

The Mediation Rules of Chicago International Dispute Resolution Association (CIDRA)

(As Effective on February 20, 1998)

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ARTICLE 1 - INTRODUCTORY RULES

1. Where the parties to a contract have agreed in writing that disputes in relation to that contract shall be referred to mediation or conciliation under these CIDRA Mediation Rules, then such disputes shall be settled in accordance with these Rules subject to such modification as the parties may agree in writing.
2. These Rules shall govern the mediation or conciliation except that where any of these Rules is in conflict with a provision of the law applicable to the mediation or conciliation from which the parties cannot derogate, that provision shall prevail.
3. By consenting to mediate or conciliate under these Rules, the parties agree to engage in the mediation or conciliation in good faith and in a forthright manner and make a serious attempt to resolve the dispute.
4. For purposes of these Rules, the term "mediation" shall encompass the term "conciliation".
5. Sample clauses which may be inserted into international commercial contracts to provide for mediation of future disputes using the services of CIDRA may be found in Appendix A to these Rules.

ARTICLE 2 - NOTICE, CALCULATION OF PERIODS OF TIME

1. For the purposes of these Rules, any notice, including a notification, communication or proposal, is deemed to have been received if it is physically delivered to the addressee or if it is delivered at his habitual residence, place of business or mailing address, or, if none of these can be found after making reasonable inquiry, then at the addressee's last-known residence or place of business. Notice shall be deemed to have been received on the day it is so delivered.
2. For the purposes of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice, notification, communication or proposal is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.
3. The periods of time fixed by the mediator or CIDRA for the communication of written statements should not exceed thirty days. However, the mediator or CIDRA, as the case may be, may extend the time-limits if it concludes that an extension is justified.

ARTICLE 3 - FAST TRACK MEDIATION

1. The parties may agree to shorten the various time-limits set out in these Rules. Any such agreement entered into subsequent to the selection of a mediator shall become effective only upon the approval of the mediator.
2. CIDRA, on its own initiative or at the request of one or more parties, may extend any time limit

which has been shortened by the parties under this Article.

ARTICLE 4 - INITIATION OF MEDIATION

1. Any party may initiate a mediation proceeding under these Rules by submitting to CIDRA, together with the appropriate filing fee, an initiating document labeled as a "Mediation Submission Agreement", or a "Request to Mediate", or a "Request for Issuance of an Invitation to Mediate". A Mediation Submission Agreement is an initiating document signed by all parties to a dispute indicating their desire to mediate a resolution of their differences, whether or not they have previously agreed to mediate under a mediation clause of a commercial contract. CIDRA's form Mediation Submission Agreement appears in Appendix B to these Rules. A Request for Mediation is an initiating document triggering the provisions of a mediation clause of a commercial contract between or among the parties. A Request for Issuance of an Invitation to Mediate is an initiating document requesting CIDRA to invite other parties to a dispute to participate in a mediation proceeding, where the parties have entered into no preagreement to mediate a dispute arising under a commercial contract between or among them. A properly-executed Mediation Submission Agreement is a precondition to the mediation of any dispute under these Rules.
2. To the extent possible, a Request to Mediate or a Request for Issuance of an Invitation to Mediate ("Requests") shall contain:
 - a. A statement requesting that the dispute be referred to mediation;
 - b. The names, addresses, and telephone numbers of the parties to the dispute and of all counsel, representatives and persons providing assistance to the parties, if known;
 - c. A reference to and a copy of the mediation clause or the separate mediation agreement that is invoked, if applicable;
 - d. A reference to and copy of the contract out of or in relation to which the dispute arises, if applicable;
 - e. A statement of facts supporting any claim and an indication of the amount involved, if any;
 - f. The points at issue;
 - g. The relief or remedy sought, if known;
 - h. A proposal as to a mediator, if parties have not previously so agreed;
 - i. The submission or written request may also include:
 - j. A proposal as to the place of mediation, if parties have not previously so agreed;
 - k. A proposal as to the language(s) of mediation, if parties have not previously so agreed.
3. The requesting party may attach to the Request any other relevant documents or may include a reference to such relevant documents in the Request.
4. CIDRA shall send forthwith a copy of a Request to Mediate or a Request for Issuance of an Invitation to Mediate and any attached documents to the other party or parties to the dispute.

ARTICLE 5 - RESPONSE TO REQUEST TO MEDIATE OR FOR ISSUANCE OF AN INVITATION TO MEDIATE

1. With respect to a Request to Mediate or a Request for Issuance of an Invitation to Mediate, within a period of thirty days after the date of receiving such a Request, the other parties to the dispute shall file a Response (with attachments as appropriate) with CIDRA and serve one copy on each of the other parties to the dispute.
2. If CIDRA or the requesting party does not receive a written reply to such Request from an invited party within 30 days of an invited party's receipt of the Request, CIDRA, in consultation with the requesting party, may deem the lack of reply as a rejection of the request or invitation to mediate the dispute. On CIDRA's written notice to the requesting party that the mediation cannot proceed, the requesting party may seek out other dispute resolution alternatives to protect its interests.
3. Any Response submitted by a noticed or invited party shall, at a minimum, reply to the particulars of subparagraphs (e), (f), and (g), *supra* in Article 4, or state the reasons why the responding party is not obligated or desires not to participate in a mediation proceeding. The Response may also contain a reply to subparagraphs (i) and (j) of Article 4 and include documents as attachments.
4. The mediation proceeding shall be deemed to commence on the date that CIDRA determines that two or more parties have signed a Mediation Submission Agreement and that it is appropriate to proceed without the participation of other noticed and/or invited parties.

ARTICLE 6 - REPRESENTATION AND ASSISTANCE

The parties may be represented or assisted by persons of their choice. The names and addresses of such persons must be communicated in writing to the other party or parties and CIDRA as soon as practicable after such representation or assistance is arranged or changed. Such communication must specify whether the appointment is being made for purposes of representation or assistance.

ARTICLE 7 - SELECTION AND APPOINTMENT OF MEDIATOR

1. CIDRA shall establish and maintain a panel of mediators and shall appoint mediators as provided in these Rules. To the extent possible, the panel in part will consist of mediators who are dual or multi-lingual.
2. There shall be one mediator, unless the parties agree that the dispute requires the assistance of one or more co-mediators.
3. If a party nominates or CIDRA appoints or designates a mediator, the full name, address, and nationality of the mediator, together with a description of his or her qualifications, shall be mutually disclosed.
4. If, by 10 days after the commencement of the mediation proceedings, the parties cannot agree on a sole mediator and have not mutually agreed on a method of appointment, CIDRA shall use the following list-procedure, unless both or all parties agree that the list-procedure should not be used or unless CIDRA determines in its discretion that the use of the list-procedure is not appropriate for the case:
 - a. CIDRA shall communicate to the parties an identical list containing at least three names of

mediators together with a description of their qualifications;

- b. Within fifteen days after the receipt of this list, each party shall return the list to CIDRA after having deleted the name or names to which it objects and numbered the remaining names on the list in the order of preference;
 - c. After expiration of the fifteen day period, CIDRA shall appoint the sole mediator from among the names approved on the lists returned to it and in accordance with the order of preference indicated by the parties;
 - d. If for any reason the appointment cannot be made according to this procedure, CIDRA may exercise its discretion in appointing the sole mediator;
5. In making the appointment of a sole mediator, CIDRA shall have regard to such considerations as are likely to secure the appointment of an independent and impartial mediator and may take into account as well the advisability of appointing a mediator of a nationality other than the nationalities of the parties.

ARTICLE 8 - SELECTION AND APPOINTMENT OF CO-MEDIATORS

1. If, by 10 days after the commencement of the mediation proceedings, the parties cannot agree on co-mediators and have not mutually agreed on a method of appointment, CIDRA shall use the following procedure to appoint co-mediators:
 - a. If the parties desire two mediators but cannot agree on who the co-mediators should be, each party (or each side) shall nominate one mediator, subject to appointment and confirmation by CIDRA. If CIDRA determines that a co-mediator nominated by a party is inappropriate, CIDRA, in its discretion, may appoint the second mediator either by the list-procedure described in paragraph 4, *supra*, or by independent designation.
 - b. If the parties desire three or more mediators but cannot agree on whom they should be, the same procedure used in (a) immediately above shall be used, and CIDRA, in its discretion, shall appoint the third or more mediators either by the list-procedure described in paragraph 4, *supra*, or by independent designation.
 - c. Every mediator, whether nominated by the parties or otherwise selected by CIDRA, are CIDRA neutrals and shall remain independent and impartial.
2. If a party nominates or CIDRA appoints or designates a co-mediator, the full name, address, and nationality of the co-mediator, together with a description of his or her qualifications, shall be mutually disclosed.
3. In making the appointment of co-mediators, CIDRA shall have regard to such considerations as are likely to secure the appointment of independent and impartial co-mediators and may take into account as well the advisability of appointing co-mediators of a nationality other than the nationalities of the parties and the particular expertise of the co-mediators.

ARTICLE 9 - INDEPENDENCE, DISCLOSURE

1. Every mediator must be and remain independent of the parties involved in the mediation proceeding.
2. No person shall serve as a mediator in any dispute in which that person has any financial or

personal interest in the result of the mediation, except by the written consent of all parties.

3. Prospective mediators shall disclose to those who approach them in connection with their possible appointment, any circumstances likely to give rise to justified doubts as to their impartiality or independence. A mediator, once appointed or chosen, shall disclose such circumstances to the parties unless the parties have already been informed by them of these circumstances.
4. No mediator shall have any communication or any sort with one or some of the parties unless all of the parties are present, except as set forth in Article 20(d)(i), (h) and Article 21 of these rules.

ARTICLE 10 - GROUNDS FOR CHALLENGE

1. Any mediator may be challenged if circumstances exist that give rise to justified doubts as to the mediator's impartiality or independence.
2. A party may challenge the mediator appointed by it only for reasons of which it becomes aware after the appointment has been made.

ARTICLE 11 - PROCEDURES FOR CHALLENGE

1. A party who intends to challenge a mediator shall send notice of the challenge within fifteen days after CIDRA has been notified of the appointment of the challenged mediator or within fifteen days after circumstances described in Articles 9 and 10 have become known to the challenging party.
2. The challenge shall be communicated to CIDRA and the other party or parties. The notification shall be in writing and shall state the reasons for the challenge.

ARTICLE 12 - CIDRA OVERSIGHT

1. If the other party does not agree to the challenge and the challenged mediator or co-mediator does not wish to withdraw, the decision on the challenge will be made by CIDRA.
2. If CIDRA sustains the challenge, a substitute mediator or co-mediator shall be appointed or chosen pursuant to the procedure described in Articles 7 or 8, as appropriate.

ARTICLE 13 - REPLACEMENT OF A MEDIATOR OR CO-MEDIATOR

1. In the event of death or resignation of a mediator or co-mediator during the course of the mediation proceedings, a substitute mediator or co-mediator shall be appointed or chosen pursuant to the procedure provided in Articles 7 or 8, as appropriate.
2. Similarly, in the event that a mediator or co-mediator fails to perform or in the event of the de jure or de facto impossibility of his or her performing the mediator or co-mediator functions, a substitute mediator or co-mediator shall be appointed or chosen pursuant to the procedure provided in Articles 7 or 8, as appropriate.

ARTICLE 14 - ROLE OF THE MEDIATOR

1. The mediator assists the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute.
2. The mediator will be guided by principles of objectivity, fairness, and justice, giving consideration to, among other things, the rights and obligations of the parties, the usages of the trade concerned and the circumstances surrounding the dispute, including any previous business practices between the parties.
3. The mediator may conduct the mediation proceedings in such a manner as he or she considers appropriate, taking into account the circumstances of the case, the desires expressed by the parties, including any request by a party that the mediator hear oral statements, and the need for a speedy settlement of the dispute.
4. The mediator may, at any stage of the mediation proceedings, make proposals for settlement of the dispute. Such proposals need not be in writing and need not be accompanied by a statement of reasons.

ARTICLE 15 - AUTHORITY OF THE MEDIATOR

1. The mediator does not have the authority to impose a settlement on the parties but will seek to assist them in reaching a satisfactory resolution of the dispute. The mediator is authorized to conduct joint and separate meetings with the parties and to make oral and written recommendations for settlement. When ever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided that the parties agree and bear the costs of obtaining such advice. Arrangements for obtaining such expert advice shall be made by the mediator or the parties, as the mediator shall determine.
2. The mediator is authorized to terminate the mediation whenever, in the judgment of the mediator, further efforts at mediation would not contribute to a resolution of the dispute between the parties. (See Article 24).

ARTICLE 16 - LANGUAGE

1. Promptly after appointment, the mediator shall determine, in consultation with CIDRA and the parties and their counsel or representatives, the language or languages to be used in the mediation proceedings.
2. This determination shall apply to the language or languages to be used in premediation written statements or briefs of the parties and in the mediation conferences.
3. The determination shall specify the number and type of any language interpreters or translators that will be required.

ARTICLE 17 - PREMEDIATION EXCHANGE OF DOCUMENTS OR OTHER INFORMATION

1. If any party has a substantial need for documents or other material in the possession of another party, the parties shall attempt to agree on an exchange of documents or other material. Should

they fail to agree, either party may request a joint consultation with the mediator who shall assist the parties in reaching agreement. The parties and mediator may, of their own option, establish a schedule for discovery that may facilitate a settlement.

2. At the conclusion of the mediation process, upon the request of a party which provided documents or other material to one or more other parties, the recipients shall return the same to the originating party without retaining copies.

ARTICLE 18 - PREMEDIATION CONFERENCES AND WRITTEN STATEMENTS

1. Before addressing the substance of the dispute, the parties and the mediator may discuss preliminary matters in a premediation conference. Topics discussed in such conference might include possible modification of the ground rules of the mediation proceedings, the place and time of meetings, and each party's need for documents or other information in the possession of the other.
2. At least five business days before the first scheduled substantive mediation conference, unless otherwise directed by the mediator, each party shall submit to the mediator a written statement summarizing the background and present status of the dispute and such other material and information as it deems helpful to familiarize the mediator with the dispute. The parties may agree to submit jointly certain records and other materials. The mediator may request any party to provide clarification and additional information.
3. The parties are encouraged to exchange written statements and other materials they submit to the mediator in order to further each party's understanding of the other party's viewpoints. However, any party may submit a complete confidential written statement or partial confidential written statement to the mediator who in turn shall keep confidential all information contained in such statements unless or until directed otherwise by the submitting party. At the conclusion of the mediation process, upon the request of a party, the mediator shall return to that party all written confidential materials and information provided to the mediator by that party.

ARTICLE 19 - DATE, TIME, AND PLACE OF MEDIATION

1. Unless the parties have agreed upon the place where the mediation is to be held, such place shall be determined by CIDRA, having regard to the circumstances of the mediation.
2. The mediator may determine the locale of the mediation within the place or country determined by CIDRA in consultation with the parties. The mediator may hold meetings at any locale it deems appropriate, having regard to the circumstances of the mediation.
3. The mediator may meet at any location it deems appropriate for the inspection of goods, other property, or documents. The parties shall be given sufficient notice to enable them to be present at any such inspection.
4. The mediator, in consultation with CIDRA and the parties and their counsel and representatives, shall set the date(s) and time(s) of the mediation conference(s).

ARTICLE 20 - MEDIATION PROCEEDINGS - GROUND RULES

The following ground rules apply to mediation proceedings conducted under these Rules, subject to any modifications on which the parties and the mediator agree in writing:

- a. The mediation process is voluntary and non-binding.
- b. Any party may withdraw at any time after attending the first substantive mediation session, and before execution of a written settlement agreement, by written notice to the mediator and the other party or parties.
- c. The mediator shall be neutral and impartial.
- d. The mediator shall control the procedural aspects of the mediation. The parties shall cooperate fully with the mediator.
- e. The mediator is free to meet and communicate separately with each party and their counsel. By agreement of the parties and their counsel, the mediator may meet with the parties by themselves. The mediator may meet jointly with counsel for the parties and/or each counsel separately.
- f. The mediator will decide when to hold joint meetings with the parties and when to hold separate meetings. The mediator will fix the time and place of each session and its agenda in consultation with the parties. There will be no stenographic record of any meeting. Formal rules of evidence or procedure will not apply.
- g. Each party will have present at each mediation session a corporate executive or other individual who has full authority to negotiate a resolution of the dispute, unless the mediator determines otherwise. Each party may have present more than one person -- e.g. a corporate executive and an attorney. The mediator may limit the number of persons representing each party or attending a particular mediation session.
- h. The mediation process shall be conducted expeditiously.
- i. There is no attorney/client relationship between the mediator and any party and the mediator does not provide legal advice. The parties recognize that in the process of reaching agreement they may choose to waive or forgo a claim or defense, and that they may consult an attorney if they have any questions about their legal rights.
- j. When a party meets alone with the mediator, he or she will clearly inform the mediator as to which statements or documents shall remain confidential, and which may be shared with the other parties.
- k. The mediator shall not transmit information received in confidence from any party to any other party or any third party unless authorized to do so by the party transmitting the information, or unless ordered to do so by a court of competent jurisdiction. (See Article 21).
- l. Unless the parties agree otherwise, they will refrain from pursuing litigation or any administrative or judicial remedies during the mediation proceedings or for a set period of time, insofar as they can do so without prejudicing their legal rights.
- m. Unless all parties and the mediator agree otherwise in writing, the mediator and any persons assisting the mediator will be disqualified as a witness, consultant or expert in any pending or future investigation, action, or proceeding relating to the subject matter of the mediation.

- n. The mediator may promote settlement in any manner the mediator believes is appropriate. The mediator shall help the parties focus on their underlying interests and concerns, explore resolution alternatives and develop settlement options.
- o. The parties are expected to initiate and convey to the mediator proposals for settlement. Creative proposals for settlement are encouraged. Each party shall provide a rationale for any settlement terms proposed.
- p. If the parties fail to develop mutually acceptable settlement terms, the mediator -- before terminating the mediation proceedings and with consent of the parties, may either submit to the parties a final settlement proposal which the mediator considers fair and equitable to all parties; or, if the mediator believes he or she is qualified to do so, the mediator may give the parties an evaluation of the likely outcome of the case if the dispute were adjudicated to a resolution.
- q. If the dispute eventually goes to arbitration, the mediator shall not serve as an arbitrator unless the parties and the mediator agree otherwise in writing.
- r. The mediator may withdraw at any time by written notice to the parties:
- s. (i) for personal reasons; (ii) if the mediator believes that a party is not acting in good faith; or (iii) if the mediator concludes that further mediation efforts would not be useful. If the mediator withdraws pursuant to (i) or (ii), he or she need not state the reason for withdrawal.
- t. The parties agree to deposit the fees and expenses as required by CIDRA. Additional time for review, follow-up telephone conferences or meetings with any party to attempt to reach settlement of a matter, or any subsequent related judicial or other proceeding, will be billed at the rate determined by CIDRA. The mediation proceedings will not commence unless the required deposits have been made.
- u. A schedule of CIDRA mediation fees appears in Appendix D of these Rules.

ARTICLE 21 - CONFIDENTIALITY

1. Confidential information disclosed to a mediator by the parties or by other individuals during the course of the mediation shall not be divulged by the mediator. All records, reports, or other documents received by a mediator while serving in that capacity shall be confidential. The mediator shall not be compelled to divulge such records or to testify in regard to the mediation in any adversary proceeding or judicial forum.
2. The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence at an arbitral, judicial, or other proceeding:
 - a. views expressed or suggestions made by another party with respect to a possible settlement of the dispute;
 - b. admissions made by another party in the course of the mediation proceedings;
 - c. proposals made or views expressed by the mediator; or
 - d. the fact that another party had or had not indicated willingness to accept a proposal for settlement made by the mediator.

ARTICLE 22 - SETTLEMENT

1. If a settlement is reached, counsel for the parties will draft a written settlement document incorporating all settlement terms, which may include mutual releases from all liability relating to the subject matter of the dispute. This draft will be circulated among the parties, amended as necessary, and formally executed. Initially, a preliminary memorandum of understanding may be prepared at the mediation conference and executed by the parties.
2. If litigation is pending, the settlement may provide that the parties will request dismissal of the case promptly upon execution of the settlement agreement. The parties also may request the court to enter the settlement agreement as a consent judgment.

ARTICLE 23 - OTHER ALTERNATIVES IF SETTLEMENT IS NOT REACHED

1. If a resolution of the dispute is not reached, the mediator shall discuss with the parties the possibility of their agreeing to a non-binding or binding arbitration, "last offer" arbitration, or another form of Alternative Dispute Resolution.
2. If the parties agree in principle, the mediator may offer to assist them in structuring a procedure designed to result in a prompt, economical dispute resolution process.

ARTICLE 24 - TERMINATION OR REOPENING OF MEDIATION PROCEEDINGS

1. The mediation shall be terminated:
 - a. by execution of a settlement agreement by the parties;
 - b. by a written declaration of the mediator to the effect that further efforts at mediation are no longer worthwhile;
 - c. by a written declaration of a party or parties to the effect that the mediation proceedings are terminated; or
 - d. by a written declaration of CIDRA that the mediation proceedings are terminated.
2. A mediation, once terminated, may be reopened by any party or parties by following the procedure described in Articles 4 and 5.
3. Parties are encouraged to complete a "Mediation Evaluation Form" after the termination of a mediation and return the completed form to CIDRA to assist CIDRA in continuing its efforts to improve its dispute resolution program. A CIDRA Mediation Evaluation Form appears in Appendix C to these Rules.

ARTICLE 25 - EXPENSES

1. The parties shall each be responsible for their own expenses and costs.
2. In addition, unless the parties agree to some other proportion or division of responsibility, the parties shall be responsible to pay their pro-rata share of the following expenses of the mediation proceedings:

- a. The fees of the mediator(s) to be stated separately as to each mediator and to be fixed by CIDRA in accordance with Article 26;
- b. Facilities Costs.
- c. The travel and other expenses incurred by the mediator(s);
- d. The costs of expert advice and of other assistance required by the mediator(s);
- e. The travel and other expenses of other individuals to the extent such expenses are approved by the mediator(s);
- f. Administrative fees and expenses of CIDRA.
- g. All expenses shall be paid in U.S. dollars unless CIDRA otherwise determines in writing.

ARTICLE 26 - MEDIATOR FEES

1. The mediators fees may vary from those listed in Appendix D, but they shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject-matter, the time spent and other relevant circumstances. The registration fees are as listed on Appendix D.
2. Mediator fees shall be paid by the parties in U.S. dollars unless CIDRA otherwise determines in writing.

ARTICLE 27 - DEPOSIT OF EXPENSES AND MEDIATOR FEES

1. CIDRA may request each party to deposit an equal amount as an advance for the expenses and fees referred to in Articles 25 and 26.
2. During the course of the mediation proceedings, CIDRA may require supplementary deposits from the parties.
3. If the required deposits are not paid in full within thirty days after the parties' receipt of the request to make deposits, CIDRA shall so inform the parties in order that one or another of them may make the required deposit. If such deposit is not made, CIDRA may order the suspension or termination of the mediation proceedings.
4. After the mediation proceedings have concluded, CIDRA shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.
5. All deposits shall be made in U.S. dollars unless CIDRA otherwise determines in writing.

ARTICLE 28 - INTERPRETATION AND APPLICATION OF RULES

The mediator shall interpret and apply these Rules insofar as they relate to the mediator's powers and duties. All other rules shall be interpreted and applied by CIDRA.

ARTICLE 29 - CIDRA FUNCTIONS

All functions assigned to CIDRA under these Rules shall be performed by a committee or officers appointed by the Board of Directors of Chicago International Dispute Resolution Association.

ARTICLE 30 - EXCLUSION FROM LIABILITY

1. Neither CIDRA nor any mediator is a necessary party in judicial proceedings relating to a mediation.
 2. Neither CIDRA nor any mediator shall be liable to any party for any act or omission in connection with any mediation conducted under these Rules, except for its/his/her own willful misconduct.
 3. Each party utilizing CIDRA or CIDRA mediator(s) agrees to indemnify, hold harmless and provide a defense by an counsel selected by CIDRA or the mediator(s) in case CIDRA or the mediator(s) is (are) joined in a suit arising out of CIDRA mediation proceedings.
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Peter V. Baugher, President

**200 World Trade Center, Suite 1540 The Merchandise Mart, Chicago, IL USA 60654
312-409-1373 (Telephone), 312-701-9335 (Facsimile), cidra@sw.com**