

## AGREEMENT TO MEDIATE

Caption: \_\_\_\_\_

1. Mediation is a voluntary, collaborative process intended to assist disputing parties in finding a legally-binding solution to their disputes. The process is informal. The parties may discuss the factual and legal issues and any other matters that they deem pertinent to the dispute. All those in attendance will have a full opportunity to be heard. The parties are seeking to determine their own solution through a negotiation facilitated by the mediator. The attending parties, or their representatives in attendance, should have authority to agree to a legally binding solution to the dispute. The parties are not required to reach a settlement. However, if the parties do reach a settlement and execute a written agreement disposing of the dispute, the agreement is enforceable in the same manner as any other written contract. The parties may terminate the mediation session at any time prior to reaching a settlement agreement. In the event that the initial mediation session does not result in a settlement agreement, the mediator may follow up with the parties to assist them in seeking a resolution of their dispute.
2. The mediator serves as a neutral and impartial facilitator of the negotiations. The mediator is not the legal representative of either party. In providing mediation services, the mediator does not engage in the practice of law. The mediator does not decide the outcome of the dispute. The mediator does not predict the specific resolution of a legal issue, nor does the mediator counsel or direct the party or parties to take any particular course of action. The mediator does not give professional advice of any kind to either party, nor does the mediator act as an advocate for either party. While the mediator may suggest possible options by which to resolve a dispute, the mediator does not recommend any particular solution since it is up to the parties to make the ultimate decision. In the event that the parties request that the mediator participate in memorializing any settlement agreement reached by the parties, it is understood and agreed by all parties that the mediator will be acting only as a scrivener. Furthermore: (i) the mediator does not provide legal advice; (ii) any mediated agreement may affect the legal rights of the parties; (iii) each party to the mediation has the opportunity to consult with independent legal counsel at any time and is encouraged to do so; and (iv) each party to the mediation should have any draft agreement reviewed by independent counsel prior to signing the agreement. The mediator is an independent contractor of The McCammon Group. The mediator and The McCammon Group, Ltd. (“The McCammon Group”), including its independent contractors, employees, officers and shareholders, shall not be liable to the parties for any act or omission relating to the mediation.
3. The fundamental style of the mediator is facilitation. This involves the personal skills of the mediator to clarify interests, identify issues, test the merits of positions and generally to assist the parties in moving toward common ground. A mediator may give legal information including, among other things, the neutral evaluation of issues. Such evaluation is provided only where (i) it is requested; (ii) the mediator thinks that the requested evaluation is appropriate and necessary; (iii) the mediator is qualified to give such evaluation; (iv) there is sufficient information on which to base such evaluation; and, (v) such evaluation is provided in reasonably broad and qualified terms. As the mediation proceeds, the needs of the parties may change, and the nature of the services provided may likewise change, as the parties may request.
4. All statements, documents and other matters generated in connection with the mediation are confidential. Furthermore:
  - a. all memoranda, work products and other materials contained in the case files of a mediator or mediation program are confidential;
  - b. any communication made in or in connection with the mediation which relates to the controversy being mediated, including screening, intake and scheduling a dispute resolution proceeding, whether made to a mediator or dispute resolution program staff, or to any other person, is confidential;
  - c. a mediated agreement signed by the parties shall not be confidential, unless the parties otherwise agree in writing;
  - d. allegations of child abuse are not confidential, as mediators are mandatory reporters of such information;
  - e. in reporting on the outcome of the dispute resolution proceeding to the referring court, the neutral shall indicate whether an agreement was reached, the terms of the agreement if authorized by the parties, the fact that no agreement was reached, or the fact that the orientation session or mediation did not occur. The neutral shall not disclose information exchanged or observations regarding the conduct and demeanor of the parties and their counsel during the dispute resolution proceeding, unless the parties agree otherwise;
  - f. neither the mediator nor anyone associated with The McCammon Group may be compelled to appear or to give testimony in any judicial, regulatory or administrative proceeding;
  - g. no documents or materials belonging to or in the custody of the mediator or The McCammon Group may be subpoenaed or in any other way sought to be used in any judicial, regulatory or administrative proceeding;

