

Mediation Agreement

The undersigned parties desiring to attempt to settle their dispute and related issues through mediation facilitated by Creative Commercial Services, Inc., hereby mutually agree as follows:

1. **Mediator Neutrality/Voluntary Process.** The parties recognize that mediation is a voluntary process for settlement negotiation. The mediator is a "neutral" who serves as an impartial facilitator to assist the parties to reach their own settlement. The Mediator is NOT a judge or arbitrator, and has no authority to force a settlement on the parties, require a party to make concessions or take any action, make decisions about party liability or otherwise render a binding decision. Any agreements reached between the parties as a result of mediation, must be memorialized in a separate written agreement signed by the parties. The parties intend to participate in mediation until they reach an agreement. The parties agree that in the event that any party chooses to withdraw from the mediation process at any time, the withdrawing party will use its best efforts to discuss the decision to withdraw in the presence of all parties and the mediator.

2. **Prior contacts.** The parties and their counsel represent and warrant that they have disclosed to the other parties and the Mediator all prior contacts between themselves and the Mediator.

3. **Counsel.** The parties agree and understand that that they understand that no attorney-client relationship exists between the Mediator and any party to this Agreement, nor does the Mediator serve as representative for any party. Each party may seek their own legal counsel at participate in the mediation process. The parties are advised to have their own legal counsel review any written agreement for settlement resulting from mediation prior to signing. The parties acknowledge that they have had an opportunity to review this agreement and the fees and policies of Creative Commercial Solutions before executing this Agreement to Mediate.

4. **Mediation Conferences and Caucuses.** The parties understand and agree that as part of the mediation process, the Mediator may meet in confidential "caucus" sessions separately with each party and/or their counsel. The Mediator treats any information received in caucus as confidential and will refrain from disclosing such information to the other party or its counsel, unless the Mediator is specifically authorized to disclose designated information. The Mediator may at the request of either party, counsel or on his own initiative, conduct any conference pursuant to this agreement by telephone, video, webcast or other means of communication.

5. Confidentiality, Immunity and Indemnification. The parties and mediator agree to enter a separate Confidentiality Agreement, prior to commencement of the Mediation proceedings to enable the parties to discuss freely all aspects of their dispute and allow the Mediator to effectively assist the parties in reaching a voluntary resolution of their dispute. In addition, the parties further agree:

a. All written, oral and non-verbal communications made or provided in connection with the mediation services provided pursuant to this Agreement will be treated as privileged settlement discussion, are and will remain confidential.

b. That no communications, whether written, oral or non-verbal, nor any document produced, whether in print, electronic, or by other means, which is not otherwise independently discoverable shall be offered or received as evidence or used for impeachment or for any other purpose in any current or future litigation. The provisions of Florida's Mediation Confidentiality and Privilege Act are incorporated by reference as if fully set forth herein.

c. That the Mediator shall have the same common law and statutory immunity as judges from suit for damages or equitable relief and from compulsory process to testify or produce evidence based on or concerning any action, statement or communication in or concerning the mediation conducted pursuant to this Agreement. The parties further agree that neither they nor their attorneys will subpoena or call the Mediator to produce any notes or documents related to this mediation or to testify concerning any notes, documents, thoughts or impressions in any legal or administrative proceeding of any kind. **The parties acknowledge and understand that the Mediator will destroy all notes taken during mediation immediately upon conclusion of the mediation.** Therefore, if any party attempts to compel the Mediator to testify or produce documents or notes, that party shall be liable for and shall indemnify the Mediator for any and all liabilities, costs and expenses, including attorneys' fees and lost professional time, incurred in resisting such compulsion and in testifying if required to do so by a court of competent jurisdiction.

6. Fees, Costs and Expenses. Mediation sessions are scheduled for minimum periods of 3 hours or a full day. The initial fee for a half-day mediation session for a two party matter is \$600 per party. The initial fee for a full day mediation session for a two party matter is \$1,400 per party. The initial fees include all case scheduling, administrative time, file preparation, and review time for the basic pleadings (complaint, answers, cross/counterclaims, etc.) and Mediation Summaries from each party (four page maximum please).

Additional time for mediation preparation (including telephone, video or web conferences) preparation for complex or document intensive cases, preparation of documents, agreements and memoranda of understanding, additional conferences and review of substantial documentation is billed at \$250 per hour, plus expenses (including but not limited to long distance, photocopies, postage,

courier fees, etc.) to be split evenly by the parties, unless otherwise agreed by the parties. Additional Conferences are billed at two hour minimum increments. The parties and counsel agree that Conferences cancelled less than 5 business days in advance are charge a minimum of two hours. Travel expenses are billed for mediations or conferences requiring Mediator travel of more than 100 miles. Travel time in excess of 100 miles is billed at \$100 per hour, plus actual costs (airline, hotel, taxi, parking, meals, etc.) and will be paid equally by the parties unless otherwise agreed by the parties. The parties and their counsel agree that all fees and expenses of the Mediator shall be paid equally by each party, unless the parties agree otherwise.

7. Benefit of Agreement. This Agreement shall inure to the benefit of and be binding upon the parties hereto, and the Mediator shall be deemed a third party beneficiary hereof.

Signed:

Signed:

Print name:

Print name:

Dated: _____

Dated: _____