

## AGREEMENT TO MEDIATE

**The Parties to this Mediation/ADR:** \_\_\_\_\_ represented by \_\_\_\_\_, Esquire and \_\_\_\_\_, represented by \_\_\_\_\_, Esquire.

**The Mediator:** David B. White, Esquire (the “Mediator”).

**Agreement:** The parties agree to mediate, and hereby engage the Mediator to provide mediation services, and the Mediator agrees to provide mediation services, on the terms and conditions of this agreement.

**Subject of the Mediation:** The subject of the mediation is \_\_\_\_\_ v. \_\_\_\_\_, Civ. No. \_\_\_\_\_, now pending in the \_\_\_\_\_, including all averments, claims, counterclaims, and defenses in that case.

**Nature of the Mediation:** The mediation is a non-binding settlement negotiation. The Mediator may hold joint sessions with the parties and/or private sessions with each party separately for the purposes of improving the Mediator’s understanding and facilitating the mediation process. The Mediator has no authority to force a settlement on the parties and is not a judge.

**Fees:** The fee for mediation services is \$700 per hour for pre-mediation services; \$3,750 for a half-day session; and, \$7,500 for a full-day session. In addition, there will be an Administrative Fee Charge of \$400.00 for services performed in connection with scheduling and conducting the mediation. One-half of all mediation fees are payable by or on behalf of \_\_\_\_\_ and one-half of all mediation fees are payable by or on behalf of \_\_\_\_\_. The bill for mediation services will be sent to counsel for said parties unless the parties agree to other arrangements.

The undersigned counsel acknowledge that they have direct responsibility for payment of the Invoice for mediation services. Further, the undersigned counsel acknowledge and agree that upon receipt of the letter or email confirming the date and time reserved for the mediation, absent the ability of the Mediator to schedule a replacement case, late notice (within 3 business days) cancellation fees will apply to be split evenly by the Parties, regardless of which Party requests the cancellation.

In the event that the matter does not settle at the mediation session and the parties contact the Mediator for additional assistance following the mediation session, the Mediator will bill for any additional time at \$700 per hour.

**Mediation Sessions:** The mediation shall take place in one or more sessions as the parties and Mediator shall agree. The first session shall be held on \_\_\_\_\_, 20\_\_ at \_\_\_\_\_ am/pm, at the law offices of Burns White LLC, located at Burns White Center, 48 26<sup>th</sup> Street, Pittsburgh, PA 15222 **OR** via Videoconference, whichever format has been agreed upon by all parties. Each party shall have present at each mediation session one or more representatives with full authority to negotiate, make decisions concerning, and enter into a settlement of the dispute on behalf of that party. Each party shall also have one or more of its lawyers in attendance.

**Consulting with Attorneys:** The parties and participants to the Mediation are welcomed and encouraged to consult with their attorneys regarding their legal rights and obligations throughout the course of the mediation and before finalizing a settlement agreement. The Mediator does not provide legal advice or an analysis of legal rights or obligations. The parties rely solely on their own attorneys for legal advice.

**Confidentiality/Privilege:** The parties acknowledge and agree that the mediation is a settlement negotiation and that offers, promises, conduct, and statements, whether written or oral, made in the course of the mediation are confidential and, to the extent provided by law, inadmissible in any litigation or arbitration of the subject matter of the mediation.

All mediation communications and documents are privileged. However, evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

The Mediator shall hold confidential all information a party or participant discloses to the Mediator in connection with the mediation and shall not disclose such information to any other party or person except to the extent the disclosing party or participant authorizes the disclosure.

The Mediator and each party will instruct those acting on his, her, or its behalf to protect the confidentiality of mediation communications and documents and to take appropriate steps to assure that such confidentiality is not breached.

**No Record:** No recording or stenographic record will be made of any portion of a mediation session. The Mediator shall make no written report or decision relating to any issue in dispute unless the parties expressly agree that he should. The parties agree not to subpoena or otherwise require the Mediator (a) to testify concerning any aspect of the mediation or the mediation services or (b) to produce records or notes made in the course of the mediation or the performance of the mediation services.

**Mediator's Disclosure:** I have been a practicing trial lawyer since 1982 in Pittsburgh, Pennsylvania. I am Of Counsel at the law firm of Burns White LLC. I am not a member or an employee of Burns White LLC. I have also served as a mediator since 2005. Over the course of my practice as an attorney and mediator, I and/or the attorneys at Burns White LLC may have and/or have handled matters with the parties, lawyers and/or the law firms representing the parties involved in the instant dispute. I and/or the attorneys at Burns White LLC may have and/or have also handled cases involving similar legal or factual issues. I and/or the attorneys at Burns White LLC may have served on committees and/or socialized with the parties, lawyers handling this case and/or members of their law firms. The foregoing notwithstanding, to my knowledge I have no conflict of interest that prevents my serving as mediator under this agreement. If any of the parties is aware of any conflict or potential conflict of interest, involving me and/or any attorney at Burns White LLC, please notify me in writing prior to the scheduled mediation date.

**No Presumption:** This agreement has been negotiated by the Mediator and counsel for the parties. Neither the Mediator nor any party or its counsel shall be deemed to be the drafter of this agreement or any provision. No presumption shall be deemed to exist in favor of or against the Mediator or either party as a result of the preparation or negotiation of this agreement.

**Choice of Law:** The laws of the Commonwealth of Pennsylvania shall govern the interpretation, performance and enforcement of this agreement, excluding the Commonwealth's rules or precedent relating to choice of law.

**Termination of Mediation:** After the conclusion of the first mediation session, the Mediator or either party may terminate the mediation by giving the others notice of the termination. Such termination shall terminate the further right or obligation of the parties or the Mediator to mediate

or to provide or receive mediation services under this agreement but shall not otherwise terminate this agreement.

**Binding Effect:** This agreement shall bind and inure to the benefit of the Mediator, the parties, and their respective successors and assigns.

**Integration:** This agreement constitutes the entire agreement of the Mediator and the parties with respect to mediation of the above-referenced subject matter. This agreement may not be modified except in writing signed by the Mediator and the parties. All prior or contemporaneous understandings, discussions or agreements with respect to the mediation are expressly superseded by this agreement.

WE AGREE to the foregoing Agreement to Mediate as of the \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_

Attorney for \_\_\_\_\_

\_\_\_\_\_

Attorney for \_\_\_\_\_

\_\_\_\_\_

David B. White, Esquire  
Burns White LLC  
Mediator