **4.5 TPG Appoints**

(a) Where the agreement between the parties provides for *TPG* to appoint the Neutrals, within ten (10) calendar days after the Close of Pleadings, *TPG* shall:

- (i) when the Panel is to consist of one (1) Neutral, nominate one (1) individual from its Panel of Neutrals together with two (2) alternates; and
- (ii) when the Panel is to consist of three (3) Neutrals, nominate three (3) individuals from its Panel of Neutrals together with seven (7) alternates.

(b) *TPG* shall provide each of the parties with names, biographical and professional information of each individual nominated as well as the alternates. Not later than twenty (20) calendar days after the Close of Pleadings, each party shall indicate its approval or rejection of the individuals nominated by *TPG* as well as the alternates. In the event that all parties approve the individuals nominated by *TPG*, the Mini-Trial Panel shall consist of such person(s). If the individuals nominated by *TPG* are not accepted by all parties, *TPG* shall select the Neutral(s) for the Mini-Trial Panel from among the alternates accepted by all the parties. In the event that there are not sufficient acceptable alternates to comprise the Mini-Trial Panel, *TPG* shall select other individuals from its Panel of Neutrals to serve as Neutrals and *TPG*'s selection (subject to Rule 4.7) shall be final.

(c) If the parties or the party appointed Neutrals fail to agree upon acceptable individuals to serve as Neutral(s) or Consent(s) to Serve as a Neutral are not filed within the time periods set forth in this Rule, *TPG* shall appoint a Neutral(s) from its Panel of Neutrals within fifteen calendar (15) days after expiration of the last day that the respective party was required to file the Consent to Serve as a Neutral. Subject to Rule 4.7, *TPG*'s selection shall be final.

#### **4.6 Vacancies**

(a) If any Management Representative is unable to continue to serve in such capacity, notice thereof shall be given to *TPG* and the other parties as soon as such party discovers that its Representative(s) cannot continue to serve on the Mini-Trial Panel and such party shall appoint a replacement Management Representative(s) with similar authority within five (5) business days after giving the notice referred to in this Rule 4.6 (a).

(b) If any Neutral who is a member of the Mini-Trial Panel is unable to serve in such capacity for any reason:

(i) when the Mini-Trial Panel consists of one or more Neutrals who were appointed upon the mutual agreement of the parties, the parties shall mutually agree upon and appoint replacement Neutral(s) and file a Consent to Serve as a Neutral, executed by each individual to serve in such capacity, within ten (10) calendar days after the vacancy has occurred on the Mini-Trial Panel;

(ii) when a party had the right to select the individual(s) who is no longer available to serve as an Neutral, such party shall be entitled to select and appoint a replacement Neutral and shall file a Consent to Serve as a Neutral, executed by each individual to serve in such capacity, within ten (10) calendar days after the vacancy has occurred on the Mini-Trial Panel; and

(iii) When the agreement between the parties required *TPG* to select and appoint the Neutral(s) who is no longer available to serve on the Mini-Trial Panel, *TPG* shall be entitled to select and appoint a replacement Neutral and shall give the parties notice of its selection within ten (10) calendar days after the vacancy has occurred on the Mini-Trial Panel. Subject to Rule 4.7, *TPG's* appointment shall be final.

(c) In the event that Consent(s) to Serve as Neutral(s) for replacement Neutral(s) are not filed within the time periods set forth above in Rule 4.6, *TPG* shall appoint a Neutral(s) from its Panel of Neutrals within fifteen (15) days after expiration of the last day that the parties were required to file the Consent to Serve as a Neutral. Subject to Rule 5.7, *TPG's* appointment shall be final.

#### **4.7 Qualifications, Conflicts of Interest & Disqualification**

(a) Each Neutral shall be independent and impartial and, subject to Rule 9.3, shall be bound by these Rules. An individual shall not accept appointment as a Neutral unless such person can devote the time necessary to facilitate a speedy and proper resolution of the dispute.

(b) Neutrals appointed either by *TPG* or the parties shall promptly disclose to *TPG* any conflict of interest or appearance of impropriety which may result from their serving on the Mini-Trial Panel, including without limitation, (i) any financial interest in the parties, the matter in dispute or its outcome or (ii) personal or business relationship with any of the parties (including its directors or officers) either past or present. Upon receipt of such information by *TPG*, either from the respective Neutral or any other source, notice thereof shall be given to all parties. In the event that a party objects to the continued service on the Mini-Trial Panel by such individual and notice of such objection together with the underlying basis therefor is given within five (5) business days after receipt of *TPG's* notice advising of such conflict of interest, *TPG* shall decide whether the individual should be disqualified from continued service on the Mini-Trial Panel, which decision shall be final.

#### **5. Preliminary Hearing**

A preliminary hearing shall be held before the Mini-Trial Panel during which procedural matters will be decided by the Panel, including without limitation, (a) issues for resolution, (b) bifurcation of issues, if necessary, (c) calling and scheduling of witnesses and presentation of each party's case and rebuttal, (d) schedule and length of hearings and (e) protective orders. The preliminary hearing shall be held no later than ten (10) business days after the Panel has been selected.

#### **6. Discovery**

The scope of discovery shall be decided by the Neutral(s). The Neutral(s) shall have the sole discretion to prescribe the allowable methods of discovery, relevant issues and time frames within which discovery must be completed, taking into account the needs of the parties and the desirability of making discovery expeditious and cost effective.

**7. Subpoena Powers**

At the request of a party or on its own initiative, the Neutral(s) shall have the authority, subject to applicable law, to issue subpoenas for the production of persons and/or material.

**8. Evidence**

**8.1 Rules of Evidence**

Rules of evidence shall not be applicable to the Proceeding however, the parties may object to any item of evidence proffered by another party. The Neutral(s) shall have sole discretion to rule upon the admission and relevancy of each item of evidence proffered by the parties. The Mini-Trial Panel shall receive and consider all such evidence found to be relevant, material and credible.

**8.2 Neutrals' Instruction**

Upon the instruction of the Neutral(s), the parties shall produce documents, material (including without limitation computer programs in either source code or object code format) and witnesses deemed relevant by the Neutral(s).

**8.3 Receipt of Evidence**

(a) Evidence shall be received by the entire Mini-Trial Panel in the presence of all parties during scheduled hearings unless otherwise agreed to by the Mini-Trial Panel and the parties.

(b) Material received into evidence shall be appropriately marked for identification. The names, addresses and telephone numbers (personal and business) of all witnesses shall be made part of the Proceeding's record.

**8.4 Expert Witnesses**

Upon the request of a party or upon instruction by the Neutral(s), expert testimony may be admitted by the Mini-Trial Panel.

**8.5 On-Site Inspection**

When the Mini-Trial Panel deems it necessary or advisable to view premises, locations or material which cannot be readily transported to the hearing room,

the Mini-Trial Panel may personally inspect the site or material upon notice to all parties of the date, time and place of inspection.



## **8.6 Confidentiality & Protective Orders**

The Proceeding and all information disclosed and testimony given in connection therewith shall be kept confidential by the Mini-Trial Panel and the parties and shall be used only for purposes of the Proceeding. The Neutral(s) shall have the right to issue orders as are necessary or advisable to maintain confidentiality as well as the integrity, preservation and availability of evidence.

## **9. Procedural Matters**

### **9.1 Service of Notice**

Notices required to be served under these Rules shall be given by: (a) personal delivery to the person to be served or its counsel; (b) certified mail, return receipt requested mailed to the person to be served or its counsel; or (c) as otherwise allowed by the Mini-Trial Panel. Proof of service shall be promptly filed with *TPG* in conformance with **Form 6** appended to these Rules. Service of notice shall be deemed to have occurred on the date of delivery, if personally served or three (3) business days after deposit in the mails, if served by mail.

### **9.2 Representation by Counsel**

Each party may elect to be represented by counsel in connection with the Proceeding. A party shall give *TPG* and each other party notice of its representation by counsel within three (3) calendar days of the appointment of such counsel, which notice shall include the counsel's name, address, telephone and fax numbers.

### **9.3 Contractual Mandates/Agreement of Parties**

The Mini-Trial Panel shall abide by the terms and conditions agreed to between the parties as it relates to the conduct of the Proceeding.

### **9.4 Schedule/Postponements**

Prior to the commencement of hearings, the Mini-Trial Panel shall prepare a schedule, to be strictly adhered to, for the Proceeding which shall include (a) the duration of discovery, if any, (b) commencement and duration of hearings, (c) length of closing arguments (d) and presentation of closing memoranda, if any. Upon agreement of the parties or upon the request of one party, the Mini-Trial Panel may postpone a hearing or otherwise modify the schedule upon good cause shown.

### **9.5 Oaths**

Prior to the taking of any testimony, each witness shall undertake an oath that the information s/he will provide is truthful.

## **9.6 Stenographic Record**

*TPG* shall provide a stenographer for all hearings. Transcripts of the hearings shall be promptly furnished to the parties and unless objected to within five (5) calendar days after such party's receipt, shall be deemed accepted as accurate. Except as may be decided by the Mini-Trial Panel to the contrary or upon agreement of the parties, the costs associated with obtaining a stenographic record shall be borne by the parties in equal percentages.

## **9.7 Interpreters**

At the request of a party, *TPG* shall provide qualified interpreters for a party or witness as well as translation services for documents in a foreign language. The associated cost shall be borne by the party requiring the services.

## **9.8 Communication with Neutrals**

Except as otherwise permitted in these Rules, requested or permitted by the Neutral(s), until settlement discussions commence between the parties, no party or anyone acting on a party's behalf shall communicate with a Neutral except during the time in which a hearing is being conducted. Notwithstanding the foregoing, a party and a Neutral appointed by such party may confer regarding the selection of the third Neutral.

(b) In all matters not expressly provided for in these Rules, the Mini-Trial Panel shall act in the spirit of these Rules in order to reach a fair and equitable resolution of the dispute in an expedited manner.

## **9.9 Decision of Neutrals**

In all cases where the Mini-Trial Panel is comprised of more than one Neutral, decisions required to be made by the Neutral shall be made by a majority of the Neutrals.

## **9.10 Failure of Mini-Trial Panel To Agree**

In all cases where issues are to be decided by the Mini-Trial Panel and the Panel fails to unanimously agree, the issue(s) shall be decided by the Neutral(s).

# **10. Hearing**

## **10.1 Requirement & Waiver**

A hearing shall be required in all Proceedings.

## **10.2 Summary of Claims & Defenses**

(a) Unless completed during the Preliminary Hearing, the Neutral(s) shall determine the manner in which the parties present their cases. Unless otherwise specified by the Neutral(s), the presentation of a party's case shall include the submission of a pre-hearing memorandum including the following elements:

- (i) statement of facts;
- (ii) statement of each claim or defense being asserted;
- (iii) statement of the applicable law upon which a party relies;
- (iv) statement of the evidence to be presented, including the name capacity and subject of testimony of any witness to be called and an estimate of the amount of time required for the witnesses direct testimony; and
- (v) statement of the relief requested, including the basis for any damages claimed.

(b) One (1) copy of the pre-hearing memorandum shall be given to each party, *TPG* and each member of the Mini-Trial Panel.

### **10.3 Presentation of Cases**

The Petitioner shall first present witnesses and evidence in support of its claim followed by the Responding Party's presentation of defenses thereto. In the event counterclaims have been asserted against the Petitioner, witnesses and evidence in support of such counterclaims shall be presented immediately thereafter followed by Petitioner's defenses thereto. Each party shall have a reasonable opportunity to ask questions of the opposing party's witnesses. Although the Mini-Trial Panel may vary this procedure, each party shall be afforded a fair and complete opportunity to present all relevant and material evidence.

### **10.4 Attendance at Hearings**

(a) Each party or its counsel shall be present at all hearings. In the event that a party or its counsel is not present, the Neutral(s) shall determine whether to proceed with the hearing or reschedule.

(b) The Mini-Trial Panel shall have the discretion of allowing individuals other than parties attend the hearings, taking into account that the Proceedings are to be maintained as confidential.

### **10.5 Video Conferencing & Conference Calls**

Upon mutual agreement of the parties and the Mini-Trial Panel, hearings may be conducted by way of video conferencing or telephone conference calls.

## **11. Amendments to Claims**

### **11.1 As of Right**

At any time prior to the date which is seven (7) calendar days prior to the Preliminary Hearing, either party may amend its claim(s) against the other party by serving notice and a copy of the amended pleading upon the other party within the aforementioned time frame. Two (2) copies of the amended pleading shall be filed with *TPG* at the same time. The other party shall have ten (10) calendar days to serve its answer. Two (2) copies of the answer shall also be filed with *TPG*. The amended pleading shall specify in reasonable detail the basis and nature of the amended claim(s) as well as the remedy sought.

### **11.2 Upon Consent**

Upon expiration of the applicable seven (7) day period specified in Rule 11.1, a party may only amend its claim(s) upon permission of the Neutral(s) whose decision shall be final.

## **12. Settlement Discussions**

At the conclusion of the hearing the Management Representatives shall review all of the evidence and other material submitted by the parties and shall meet, either with or without the Neutral(s) to discuss settlement of the dispute. If requested by the Management Representatives, the Neutral(s) shall facilitate the settlement discussions by, *inter alia*, suggesting settlement options or rendering a non-binding opinion as to how the dispute could be decided if arbitrated or litigated. The Neutral(s) shall have the authority to meet privately with each of the parties in order to elicit the issues, facts, positions and objectives of the parties and then bring the parties together to discuss settlement options. The Mini-Trial Panel shall not have the authority to impose a settlement upon the parties.

## **13. Pre-Decision Relief**

### **13.1 Court Ordered**

Any party may seek equitable relief to a court of competent jurisdiction during the pendency of the Proceeding. Such application by a party shall not be deemed or construed to have vitiated the jurisdiction of *TPG* or the Mini-Trial Panel.

### **13.2 TPG Ordered**

Any party to the Proceeding may request the Neutral(s) to grant such interim relief as the Neutral(s) deem appropriate.

**14. Sanctions**

At the discretion of the Neutral(s), sanctions may be assessed against a party or its counsel for failure to comply with orders of the Mini-Trial Panel or other dilatory actions taken by the party or its counsel which improperly delays the Proceeding.

**15. Location**

Within five (5) calendar days after the Mini-Trial Panel has been selected, it shall determine the location where hearings are to be held taking into account the residence of the parties, location of relevant evidence and convenience to all parties and the Mini-Trial Panel. If requested by the Mini-Trial Panel, *TPG* shall make conference and meeting room facilities at its offices in New York City available to the parties at no additional fee.

**16. Termination of Mini-Trial Proceeding**

The Proceeding shall terminate in the event that:

**16.1 Agreement of the Parties**

Upon the filing with *TPG* of a written agreement between the parties, the Proceeding shall be discontinued. The record of the Proceeding shall be preserved and either party may reinstate the Proceeding unless stipulated to the contrary between the parties.

**16.2 Conversion to Alternative ADR Process**

Upon the filing with *TPG* of a written agreement, at any time during the Proceeding, the parties may discontinue the Mini-Trial in favor of an alternative method of dispute resolution including without limitation, mediation, advisory opinion or arbitration. The record of the Proceeding shall be preserved and either party may reinstate the Proceeding unless stipulated to the contrary between the parties. Unless agreed to the contrary by the parties, the Neutral(s) in such other Proceeding shall be different from those comprising the Mini-Trial Panel.

**16.3 Settlement**

In the event that the parties have agreed to a settlement of the dispute, the terms and conditions of the settlement shall be memorialized in writing and filed with *TPG*. The settlement agreement shall be binding and enforceable against the parties.

**16.4 Settlement Not Possible**

In the event that the Neutral(s) believes that there is no reasonable likelihood that a settlement can be reached between the parties, it can terminate or suspend any further Proceedings or, if the parties have so agreed, require the Parties to proceed to Arbitration in accordance with *TPG's* Arbitration Rules.

## **17. Jurisdiction, Powers & Liability**

### **17.1 Authority**

(a) When the parties agree to Mini-Trial under these Rules or when they provide for Mini-Trial by *TPG*, they thereby authorize *TPG* to administer the Proceeding. The Neutral(s) shall have the sole authority to consider and decide any jurisdictional challenge.

(b) All issues relating the existence, validity or scope of an agreement subject to a Mini-Trial clause, including without limitation, the Mini-Trial clause, shall be determined by the Neutral(s).

(c) Except as permitted under Rule 13.1, a party shall not commence or prosecute any suit or action against another party to the Proceeding during the pendency of the Proceeding which relates to any of the issues to be resolved in the Proceeding.

### **17.2 Rules**

Upon submission of the dispute for resolution administered by *TPG*, the parties shall be deemed to have submitted to the Rules set forth herein as the same may be amended, supplemented or otherwise modified from time to time. Any reference by the parties to these Rules shall mean the Rules in effect at the time the Proceeding is Commenced (as defined in Rule 2.4) unless otherwise agreed to by the parties.

### **17.3 Liability**

Except in cases of intentional wrongful conduct committed by *TPG* or a Neutral, neither *TPG*, any of its directors, officers, employees or any Neutral shall have liability to the parties.

### **17.4 Interpretation of Rules**

(a) Any disagreement between the parties in connection with the application of these Rules shall be resolved by the Neutral(s) whose decision shall be final. Any disagreement between the Neutral(s) in connection with the application of these Rules shall be resolved by *TPG*.

**18. Fees & Expenses**

**18.1 Fees**

*TPG's* fees associated with the Proceeding are outlined in the Fee Schedule appended to these Rules. Unless agreed to the contrary between the parties, the parties shall pay *TPG's* fees in equal percentages.

**18.2 Expenses**

The expenses of witnesses called by the parties shall be paid by the party producing such witness. Expenses incurred by *TPG's* or on behalf of the parties shall be reimbursed to *TPG* by the parties. Unless agreed to the contrary between the parties or set forth to the contrary elsewhere in these Rules, the parties shall reimburse *TPG's* expenses in equal percentages.

**18.3 Neutral's Compensation**

*TPG* shall compensate the Neutral(s) for their services.

**18.4 Retainer**

Upon Commencement of the Proceeding, each party shall deposit with *TPG* a retainer in an amount determined by *TPG* not to exceed twenty thousand dollars (\$20,000) per party. *TPG's* fees and expenses shall be deducted from the retainer balance as incurred. Upon notice to the parties, the retainer amount shall be replenished as required by *TPG*.

**18.5 Suspension of Proceedings**

In the event that the parties have failed to make payments as specified in this Rule 18, *TPG* in its sole discretion and without obligation or liability to the parties may suspend the Proceeding until appropriate arrangements have been made to pay all amounts owed to *TPG* as well as security for the payment of amounts payable for services to be provided in the future.

**FORM 1**

**NOTICE OF CLAIM**

DATE:

TO: [Identify contact person, name address and telephone number of the other party(s)]

Please take notice that in accordance with [identify agreement or other document which subjects the parties to a TPG administered mini-trial process], the undersigned hereby requests a mini-trial for the purposes of resolving the dispute between our companies.

[The following information should be included:]

- (i) identify the parties, designating applicable Petitioner(s) and Responding Party(s) including the name, address, telephone and facsimile numbers of each party. The Petitioner shall also identify the name, address telephone and facsimile numbers of its attorney or other representative;
- (ii) identify and provide a brief summary (not to exceed two pages) of the applicable agreement(s) between the parties giving rise to the dispute;
- (iii) identify the mini-trial provision of the applicable agreement(s); and
- (iv) specify in reasonable detail the basis and nature of the claim(s) and the remedy sought.

**This form is to be executed by the duly authorized officer of the party requesting a mini-trial before a notary public and served upon the other party(s) as well as TPG.**



**FORM 2**

**DEMAND FOR MINI-TRIAL**

DATE:

TO: [Identify contact person, name address and telephone number of the other party(s)]

Please take notice that in connection with the dispute which has arisen between our firms relating to [briefly describe dispute for which a mini-trial is requested] the undersigned hereby requests that you consent to a non-binding mini-trial process administered by TPG, Inc. for the purposes of resolving the dispute between our companies.

[The following information should be included:]

- (i) identify the parties, designating applicable Petitioner(s) and Responding Party(s) including the name, address, telephone and facsimile numbers of each party. The Petitioner shall also identify the name, address telephone and facsimile numbers of its attorney or other representative;
- (ii) identify and provide a brief summary (not to exceed two pages) of the applicable agreement(s) between the parties giving rise to the dispute;
- (iii) if applicable, identify the mini-trial provision of the applicable agreement(s); and
- (iv) specify in reasonable detail the basis and nature of the claim(s) and the remedy sought.

**This form is to be executed by the duly authorized officer of the party requesting a mini-trial before a notary public and served upon the other party(s) as well as TPG.**

**FORM 3**

**CONSENT TO MINI-TRIAL**

DATE:

TO: Technology Practice Group, LLC  
1010 Northern Blvd.  
Suite 414  
Great Neck, NY 11021

Please take notice that the parties hereby agree to a non-binding mini-trial process for the purposes of resolving their dispute relating to [briefly describe dispute].

[The following information should be included:]

- (i) identify the parties, designating, where applicable, Petitioner(s) and Responding Party(s) including the name, address, telephone and facsimile numbers of each party. The Consent to mini-trial shall also identify the name, address telephone and facsimile numbers of each party's attorney or other representative;
- (ii) identify and provide a brief summary (not to exceed two pages) of the applicable agreement(s) between the parties giving rise to the dispute; and
- (iii) specify in reasonable detail the basis and nature of the claim(s) and the remedy sought.

**This form is to be executed by the duly authorized officer of each party before a notary public and returned to *TPG*.**

**FORM 4**

**AUTHORIZATION AGREEMENT**

DATE:

TO: Technology Practice Group, LLC  
1010 Northern Blvd.  
Suite 414  
Great Neck, NY 11021

This shall confirm that the individuals listed below (“Management Representatives”) are authorized by [enter name of party] to represent [enter name of party] with respect to a mini-trial in connection with the resolution of a dispute with [enter name of other party(s)].

All necessary board of director and other approvals have been obtained granting the Management Representatives the authority to act on behalf of and bind [enter name of party] with respect to any procedural, settlement or other matter arising in connection with the mini-trial or other disposition with respect to the dispute.

[Enter name, title, address, telephone and fax number for each Management Representative]

**This form is to be executed by the duly authorized officer of the party before a notary public and returned to TPG.**

**FORM 5**

**CONSENT TO SERVE AS NEUTRAL**

DATE:

TO: Technology Practice Group, LLC  
1010 Northern Blvd.  
Suite 414  
Great Neck, NY 11021

The undersigned hereby agrees to serve a Neutral in connection with the non-binding mini-trial proceeding between [identify parties]. In serving as a Neutral the undersigned agrees to comply with *TPG's* Mini-Trial Rules.

[Name, signature, office address, telephone and fax number of Neutral]

**FORM 6**

**PROOF OF SERVICE**

DATE:

The undersigned hereby confirms that on [enter date] he/she deposited in the United States mail an envelope containing the [enter name of document] to be delivered by certified mail, return receipt requested, addressed to [enter name of receiving party] and had the necessary postage affixed thereto.

- alternative -

The undersigned hereby confirms that on [enter date] he/she personally delivered to [enter name of receiving party] an envelope containing the [enter name of document].

**This form is to be executed by the person affirming the foregoing before a notary public. The original should be returned to *TPG* and one copy should be sent to each party.**

## ARBITRATION RULES

### 1. Authority

#### 1.1 Eligibility

The alternative methods of dispute resolution administered by *TPG* and these Rules shall only be applicable to disputes and/or claims which relate to or arise out of the use, implementation, purchase, sale, license or development of technology and intellectual property, including computer, information, communication, medical and bio-technology together with the related areas of patent, trade secret, confidential know-how and copyright.

#### 1.2 Standing

(a) When an agreement grants the parties the right to have disputes in connection therewith resolved and finally determined by binding arbitration administered by *TPG*, either party may file a **Notice of Claim** (as provided for under Rule 2.1) against the other and submit such claim(s) for resolution in accordance with the Rules set forth herein.

(b) When an agreement to arbitrate does not exist between the parties or the parties have not designated *TPG* as the entity authorized to administer the Proceeding in an agreement between them, any party to a dispute may file a **Demand to Arbitrate** (as provided for under Rule 2.2) in accordance with the Rules set forth herein. Upon the consent of each of the other parties (as provided for in Rule 2.2(c)), all parties shall submit the claim(s) for resolution in accordance with the Rules set forth herein.

(c) When an agreement to arbitrate does not exist between the parties or the parties have not designated *TPG* as the entity authorized to administer the Proceeding, upon execution of a **Consent to Arbitrate** (as provided for under Rule 2.3), the parties shall submit the dispute to *TPG* for resolution in accordance with the Rules set forth herein.

### 2. Invoking Arbitration

#### 2.1 Notice of Claim

(a) When an agreement grants the parties thereto the right to have disputes in connection therewith finally determined through binding arbitration administered by *TPG*, a party (the "Petitioner") may commence a Proceeding by serving a Notice of Claim upon the other parties (the "Responding Party(s)") and at the same time shall file two (2) copies of the Notice of Claim with *TPG*.

(b) The Notice of Claim shall be in conformance with **Form 1** appended to these Rules and shall:

(i) identify the parties, designating applicable Petitioner(s) and Responding Party(s) including the name, address, telephone and facsimile numbers of each party. The Petitioner shall also identify the name, address telephone and facsimile numbers of its attorney or other representative;

(ii) identify and provide a brief summary (not to exceed two pages) of the applicable agreement(s) between the parties giving rise to the dispute;

(iii) identify the arbitration provision of the applicable agreement(s); and

(iv) specify in reasonable detail the basis and nature of the claim(s) and the remedy sought.

## **2.2 Demand to Arbitrate**

(a) When an agreement to arbitrate does not exist between the parties or the parties have not designated *TPG* as the entity authorized to administer the Proceeding, a party seeking to invoke an arbitration Proceeding administered by *TPG* shall serve a Demand to Arbitrate upon the other parties and at the same time shall file two (2) copies of the Demand to Arbitrate with *TPG*.

(b) The Demand to Arbitrate shall be in conformance with **Form 2** appended to these Rules and shall:

(i) identify the parties, designating applicable Petitioner(s) and Responding Party(s) including the name, address, telephone and facsimile numbers of each party. The Petitioner shall also identify the name, address telephone and facsimile numbers of its attorney or other representative;

(ii) identify and provide a brief summary (not to exceed two pages) of the applicable agreement(s) between the parties giving rise to the dispute;

(iii) if applicable, identify the arbitration provision of the applicable agreement(s); and

(iv) specify in reasonable detail the basis and nature of the claim(s) and the remedy sought.

(c) Upon consent of all parties to binding arbitration administered by *TPG*, the Petitioner shall file a Consent to Arbitrate in conformance with **Form 3** appended to these Rules, executed by each party to the dispute. The Consent to Arbitrate must be filed with *TPG* not later than thirty (30) calendar days from the date the Demand to Arbitrate was filed with *TPG*.

### **2.3 Consent to Arbitrate**

(a) When an agreement to arbitrate does not exist between the parties or the parties have not previously designated *TPG* as the entity authorized to administer the Proceeding, upon execution of a Consent to Arbitrate by each party, the dispute shall be submitted to *TPG* for resolution in accordance with the Rules set forth herein.

(b) The Consent to Arbitrate shall be in conformance with **Form 3** appended to these Rules and shall:

(i) identify the parties, designating applicable Petitioner(s) and Responding Party(s) including the name, address, telephone and facsimile numbers of each party. The Consent to Arbitrate shall also identify the name, address telephone and facsimile numbers of each party's attorney or other representative;

(ii) identify and provide a brief summary (not to exceed two pages) of the applicable agreement(s) between the parties giving rise to the dispute; and

(iii) specify in reasonable detail the basis and nature of the claim(s) and the remedy sought.

### **2.4 Commencement**

A Proceeding shall be deemed to have Commenced upon the filing with *TPG* of a Notice of Claim or Consent to Arbitrate, as applicable.

## **3. Answer**

### **3.1 Response Time**

Not later than fifteen (15) calendar days after Commencement of the Proceeding, the Responding Party(s) shall serve upon the Petitioner(s) an answer to the claim(s) which shall include all affirmative defenses thereto together with any counterclaims. Two (2) copies of the answer, inclusive of affirmative defenses and counterclaims shall be filed with *TPG* within such fifteen (15) day period.



### **3.2 Affirmative Defenses & Counterclaims**

The answer shall specify in reasonable detail the basis and nature of the Responding Party(s) defenses to the claim(s) and, in the event counterclaim(s) are asserted, shall specify in reasonable detail the basis and nature of the counterclaim(s) and the remedy sought.

### **3.3 Answer to Counterclaims**

Not later than fifteen (15) calendar days after service of counterclaim(s), the Petitioner(s) shall serve an answer to counterclaims upon Responding Party(s) which shall include all affirmative defenses thereto. Two (2) copies of the answer to counterclaims, inclusive of affirmative defenses shall be filed with *TPG* within such fifteen (15) day period.

### **3.4 Failure to Answer**

In the event an answer to the claim(s) or counterclaim(s) is not served within the time frames specified in Rules 3.2 and 3.3, it will be deemed a denial of such claims and the Proceeding shall continue in accordance with these Rules.

### **3.5 Close of Pleadings**

The Close of Pleadings shall be deemed to have occurred upon the later of: (a) service of an answer; (b) answer to counterclaim(s); or (c) if an answer or answer to counterclaims is not served, the time period allowed for service of the foregoing.

## **4. Applicable Law**

In cases where resolution of a claim and/or counterclaim requires reference to principles of common or statutory law, the Arbitration Panel shall be bound by the choice of law, if any, specified in the written agreement between the parties and, in the absence of such a provision, the Arbitration Panel shall be entitled to apply the law of the jurisdiction which has the most significant contacts to the claim(s) and/or counterclaim(s).

## **5. Arbitration Panel**

### **5.1 Number**

Unless specified in the agreement or otherwise agreed to between the parties, the Arbitration Panel shall be comprised of one (1) individual.

### **5.2 Panel of Neutrals**

*TPG* shall maintain a Panel of Neutrals competent in various disciplines relating to technology. Biographical and professional information shall be contained for each individual listed in the Panel of Neutrals.

### **5.3 Contract Identifies Arbitrator(s)**

Where the agreement between the parties has identified the individual(s) to serve as Arbitrator(s), within ten (10) calendar days after the Close of Pleadings, the Petitioner shall file a Consent to Serve as a Neutral executed by each Arbitrator, in conformance with **Form 4**, appended to these Rules.

### **5.4 Parties Stipulate**

(a) Where the agreement between the parties either (i) allows each party to appoint an individual to serve as an arbitrator; or (ii) requires the parties to mutually agree upon and appoint the individual(s) to serve as an Arbitrator(s), they shall do so and file with *TPG* a Consent to Serve as a Neutral, as executed by each Arbitrator, within ten (10) calendar days after the Close of Pleadings. If the parties request, *TPG* shall provide the names of individuals listed in its Panel of Neutrals from which an arbitrator may be selected.

(b) Where the agreement between the parties allows each party to appoint an Arbitrator and requires the Arbitrators so appointed to select a third Arbitrator, the party appointed Arbitrators shall do so and cause a Consent to Serve as a Neutral to be filed with *TPG* within twenty (20) calendar days after the Close of Pleadings. If the party appointed Arbitrators request, *TPG* shall provide the names of individuals listed in its Panel of Neutrals from which the third arbitrator may be selected. The individual selected by the party appointed Arbitrators shall serve as the panel's chairperson.

### **5.5 TPG Appoints**

(a) Where the agreement between the parties provides for *TPG* to appoint the Arbitrators, within ten (10) calendar days after the Close of Pleadings, *TPG* shall:

(i) when the Panel is to consist of one (1) Arbitrator, nominate one (1) individual from its Panel of Neutrals together with two (2) alternates; and

(ii) when the Panel is to consist of three (3) Arbitrators, nominate three (3) individuals from its Panel of Neutrals together with seven (7) alternates.

(b) *TPG* shall provide each of the parties with names, biographical and professional information of each individual nominated as well as the alternates. Not later than twenty (20) calendar days after the Close of Pleadings, each party shall indicate its approval or rejection of the individuals nominated by *TPG* as

well as the alternates. In the event that all parties approve the individuals nominated by *TPG*, the Arbitration Panel shall consist of such person(s). If the individuals nominated by *TPG* are not accepted by all parties, *TPG* shall select the Arbitration Panel from among the alternates accepted by all the parties. In the event that there are not sufficient acceptable alternates to comprise the Arbitration Panel, *TPG* shall select other individuals from its Panel of Neutrals to serve as Arbitrators and *TPG's* selection (subject to Rule 5.7) shall be final.

(c) If the parties or the party appointed Arbitrators fail to agree upon acceptable individuals to serve as Arbitrator(s) or Consent(s) to Serve as a Neutral are not filed within the time periods set forth in this Rule, *TPG* shall appoint an Arbitrator(s) from its Panel of Arbitrators within fifteen calendar (15) days after expiration of the last day that the respective party was required to file the Consent to Serve as a Neutral. Subject to Rule 5.7, *TPG's* selection shall be final.

### **5.6 Unavailability of Arbitrators & Vacancies**

(a) If any member of the Arbitration Panel is unable to act as an arbitrator for any reason at any time prior to or before a Decision is issued:

(i) when the Arbitration Panel consists of one or more individuals who were appointed upon the mutual agreement of the parties, the parties shall mutually agree upon and appoint replacement Arbitrator(s) and file a Consent to Serve as a Neutral executed by such Arbitrator(s) within ten (10) calendar days after the vacancy has occurred on the Arbitration Panel;

(ii) when a party had the right to select the individual(s) who is no longer available to serve as an Arbitrator, such party shall be entitled to select and appoint a replacement Arbitrator and shall file a Consent to Serve as a Neutral executed by such Arbitrator(s) within ten (10) calendar days after the vacancy has occurred on the Arbitration Panel; and

(iii) When the agreement between the parties required *TPG* to select and appoint the Arbitrator(s) who is no longer available to serve on the Arbitration Panel, *TPG* shall be entitled to select and appoint a replacement Arbitrator and shall give the parties notice of its selection within ten (10) calendar days after the vacancy has occurred on the Arbitration Panel. Subject to Rule 5.7, *TPG's* appointment shall be final.

(b) In the event that Consent(s) to Serve as Neutral(s) for replacement Arbitrator(s) are not filed within the time periods set forth above in Rule 5.6, *TPG* shall appoint an Arbitrator(s) from its Panel of Arbitrators within fifteen (15) days after expiration of the last day that the parties were required to file the

Consent to Serve as a Neutral. Subject to Rule 5.7, *TPG's* appointment shall be final.

## **5.7 Qualifications, Conflicts of Interest & Disqualification**

(a) Each Arbitrator shall be independent and impartial and, subject to Rule 10.3, shall be bound by these Rules. An individual shall not accept appointment as an Arbitrator unless such person can devote the time necessary to render a speedy and proper Decision.

(b) Arbitrators appointed either by *TPG* or the parties shall promptly disclose to *TPG* any conflict of interest or appearance of impropriety which may result from their serving on the Arbitration Panel, including without limitation, (i) any financial interest in the parties, the matter in dispute or its outcome or (ii) personal or business relationship with any of the parties (including its directors or officers) either past or present. Upon receipt of such information by *TPG* either from the respective Arbitrator or any other source, notice thereof shall be given to all parties. In the event that a party objects to the continued service on the Arbitration Panel by such individual and notice of such objection together with the underlying basis therefor is given within five (5) business days after receipt of *TPG*'s notice advising of such conflict of interest, *TPG* shall decide whether the individual should be disqualified from continued service on the Arbitration Panel, which decision shall be final.

## **6. Preliminary Hearing**

At the request of a party or if *TPG* determines that the Proceeding will be facilitated, a preliminary hearing will be held before the Arbitration Panel. At the preliminary hearing, procedural matters may be decided by the Arbitration Panel, including without limitation, (a) issues for resolution, (b) bifurcation of issues, if necessary, (c) discovery, if any, (d) calling and scheduling of witnesses and presentation of each party's case and rebuttal, (e) schedule and length of hearings and (f) protective orders.

## **7. Evidence**

### **7.1 Rules of Evidence**

Rules of evidence shall not be applicable to the Proceeding however, the parties may object to any item of evidence proffered by another party. The Arbitration Panel shall have sole discretion to rule upon the admission, relevancy of and weight to be given to each item of evidence proffered by the parties. The Panel shall be entitled to receive and consider all such evidence found to be relevant, material and credible in reaching its Decision.

### **7.2 Arbitrators' Instruction**

Upon the instruction of the Arbitration Panel, the parties shall produce documents, material (including without limitation computer programs in either

source code or object code format) and witnesses deemed relevant by the Panel to its Decision.

### **7.3 Receipt of Evidence**

(a) Evidence shall be received by the entire Arbitration Panel in the presence of all parties during scheduled hearings unless otherwise agreed to by the Panel and the parties.

(b) Material received into evidence shall be appropriately marked for identification. The names, addresses and telephone numbers (personal and business) of all witnesses shall be made part of the Proceeding's record.

### **7.4 Expert Witnesses**

Upon the request of a party or upon instruction by the Arbitration Panel, expert testimony may be admitted by the Panel.

### **7.5 On-Site Inspection**

When the Arbitration Panel deems it necessary or advisable to view premises, locations or material which cannot be readily transported to the hearing room, the Panel may personally inspect the site or material upon notice to all parties of the date, time and place of inspection.

### **7.6 Confidentiality & Protective Orders**

The Proceeding and all information disclosed and testimony given in connection therewith shall be kept confidential by the Arbitrator(s) and the parties and shall be used only for purposes of the Proceeding. The Arbitration Panel shall have the right to issue orders as are necessary or advisable to maintain confidentiality as well as the integrity, preservation and availability of evidence.

## **8. Subpoena Powers**

At the request of a party or on its own initiative, the Arbitration Panel shall have the authority, subject to applicable law, to issue subpoenas for the production of persons and/or material.

## **9. Discovery**

Unless authorized by the Arbitration Panel or otherwise agreed to between the parties, there shall be no discovery. In all Proceedings where discovery is permitted, the Panel shall have the sole discretion to prescribe the allowable methods of discovery, relevant issues and time frame within which discovery must be completed, taking into account the needs of the parties and the desirability of making discovery expeditious and cost effective.

## **10. Procedural Matters**

### **10.1 Service of Notice**

Notices required to be served under these Rules shall be given by: (a) personal delivery to the person to be served or its counsel; (b) certified mail, return receipt requested mailed to the person to be served or its counsel; or (c) as otherwise allowed by the Arbitration Panel. Proof of service shall be promptly filed with *TPG* in conformance with **Form 5** appended to these Rules. Service of notice shall be deemed to have occurred on the date of delivery, if personally served or three (3) business days after deposit in the mails, if served by mail.

### **10.2 Representation by Counsel**

Each party may elect to be represented by counsel in connection with the Proceeding. A party shall give *TPG* and each other party notice of its representation by counsel within three (3) calendar days of the appointment of such counsel, which notice shall include the counsel's name, address, telephone and fax numbers.

### **10.3 Contractual Mandates/Agreement of Parties**

The Arbitration Panel shall abide by the terms and conditions agreed to between the parties as it relates to the conduct of the Proceeding and the Decision rendered as a result thereof.

### **10.4 Schedule/Postponements**

Prior to the commencement of hearings, the Arbitration Panel shall prepare a schedule, to be strictly adhered to, for the Proceeding which shall include (a) the duration of discovery, if any, (b) commencement and duration of hearings, (c) length of closing arguments (d) and presentation of closing memoranda, if any. Upon agreement of the parties or upon the request of one party, the Panel may postpone a hearing or otherwise modify the schedule upon good cause shown.

### **10.5 Oaths**

Prior to the taking of any testimony, each witness shall undertake an oath that the information s/he will provide is truthful.

### **10.6 Stenographic Record**

*TPG* shall provide a stenographer for all hearings. Transcripts of the hearings shall be promptly furnished to the parties and unless objected to within five (5) calendar days after such party's receipt, shall be deemed accepted as accurate. Except as may be decided by the Arbitration Panel to the contrary or upon

agreement of the parties, the costs associated with obtaining a stenographic record shall be borne by the parties in equal percentages.

#### **10.7 Interpreters**

At the request of a party, *TPG* shall provide qualified interpreters for a party or witness as well as translation services for documents in a foreign language. The associated cost shall be borne by the party requiring the services.

#### **10.8 Communication with Arbitration Panel Members**

Except as otherwise permitted in these Rules, requested or permitted by the Arbitration Panel, no party or anyone acting on a party's behalf shall communicate with a member of the Arbitration Panel except during the time in which a hearing is being conducted. Notwithstanding the foregoing, a party and a member of the Panel appointed by such party may confer regarding the selection of the third Arbitrator.

(b) In all matters not expressly provided for in these Rules, the Arbitration Panel shall act in the spirit of these Rules in order to reach a fair and equitable resolution of the dispute in an expedited manner.

### **11. Hearing**

#### **11.1 Requirement & Waiver**

A hearing shall be required in all Proceedings unless the parties agree in writing to waive such right in which case the Decision shall be rendered solely upon the pleadings and documentary evidence.

#### **11.2 Summary of Claims & Defenses**

(a) Unless completed during the Preliminary Hearing, the Arbitration Panel shall determine the manner in which the parties present their cases. Unless otherwise specified by the Arbitration Panel, the presentation of a party's case shall include the submission of a pre-hearing memorandum including the following elements:

- (i) statement of facts;
- (ii) statement of each claim or defense being asserted;
- (iii) statement of the applicable law upon which a party relies;
- (iv) statement of the evidence to be presented, including the name capacity and subject of testimony of any witness to be called and an estimate of the amount of time required for the witnesses direct testimony; and



(v) statement of the relief requested, including the basis for any damages claimed.

(b) One (1) copy of the pre-hearing memorandum shall be given to each party, *TPG* and each member of the Arbitration Panel.

### **11.3 Presentation of Cases**

The Petitioner shall first present witnesses and evidence in support of its claim followed by the Responding Party's presentation of defenses thereto. In the event counterclaims have been asserted against the Petitioner, witnesses and evidence in support of such counterclaims shall be presented immediately thereafter followed by Petitioner's defenses thereto. Each party shall have a reasonable opportunity to ask questions of the opposing party's witnesses. Although the Arbitration Panel may vary this procedure, each party shall be afforded a fair and complete opportunity to present all evidence relevant and material for the Panel to reach its Decision.

### **11.4 Attendance at Hearings**

(a) Each party or its counsel shall be present at all hearings. In the event that a party or its counsel is not present, the Arbitration Panel shall determine whether to proceed with the hearing or reschedule. In cases where a party or its counsel is repeatedly absent from scheduled hearings, the Panel may base its Decision on the evidence provided by the parties at the scheduled hearings.

(b) The Arbitration Panel shall have the discretion of allowing individuals other than parties attend the hearings, taking into account that the Proceedings are to be maintained as confidential.

### **11.5 Video Conferencing & Conference Calls**

Upon mutual agreement of the parties and the Arbitration Panel, hearings may be conducted by way of video conferencing or telephone conference calls.

## **12. Amendments to Claims**

### **12.1 As of Right**

At any time prior to the earlier of fourteen (14) calendar days prior to the Preliminary Hearing or start of evidentiary hearings, either party may amend its claim(s) against the other party by serving notice and a copy of the amended pleading upon the other party within the aforementioned time frame. Two (2) copies of the amended pleading shall be filed with *TPG* at the same time. The other party shall have ten (10) calendar days to serve its answer. Two (2) copies of the answer shall also be filed with *TPG*. The amended pleadings shall specify

in reasonable detail the basis and nature of the amended claim(s) as well as the remedy sought.

## **12.2 Upon Consent**

Upon expiration of the applicable fourteen (14) day period specified in Rule 12.1, a party may only amend its claim(s) upon permission of the Arbitration Panel whose decision shall be final.

## **13. Settlement Discussions**

Settlement discussions shall be encouraged by the Arbitration Panel. The fact that settlement discussions have taken place and/or the matters discussed during such discussions shall not be considered by the Arbitration Panel in reaching its Decision.

## **14. Pre-Decision Relief**

### **14.1 Court Ordered**

Any party may seek equitable relief to a court of competent jurisdiction during the pendency of the Proceeding. Such application by a party shall not be deemed or construed to have vitiated the jurisdiction of *TPG* or the Arbitration Panel to render a final and binding Decision with respect to the claims asserted in the Proceeding.

### **14.2 TPG Ordered**

Any party to the Proceeding may request the Arbitration Panel to grant such interim relief as the Panel deems appropriate.

## **15. Audit**

At the request of a party or upon the Arbitration Panel's initiative, an audit may be ordered by the Arbitration Panel to be taken of a party's records, inventory or other material which the Arbitration Panel deems relevant and material to reaching its Decision. The parties shall be entitled to select the company responsible for performing the audit from a list approved by *TPG*, in the absence of which *TPG* shall make the selection. The cost of performing the accounting or audit shall be borne by the parties in equal percentages unless the Panel decides to the contrary pursuant to Rules 16.5 and 22.2.

## **16. Decision**

### **16.1 Alternative Decision**

At any time prior to the Arbitration Panel rendering its Decision:

(a) each party may submit to the Arbitration Panel its final settlement offer. The Arbitration Panel shall then select the offer which the Arbitration Panel, in its sole discretion, determines is most reasonable which shall then become the Decision of the Arbitration Panel; or

(b) the parties may agree between themselves, without informing the Arbitration Panel, that the Decision shall be adjusted to not be less than or exceed the ranges agreed to between the parties.

#### **16.2 Time**

The Arbitration Panel shall render its Decision not later than thirty (30) calendar days after the hearings have concluded.

#### **16.3 Majority Decision**

The Decision shall be signed and based upon the majority opinion of the individuals serving on the Arbitration Panel.

#### **16.4 Written Decision**

Unless requested by all of the parties, the reasons underlying the Arbitration Panel's Decision shall not be memorialized in a writing.

#### **16.5 Relief Granted**

The Arbitration Panel shall have the discretion to grant any remedy or relief deemed appropriate and equitable, taking into account any limitations specified in the agreement between the parties.

#### **16.6 Fees and Expenses**

Unless otherwise agreed to between the parties, the Arbitration Panel shall have the discretion to assess the costs associated with the Proceeding among the parties in whatever percentages deemed appropriate and equitable. Unless otherwise agreed to between the parties, the Arbitration Panel shall further have the discretion of awarding attorney's fees.

#### **16.7 Notice**

The Arbitration Panel shall provide *TPG* with two (2) copies of the Decision together with one additional copy for each party to the Proceeding, all bearing the original signatures of a majority of the Arbitration Panel members. Upon receipt, *TPG* shall serve one copy of the Decision upon each party.

#### **16.8 Binding Effect**

The parties agree to be bound by the Decision as the final and binding resolution of all claims and counterclaims relating to the issues arbitrated. The Decision shall be enforceable in the same manner as a judgment rendered by a court of competent jurisdiction.

**17. Sanctions**

At the discretion of the Arbitration Panel, sanctions may be assessed against a party or its counsel for failure to comply with orders of the Arbitration Panel or other dilatory actions taken by the party or its counsel which improperly delays the Proceeding.

**18. Location**

Within five (5) calendar days after the Arbitration Panel has been selected, it shall determine the location where hearings are to be held taking into account the residence of the parties, location of relevant evidence and convenience to all parties and the Arbitration Panel. If requested by the Arbitration Panel, *TPG* shall make conference and meeting room facilities at its offices in New York City available to the parties at no additional fee.

**19. Termination of Arbitration Proceeding**

The Proceeding shall terminate without a Decision being rendered by the Arbitration Panel in the event that:

**19.1 Agreement of the Parties**

Upon the filing with *TPG* of a written agreement between the parties, the Proceeding shall be discontinued. The record of the Proceeding shall be preserved and either party may reinstate the Proceeding unless stipulated to the contrary between the parties.

**19.2 Conversion to Alternative ADR Process**

Upon the filing with *TPG* of a written agreement, at any time during the Proceeding, the parties may discontinue the arbitration in favor of an alternative method of dispute resolution including without limitation, mediation, mini-trial or advisory opinion. The record of the Proceeding shall be preserved and either party may reinstate the Proceeding unless stipulated to the contrary between the parties. Unless agreed to the contrary by the parties, the Neutral(s) in such other Proceeding shall be different from those comprising the Arbitration Panel.

**19.3 Settlement**

In the event that the parties have agreed to a settlement of the dispute before the Arbitration Panel has reached its Decision, the terms and conditions of the settlement shall be memorialized in writing and filed with *TPG*. The settlement

agreement shall become the Decision of the Arbitration Panel and shall be binding and enforceable in the same manner as if a Decision had been rendered by the Arbitration Panel.

## **20. Jurisdiction, Powers & Liability**

### **20.1 Authority**

(a) When the parties agree to arbitrate under these Rules or when they provide for arbitration by *TPG*, they thereby authorize *TPG* to administer the Proceeding. The Arbitration Panel shall have the sole authority to consider and decide any challenge to its jurisdiction.

(b) All issues relating the existence, validity or scope of an agreement subject to an arbitration clause, including without limitation, the arbitration clause, shall be determined by the Arbitration Panel.

(c) Except as permitted under Rule 14, a party shall not commence or prosecute any suit or action against another party to the Proceeding during the pendency of the Proceeding which relates to any of the issues to be decided by the Arbitration Panel.

### **20.2 Rules**

Upon submission of the dispute for resolution administered by *TPG*, the parties shall be deemed to have submitted to the Rules set forth herein as the same may be amended, supplemented or otherwise modified from time to time. Any reference by the parties to these Rules shall mean the Rules in effect at the time the Proceeding is Commenced (as defined in Rule 2.4) unless otherwise agreed to by the parties.

### **20.3 Liability**

Except in cases of intentional wrongful conduct committed by *TPG* or a member of the Arbitration Panel, neither *TPG*, any of its directors, officers, employees or any member of the Arbitration Panel shall have liability to the parties.

### **20.4 Interpretation of Rules**

(a) Any disagreement between the parties in connection with the application of these Rules shall be resolved by the Arbitration Panel whose decision shall be final. Any disagreement between the members of the Arbitration Panel in connection with the application of these Rules shall be resolved by *TPG*.

## **21. Release of Documents**

Upon the request of a party, *TPG* shall release a copy of all documents filed or submitted into evidence in connection with the Proceeding. The party requesting such copy shall reimburse *TPG* for its associated costs and expenses.

## **22. Fees & Expenses**

### **22.1 Fees**

*TPG's* fees associated with the Proceeding are outlined in the Fee Schedule appended to these Rules. Unless agreed to the contrary between the parties or the Decision of the Arbitration Panel so directs, the parties shall pay *TPG's* fees in equal percentages.

### **22.2 Expenses**

The expenses of witnesses called by the parties shall be paid by the party producing such witness. Expenses incurred by *TPG's* or on behalf of the parties shall be reimbursed to *TPG* by the parties. Unless agreed to the contrary between the parties, set forth to the contrary elsewhere in these Rules or the Decision of the Arbitration Panel so directs, the parties shall reimburse *TPG's* expenses in equal percentages.

### **22.3 Arbitrator's Compensation**

*TPG* shall compensate the members of the Arbitration Panel for their services.

### **22.4 Retainer**

Upon Commencement of the Proceeding, each party shall deposit with *TPG* a retainer in an amount determined by *TPG* not to exceed twenty thousand dollars (\$20,000) per party. *TPG's* fees and expenses shall be deducted from the retainer balance as incurred. Upon notice to the parties, the retainer amount shall be replenished as required by *TPG*.

### **22.5 Suspension of Proceedings**

In the event that the parties have failed to make payments as specified in this Rule 22, *TPG* in its sole discretion and without obligation or liability to the parties may suspend the Proceeding until appropriate arrangements have been made to pay all amounts owed to *TPG* as well as security for the payment of amounts payable for services to be provided in the future.



**FORM 1**

**NOTICE OF CLAIM**

DATE:

TO: [Identify contact person, name address and telephone number of the other party(s)]

Please take notice that in accordance with [identify agreement or other document which subjects the parties to a TPG administered arbitration proceeding], the undersigned hereby requests binding arbitration for the purposes of resolving the dispute between our companies.

[The following information should be included:]

- (i) identify the parties, designating applicable Petitioner(s) and Responding Party(s) including the name, address, telephone and facsimile numbers of each party. The Petitioner shall also identify the name, address telephone and facsimile numbers of its attorney or other representative;
- (ii) identify and provide a brief summary (not to exceed two pages) of the applicable agreement(s) between the parties giving rise to the dispute;
- (iii) identify the arbitration provision of the applicable agreement(s); and
- (iv) specify in reasonable detail the basis and nature of the claim(s) and the remedy sought.

**This form is to be executed by the duly authorized officer of the party requesting an arbitration before a notary public and served upon the other party(s) as well as TPG.**

**FORM 2**

**DEMAND TO ARBITRATE**

DATE:

TO: [Identify contact person, name address and telephone number of the other party(s)]

Please take notice that in connection with the dispute which has arisen between our firms relating to [briefly describe dispute for which an arbitration is requested] the undersigned hereby requests that you consent to binding arbitration administered by TPG, Inc. for the purposes of resolving the dispute between our companies.

[The following information should be included:]

- (i) identify the parties, designating applicable Petitioner(s) and Responding Party(s) including the name, address, telephone and facsimile numbers of each party. The Petitioner shall also identify the name, address telephone and facsimile numbers of its attorney or other representative;
- (ii) identify and provide a brief summary (not to exceed two pages) of the applicable agreement(s) between the parties giving rise to the dispute;
- (iii) if applicable, identify the arbitration provision of the applicable agreement(s);  
and
- (iv) specify in reasonable detail the basis and nature of the claim(s) and the remedy sought.

**This form is to be executed by the duly authorized officer of the party requesting an arbitration before a notary public and served upon the other party(s) as well as TPG.**

**FORM 3**

**CONSENT TO ARBITRATE**

DATE:

TO: Technology Practice Group, LLC  
1010 Northern Blvd.  
Suite 414  
Great Neck, NY 11021

Please take notice that the parties hereby agree to binding arbitration for the purposes of resolving their dispute relating to [briefly describe dispute].

[The following information should be included:]

- (i) identify the parties, designating, where applicable, Petitioner(s) and Responding Party(s) including the name, address, telephone and facsimile numbers of each party. The Consent to Arbitrate shall also identify the name, address telephone and facsimile numbers of each party's attorney or other representative;
- (ii) identify and provide a brief summary (not to exceed two pages) of the applicable agreement(s) between the parties giving rise to the dispute; and
- (iii) specify in reasonable detail the basis and nature of the claim(s) and the remedy sought.

**This form is to be executed by the duly authorized officer of each party before a notary public and returned to *TPG*.**

**FORM 4**

**CONSENT TO SERVE AS NEUTRAL**

DATE:

TO: Technology Practice Group, LLC  
1010 Northern Blvd.  
Suite 414  
Great Neck, NY 11021

The undersigned hereby agrees to serve a Neutral in connection with the binding arbitration proceeding between [identify parties]. In serving as a Neutral the undersigned agrees to comply with *TPG's* Arbitration Rules.

[Name, signature, office address, telephone and fax number of Neutral]

**FORM 5**

**PROOF OF SERVICE**

DATE:

The undersigned hereby confirms that on [enter date] he/she deposited in the United States mail an envelope containing the [enter name of document] to be delivered by certified mail, return receipt requested, addressed to [enter name of receiving party] and had the necessary postage affixed thereto.

- alternative -

The undersigned hereby confirms that on [enter date] he/she personally delivered to [enter name of receiving party] an envelope containing the [enter name of document].

**This form is to be executed by the person affirming the foregoing before a notary public. The original should be returned to *TPG* and one copy should be sent to each party.**