SUFFOLK COUNTY SUPREME COURT

COMMERCIAL DIVISION

MEDIATION PROGRAM

I. OVERVIEW

Alternative Dispute Resolution ("ADR") refers to a variety of processes other than litigation that parties use to resolve disputes. ADR offers the possibility of a settlement that is achieved sooner, at less expense, and with less inconvenience and acrimony than would be the case in the normal course of litigation. The principal forms of ADR include arbitration, neutral evaluation, and mediation. The Suffolk County Commercial Division will initially focus on mediation.

While there is currently no Court sponsored Arbitration available, parties may choose to proceed to resolve matters with the assistance of a private arbitrator. Parties who choose to proceed to binding arbitration as the initial form of ADR pursuant to an Order of Reference shall agree upon appropriate procedures to govern the process in lieu of the requirements set forth in these rules.

II. MEDIATION

Mediation is a confidential, informal procedure in which a neutral third person ("Mediator") helps parties in disagreement, negotiate with each other. Mediation is particularly appropriate for the resolution of complex commercial cases. Mediation offers the parties a confidential, structured forum in which to explore practical business concerns and develop tailor-made solutions beyond those that a Judge can often provide. With the assistance of the Mediator, parties identify issues, clarify perceptions and explore options for mutually acceptable outcomes. Although parties are not obligated to reach an agreement during mediation, the process frequently concludes with a written agreement. A Mediator will not impose a solution on the parties or attempt to tell them what to do. If the parties do not reach agreement, the case continues with the assigned Trial Justice.

In mediation, the goal is to find a mutually acceptable alternative to having a trial Justice make a determination after trial or hearing. Mediation sessions will take place on neutral ground, usually the Mediator's office. A session can be as short as a few hours or continue over the course of several sessions, depending upon the issues. This program shall be applicable to cases referred by Justices of the Commercial Division ("Referring Justice") either upon request of the parties or at the Referring Justices' discretion. Upon such a request the Court shall issue an Order of Reference. The parties and/or counsel will select a Mediator from the Suffolk County ADR Roster of Mediators. The Court shall have the discretion to appoint a Mediator from the Roster

in the event that the parties and/or counsel are unable to agree on a Mediator or request same.

All parties will have the opportunity to raise issues of concern and to explain the facts of the dispute as each sees them. The Mediator will ask questions in an effort to identify those issues that each of the parties wants to discuss. The Mediator will not offer an opinion as to the likely Court outcome of any particular issue. Once the Mediator and parties have identified the issues for discussion, the Mediator will assist the parties to work collaboratively to develop and choose options which address these issues.

The Mediator may initiate a caucus. During the caucus, the Mediator will meet separately with each party. The Mediator will not divulge any information discussed in the caucus without first obtaining each party's permission to do so. If the parties agree to resolve any or all issues, their agreement will be reduced to writing and forwarded to the Referring Justice for approval.

III. THE ROSTER

The Administrative Judge of the 10th Judicial District (Suffolk County) shall establish and maintain a panel of Mediators (the "Roster") who shall possess such qualifications and training as required by Part 146 of the Rules of the Chief Administrative Judge.

Every member of the Roster, and any other person who serves as a Mediator pursuant to these Rules, shall comply with the Code of Ethical Standards for Mediators of the Commercial Division upon its issuance. Continuing presence on the Roster is subject to review by the Administrative Judge. Mediators may be removed from the Roster at the discretion of the Administrative Judge in consultation with the Unified Court System Office of ADR Programs. The Roster will be available on the Commercial Division website at http://www.nycourts.gov/courts/comdiv/suffolk.shtml

IV. PROCEDURES

Cases shall be referred to Mediation as early as is practicable. Where the parties consent to a referral at a conference or in a written stipulation or by order of the Referring Justice pursuant to Rule 3 of the Rules of Practice for the Commercial Division (202.70 g), the Referring Justice shall issue an Order of Reference requiring that the case proceed to Mediation in accordance with these Rules. Along with the Order of Reference, the Referring Justice shall include the contact information for the mediator appointed by the Court. Within fifteen (15) days of receipt, the parties and/or counsel shall contact the Mediator and obtain from the Mediator a confirmation of their willingness to conduct the Mediation proceeding. If the parties and/or counsel object to

the mediator appointed, they must notify the Court within fifteen (15) days or the objection is waived.

The parties and/or counsel shall schedule with the Mediator a time and place for the Mediation proceeding and fill out the Mediation initiation form which requires the names and contact information for all parties and counsel to the case and contains additional provisions for confidentiality and Mediator immunity. This form along with the Confirmation of the Mediator shall be returned to the Referring Justice for approval within 15 days of receipt of the Order of Reference.

The issuance of an Order of Reference shall not stay court proceedings in the case unless otherwise directed by the Referring Justice. In the event the Referring Justice stays the court proceedings, the parties may agree to the informal exchange of information concerning the case if such exchange will promote the effectiveness of the Mediation process. The Mediator shall make reasonable directives for such exchange consistent with any pre-existing disclosure order of the Court and in compliance with the deadlines herein set forth.

Should a conflict arise regarding the scheduled date for the Mediation session, the parties and the Mediator will agree on a convenient date for the initial session without the involvement of the Court. Notwithstanding the above, the initial Mediation session must be conducted within 30 days from the date the Order of Reference was issued. In the event of extraordinary circumstances, the Mediator shall contact the Court which may intervene in order to expedite the process. The Mediator may initially request a conference call with all counsel regarding any preliminary matters.

At least 10 days before the initial session, the Mediator may request that each party deliver to the Mediator a copy of its pleadings and a memorandum of not more than ten pages (except where the parties and the Mediator agree in advance upon a different limit) setting forth that party's opinion as to the facts and the issues that are not in dispute, contentions as to liability and damages, and suggestions as to how the matter might be resolved. This memorandum shall not be served on the adversary or filed in court, shall be read only by the Mediator, and shall be destroyed by the Mediator immediately upon completion of the proceeding.

Unless exempted by the Mediator for good cause, all parties and their respective counsel must attend the Mediation session(s) either in person or, in the case of a corporation, partnership or other business entity, by an official (or more than one if necessary) who is both fully familiar with all pertinent facts and authorized to settle the matter. All attorneys who participate in the Mediation process shall be fully familiar with the action and authorized to settle.

Within seven (7) days after the Mediation process has concluded whether by agreement, or by the refusal of one or more parties to continue, the Mediator shall

complete the Mediation Disposition Form and transmit it along with any written agreement, to the Referring Justice. If the Mediation process results in a settlement, the parties shall file a stipulation of discontinuance with Special Term and fax a copy to the Referring Justice.

Notwithstanding the forgoing, if a party or counsel fails to schedule an appearance for a Mediation session in a timely manner, appear at any scheduled session or otherwise comply with these Rules, the Mediator shall advise the Court, as to the nature of the infraction, and may, if deemed appropriate, recommend the imposition of sanctions.

V. CONFIDENTIALITY

All communications made - whether in writing, orally, or by other means - during the course of mediation by any party, Mediator, or any other person present, shall not be disclosed, except as noted below. Similarly, information generated in or around the mediation --including memoranda, work products or case files of a Mediator--is confidential and shall not be disclosed, except as noted below. However, mediation may not be used as a shield with respect to discoverable documents and information produced or occurring prior to or outside the confines of mediation.

No party or counsel for a party may reveal the details of the mediation process to the Referring Justice or a member of the his/her staff, except as otherwise provided below. Communications and information may be subject to disclosure in any present or future judicial or administrative proceeding under the following circumstances:

1. Attendance
Information pertaining to whether the parties and their counsel attended the mediation session(s) will be reported to the Referring Justice.

2. Waiver
All parties to the mediation and their attorneys may specifically agree in writing to waive confidentiality with respect to any or all issues.

3. Written Agreement
Agreements signed by all the parties will be submitted to the Court for review.

No party to an action referred to Mediation shall subpoena or otherwise seek to compel the Mediator to testify in any legal proceeding concerning the content of the Mediation proceeding. In the event that a party to an action that had or has been referred to Mediation attempts to compel such testimony, that party shall hold the Mediator harmless against any resulting expenses, including reasonable legal fees incurred by the Mediator or reasonable sums lost by the Mediator in representing himself or herself in connection therewith.

Notwithstanding the foregoing and the provisions of the Confidentiality section above, a party or the Referring Justice may report to an appropriate disciplinary body any unprofessional conduct engaged in by the Mediator and the Mediator may do the same with respect to any such conduct engaged in by counsel to a party.

VI. IMMUNITY OF THE MEDIATOR

Any person designated to serve as Mediator pursuant to these Rules shall be immune from suit based upon any actions engaged in or omissions made while serving in that capacity to the extent permitted by applicable law.

VII. COMPENSATION OF MEDIATORS

Mediators shall be compensated at the rate of $300 per hour unless the parties and the Mediator agree otherwise in writing, except that Mediators shall not be compensated for the first three (3) hours spent in the Mediation session or for the time spent on the selection and appointment process or in preparation for such Mediation session. The Mediator's fees and expenses shall be borne equally by the parties unless otherwise agreed in writing.

VIII. CONFLICTS OF INTEREST

The Mediator shall disqualify himself or herself in the event that there is an actual conflict of interest or the appearance of a conflict of interest, unless the parties and counsel agree, in writing, after full disclosure, to waive the conflict of interest or the appearance of the conflict of interest.

IX. FURTHER COURT PARTICIPATION

In the event that the parties do not reach an agreement during Mediation, the case will return to the Referring Justice. However, nothing set forth herein shall preclude the Referring Justice from participating and/or engaging in further settlement efforts with the parties and/or respective counsel.