

## **MEDIATION PROVISION**

1. *Agreement to Mediate*: In the event of any controversy, claim or dispute arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this Agreement (“Dispute”), we agree to submit any such Dispute to mediation administered by ADR Services, Inc.

2. *Initiating Mediation*: Any party to this agreement may demand mediation at any time by serving a written demand in person or by mail to the opposing party with a copy of the demand and of this dispute resolution agreement to ADR Services, Inc.

3. *Enforcement*: The parties agree that the mediation provisions of this Agreement may be enforced in the same manner as an arbitration agreement, by petition to any court having jurisdiction for the appointment of a mediator in the same manner as a petition for the appointment of an arbitrator. Further, the parties agree the court may award reasonable attorneys’ fees and costs to the prevailing party in any proceeding to enforce this mediation agreement.

4. *Fees and Costs*: The fees and costs of the mediator shall, in the absence of an agreement to be contrary, be borne equally by all parties.

5. *Confidentiality of Proceedings*: The mediation process is to be considered a settlement negotiation for the purpose of all state and federal rules protecting disclosures made during such conferences from later discovery or use in evidence.

The parties hereto agree that the provisions of California Evidence Code §§703.5 and 1115, et seq. shall apply to any mediation conducted hereunder.

The entire mediation procedure is confidential, and no stenographic or other official record shall be made except to memorialize a settlement record. All statements, admissions, writings, promises and offers made during the mediation by any party or a party’s agent, employee, or attorney are confidential and, where appropriate, are to be considered work product and privileged. Likewise, all conduct, views and opinions, oral or written, made for the purpose of, in the course of, or pursuant to the mediation or mediation consultant by any person (including any party, party’s agent, employee, attorney mediator or other nonparty) are confidential and privileged. Such conduct, statements, admissions, writings, promises, offers, views and opinions shall not be subject to discovery or be admissible for any purpose, including impeachment, in any litigation or other proceeding involving the parties; provided, however, that evidence otherwise admissible or subject to discovery is not excluded from discovery or admission in evidence simply as a result of it having been used in connection with this settlement process.

6. *Enforceability of Settlement*: If enforcement of any settlement agreement reached during mediation becomes necessary, it may be enforced pursuant to Code of Civil Procedure section 664.6. Notwithstanding the mediation confidentiality provisions set forth in Evidence Code sections 1115-1128 and the confidentiality agreement of the parties, the settlement agreement may be introduced and admitted as evidence for this purpose. The prevailing party in any proceeding to enforce this settlement agreement shall be entitled to recover reasonable attorneys’ fees and costs.