Mediation Agreement

Purpose

This Mediation Agreement sets forth the terms and conditions governing the mediation of the disputes between _____________________ (the “Parties” or individually the “Party”) arising out of ________________________________ (the “Dispute”). The purpose of the mediation is to arrive at a mutually acceptable resolution of the Dispute in a cooperative and informal, rather than a legal and formal, manner.

Mediation Process

1. The Parties have chosen James W. Barkley (“the Mediator”) as the Mediator to aid in their attempts to settle the Dispute.

2. The Mediator will:
   
   a. Review written information submitted by the Parties prior to the mediation. These submissions may include confidential statements provided only to the Mediator.
   
   b. Have private, confidential conversations with the participants to develop information about the Parties’ contentions and objectives. Confidential pre-mediation meetings and calls with the Mediator may be scheduled.
   
   c. Conduct the mediation with the Parties and their counsel.
   
   d. As necessary, and if requested, provide a confidential evaluation of the strengths and weaknesses of each Party’s case.
   
   e. As necessary, and if requested, conduct follow-up conferences with the participants subsequent to the mediation session.

3. The mediation session will be held on______________, beginning at _____ a.m. (EST), and will be attended by representatives of the Parties with full settlement authority and by counsel. The mediation will be held at a location acceptable to all Parties. The mediation will begin with a joint session attended by all participants. Each Party may present a summary of its position and may make whatever presentation it deems most appropriate. Following the joint session, the Mediator will engage in a series of private caucuses with each Party. Any information that a Party shares during a private caucus will be treated as confidential and will not be shared with
another Party or any non-participant to the mediation process without prior permission. Caucuses will continue throughout the session until a resolution is achieved or the mediation is terminated. There shall be no stenographic or electronic record of the mediation process.

4. To facilitate a resolution, the Mediator and the Parties and their counsel will work to ensure that each Party appreciates the strengths and weaknesses of all Parties’ factual and legal contentions. In the exchange of information and positions, and in the evaluation of that information, each Party will have both the opportunity and responsibility to disclose candidly to the Mediator the facts, theories, and opinions on which it intends to rely with regard to the matters in dispute. Accordingly, each Party will be asked to work with the Mediator in considering and evaluating solutions that would satisfy its own interests and those of the other Parties.

5. The Parties agree that the Mediator is not acting as an attorney or providing legal advice or representation on behalf of any Party. The Mediator will not decide who prevails in the Dispute and will not render an award, verdict, or judgment or otherwise determine fault or blame. The Mediator, however, will upon request provide his evaluation of the strengths and weaknesses of each Party’s factual and legal contentions to the extent the Mediator deems it appropriate and helpful.

6. No Party shall be bound by anything said or done at any mediation session unless a settlement is reached. The Mediator has no authority to impose a settlement on the Parties, and the Mediator is authorized to conclude the mediation process whenever further efforts, in his judgment, will not contribute to the resolution of the Dispute. If a settlement option is developed that all Parties are willing to accept, the Mediator will summarize the terms of that option. The Parties will thereupon promptly draft and execute a settlement memorandum that incorporates the principal terms of the settlement option. Any executed settlement agreement may be introduced into evidence in any subsequent proceedings to enforce the terms of the settlement agreement.

Confidentiality

This entire mediation process is an off-the-record compromise negotiation. Except as memorialized in an executed Settlement Agreement, all offers, promises, conduct, and statements, whether oral or written, made in the course of the mediation by any of the Parties, their agents, employees, experts, and attorneys, and by the Mediator, are confidential and off the record. Such offers, promises, conduct, and statements will not be disclosed to third parties, except persons associated with the participants in the process (e.g., a Party’s agent, employee, or attorney) and are privileged and inadmissible for any purpose,
including impeachment, notwithstanding any applicable federal or state statute, rule, or common law provisions. If this matter does not settle in mediation, no Party may provide any details or otherwise disclose what happened in the mediation. However, evidence previously disclosed or known to a Party, or that is otherwise admissible or discoverable, shall not be rendered confidential, inadmissible, or not discoverable solely as a result of its use in the mediation.

While the goal of mediation is resolution of all issues among all parties, the Parties understand that a multi-party mediation may result in settlement of only some issues among some of the Parties. The Parties also understand that the Mediator may be asked to facilitate a settlement among certain parties to the exclusion of other parties. The Parties should also be aware that the Mediator’s obligations of confidentiality may preclude the Mediator from advising a Party that such discussions are ongoing.

**Disqualification of Mediator and Exclusion of Liability**

The Parties agree not to call the Mediator as a witness or as an expert in any pending or subsequent litigation or arbitration involving the Parties and relating in any way to the Dispute, which is the subject of the mediation. The Parties agree to defend the Mediator and Morin & Barkley LLP from any subpoenas from third parties arising out of this Mediation Agreement or the mediation. The Parties agree that neither Morin & Barkley LLP nor the Mediator is a necessary party in any arbitral or judicial proceedings relating to the mediation or to the subject matter of the mediation. Neither the Mediator nor any employee or agent of Morin & Barkley LLP shall be liable to any Party for any act or omission in connection with any mediation conducted under this Agreement.

**Miscellaneous**

This is a voluntary, non-binding mediation process. Any Party may terminate its participation for any reason by notification to the Mediator and the other Parties. The Mediator may terminate the mediation if, in his judgment, no further value exists to continuing the process.

**Fees and Expenses**

The Mediator’s fee for conducting and participating in this mediation is $ per hour for all time spent in connection with the mediation, including conversations or meetings with counsel or the Parties before the mediation; reviewing mediation statements; preparing for and conducting the mediation;
and any follow-up after the mediation session. Travel time and expenses will be billed as set forth in the Rate Sheet. Based on the Parties’ estimate of a ___ day Mediation and pre-mediation preparation time, including separate conversations with the Parties and their counsel and review of pre-mediation submissions, it is estimated that the Mediator’s fee will be approximately $____________. The Mediator’s fees and expenses will be divided equally among the Parties.

Each Party shall pay its share of the estimated fees ($_______ each) by no later than __________. In the event the actual fees are less than this amount, any excess fees that have been paid in advance will be refunded. In the event the actual fees are greater than the estimated amount, the Parties will be invoiced after the mediation for their respective share of such amount and agree to pay such invoice upon receipt. Expenses will be billed after the mediation session.

**Cancellation Policy**

If the mediation session is cancelled, professional fees are fully refundable, except to the extent the Mediator has already incurred time in preparation for the mediation, in which case such time will be charged at the rate set forth above and will be deducted from the fees already paid. The balance will be refunded to the Parties.

Date: ___________________  By: __________________________________________

_______________________________  (Name/Title)

________________________________________

Date: ___________________  By: __________________________________________

_______________________________  (Name/Title)

________________________________________

Date: ___________________  By: __________________________________________

_______________________________  (Name/Title)

________________________________________

JAMES W. BARKLEY, MEDIATOR