



AGREEMENT TO MEDIATE

NJ MEDIATOR, LLC, BY JOHN F. GELSON, ESQ. (hereinafter the "Mediator") and the undersigned parties, persons and entities, this ____ day of _____, 2011 agree that:

1. The undersigned parties and their representatives seek to resolve through mediation certain controversies identified as _____ [insert case name]. The parties have agreed to jointly retain the Mediator to provide a neutral third party to facilitate their settlement negotiations.
2. The mediator will not act as advocate, representative, fiduciary or counsel for any party and will have no formal coercive authority to make any binding decisions or recommendations or to compel the making of any agreement or the granting of any concession.
3. Participation in the mediation is voluntary. At any time, upon notice to the mediator and the other parties, any party or its representatives may terminate its participation.
4. The parties acknowledge that prior to the commencement of the mediation they were provided with a written statement of qualifications of the mediator, including a description of his educational background and his relevant training and experience.
5. The parties acknowledge their confidence in the impartiality of the mediator and in the integrity of the mediation process. The parties further agree to pay promptly upon receipt, the invoice for fees and expenses (if any) of the Mediator; and counsel shall sign this agreement to confirm this undertaking by their clients.
6. The mediation constitutes settlement discussions in which the *Rules of Evidence* are applicable. Nothing said or disclosed during the mediation, nor any document produced in mediation which is not otherwise discoverable shall be admissible as evidence or usable for impeachment or other purposes in any judicial or arbitration proceeding.



7. No party or participant in the mediation process shall call or subpoena the mediator to produce in any civil action, arbitration or other legal or administrative proceedings of any kind whatsoever any notes or documents related to the mediation or to testify regarding any notes or documents or the mediator's thoughts or impressions. If so called or subpoenaed by anyone, the Mediator shall refuse to testify or to produce such notes or documents. Should any party or other signatory to this Agreement or any other participant in the mediation process or any non-participating third party, entity or agency, attempt to compel such testimony or production, the parties or signatories to this Agreement, upon notice from Mediator, shall defend and indemnify at their joint and several expense, the mediator against any liabilities, costs or expenses, including reasonable attorneys' fees, which the mediator may incur resisting from such compulsion.

8. The Mediator will conduct an initial joint mediation session with all parties and counsel on _____ at 10:00 a.m. at the offices of NJ MEDIATOR RESOLUTION SERVICES, LLC. The joint mediation session shall be attended by counsel and party representatives *with settlement authority*. Counsel for the parties may be asked to give brief presentations of their positions and to react to the positions of other parties. The presentations will be informal and without cross-examination. The Mediator will have complete authority over all mediation procedures.

9. The Parties will submit to the Mediator, no later than _____ such documents as will assist him in gaining an understanding of the merits of their claims, positions and contentions. At the same time, each of the Parties will submit to the Mediator a statement setting forth key facts, their claims, and controlling legal principles. Copies of any cases and statutes from jurisdictions outside of New Jersey and articles cited in the statement will be submitted with the statement. **The parties are encouraged to exchange statements with each other, which statements may omit any information submitted to the Mediator which the Party does not wish disclosed to other Parties including possible settlement alternatives.** Upon request, within 45 days after the settlement of the dispute, or the failure of settlement, the Mediator will destroy or return to the respective parties all written or otherwise recorded materials



submitted, in order to protect the confidential nature of the mediation process.

10. The mediation process is a compromise negotiation. All offers, promises, conduct, and statements, oral or written, made in the course of the mediation by any of the parties or their agents, experts and attorneys, and the Mediator, are confidential and will not be disclosed to the Court, third parties, except persons associated with the Parties in the mediation process, and persons or entities to whom a Party has a legal or contractual obligation to report, and are privileged and inadmissible for any purpose, including impeachment, under any applicable rule of evidence, statute or common law doctrine.

However, evidence previously disclosed or known to a party shall not be rendered confidential, inadmissible, or non-discoverable solely as a result of its use in the mediation. Moreover, an expert who participates in the mediation is not disqualified from assisting a party in subsequent litigation on the same subject matter. Any resolution of the dispute shall be recorded by the Mediator, and the parties shall be *voir dire*d as to the understanding of the settlement agreement and their intention to be bound thereby. The Mediator will provide a copy of the transcript of the recording of the settlement to all parties with the findings of the settlement.

11. There is no attorney/client relationship between the Mediator and any Party herein. For example, the Parties recognize that in the process of reaching agreement, they may choose to forgo a claim or defense, ask the Mediator for his perspective on a particular issue or the case in general, or the Mediator may record a settlement. The Parties will consult with their own attorney if they have any questions about their legal rights. The Parties agree that the Mediator is not acting as an attorney and does not provide legal advice.



MEDIATOR: JOHN F. GELSON, ESQ.

COMPENSATION: ESTABLISHED RATE OF \$400.00 PER HOUR FOR THE TIME OF JOHN F. GELSON, ESQ. THE COMPENSATION FOR COURT-ORDERED MEDIATIONS UNDER R. 1:40 ARE GOVERNED BY THE COURT RULES.

IN WITNESS WHEREOF, THE UNDERSIGNED HAVE EXECUTED THIS AGREEMENT ON THE DAY AND YEAR FIRST ABOVE WRITTEN.

NAMES

ADDRESSES

Counsel

Counsel

Counsel

Counsel

Mediator
