

### MEDIATION AGREEMENT

The undersigned parties (the "Parties") hereby agree to retain Joe Costello (the "Mediator") to provide mediation services for their dispute (the "Dispute") in accordance with the following terms:

- 1. Mediation Procedures.** The mediation is a voluntary settlement negotiation. The Mediator's role is to assist the Parties in resolving the Dispute. The Mediator has no authority to impose a settlement on the Parties. The Parties and their counsel retain ultimate responsibility for any agreement they reach and the written terms of that agreement. The Mediator is neutral and will not act as an attorney on behalf of or provide legal advice to any of the Parties.
- 2. Participation in the Mediation.** The mediation will take place at a time and location to be agreed upon by the Parties and the Mediator. The participants in the mediation will include representatives with full settlement authority. Non-parties (e.g., insurers or experts) may attend the mediation, but only with the consent of the Parties and the approval of the Mediator.
- 3. Confidentiality.** All statements by the Parties, their counsel, and the Mediator relating to the mediation, and any documents created for or during the mediation, are confidential settlement discussions and are not discoverable or admissible for any purpose in any litigation or arbitration absent consent of the Parties or order of a court. The Parties and their counsel will not subpoena or otherwise require the Mediator to testify or produce records, notes or work product in any future proceedings. During the mediation, the Mediator may have separate meetings with the Parties and their counsel. If a party informs the Mediator that information is being conveyed to the Mediator in confidence, the Mediator will not disclose that information.
- 4. Disclosures.** The Mediator, the Parties and their counsel have disclosed past and present relationships and other information, if any, that a reasonable person would believe could influence the Mediator's impartiality. The Parties waive any actual or potential conflicts of interest.
- 5. Mediator Indemnification and Exclusion of Liability.** The Parties and their counsel jointly and severally agree to hold harmless and defend the Mediator in connection with any subpoena, claims or demands against the Mediator arising out of or related to the mediation of the Dispute. Any party breaching this Mediation Agreement shall be liable for and shall indemnify the non-breaching parties and the Mediator for all costs, expenses, liabilities, and fees, including attorney's fees, which are incurred as a result of such breach. The Mediator shall not be liable for any act or omission of any party or participant in connection with the mediation.
- 6. Fee and Expenses.** The Mediator's fee is \$9,800.00 per day, which covers one mediation session, all preparation and communications with the Parties' counsel in advance of that session, incidental communications following that session, and local travel expenses. At least 24 hours before that session, the Parties will pay the Mediator's fee, which will be split equally between the Parties unless they agree in writing to another arrangement. Counsel for the Parties are obligated to pay the Mediator's fee and expenses regardless of whether they are reimbursed by their client for these amounts.
- 7. Counterparts.** This Mediation Agreement may be signed in counterparts.

  
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Joe Costello, Mediator

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Counsel for Plaintiff(s)

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Date

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Counsel for Defendant(s)

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Date