



## **AGREEMENT to CONFIDENTIALLY MEDIATE**

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By signing this Agreement the Parties have agreed to participate in a confidential mediation of their dispute conducted by Richard Hurford Dispute Resolution Services, P.C. (the “Mediator”) in accordance with the following terms:

### Scope of Mediation

The Parties would like to fully resolve their dispute through mediation. All issues relating to the dispute will be explored and discussed by the Mediator and the Parties in a professional manner.

### Mediation Process and the Obligations of the Parties, Counsel and the Mediator

The purpose of this mediation is to encourage the parties to explore and fully discuss the differences between them and to reach a mutually agreeable resolution on the issues that divide them. The Mediator has no decision-making authority and will not impose an outcome on any Party. The Parties retain complete control over whether or not to accept the terms of any proposed resolution and, therefore, the Mediator makes no representation that the Parties will reach an agreement on any of the issues, disputes or claims discussed during the mediation. The Mediator’s role is to facilitate the communications that may lead to a mutually satisfactory agreement. During the course of the mediation, the Mediator is authorized to conduct joint and separate communications with the Parties to encourage such communications. The Parties are encouraged to discuss any concerns, issues or interests candidly with the Mediator during confidential separate communications.

The Mediator is a neutral third party who may not, and will not, act as an advocate for or give legal advice to any Party. No professional-client or fiduciary relationship exists between any Party and the Mediator and nothing said by the Mediator constitutes legal advice. The Parties have been advised to seek and rely upon the legal advice of counsel.

Participation in this mediation process is voluntary and anyone can terminate this process at any time. If any Party or their counsel is contemplating terminating the mediation or departing the premises, they are requested to first discuss the matter with the Mediator.

The Mediator’s conduct is governed by Mediator Standards of Conduct promulgated by the Michigan Supreme Court Administrative Office and those Standards are incorporated into this Agreement. The parties have reviewed these Standards. If a copy of the Standards are desired a copy will be provided upon request.

The Mediator may assist the Parties and counsel with the terms of the settlement reached but counsel and the Parties will be solely responsible for drafting the finalized settlement that is achieved as the result of the mediation. The Parties are encouraged to discuss and fully review the terms of the settlement that is reached with counsel.

### Confidential Nature of Mediation

Confidentiality is extremely important to foster the communications necessary to reach a resolution of the Parties' dispute. In order to encourage full settlement of all matters underlying the dispute, the Parties and the Mediator agree that all communications made in connection with this mediation are confidential. The Mediator agrees not to disclose any communication received during separate confidential sessions with a Party to any other Party without the express permission of the Party making the disclosure. No communications made during the mediation are subject to discovery, admissible in any subsequent proceedings, and may not be disclosed to anyone other than mediation participants, except as provided in MCR 2.412(D). The provisions of MCR 2.412(D) have been reviewed and discussed with counsel.

This mediation will be considered settlement negotiations for the purpose of all state and federal rules and statutes protecting disclosures made from later discovery or use as evidence in any subsequent arbitral, judicial, or other proceeding.

All statements, discussions or documents made or prepared during the course of the mediation (including those made during any pre-mediation conference calls and post mediation follow-up) are privileged and confidential, made without prejudice to any party's legal position, and are non-discoverable and inadmissible for any purpose in any arbitral, judicial, or other proceeding except as specifically provided in MCR 2.412(D).

If the mediation ends in a written settlement agreement or with the Parties coming to an impasse, unless there is an agreement reached to the contrary the Mediator will destroy all notes taken during the course of the mediation and all materials provided to the Mediator. In no event, however, will the Mediator retain any such notes longer than one year from the conclusion of the mediation. The Parties understand that the Mediator will not voluntarily testify on behalf of a Party in any proceeding, nor voluntarily produce any documents or information in the Mediator's possession. The Parties agree that no aspect of the mediation shall be relied upon or introduced as evidence in any arbitral, judicial or other proceeding.

The Parties agree that a breach of the confidentiality terms of this Agreement would cause irreparable injury and that monetary damages would be an inadequate remedy, since the Parties and the Mediator are relying upon this Agreement to confidentially disclose sensitive and protected information. The Parties agree and stipulate that any Party to this Agreement or the Mediator may obtain an injunction to prevent disclosure of any such confidential information in

violation of this Agreement.

Evidence that the parties have entered into a written settlement agreement during the course of the mediation may be disclosed and admissible to the extent necessary to enforce the settlement.

4. Mediator's Compensation

The Parties, Counsel and the Mediator have already agreed on the terms of the Mediator's compensation in a separately executed retention agreement, the terms of which are incorporated into this Agreement.

5. Conflict of Interest

The Parties and their counsel have disclosed to the Mediator, and the Mediator has disclosed to each of them, all matters that each reasonably believes require disclosure pursuant to MCR 2.411. The Mediator has fully discussed during the pre-mediation conference call those facts and circumstances that might give rise to any actual or potential conflicts of interest. The Mediator believes that any actual or potential conflict discussed with Counsel will not impact the neutrality of the Mediator. To the extent any actual or potential conflict has been discussed, the Parties waive the conflicts and potential conflicts disclosed. If any Party believes the Mediator is not impartial, that Party should not sign this agreement and immediately terminate any involvement in this mediation.

During the course of the Mediation if any Party or the Mediator becomes aware of any facts or circumstances that may lead to a conflict of interest on the part of the Mediator, the Parties and the Mediator will immediately disclose those facts or circumstances. Once disclosed the Parties or the Mediator will determine if this mediation process should immediately terminate.

6. Dispute Resolution

Any dispute arising between the Mediator and any Party or Counsel shall be resolved through mediation, using a mediator chosen by all parties to that dispute.

Thank you for agreeing to participate in this confidential mediation.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
*(Party Signature)*

By: \_\_\_\_\_  
*(Party Signature)*

\_\_\_\_\_  
*(Party Name)*

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*(Party Name)*

By: \_\_\_\_\_  
*(Party Signature)*

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*(Party Name)*

By: \_\_\_\_\_  
*(Attorney Signature)*

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*(Party Representing)*

By: \_\_\_\_\_  
*(Attorney Signature)*

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*(Attorney Signature)*

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*(Party Representing)*