

**NORTHWEST ARCTIC BOROUGH ASSEMBLY  
ORDINANCE 25-03**

**AN ORDINANCE OF THE NORTHWEST ARCTIC BOROUGH  
ASSEMBLY APPROVING A CONTRACT FOR LEGAL SERVICES WITH  
VINSON & ELKINS.**

**WHEREAS:** the Borough wishes to engage specialized legal counsel to represent the Borough renegotiating its Payment in Lieu of Taxes Agreement (PILT) with Teck Alaska; and

**WHEREAS:** Vinson & Elkins LLP has extensive experience in mining and a primary focus on resource extraction-related law; and

**WHEREAS:** the majority of Vinson & Elkins' clients are energy and natural resources companies; and

**WHEREAS:** Vinson & Elkins has significant experience negotiating mining and energy-related agreements, including successful experience assisting the Borough from 2015 to 2017; and


**WHEREAS:** the Borough wishes to engage Vinson & Elkins under the terms of its engagement letter whereby payment will not be due until the conclusion of the representation; and

**WHEREAS:** Borough Code § 6.16.250(b) requires that contracts spanning multiple fiscal years be approved by ordinance.

**NOW THEREFORE BE IT ENACTED** by the Northwest Arctic Borough Assembly, for and on behalf of the Northwest Arctic Borough:

1. The Mayor is authorized execute an engagement letter for legal services with Vinson & Elkins LLP in substantially the same form that accompanies this Ordinance.
2. Payment will not be due until the conclusion of the representation.
3. This Ordinance shall be effective upon enactment.

**PASSED AND ADOPTED THIS** 25<sup>th</sup> **DAY OF** Mar **2025.**

  
\_\_\_\_\_  
**Nathan Hadley, Jr., Assembly President**

PASSED AND APPROVED THIS 25<sup>th</sup> DAY OF Mar 2025.

*Dickie Moto*  
Dickie Moto, Sr., Mayor

SIGNED AND ATTESTED TO THIS 25<sup>th</sup> DAY OF Mar 2025.

*Stella Atoruk*  
Stella Atoruk, Borough Clerk

ATTEST:

First Reading: 02-25-2025  
Second Reading: 03-25-2025



# Vinson&Elkins

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January 23, 2025

Via Email: [mattm@lbblawyers.com](mailto:mattm@lbblawyers.com)

Northwest Arctic Borough  
163 Lagoon Street  
Kotzebue, AK 99752  
Attention: Matt Mead

RE: Red Dog Mine – PILT Arrangements

Dear Matt:

We are delighted to have the opportunity to represent you in this matter. This letter and the attached Additional Terms of Engagement (“Additional Terms”) set forth the terms of our engagement.

## **Client**

Our only client for this engagement is Northwest Arctic Borough (“NAB” or “you”). We are not representing anyone else. Our duties and responsibilities run to you and not to any other persons, constituents, or entities, including parents, subsidiaries, affiliates, portfolio companies, joint ventures, successors, employees, directors, owners, or other stakeholders, even if you depend on them financially, have operations in common with them, control them, or are controlled by them.

No client may be added to this engagement without our express written agreement, and this engagement will not create an attorney-client or a *de facto* or implied attorney-client relationship with any other person or entity.

## **Scope of Engagement**

You have asked us to advise you in connection with the negotiation of payment in lieu of taxes (“PILT”) and associated agreements and arrangements with Teck Resources Limited (or an affiliate thereof) and other owners of the Red Dog Mine in Alaska. It is important that both of us agree on the scope of the work we will do for you, so please let me know right away if I have misstated it. If you engage us for other matters, we will confirm the scope of that work separately and otherwise apply the terms of this agreement.

**Fees and Other Charges**

Our fees will be established based on the value of services performed by attorneys and other professionals devote to the matter. Our billing rates vary according to the experience of the individuals and the nature and location of the work. We will bill you at the conclusion of this matter on a value basis for work performed, as we did on our prior engagement. We will bill you, and you will pay us, in United States dollars, absent an agreement otherwise. We review our billing rates annually, usually in January. If we change them, we will apply those new rates thereafter.

In addition, we may bill for expenses and other charges incurred in this matter, such as travel, couriers, photocopying, certain overtime costs, and computerized research. We may charge for those items whether that work is performed by outside vendors or in-house.

**Conflicts of Interests: Other Clients and Consent to Adverse Representation**

There are three conflict issues to consider at the beginning of a new engagement: whether there are existing conflicts that require your consent; how we will respond if a conflict later emerges concerning this matter; and how we will treat conflicts regarding other matters in the future.

First, as to existing conflicts concerning this matter, we have run a conflicts check on the names of the people and entities you have identified for us, and we believe that we are free to represent you. If you learn of any other person or entity that might become involved in this matter, please let us know right away so that we can check those additional names for conflicts.

Second, it is possible that a conflict could emerge during the course of this matter. For instance, depending on the circumstances, a conflict might arise if another one of our clients (for example, a lender), represented by another law firm, becomes adverse to you here. Should that happen, we will take appropriate steps to protect your confidential information, and you consent to our representation of that client in other unrelated matters.

Third, during the time that we are representing you, situations or issues may arise between you and other clients of the Firm in other matters. As you know, we are a large firm and represent many clients, especially in the energy, financial services, private equity, and technology fields. Given the scope of our business and client relationships, it is possible that some of our present or future clients may be your competitors or otherwise have interests that differ from yours. This is not an exclusive agreement, and you are free to retain any other counsel of your choosing. But by retaining us you agree that we are free to represent other clients whose interests are, or may be, materially and directly adverse to yours, including in litigation against you, in any matter unless (i) the matter is substantially related to our representation of you, or (ii) there is a significant risk that the representation of the other client would materially limit our ability to represent you. You waive any conflict of interest that might arise from those

matters. For purposes of this agreement, two matters are substantially related if their facts are so closely related that a genuine threat exists that factual confidential information revealed by the client in one matter will be divulged to that client's adversary in the other. We would be materially limited if our representation of another client, or our relationship with someone else, would materially affect our ability to represent you competently and diligently.

Also, you agree that, in representing other clients in matters not substantially related to our representation of you, we may seek your testimony as a non-party witness or obtain other evidence from you by subpoena or otherwise.

### **Arbitration**

The Additional Terms include an agreement to arbitrate disputes arising out of or related to this engagement in accordance with procedures established by JAMS, in the city of the V&E office in which the greatest portion of the firm's work was conducted. You should note that discovery rules, standards of evidence, rights to appeal, and procedural rules, among other things, differ in arbitration from the rules applicable in a civil trial.

### **Conclusion of the Matter**

The attorney-client relationship created here will end when we have completed the legal services covered by this engagement letter. If we perform no work on this matter for a period of ninety days, we will consider the matter concluded unless we agree otherwise in writing. If we have no other open matters for you at that time, our attorney-client relationship will be over.

Prior to that, of course, you may end this engagement at any time for any reason by informing us in writing. Similarly, we may stop representing you at any time for any reason (including non-payment of fees or due to a conflict of interest), provided we comply with the applicable rules of professional conduct. If we no longer represent you in this matter, you agree to take all steps necessary to release us from any further obligation to represent you, including signing any documents necessary to complete our withdrawal. If you end this engagement, or if we withdraw, you will pay us any undisputed outstanding fees and other charges, and we will take reasonable steps to assist you in transferring the matter to another law firm.

**Consultation and Other Considerations**

We encourage NAB to consult with other counsel of its choosing regarding the terms of our engagement, particularly those regarding the scope of this engagement and conflict of interest issues.

If you or anyone else provides us with outside counsel guidelines, electronic billing requirements, or other similar documents, we will abide by them to the extent practicable. However, nothing in those guidelines may be read to impose a higher standard of care with respect to our legal services than that existing under applicable law, change the conflicts of interest arrangement agreed to in this letter, require us to provide any contractual indemnity to you or anyone else, or expand our obligations as attorneys under the applicable rules of professional conduct. This agreement may not be modified in any material respect by such guidelines without a separate writing signed by both of us that refers to this agreement.

This letter and the Additional Terms set forth the entire agreement between us. If they correctly reflect your understanding of the terms of our representation, please sign below and return a copy to me. If you ask us to begin work before you return the signed letter, or if we do not hear from you within seven days, we will consider that you have agreed to the terms of this letter and the Additional Terms.

We look forward to working with you. Please contact me if you have any questions.

Very truly yours,

VINSON & ELKINS L.L.P.



By:

\_\_\_\_\_  
Kaam N. Sahely

AGREED TO AND ACCEPTED:

NORTHWEST ARCTIC BOROUGH

By: 

Dickie Moto  
Name

MAYOR  
Title



**VINSON & ELKINS L.L.P.*****Additional Terms of Engagement***

These additional terms are an integral part of our agreement with you.

**Scope of Our Work**

We provide only legal services. We do not provide business, investment, insurance, underwriting, translation, accounting, financial, or technical services or advice, and you may not rely on us for such advice. Similarly, we do not make business decisions for you, and we do not investigate the character or credit of persons with whom you might be dealing.

Unless specifically included in the “Scope of Engagement” section of the engagement letter, this engagement does not include advice about (i) your disclosure obligations concerning the matter under any applicable law or regulation, including the federal securities laws and the Corporate Transparency Act (the “CTA”), (ii) the tax consequences concerning the matter, or (iii) analysis of intellectual property as to freedom to operate, scope of coverage, infringement, validity, or enforceability. We also are not responsible for review of your insurance policies or other documents to determine the possibility of coverage or indemnity for any claim asserted in this matter or for notification of your insurance carriers about the matter. Additionally, with respect to the CTA, we will not file or update beneficial ownership information reports on your behalf or gather the information required for them; you will need to retain another service provider to handle those tasks, or handle them internally. We encourage you to address those issues with other advisors or professionals.

After this matter has concluded, changes in your circumstances or the applicable laws could affect your future rights and obligations. Unless you engage us to do so, we have no obligation to inform you about future legal developments or your future rights and obligations.

**Multiple Bidder or Other Competing Party Situations**

Our clients often retain us to pursue potential transactions. In some instances, whether a particular proposed transaction begins with bilateral negotiations, alternative restructuring proposals, an auction, or another bidding or selection process, it is possible that the Firm—because it represents many clients in the energy and financial services sectors—might be contacted by other entities or persons that are also interested in pursuing transactions that are equivalent, similar, or alternatives to the transaction you are pursuing. In those situations, we would like your agreement that the Firm may also represent other clients (“Competing Parties”) in connection with such a transaction. We will not represent Competing Parties unless we are satisfied that we can protect your confidential information from disclosure, and that we will not favor one client over another. We will do that by employing appropriate internal procedures, including using separate teams for each of the Competing Parties and erecting ethical screens between them. Those internal procedures, and our obligation under applicable rules of professional conduct to preserve client confidences, would prevent us from disclosing any of your confidential information to a Competing Party, or using your confidential information for its benefit, even if that information were important to the Competing Party. Conversely, for the same reasons, we will not disclose to



you any confidential information obtained from a Competing Party, nor use such confidential information for your benefit, even if that information would be important to you.

With the above understandings, you consent to our representation of Competing Parties and waive any conflicts that exist or might arise from such a representation. We are happy to discuss any of these issues in further detail with you. You also may choose to consult with independent counsel regarding this waiver.

### **Legal Notices to Clients in Certain Jurisdictions**

For New York engagements, New York law requires us to provide you with notice of certain rights in connection with this engagement letter. If a dispute arises between us relating to our fees under this engagement letter, you may have the right to arbitration of the dispute pursuant to Part 137 of the Rules of the Chief Administrative Judge of the Courts of the State of New York. We will send you a copy of those rules upon request. Similarly, certain other jurisdictions may permit arbitration of fee disputes under some circumstances. Also, Texas law requires that we inform clients of the existence of a grievance process. The State Bar of Texas investigates and prosecutes professional misconduct committed by Texas attorneys. Although not every complaint against or dispute with a lawyer involves professional misconduct, the State Bar's Office of Chief Disciplinary Counsel will provide you with information about how to file a complaint. Please call 1-800-932-1900 for more information. Also, the Supreme Court of Texas has promulgated The Texas Lawyer's Creed - A Mandate for Professionalism, which states that an attorney should inform a client of the creed's contents when undertaking a representation. We will send you a copy of the creed upon request. It is also available online at the Texas Bar website, <https://www.texasbar.com>.

### **Terminology**

Vinson & Elkins L.L.P. is a limited liability partnership formed under the laws of Texas, United States. Vinson & Elkins R.L.L.P. is a limited liability partnership formed under the laws of New York which is a "recognized body" as defined in the SRA Standards and Regulations, authorized and regulated by the Solicitors Regulation Authority in the United Kingdom (No. 0079019). Vinson & Elkins Europe R.L.L.P. is also a limited liability partnership formed under the laws of New York. You have instructed the Vinson & Elkins entity shown on the letterhead of the engagement letter, and your contract is with that entity. Nevertheless, the entity you retained may contract with other V&E entities to provide you with the services you require and, unless context requires otherwise, for purposes of this engagement, the terms "Firm," "we," and "our" as used in the engagement letter and these Additional Terms include Vinson & Elkins L.L.P., Vinson & Elkins R.L.L.P., Vinson & Elkins Europe R.L.L.P., and any person, partnership, or entity established or practicing in any jurisdiction and authorized to use the name Vinson & Elkins

### **Cooperation and No Guarantees**

It is important that you cooperate fully with us and tell us all information and developments relating to this matter, and we may rely on that information without independently verifying it. We will try to achieve a result in this matter that is satisfactory to you, but we make no promises or guarantees concerning the outcome. For example, we cannot assure you that negotiations will

be successful, a proposed transaction will be completed, or the outcome of this matter will be favorable to you. Outcomes in litigation and arbitration are especially hard to predict because of many factors that are beyond the control of clients or counsel. Any statements we make concerning possible outcomes of this matter, the legal significance of possible outcomes, or any other legal matters reflect our professional judgment at that time, but they are not guarantees. Those statements necessarily are limited by our knowledge of the facts and are based on the state of the law at the time they are made.

### **Billing Arrangements and Terms**

You agree to pay our invoices in full, and we may request an advance, retainer, or other payment if you fall behind in your payment obligations or if the scope of the engagement changes. You also will be responsible for paying any taxes required by law (e.g., VAT) directly resulting from this matter. If you are required to deduct or withhold any taxes from payments due the Firm, or if the Firm or its lawyers are required to pay any taxes directly to any taxing authority, you will pay us the additional amounts necessary to compensate the Firm for the withholding or additional cost so that, after the withholding or payment of the taxes, the Firm receives the full amount due under its invoices.

In appropriate matters, as an accommodation to you, we may send our invoices to third-party payors (e.g., an insurer, indemnitor, litigation funder, or borrower). But, if for any reason a third-party payor does not timely pay our invoices, you will remain fully responsible for paying them. Likewise, even when a third party pays our fees, we owe our professional obligations to you, not to that third party.

Some clients ask us to invoice them using e-billing software or third-party e-billing services. We will do so if it can be done in a way that is technologically practical and consistent with our internal security and IT procedures. If you ask us to use such a vendor, we will assume that you have negotiated appropriate confidentiality protections and limits on the vendor's use of the information, and that those terms satisfy our confidentiality obligations to you and any cybersecurity guidelines you might send us.

**For Matters Involving eDiscovery:** As you know, litigation matters frequently involve the use of a third party database platform to handle eDiscovery requirements. Some of our clients have their own eDiscovery software tools, and others have made direct arrangements with eDiscovery vendors. If you've already made such arrangements, or if you wish to explore them for this matter, of course we will be happy to use them. If you rely on the Firm to supply an eDiscovery solution, we will use the Relativity platform. The Firm has a relationship with Relativity under which we pay a fee that fluctuates according to several variables, some of which are retrospective. We do not use those same variables in calculating what we charge our clients for using Relativity; our charges to you are generally based on the size of the database, whether it's active or inactive, and the number of user licenses the client requires. We expect that the fees we charge our clients will defray the costs we incur to provide this platform. But because our costs and our revenues fluctuate separately, in some instances the fee you are charged may be more than what we pay Relativity for the service. We cannot tell in advance whether that will be the case for any specific matter in any particular time period. We believe our charges are competitive with,

and typically favorable to, the market price for such services, but you are, of course, free to explore other options, and we will follow your instructions either way.

### **Effect of Merger or Other Reorganization**

If you acquire, are acquired by, merge, or affiliate with another company, let us know right away so we can decide whether we may continue as your attorneys in this matter, or if we need to withdraw due to conflicts or other considerations.

### **Representing Other Attorneys**

We represent attorneys and law firms in professional liability, business, tax, and other matters. This means that we may represent in another matter an attorney or law firm who opposes your interests in this matter. This will not affect our ability to represent your interests in this matter competently and diligently, nor would we pull our punches for one client to benefit another.

### **Personal Investments by Firm Attorneys**

The Firm does not separately track, for conflict of interest purposes, the personal investments made by our attorneys. Many own shares or other interests in companies, mutual funds, various investment vehicles, or real property. Also, some of the Firm's partners may invest together in private equity funds or other similar investment vehicles. In particular, the Firm has organized an investment partnership (the "Fund")—separate from the Firm—in which some partners participate. The Fund sometimes participates in investment opportunities presented by our clients or others. Given the nature of this Firm's practice, at any given time, the Fund (directly or indirectly) might have investments in energy, financial services, private equity, and technology companies or other opportunities. In general, we do not believe that these investments are material either to (i) the entities in which the attorneys or the Fund invest or (ii) the attorneys who have invested. However, if you are concerned about investments in a particular entity, please ask us to canvass our attorneys about any investments in that entity.

### **Law Firm Privilege and Possible Conflict of Interest**

While representing you, circumstances may arise where we believe it is appropriate to consult with the Firm's General Counsel's Office (or with other Firm attorneys working with our General Counsel's Office) on this matter. We will do this at our own expense. To the extent that we are addressing our duties and obligations to you or others, a conflict of interest might arise between you and the Firm. You agree that such consultations are privileged and confidential communications between the Firm and its counsel and therefore are protected from disclosure to you. You also agree to waive any claim of conflict of interest that exists or might arise out of those consultations.

### **Confidentiality and Disclosure of Attorney-Client Relationship**

We will use your confidential information only in connection with representing you. Unless otherwise specified in the accompanying letter, we will not disclose your confidential information, use it to your disadvantage, or use it to the advantage of other clients. Likewise, we will not share with you or use for your benefit confidential information that we receive from other

clients. You agree, however, that we may disclose the existence of this attorney-client relationship and a general description of the nature of the engagement for the limited purpose of obtaining informed consent or a conflicts waiver from another client.

In Firm brochures and other materials or information about our practice, we may identify you as a Firm client, indicate the general nature of our representation of you, and provide examples of engagements handled on your behalf (including this matter). If you do not wish to have your name mentioned in those materials, please inform us in writing.

### **Cybersecurity, Secure Electronic Communications, and Privacy**

We have ISO 27001 certification for our U.S. and U.K. information security management systems that handle Client Materials (defined below). As part of our information security program, we take steps to safeguard data that are entrusted to us, including personal data, as defined by the EU General Data Protection Regulation 679/2016 (“GDPR”) concerning individuals located in the European Union. Our information security program implements technical and organizational measures designed to protect personal data against unlawful, unauthorized, or accidental loss, disclosure, destruction, access, or use. Please do not send us any personal data regarding individuals that is protected by the GDPR, the Health Insurance Portability and Accountability Act (“HIPAA”), or other similar statutes unless you (i) have consent from the data subjects or some other lawful basis to provide their personal data to us, (ii) agree that we may maintain and use that data to represent you, and (iii) agree that we need to use that personal data to carry out our representation of you. If you share with us any personal data that is subject to the GDPR, you and the Firm will act as independent data controllers with our own responsibilities to comply with any applicable obligations of the GDPR or national implementing legislation. While representing you in this matter, if you or others provide us with “special categories of data” or other sensitive personal data, as defined by the GDPR, please inform us in writing so that we may consider whether to take any additional steps to safeguard the information.

### **Local Counsel, Outside Contractors, and Service Providers**

If you need local or special counsel in this matter, you will be responsible for retaining and compensating them. We are not responsible for the quality of other counsel’s work even if we provide you with recommendations, instruct them directly, or coordinate with them.

We sometimes use outside contractors and service providers in some areas of our practice or operations. They include vendors, eDiscovery and data-hosting providers, temporary or contract attorneys and paralegals, consultants, advisors, experts, investigators, court reporters, translators, registered agents, local counsel, and other service providers. In performing their services, those people may have access to confidential information, and we will take appropriate steps to preserve the confidentiality of any such information. You consent to our allowing outside contractors and service providers access to such information as described.

Absent special arrangements, you are responsible for paying the outside contractors and service providers used on this matter. We will instruct them to bill you directly for their services. Those contractors and service providers are deemed to be engaged by you even if their bills are addressed to or reviewed by us. If they send bills or invoices to us, we may re-direct them to you



for payment. In our discretion, we may pay invoices for small amounts and include those sums in our invoices to you, although we will seldom do so for sums greater than \$1,000.

### **Compulsory Process and Post-Engagement Tasks**

After this matter ends, you might ask us, or we might be compelled, to undertake certain post-engagement tasks relating to this matter, such as responding and objecting to subpoenas, searching for and producing documents, preparing for testimony, performing transition work, and other similar activities. In those situations, we will promptly notify and consult with you unless we are legally prohibited from doing so, and you agree to compensate us for the fees and expenses we incur, including payment for the time spent by our attorneys and other timekeepers calculated at our then applicable hourly rates. If we receive a subpoena, we will inform you, if legally permitted to do so. Pending instruction from you, we will attempt to limit the subpoena on any reasonable ground and will object to the subpoena and assert all reasonable arguments against disclosure. If we are ordered by a court to produce documents or other information or are otherwise required to do so by law, you agree that we may produce the documents or other information and that we are not required to file an appeal from that judicial order. Nothing in this engagement letter obligates our attorneys or personnel to submit to interviews or to provide testimony. Performing post-engagement tasks will not constitute providing legal services to you, and it will not create or revive an attorney-client relationship between us.

### **Document Retention and Destruction**

While representing you, we likely will receive or create documents and materials such as correspondence, memoranda, pleadings, exhibits, transcripts, physical evidence, various agreements, transaction documents, and other documents and materials directly and substantively related to the representation (collectively, "Client Materials"). We will keep the Client Materials in files we will create for this matter. You agree that we may maintain some or all of those Client Materials solely in electronic form and that the metadata associated with those electronic documents are not Client Materials.

We also may create and maintain our own materials related to this matter which will belong to us ("Firm Materials"). Firm Materials are prepared for our internal use and include, for example, Firm administrative records, conflicts and new business intake materials and reports, time and billing reports, personnel and staffing materials, credit, expense, and accounting records, administrative and routine internal documents, notes, emails, and drafts not distributed outside the Firm, form files or templates (even if referred to in the course of this matter), and other materials and internal communications not directly and substantially part of the representation.

After the end of this matter, upon your request and assuming our fees and charges have been paid, we will send you the Client Materials at your expense. We reserve the right to retain a copy of the Client Materials. If you ask us to send you paper copies of documents that we maintain solely in electronic form, scan paper documents into an electronic format, or convert electronic documents from one electronic format into another, you agree to pay the associated costs.

If you do not request the Client Materials when this matter ends, we will keep them for a reasonable period of time (currently seven years for most documents) after the end of the matter. In so doing, we will follow our own records retention policy, not yours. Retaining those or other

materials does not constitute the performance of legal services for you and does not create or revive an attorney-client relationship between us. After the applicable retention period, we may destroy the Client Materials without any additional notice to you.

### **Arbitration**

Any dispute arising out of or relating to our representation of you will be resolved by confidential arbitration, whether the dispute involves claims of professional malpractice or other claims related to the quality of our services, claims relating to your or our performance under these terms, disputes over fees or other charges (except as covered below or prohibited by law), or anything else. The location of the arbitration will be the city of the V&E office in which the greatest portion of the firm's work was conducted, and the substantive laws of that state will govern the arbitration, exclusive of conflict or choice of law rules. The Federal Arbitration Act (9 U.S.C., Secs. 1-16) will govern the interpretation of, enforcement of, and proceedings pursuant to, this arbitration clause. The arbitration will be administered by JAMS pursuant to its [Comprehensive Arbitration Rules and Procedures](#). The arbitrator(s) will be former U.S. federal judges or magistrates. Judgment on the award may be entered in any court having jurisdiction. This clause does not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. The arbitrator(s), and not any court, will have the exclusive authority to resolve any dispute or claim relating to the interpretation, applicability, or enforceability of this agreement and arbitration clause.

All arbitration proceedings will be confidential, as will be any award, evidence offered in the arbitration, and materials created for the purpose of the arbitration except where such materials are already in the public domain or where necessary to enforce an award or otherwise as provided by a court of competent jurisdiction.

If the amount in controversy, in total, is less than \$4,000,000, the dispute will be decided by a sole arbitrator. In those cases, the arbitration will be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures and in accordance with the Expedited Procedures in those Rules. If the amount involved is \$4,000,000 or more, a three person panel of arbitrators will preside. In those cases, the arbitration will be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures. In all cases, the arbitrators will be selected in accordance with the applicable JAMS procedure.

If the total amount of any final award, including interest and fees, exceeds \$4,000,000, the parties will have the right to appeal the award to a panel of three arbitrators comprised of former appellate court judges pursuant to the JAMS Optional Arbitration Appeal Procedure (as it exists on the effective date of this Agreement). The appellate panel will be selected in accordance with the applicable JAMS procedure.

There are advantages and disadvantages to arbitration, compared with proceeding in court. Arbitration is generally regarded as faster and less expensive overall, although arbitration may include up-front expenses that would not be included in a court proceeding. Arbitration is confidential, while court proceedings are typically public. In court, you would generally have the right to a jury; in arbitration, there is no jury and the matter will be resolved by the arbitrator(s). In court, parties can usually appeal from the trial court as of right. In this arbitration agreement, appeals within the arbitration process (not in court) are available only for certain matters and,

following an arbitration, the courts may enforce the arbitration award without reviewing it for errors of fact or law. Arbitration may limit the amount of discovery available to either party, particularly with respect to discovery from third parties. Of course you may consult with other counsel about agreeing to this arbitration provision.

The parties may pursue their own individual claims, and will not pursue them on a class, collective, or consolidated basis. Each party will bear its own attorneys' fees, costs, and expenses (including filing fees). The parties will also bear the cost of arbitration (including arbitrator fees) pursuant to an agreed-upon allocation. Absent an agreement about allocation, the defendants (individually and/or collectively) shall bear no more than half the cost of arbitration.

A party seeking affirmative relief must initiate arbitration within the period provided by the applicable statutes of limitation or statute of repose. A filing in court does not toll the statute of limitations. The arbitrator(s) are authorized to dismiss or enter summary judgment in the arbitration at any stage based on a determination that the claim is time barred or for any other legally or factually supported reason.

This agreement to arbitrate is binding on you as well as any of your present and future parents, subsidiaries, affiliates, successors and assigns who seek to assert a claim against the Firm or any of its partners or employees that is encompassed by this agreement.

California State Bar Fee Arbitration. Notwithstanding the above, in a dispute subject to the jurisdiction of the State of California over fees or other charges, you have the right to elect arbitration pursuant to the fee arbitration procedures of the State Bar of California, as set forth in California Business & Professions Code §§ 6200, et seq. Those procedures permit a trial after arbitration, unless the parties agree in writing, after the dispute has arisen, to be bound by the arbitration award. If you do not elect to proceed under those California procedures, then the JAMS procedures described above will apply.

New York Fee Dispute Arbitration. Notwithstanding the above, certain disputes over fees or other charges ("NY Fee Dispute") may be subject to the jurisdiction of the State of New York Fee Dispute Resolution Program ("FDRP"), Part 137 of the Rules of the Chief Administrator of the courts of the State of New York. If you have a qualifying NY Fee Dispute, you will be able to, at that time, choose between resolving it through the FDRP or instead resolving it through the JAMS procedures described above. If you select the FDRP, then the NY Fee Dispute will be handled according to the rules established under that program, rather than the JAMS process detailed in these terms.