

## SILICON VALLEY MEDIATION GROUP AGREEMENT TO MEDIATE

This Agreement to Mediate (“Agreement”) is made by and between the undersigned parties as to each other and the neutral mediator, a member of the Silicon Valley Mediation Group, whose signature is also set forth below.

### 1. Scope of Mediation

The parties agree that they would like to fully resolve this dispute through mediation. Accordingly, all issues relating to the dispute will be covered by the mediation unless the parties stipulate in writing to those issues, which will not be subject to the process.

### 2. Rights and Obligations of the Parties

a) The parties understand and agree that mediation is a voluntary process and that any party may end its participation in the mediation at any time. Nevertheless, they also agree to proceed in good faith to enhance prospects for a successful process.

b) The parties understand and agree that the Mediator is a neutral intermediary and settlement facilitator and may not act as an advocate for any party. The Mediator’s statements do not constitute legal advice to any party. Accordingly, the parties are strongly encouraged to seek legal advice from their own counsel. If the mediator assists in documenting a settlement agreement reached during the course of the mediation, he or she is only serving as scrivener and each participant is advised to have the agreement independently reviewed by his or her own counsel before executing a binding agreement. The mediator cannot i) act as a legal advisor or legal representative for any party; ii) assert, analyze or protect any legal right or obligation; iii) unless specifically requested by a party or parties make an independent expert analysis of the case or raise issues not raised by the parties; iv) provide financial or tax advice regarding any aspect of the facts or settlement; and v) guarantee that the mediation session will result in resolution of the dispute.

c) In most cases parties will be represented by counsel and are encouraged to consult with their attorneys before, during and after the mediation regarding their legal rights and obligations. If for any reason a

party is not represented by counsel, the party acknowledges that it understands that it has the right to obtain counsel. Whether or not represented, parties are encouraged to participate directly in the mediation.

d) The parties agree to mediate in good faith and endeavor to enhance the prospects for resolution of the conflict. They further agree to participate in all mediation sessions through representatives with authority to settle the matter, meaning the party present or its representative will have full authority to resolve the matter at the mediation, and in cases involving insured parties, that representatives with full settlement authority up to the policy limits will be present.

### 3. Fees

a) Fees will be charged for time spent in preparation, telephone calls and other communications, participation in the mediation and follow-up, when necessary. The parties agree that, unless otherwise agreed to in writing, all fees for the mediation will be shared equally by them. There will be a four-hour minimum charge for mediation, which is due upon signing this Agreement. Additional fees due prior to commencement of the first session shall be estimated and if the session exceeds the estimate an invoice shall be prepared and is due upon receipt. A service charge of one and one half (1.5 %) percent per month will be charged on all past due amounts. The parties agree to pay attorney and mediator fees and expenses incurred by the Silicon Valley Mediation Group and the Mediator in securing payment for services and costs incurred in the dispute resolution process and for any additional attorney and mediator fees and court costs required to secure reimbursement of those fees and expenses.

b) The parties agree to jointly and severally hold the Silicon Valley Mediation Group and the Mediator, who is an independent contractor and not an employee, harmless for any and all damages and claims arising out of, or in connection with the services provided, including third party claims. Any dispute between the Silicon Valley Mediation Group or the Mediator and a party to this Agreement, in which the amount in controversy exceeds \$5000, shall be first referred to mediation and, if not settled in mediation shall be finally determined by binding arbitration under the Commercial Rule but not necessary auspices of the American Arbitration Association with venue in Los Altos, California.

#### 4. Disclosure

The provisions of the Confidentiality Agreement signed by the parties shall not restrict disclosure of any agreement reached during the mediation and signed by all parties to the agreement. This "Agreement to Mediate" is likewise excepted from the terms of the Confidentiality Agreement.

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Mediator	Signature	Date
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Party	Signature	Date
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Counsel/Representative	Signature	Date
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Party	Signature	Date
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Counsel/Representative	Signature	Date
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