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**Commonwealth of Pennsylvania**

**Office of General Counsel**

**Dispute Resolution Program**

[**www.ogcdr.state.pa.us**](http://www.ogcdr.state.pa.us)

AGREEMENT TO MEDIATE

The parties signing below acknowledge and agree they are willing to participate in a voluntary mediation process in an effort to reach a mutually acceptable resolution of the following dispute:

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The parties acknowledge and agree to be bound by the following:

1. **Mediator.**
   1. The role of the mediator is to facilitate respect and communications between the parties with the intent that the parties identify and clarify issues and explore potential resolutions of their dispute. The mediator is not a judge or a decision maker. In mediation, the parties decide the outcome and, if they resolve their dispute, the terms of settlement.
   2. The mediator does not represent either party and shall not provide legal advice. The parties may seek legal advice at any time and are encouraged to do so.
2. **Mediator Impartiality and Disclosures.** The mediator is employed by the Governor’s Office of General Counsel. The mediator shall conduct the mediation in an impartial manner. None of the parties know of any circumstances that would cause reasonable doubt concerning the mediator’s impartiality. If the mediator has disclosed past or current relationships with one or more of the parties or their attorneys, the parties acknowledge the receipt of such disclosure and consent to the mediator’s service in this mediation.
3. **Confidentiality of Communications and Documents.**
   1. Except as they shall otherwise specifically agree, the parties hereto shall keep the matters discussed at the mediation confidential. All mediation communications and mediation documents are privileged except as provided by 42 Pa.C.S. §5949 (Act of February 7, 1996, P.L. 7). The privilege applies to all mediation communications and mediation documents made in preparation for or during mediation. Disclosure of mediation communications and mediation documents may not be compelled through discovery or other process. Mediation communications and mediation documents shall not be admissible as evidence in any action or proceeding, including, but not limited to, judicial, administrative or arbitration actions or proceedings.
   2. The confidentiality privilege may not apply to any document that exists independently of the mediation and that would not be privileged if the mediation did not occur. The privilege does not apply to:
      1. A settlement document introduced in an action to enforce the settlement agreement, unless the settlement agreement states it is unenforceable or not intended to be legally binding;
      2. Communications of threats that bodily injury may be inflicted on a person, or threats that damage may be inflicted on real or personal property under circumstances constituting a felony; or, conduct during a mediation causing bodily injury; or
      3. Fraudulent communications made during mediation that are relevant evidence in an action to enforce or set aside a mediated agreement reached as a result of that fraudulent communication.
   3. In addition, the parties agree that the mediator may disclose to appropriate government entities a mediation communication or mediation document regarding a violation of, or an intent to violate, a Federal, State or local law if it constitutes one or more of the following:
      1. Information that bodily injury has been or may be inflicted on a person;
      2. Information that damage has been or may be inflicted on real or personal property, the environment, or natural resources; or
      3. Information that fraud has been or may be conducted in relation to a government program.
   4. Mediation commences at the time of initial contact with the mediator or mediation program. No record, electronic or otherwise, is made of mediation sessions. Any notes taken by the mediator during the mediation process will be destroyed when the mediation process is concluded.
4. **Mediator’s Confidentiality/Indemnification**.
   1. The mediator shall refuse to testify regarding any mediation communication or mediation document or to produce mediation documents in any action or proceeding in accord with the confidentiality privileges applicable to mediation described above and in 42 Pa.C.S. §5949. Except as set forth in paragraph 3, above, the mediator will not disclose mediation communications or mediation documents unless the parties authorize disclosure or disclosure is required by law. The mediator may report the status but not the content of the mediation to the Governor’s Office of General Counsel.
   2. Each party agrees not to subpoena or otherwise seek to compel the mediator’s disclosure of mediation communications or mediation documents. Each party, intending to be legally bound, agrees to indemnify the Commonwealth of Pennsylvania and/or the mediator against any liabilities, costs or expenses, including attorneys’ fees, that the Commonwealth and/or mediator may incur in resisting such subpoena or compulsion.
5. **Fees & Expenses.** There shall be no fee for the mediation. If the mediation session is held in Commonwealth government offices in \_\_\_\_\_\_\_, Pennsylvania, any travel expenses incurred by the mediator shall be covered by the Commonwealth agency requesting the mediation; otherwise the parties shall be equally liable for such expenses.
6. **Termination of Mediation.** Mediation is voluntary. Mediation may be terminated without cause at any time by any party or the mediator.
7. **Voluntary Acknowledgment.** The parties affirm that they have read, understood, and voluntarily sign this Agreement to Mediate.

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Party Date Counsel Date

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Party Date Counsel Date

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Mediator Date