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## **AGREEMENT TO MEDIATE**

The undersigned parties ("Party" or "Parties") agree to participate in mediation ("Agreement") to be conducted by NJ Mediation Service LLC ("Mediator") for the purpose of compromising, settling, or resolving disputed claims as follows:

### **Mediation Process**

Mediation is a cooperative and voluntary dispute resolution process; rather than an adversarial and compelled one as is the case in litigation. The purpose of the mediation is to attempt to compromise, settle or resolve disputed claims between and/or among the parties without the need to litigate. The Parties agree to participate in good faith in the mediation as administered by NJ Mediation Service LLC and in compliance with any court ordered referral. The Mediator's role is to act as a neutral party for the purpose of assisting the parties to resolve their claims.

During the session, the Mediator may have joint and separate meetings with the Parties and their counsel if present. If a Party informs the Mediator that information is being conveyed to the Mediator in confidence, the Mediator will not disclose the information to the other Party. If a Party wishes to terminate its participation for any reason, it may do so by giving notice to the Mediator, and the other Parties. The Parties will continue to be bound by the confidentiality provisions of this agreement. The Parties agree that the Mediator is not acting as an attorney or providing legal advice on behalf of any Party.

Only Parties, with or without counsel present, or their representatives with settlement authority may attend the mediation sessions. No one else may attend without the permission of the Parties and the consent of the Mediator.

### **Neutrality**

The Mediator is a neutral facilitator who will assist the Parties to reach their own settlement. The Mediator will not make decisions about "right" or "wrong" or tell the Parties what to do. The Mediator is, however, authorized to provide an evaluation of each party's position, if requested, and may, when necessary and appropriate make recommendations for settlement.

### **Disclosures**

The Mediator, each Party, and counsel, if present, confirm that they have disclosed any past or present relationship or other information that a reasonable person would believe could influence

the Mediator's impartiality and that no conflict of interest or appearance of a conflict of interest is known to exist.

In addition, Attorneys Mediating in association with NJ Mediation Services LLC, may be involved in other cases unrelated to this case in which professionals involved in this case are also involved. The Mediator is not aware of any aspect of these relationships that would create a conflict or interfere with his/her acting as a mediator in this matter. The parties acknowledge that these factors do not constitute a conflict of interest or the appearance of a conflict of interest.

**No Legal Advice**

The Mediator does not offer legal advice, nor does he/she provide legal counsel. Each Party is advised to consult his or her own attorney to be properly advised regarding his or her legal interests, rights, and obligations.

**Protection of Information Disclosed at Mediation**

The Mediator and the participants in mediation are prohibited from divulging outside of the mediation, any oral or written information disclosed by the Parties or by witnesses during the mediation. No person may rely on or introduce as evidence in any arbitral, judicial, or other proceedings, evidence pertaining to any aspect of the mediation effort, including but not limited to: (a) views expressed or suggestions made by a Party with respect to a possible settlement of the dispute; (b) the fact that another Party had or had not indicated willingness to accept a proposal for settlement made by the Mediator; (c) proposals made or views expressed by the Mediator; (d) statements or admissions made by a Party in the course of the mediation; (e) documents prepared for the purpose of, in the course of, or pursuant to the mediation; (f) statements or actions which may otherwise constitute a waiver of a legally protected privilege; and (g) documents prepared subsequent to the mediation which refer to any of the foregoing. In addition, without limiting the foregoing, Rule 408 of the Federal Rules of Evidence and any applicable federal or state statute, rule, common law, or judicial precedent relating to the privileged nature of settlement discussions, mediation or other alternative dispute resolution procedure shall apply. Parties and their counsel may disclose information obtained at the mediation session to members of their respective organizations who shall also be bound by the confidentiality provisions of this Rule. Information otherwise, discoverable, or admissible in evidence, however, does not become exempt from discovery, or inadmissible in evidence, merely by being used by a Party in a mediation. These provisions shall not preclude a Party, its counsel, or the Mediator from responding in confidence to appropriately conducted inquiries or surveys concerning the use of mediation generally.

**Discovery from Mediator; Limitation of Liability**

The Mediator shall not be compelled to disclose to any court or to any person outside the mediation conference any of the records, reports, summaries, notes, communication, or other documents received or made by a Mediator while serving in such capacity. The Mediator shall not testify or be compelled to testify regarding the mediation in connection with any arbitral, judicial, or other proceeding. The Mediator shall not be a necessary Party in any proceedings relating to the mediation. Aside from proof of actual fraud or unethical conduct, there shall be no liability on the part of, and no cause of action shall arise against, the Mediator on account of any act or omission in the course and scope of such person's duties as Mediator hereunder. Nothing contained in this

section shall prevent the Mediator from reporting the status, but not the substance, of the mediation effort to a court in writing in compliance with any court order pertaining to the mediation.

**Preservation of Privileges**

The disclosure by a Party of privileged information to the Mediator does not waive or otherwise adversely affect the privileged nature of the information. The Parties agree to defend the Mediator from any subpoenas from outside Parties arising out of this Agreement or the mediation.

**Withdrawal**

While both Parties intend to continue with mediation until a settlement agreement is reached, the Parties understand that either or both Parties may withdraw from mediation at any time. The Parties agree that if one or both Parties decide to withdraw from mediation, best efforts will be made to discuss this decision in the presence of both Parties and the Mediator.

Termination by Mediator If the Mediator determines that it is not possible to resolve the issues through mediation, the process can be terminated once this has been conveyed to the Parties and confirmed in writing.

**Memorandum of Understanding**

When an agreement is reached, the Mediator will prepare a Memorandum of Understanding. Each Party is advised to review this with his or her own attorney before the agreement is placed in final form and signed.

**Miscellaneous**

Any documents provided to the Mediator by the Parties or counsel will be destroyed 45 days after the conclusion of the mediation unless the Mediator is otherwise instructed by the Parties or counsel. This Agreement is governed by \_\_\_\_\_ law, and may be executed in counterparts, by facsimile or electronic signature.

PARTY: \_\_\_\_\_ Date: \_\_\_\_\_  
(Print)

PARTY: \_\_\_\_\_ Date: \_\_\_\_\_  
(Sign)

PARTY: \_\_\_\_\_ Date: \_\_\_\_\_  
(Print)

PARTY: \_\_\_\_\_ Date: \_\_\_\_\_  
(Sign)