

MEDIATION AND CONFIDENTIALITY AGREEMENT

The dispute is between: <PARTY ONE> and <PARTY TWO>. <PARTY TWO> is represented by <PARTY TWO LAWYER(S)> of <PARTY TWO LAW FIRM>. <PARTY ONE> is represented by <PARTY ONE LAWYER(S)> of <PARTY ONE LAW FIRM>. The mediator is Michael J. Leech. The agreements concerning this mediation are:

1. *Location.* The mediation will take place at Mr. Leech's office at 101 North Wacker Drive, Suite 2010, Chicago, Illinois.
2. *Mediator's Fee.* The mediator's fee is \$XXX. The fee shall be divided as follows: <PARTY ONE> will pay \$XXX and <PARTY TWO> pay \$XXX. The mediation fee will be paid at or before the mediation session regardless of whether a settlement is achieved.
3. *Disclosure.* The Mediator's Disclosure Statement is attached. All parties and signatories confirm that they have already disclosed any additional matters that should be disclosed under the IUMA, 710 ILCS 35/9. All parties consent to having Mr. Leech serve as mediator and waive any actual or potential conflicts of interest.
4. *Mediator Is Not Attorney For Any Party or Participant.* The mediator has no attorney-client relationship with any party or participant, and has no obligations except hereunder. The mediator will not provide legal advice to any party. The mediator will not ensure that the progress of negotiations or terms of any settlement are to the benefit of any party. These matters are the sole responsibility of the attorney for the party. The mediators discussion of legal matters, negotiation progress and settlement terms is strictly for purposes of assisting the parties to arrive at a settlement.
5. *Mediator Not Liable For Others' Acts or Omissions.* The mediator shall not be liable for any act or omission of any party or participant in connection with the mediation
6. *Definitions.* "Mediation" means the process by which the mediator facilitates communication and negotiation between the parties to assist them in reaching a voluntary agreement regarding their dispute. A "mediation communication" includes any statement, whether oral or in a record or verbal or nonverbal, that occurs during a mediation or is made for purposes of considering, conducting, participating in, initiating, continuing, or reconvening a mediation or retaining the mediator. Writings prepared for use during the mediation shall be treated as mediation communications.
7. *Mediation Privilege.* Except as otherwise provided below or in the IUMA, (a) mediation communications are within the mediation privilege created by the IUMA and the federal common law mediation privilege; (b) mediation communications are a part of settlement discussions, under Federal Rule of Evidence 408(a) or

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applicable State law of evidence; and (c) disclosure of any mediation communication shall not be compelled in any proceeding in which testimony may be compelled by legal process. Facts, information, records and documents relating to the underlying dispute disclosed in the mediation are not rendered privileged, inadmissible or protected from disclosure solely by reason of having been disclosed in a mediation communication. See 710 ILCS 35/4(c).

8. *Special Confidences of Mediator.* Pursuant to 710 ILCS 35/8, parties and participants may make mediation communications to the mediator in special confidence, not to be communicated by the mediator to any other designated party or participant, and the mediator shall have no duty to disclose same. The privileged character of information provided to the mediator in special confidence is not lost by such disclosure.
9. *Confidentiality Generally.* Pursuant to 710 ILCS 35/8, each party and participant agrees (a) to keep mediation communications confidential, disclosing same only to family members or, in a corporate setting, to appropriate persons in the chain of command; (b) to guarantee confidentiality will be observed by those to whom such disclosure is made; (c) not to disclose mediation communications to any other third party and (d) not to use any mediation communication except to seek resolution of the dispute.
10. *Exceptions.* Exceptions to confidentiality under 710 ILCS 35/5, 35/6 and 35/7 will also apply to additional confidentiality provisions pursuant to 710 ILCS 35/8. Under the Illinois Supreme Court Rules of Professional Conduct, as construed by the ARDC, Mr. Leech will be required to report misconduct coming within the reach of *In Re Himmel*, and will do so.
11. *No Compelled Disclosure By Mediator.* The mediator shall not be compelled to disclose or to testify in any proceeding as to (i) any records, reports, or other documents received or prepared by the mediator or (ii) mediation communications, including communications in special confidence, as provided for above.
12. *Mediator Indemnification.* If the mediator is made a party to any dispute arising from this mediation, the parties agree jointly and severally to defend and hold the mediator harmless from any liability and for his reasonable attorneys' fees and litigation costs, and to advance such fees and costs subject to a written undertaking by the mediator for repayment thereof if he or it is held liable for intentional wrongdoing or malpractice. Any party or participant in the mediation that breaches this agreement or the IUMA shall indemnify all fees and costs incurred by the mediator as a result of such breach, or repay the party or parties advancing such fees and costs to the mediator. If a claim is asserted against the mediator and the mediator prevails, the mediator will be entitled to recover

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reasonable attorneys' fees and litigation expenses, including expert fees, from the person asserting the claim.

- 13. *Injunctive Relief.* All signatories agree that breach of this agreement would cause irreparable injury for which monetary damages would be an inadequate remedy. Any signatory to this agreement may obtain an injunction in a court proceeding to prevent a violation of this agreement.
- 14. *Other Agreements Superseded.* All agreements among the parties, participants and mediator concerning this subject of this mediation are contained herein. All representations, statements, understandings and agreements made prior to the execution of this agreement concerning the subject matter of this agreement, except those contained in the Attorneys' Agreement to Mediate, are superseded. No provision of this agreement shall be modified, varied, added or removed except by an agreement in writing.

Dated <MONTH> ,<DAY>, <YEAR>, and signed at or before the start of the mediation's joint session.

Mediator

Michael J. Leech

Michael J. Leech

Parties & Participants

<PARTY ONE>

<PARTY TWO>

By <PARTY ONE OR REPRESENTATIVE> by <PARTY TWO OR REPRESENTATIVE>

<PARTY ONE LAWYER>

<PARTY TWO LAWYER>

<ADDITIONAL ATTENDEE>

<ADDITIONAL ATTENDEE>