

## AGREEMENT FOR NON-BINDING MEDIATION

This Agreement for Non-Binding Mediation (the “Agreement”) is entered into on the date set forth below between Technology Dispute Resolution Services (the “TDRS”), and the parties listed on the signature page below (the “Parties”).

1. Agreement to Mediate. The Parties hereby agree to participate in a non-binding mediation of all matters in dispute between them (the “Dispute”) with TDRS acting as the mediator. The Parties agree that TDRS is not acting as an attorney or providing legal advice on behalf of any Party. The mediation will be conducted at the offices of TDRS, unless otherwise agreed by all Parties.

2. Disclosure of Past or Present Relationships. TDRS, each Party, and counsel for the Parties confirm that they have disclosed any past or present relationship or other information that a reasonable person would believe could influence TDRS’ impartiality and that no conflict of interest or appearance of a conflict of interest exists.

3. Mediation Statements. The Parties are encouraged, but not required, to provide written mediation statements to TDRS in advance of the mediation date. Any such submissions will be treated as strictly confidential by TDRS and will not be shared with any other Party unless the submitting Party consents to disclosure to another Party. Submissions should be addressed to TDRS in letter format and submitted by e-mail to TDRS at least five (5) business days before the agreed mediation date. Submissions should summarize the Party’s position on the disputed issues, the legal and factual basis for the Party’s position, the amount and basis of any claim for damages, the history of any settlement discussions, and any other matters the Party believes to be useful for resolution of the Dispute. Submissions may also include other attachments that a Party believes would be helpful, such as copies of relevant contract provisions, correspondence and other key documents related to the matters in dispute.

4. Privacy and Attendance at the Mediation. The Parties acknowledge and agree that the mediation is private. The only persons who will be permitted to attend the mediation are: (i) the Parties, (ii) the Parties’ legal counsel, (iii) third party technology consultants working with the Parties in connection with the Dispute; (iv) representatives of the Parties’ respective insurance carriers where notice of a claim related to the Dispute has been given by a Party, and (v) the TDRS mediator. If a Party is an individual, such individual will attend the mediation in person. If a Party is an organization, such Party shall send one or more representatives employed by the organization to attend the mediation with full authority to settle the Dispute. No other persons may attend the mediation without the consent of TDRS and all Parties. No court reporters will be present, and no record will be made of the proceedings. No subpoena or other service of process will be permitted at the mediation. The mediation will seek a voluntary resolution of the Dispute, and no rulings will be made on the merits of the matters in Dispute.

5. Duration of the Mediation. The mediation will be conducted on a single day to be agreed upon by the Parties commencing at 9:00 a.m. and continuing until a resolution is reached, an impasse is declared by TDRS, or the mediation is terminated by a Party. Lunch will be provided so that the Parties can continue to work towards resolution through the lunch hour. A Party may

terminate its participation in the mediation at any time after the mediation has begun by giving notice of termination to TDRS and the other Parties. Termination of the mediation prior to a resolution (whether by a Party or a declared impasse) will not result in a refund of any portion of the mediation fee. If one Party terminates its participation in the mediation, and other Parties wish to proceed in the absence of the terminating Party, the mediation may continue without the further participation of the terminating Party.

6. Conduct of the Mediation. TDRS generally convenes the mediation with a general session attended by all Parties at which counsel for the Parties will provide a summary of their clients' position, and TDRS can ask general questions. Following the general session, the Parties will be given separate conference rooms and TDRS will meet separately with the Parties to facilitate discussions for a resolution. TDRS may alter that general approach if, following consultation with the Parties and their counsel, a different approach appears to TDRS to be more conducive to facilitating discussions for a resolution of the Dispute.

7. Confidentiality. In order to promote communication among the parties, counsel and the mediator and to facilitate settlement of the dispute, the Parties and their counsel agree that the entire mediation process is confidential. All statements made during the course of the mediation are privileged settlement discussions, and are made without prejudice to any party's legal position, and are inadmissible for any purpose in any legal proceeding. These offers, promises, conduct and statements (a) will not be disclosed to third parties except persons associated with the participants in the process, and (b) are privileged and inadmissible for any purposes, including impeachment, under Rule 408 of the Federal Rules of Evidence and any applicable federal or state statute, rule or common law provisions. During the mediation session, TDRS may conduct separate meetings with the Parties and their counsel. During any separate meetings, if a Party informs TDRS that information is being conveyed to TDRS in confidence, TDRS will not disclose the information to any other Party. If a Party does not state that information is being conveyed to TDRS in confidence, then TDRS may share that information with other Parties to the mediation during the course of the mediation.

8. Records. The only records that will be kept by TDRS of the mediation are the signed mediation agreement, payment records and any settlement agreement that is reached by the Parties. TDRS will keep no records of the mediation discussions or negotiations, and any such records made during the course of the mediation will be destroyed by TDRS upon the conclusion of the mediation.

9. Mediation Fees. The Mediation Fees as provided in the attached Mediation Fee Schedule are due and payable to TDRS by the Parties upon the booking of a mediation date with TDRS. If the mediation fees have not been paid by all Parties at least two (2) weeks prior to the agreed mediation date, TDRS reserves the right to postpone the mediation and give the agreed upon mediation date to another client. All of the terms and conditions of the Mediation Fee Schedule are incorporated into this Agreement by reference.

10. No Use of Mediation in Any Legal Proceedings. The Parties agree that they will make no attempt to compel the testimony of any TDRS representative, nor to compel any TDRS representative to produce any document provided by the other party to TDRS. The Parties agree

to defend TDRS from any subpoenas from outside parties arising out of this Agreement or the mediation. The Parties agree that TDRS is not a necessary party in any arbitral or judicial proceeding relating to the mediation or to the subject matter of the mediation.

11. Limit of Liability. TDRS and its representatives shall not be liable to any Party for any act or omission in connection with the mediation conducted under this Agreement.

AGREED TO BY:

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Technology Dispute Resolution Services

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Name of Party Representing

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