

Patuxent Mediation Services, LLC

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AGREEMENT TO MEDIATE

This Agreement to Mediate (“Agreement”) sets forth the terms and conditions pursuant to which the Parties will conduct and pay for mediating a dispute that has given rise to this Agreement. By signing this Agreement, each Party acknowledges that he or she has read, understands, and agrees that:

1. General

Mediation is a process in which the parties work with an impartial mediator who, without providing legal advice, assists them in reaching their own voluntary agreement for the resolution of all or part of a dispute. As used in Title 17 of the Maryland Rules, which governs this mediation, as well as used in this Agreement, the term “mediation communication” means a communication, whether spoken, written, or nonverbal, made as part of a mediation, including a communication made for the purpose of considering, initiating, continuing, reconvening, or evaluating a mediation or a mediator. For the purposes of this Agreement, the term “mediator” includes persons associated with Patuxent Mediation Services, LLC. The mediation is governed by the Maryland Mediation Confidentiality Act, §§3-1801 et seq.

2. Voluntary

The mediation process is voluntary and I may choose to end or suspend my participation at any time, for any reason.

Withdrawing Parties remain bound by the confidentiality provisions of this Agreement. They also remain bound by their obligation to make payments for the period of time they were engaged in the mediation process up until the time they give withdrawal notice to the mediator. They also agree to comply with the mediator’s policies regarding postponement, cancellation, and no-shows.

3. Mediator Responsibilities

The mediator may help identify issues and options, assist the Parties and their attorneys in exploring the needs underlying their respective positions, and, upon request, record points of agreement expressed and adopted by the parties. If the Parties are represented by counsel, they should not sign any agreements authored

by the mediator regarding matters in litigation for the Parties to sign until they have consulted their attorneys. If the Parties, whether represented or not, choose to sign the document, the Parties agree that the document should and does by reference contain a statement that the points of agreement as recorded by the mediator constitute the points of agreement expressed and adopted by the parties.

While acting as a mediator, the mediator will not engage in any other alternative dispute resolution process and will not recommend the terms of an agreement.

The mediator has read, and consistent with State law, will abide by the *Maryland Standards of Conduct for Mediators, Arbitrators, and Other ADR Practitioners*, available at <http://www.courts.state.md.us/macro/pdfs/standardsfinal.pdf>.

4. Legal Implications

If I have questions or concerns about legal issues, I may consult a lawyer at any time to assist me in understanding all of my legal rights. The mediator is not a legal advisor and will not provide legal advice.

Participation in the mediation process, including attendance at meetings, statements made, and documents prepared or furnished by any Party or other participant, shall not be construed as an admission of liability or against interest.

The mediation shall be treated as compromise negotiations under the Maryland and Federal Rules of Evidence, and Title 17 of the Maryland Rules, if applicable.

The mediator shall not be deemed a "necessary or indispensable" Party, as defined in Rule 19 of the Federal Rules of Civil Procedure and in any equivalent state law, in any pending or future judicial, administrative, or other proceeding related to matters discussed during the mediation process.

No party shall be bound by any mediation communication unless a settlement is reached. I agree to honor the mutually agreed upon conditions of any signed settlement agreement that might result from this mediation

5. Waiver of Liability

I release the mediator and Patuxent Mediation Services, LLC, including its staff and agents, from any and all claims, actions, or proceedings concerning this mediation.

6. Compensation

The mediator shall be compensated by the Parties at the rate of \$200.00 per hour, to be divided pro-rata between the Parties. Payment for a minimum of two hours of the mediator's time is due by the beginning of the first mediation session. If the Parties and the mediator agree that the mediation session should continue

beyond the initial two hours, including holding subsequent sessions, the Parties agree to pay the mediator upon receipt of his invoice. Invoices shall include a detailed description of the total hours billed (to the quarter hour) and reimbursable incurred during the billing period in question. Payment by an attorney on behalf of a client will be accepted.

7. Confidentiality in General

Unless expressly stated otherwise in this Agreement, mediation communications will remain strictly confidential in accordance with Title 17 of the Maryland Rules. Any unauthorized or inadvertent disclosure of mediation communications shall not constitute or result in a waiver of the confidentiality of such communications.

Mediation sessions shall not be recorded verbatim and no formal minutes or transcripts shall be maintained.

8. Mediator's Duty of Confidentiality

Except as provided in paragraphs 10 and 11, a mediator and any person present or otherwise participating in the mediation at the request of the mediator shall maintain the confidentiality of all mediation communications and may not be compelled to disclose mediation communications in any judicial, administrative, or other proceeding.

All notes prepared by the mediator during the mediation and other written records created by or provided to him, except for those that do not bear on the substance of the dispute in question (e.g., notes indicating scheduling matters), shall be destroyed.

I will not call the mediator as a witness to testify and I will not subpoena any records of the mediator or Patuxent Mediation Services, LLC, for any judicial, administrative, or other proceeding. The mediator will not testify in any pending or future proceedings related to this case. Any Party who subpoenas the mediator or his papers understands that the mediator will move to quash the subpoena, and the Party agrees to pay the mediator's related attorney's fees and costs.

9. Parties' Duty of Confidentiality

Except as provided in paragraphs 10 and 11:

I and any person present or who otherwise participates in a mediation at my request may not disclose or be compelled to disclose a mediation communication in any judicial, administrative, or other proceeding; and

As allowed by Maryland Rule 17-105(b)(2), the Parties may enter into a written agreement to maintain the confidentiality of mediation

communications and to require all persons who are present or who otherwise participate in a mediation to join in that agreement. By my signature on this Agreement, I elect and agree to keep mediation communications confidential and to require all persons who are present or who otherwise participate in the mediation to join in that agreement.

10. Confidentiality of Signed Documents

As specified by Maryland Rule 17-105(c), a document signed by the parties that records points of agreement expressed and adopted by the parties or that constitutes an agreement reached by the parties as a result of mediation is not confidential unless the parties agree otherwise in writing. By my signature on this Agreement, I elect and agree that any such document is not confidential. I also elect and agree that this Agreement is not confidential.

11. Permitted Disclosures

In addition to any disclosures required by law, a mediator, a Party, and a person who was present or who otherwise participated in a mediation may disclose or report mediation communications:

To a potential victim or to the appropriate authorities to the extent they reasonably believe necessary to help prevent serious bodily harm or death to the potential victim;

When relevant to the assertion of or defense against allegations of mediator misconduct or negligence; or

When relevant to a claim or defense that an agreement arising out of a mediation should be rescinded because of fraud, duress, or misrepresentation.

To authorized representatives of the courts who are charged with administering the court's alternative dispute resolution program for the purposes of ensuring a quality mediation program.

Mediation communications that are confidential under Title 17 of the Maryland Rules and this Agreement are not subject to discovery, but information that is otherwise admissible or subject to discovery does not become inadmissible or protected from disclosure solely by reason of its use in mediation.

We agree to abide by the terms and conditions of this Agreement and indicate our assent by signing this document below.

Party Date

Party Date

Counsel Date

Counsel Date

Participant Date

Participant Date

John N. Greer, Mediator Date