Draft Agreement [and Submission] to Arbitration and Appointment of Arbitrator

This Agreement [and Submission] to Arbitration and Appointment of Arbitrator is made this x day of------2012

BETWEEN

(The First Party)

and

(The Second Party)

1. The Submission to Arbitration.

[Refer to the existing agreement (the "Submission to Arbitration"), if there is one, under which the parties have agreed to submit their dispute to arbitration.]

[If there is no prior agreement under which the parties have agreed to submit their disputes to arbitration, insert a paragraph as follows:

The Parties to this Agreement hereby agree to submit the following dispute to arbitration (the "Arbitration"):

[State the dispute to be arbitrated or attach a Schedule "A" which sets forth the dispute to be arbitrated and/or the document under which the dispute arises.]]

The dispute shall be decided by the Arbitrator, and the Arbitration shall be conducted, in accordance with this Agreement.

2. The Statutory Authority

The Arbitration shall be conducted in accordance with [Set forth the statute under which the arbitration is proceeding, such as: the Ontario Arbitration Act, 1991 or the Ontario International Commercial Arbitration Act. (the "Statutory Authority")]

3. Appointment of the Arbitrator

The parties hereby appoint Thomas G. Heintzman of Thomas Giles Heintzman Professional Corporation (the "Arbitrator"), and Thomas G. Heintzman accepts the appointment, as the single Arbitrator of the parties’ dispute.
The contact information for the Arbitrator is as follows:

Thomas G. Heintzman, O.C., Q.C., FCIArb
c/o Arbitration Place, Suite 900, 333 Bay Street, Toronto, Ontario M5H 2T4

Email: tgh@heintzmanadr.com
phone: 647-222-0601
fax: 416-920-1933

The appointment of the Arbitrator comes into effect upon the execution by the parties and the Arbitrator of this Agreement.

[Set forth any limitations on the authority of the Arbitrator from subject matter or remedial standpoint.]

4. **Rules of the Arbitration**

   [If any Rules of the Arbitration are to be applied, then insert the name of the Rules, and set forth any amendments to those Rules to be used in the Arbitration. In the alternative, if the parties wish Rules for the Arbitration, state as follows:

   The parties shall agree upon the Rules of the Arbitration at or before the first or early meeting with the Arbitrator as set forth in Part 6 below. In the alternative, and to the extent that the parties do not agree upon the Rules for the Arbitration, those rules shall be determined by the Arbitrator at the first or early meeting with the Arbitrator.]

5. **Confidential Nature of the Arbitration**

   [Set forth the agreement of the parties, if any, with respect to the confidential nature, if any, of the arbitration. The following paragraph is a suggestion:

   The arbitration hearing and all steps taken pursuant to this Agreement shall be maintained in confidence. Accordingly, the written and oral communications between the parties, their counsel and the Arbitrator in relation to the Arbitration shall be maintained in confidence. The documents and evidence exchanged between the parties or given in examinations conducted in the Arbitration shall similarly be maintained in confidence.

   Sixty days after the Arbitration is finally concluded, and in the absence of any notice from any of the parties to the contrary, the Arbitrator shall be entitled to shred and/or properly and securely dispose of the materials he receives during the Arbitration, or return the materials to the respective party. If notice to the contrary is given the parties will make suitable arrangements to receive the material that the Arbitrator was given during the Arbitration, failing which the Arbitrator shall be at liberty to send the materials to the party which tendered them and the Arbitrator shall not be required to maintain any materials received by him.

6. **The Arbitration Procedures and Hearing**

   The parties will arrange and pay for the location of the hearing of the Arbitration, including the hearing of any meetings, motions or examinations prior to the main hearing. The Arbitrator’s preference is to conduct the arbitration at Arbitration Place, Suite 900, 333 Bay
Street, Toronto, but the choice of the location is that of the parties.

The Arbitration shall be conducted in accordance with [the Submission to Arbitration], this Agreement, the Statutory Authority, [the Rules], the mandatory requirements of law; and the agreements made from time to time by the parties, or failing agreement by the directions or decisions of the Arbitrator, relating to the conduct of the Arbitration.

During the first meeting or an early meeting with the Arbitrator, the parties shall advise the Arbitrator of the procedures and timing that they agree upon, if any, for the conduct of the Arbitration. Failing agreement between the parties from time to time on the procedures and timing for the arbitration, those matters shall be resolved by the decisions and directions of the Arbitrator.

7. **Financial Terms of the Arbitrator**

The Arbitrator is the principal of Thomas Giles Heintzman Professional Corporation which is retained by the parties to provide the services of Thomas G. Heintzman as Arbitrator. The word “Arbitrator” refers to and includes Thomas G. Heintzman and Thomas Giles Heintzman Professional Corporation.

The fees and accounts of Thomas Giles Heintzman Professional Corporation will be paid equally by each party to the Arbitration. However, the parties are jointly and severally liable to Thomas Giles Heintzman Professional Corporation for the payment of the full amounts of those accounts.

The Arbitrator shall be paid $----- plus HST for each half day, and $----plus HST for each full day devoted to the Arbitration including preparation, hearing time and preparation of reasons. Less than a half day shall be considered a half day, and less than a full day but more than a half day shall be considered a full day. (the "Fees")

The execution of this Agreement constitutes an agreement by the parties that they will pay the Fees of the Arbitrator. At the time of the execution of this Agreement, the parties will estimate the time of the meetings and hearings of the Arbitration and the parties shall each deposit with the Arbitrator one half of the estimated fees and disbursements of the Arbitrator.

[In the alternative, On the execution of this Agreement, the parties will each deposit with the Arbitrator one half of an amount sufficient to pay the Fees of the Arbitrator for the next six months of the Arbitration, and they shall from time to time thereafter deposit further amounts to discharge the Fees of the Arbitrator for the following six months. Six months before the date of the main hearing of the Arbitration, the parties shall each deposit their equal share of the Fees with the Arbitrator for the expected duration of that hearing. If the hearing is longer than expected, then the parties shall from time to time deposit their equal share of the Fees of the Arbitrator for the then expected duration of the hearing.]

Any remaining balance of the deposits, after the payment of the FEES and disbursements of the Arbitrator, shall be returned by the Arbitrator to the parties without interest in accordance with the amounts they contributed to the deposits.

The Arbitrator may decline to take further steps in the Arbitration, and to withhold the final award should the financial obligations of the parties not be met.
The parties shall be responsible for the reasonable and necessary incidental out of pocket expenses and disbursements of the Arbitrator such as photocopying, fax, telephone, and other similar disbursements. If the Arbitrator must travel to the site of hearing, then the parties shall pay the reasonable travel and accommodation expenses of the Arbitrator.

With the agreement of, and on terms acceptable to, the parties, the Arbitrator may retain administrative or legal assistance, and such assistance will be paid for by the parties in accordance with those terms.

If the Arbitration is cancelled or settled more than 45 days before the scheduled commencement date of the main hearing of the Arbitration, the Fees deposited with the Arbitrator will be applied to any preparation time already devoted to the Arbitration, and any expenses incurred in relation to the Arbitration, and the balance of the deposit shall be returned to the parties in accordance with the share of the deposit that each party paid to the Arbitrator. If the Arbitration is cancelled within 45 days before the scheduled commencement date of the main hearing of the Arbitration, then the deposit will be paid to the Arbitrator as having been earned unless the Arbitrator is able to rebook the cancelled dates for other mediation or arbitration hearings. The Arbitrator shall be entitled to send an account for any additional expenses incurred in relation to the cancelled mediation.

If meeting dates are cancelled during the proceedings leading up to the main hearing, then the Arbitrator will be paid the Fees for the expected period of the meeting, either half or full days, unless the Arbitrator can rebook that time. If more than 10 scheduled meeting or hearing dates are cancelled, then a cancellation rate of 1.5 times the normal Fees will be payable by the parties.

8. Conflicts

The Arbitrator has set forth in Schedule "B" any circumstances of which he is aware that might give rise to a conflict of interest or reasonable apprehension of bias. Notwithstanding those circumstances, the Arbitrator considers that he can act impartially and independently in this Arbitration.

The parties to this Agreement are not aware of any other circumstances that would disqualify the Arbitrator from acting as the Arbitrator of their dispute. The parties confirm that they do not object to and are not aware of any grounds upon which to object to the appointment of the Arbitrator and they waive any right to challenge the authority, independence and impartiality of the Arbitrator, including any challenge from the circumstances set forth in Schedule "B".

Indemnity and Release of the Arbitrator

The parties agree that that the Arbitrator, including Thomas Giles Heintzman Professional Corporation, shall not be liable for any claim or loss arising from or in relation to the Arbitration and the Arbitrator shall have no liability except that which would be incurred by him if sitting in court as a judge of the Superior Court of Ontario under the Courts of Justice Act of Ontario. The parties otherwise release and indemnify the Arbitrator with respect to any matter relating to or arising from the mediation.
Signing of this Arbitration Appointment and Agreement

This agreement is signed by the parties and the Arbitrator and comes into effect once so signed by them. This agreement may be signed in counterpart.

Counsel for: [party] ____________________________ Date: ___________________

Counsel for: [party] ____________________________ Date: ___________________

_________________________________________ Date: _______________________

Thomas G. Heintzman, as Arbitrator, and on behalf of

Thomas Giles Heintzman Professional Corporation