

MEDIATION AND CONFIDENTIALITY AGREEMENT

The undersigned parties and participants are attempting to resolve a controversy through the process of mediation with the assistance of Alan G. Dowling, who will serve as the mediator.

The parties understand that the mediator will be making every effort to act exclusively in a neutral capacity in so far as possible in the context of the mediation, and will not be acting as an attorney for either party to the mediation. The parties further understand that no representations by the mediator should be considered to constitute legal advice, and that they are free (indeed, encouraged) to consult with legal counsel of their own choice, should they choose to do so, regarding the relevant facts, law or the application of the law to the facts in this matter.

In order to promote communication and facilitate the settlement process, the parties agree that all statements made by anyone during the course of the mediation are confidential and privileged settlement discussions, are made without prejudice to any party's legal position, shall be inadmissible for any purpose in any legal or administrative proceeding, and shall not be subject to discovery or disclosure by other legal process. The mediator shall, of course, consider and apply what is communicated to him by the respective parties and participants in the course of performing his services as mediator, but shall not disclose any evidentiary information or a given party's legal or factual positions except in so far as authorized by that party to do so in order to further the purposes of the mediation. Although confidentiality shall be maintained by all concerned, it is further understood that mere information disclosed during the mediation shall not be made confidential or unusable in any pending litigation or legal proceedings merely by virtue of having been communicated during the mediation, where such information was or is independently obtained from other sources outside the context of the mediation.

This agreement of confidentiality extends to all information disclosed during the course of the mediation, including but not limited to all statements made by the mediator, each party, their attorneys, and any other participants. Specifically, and without limiting the foregoing, the parties agree that they will not seek, nor will they encourage or permit another to seek, to compel the mediator to disclose any such confidential information in any legal or administrative proceeding, or in discovery, or otherwise. The parties further agree that they may not introduce in evidence, or use for any other purpose whatsoever, any statements or notes made by the mediator, whether oral or memorialized in written or electronic form

The parties agree that any and all disclosures they make during the course of this mediation shall be made subject to, in reliance upon, and upon the expressed condition of this promise and agreement of confidentiality, and that a breach of this agreement by any of the parties shall cause irreparable injury for which monetary damages will be an inadequate remedy, since the parties are

relying on this promise of confidentiality in disclosing sensitive or private business or personal information. The parties therefore agree and stipulate that any party to this agreement may obtain an injunction, a protective order or other appropriate relief to prevent disclosure of any information in violation of this agreement. Moreover, it is agreed that if any party breaches this agreement, that party shall be liable for, and shall indemnify the other parties and the mediator for, all costs, expenses and fees, including attorney's fees, incurred as a result of such breach, including also the value of any party's time in representing him, her or itself, incurred as a result of such breach.

Dated: _____

Signed before the commencement of the mediation by each of the persons whose signatures appear below:

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Signature *Printed Name, Role in Mediation*

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Signature *Printed Name, Role in Mediation*

