

CAMS

Comprehensive Arbitration & Mediation Services

MEDIATION AND COMPENSATION STIPULATION AND AGREEMENT

IT IS HEREBY STIPULATED AND AGREED AMONG

THE PARTIES:

THE PARTIES' REPRESENTATIVES:

THE MEDIATOR:

as follows:

1. The parties shall participate in a private, non-binding mediation, whereby a neutral and impartial person shall assist them in attempting to reach a mutually acceptable negotiated resolution of the dispute between and among them (the "Mediation"). The parties and their respective attorneys have designated and engaged the above-named Mediator to provide mediation services to them hereinafter described. The Mediation shall be conducted at a location in New York City or on Long Island as shall be agreed upon among the parties. The Mediation shall be held on _____, 2018 or on such other date and at such time as to which the parties may hereafter agree. The parties agree that fees of the Mediator for study and travel time and attendance at the Mediation, all of

which shall be billed at the rate of \$_____ per hour, and any other out-of-pocket costs of, or related to, the Mediation are to be borne equally between or among the parties unless hereafter agreed otherwise by them; provided, however, that the parties also agree that they shall be jointly and severally responsible for the payment of such fees and costs.

2. The Mediator may meet in private conference with less than all of the parties.

3. Information obtained by the Mediator, either in written or oral form, shall be confidential and shall not be revealed by the Mediator unless and until the party who provided that information agrees to its disclosure.

4. The Mediator shall not, without the prior written consent of the parties, disclose to the Court any matters which are disclosed to the Mediator by any of the parties or any matters which otherwise relate to the Mediation.

5. The mediation process shall be considered a settlement negotiation for the purpose of all federal and state rules protecting disclosures made during such negotiations from later discovery or use in evidence. The entire procedure shall be confidential, and no stenographic or other record shall be made. All conduct, statements, promises, offers, views and opinions, oral or written, made during the Mediation by any party or a party's agent, employee or attorney are confidential and, where appropriate, are to be considered work product and privileged. Such conduct, statements, promises, offers, views and opinions shall not be subject to discovery or admissible for any purpose, including impeachment, in any litigation or other proceeding involving the parties; provided, however, that evidence otherwise subject to discovery or admissible is not excluded from

discovery or admission in evidence simply as a result of it having been used in connection with the mediation process.

6. The parties intend and further agree that the Mediator and the Mediator's agents shall have the same immunity as judges and court employees have under federal, state and common law from liability for any act or omission in connection with the Mediation, and from compulsory process to testify or produce documents in connection with the Mediation.

7. The parties (i) shall not call or subpoena the Mediator as a witness or expert in any proceeding relating to the Mediation, the subject matter of the Mediation, or any thoughts or impressions which the Mediator may have about the parties to the Mediation, (ii) shall not subpoena any notes, documents or other materials prepared by the Mediator in the course of or in connection with the Mediation, and (iii) shall not offer in evidence any statements, views or opinions of the Mediator.

8. Notwithstanding anything to the contrary in paragraph 7 above, at the joint request of the parties, the Mediator shall appear as a witness or expert in a fairness hearing held in the above-captioned action, solely to testify as to the fairness of the Mediation and the resolution negotiated by the parties. Any expenses incurred by the Mediator in making such appearance shall be borne by the parties in the same manner as payment of the Mediator's compensation is set forth above in Paragraph 1. If the Mediator is requested or required to appear, the Mediator shall be compensated for his travel and appearance time; provided, however, that if the Mediator is required to appear beyond the geographic area of the five boroughs of New York City or the Counties of Westchester, Nassau or Suffolk, the Mediator's time charges will be capped at eight (8) hours per day. The parties agree to hold

the Mediator harmless from any liability of any kind or nature arising from any testimony given by the Mediator pursuant to the request of the parties under this paragraph.

9. This Stipulation may be signed in counterparts all of which, together, shall be deemed to constitute one and the same instrument. In addition, this Stipulation may be executed and delivered via electronic transmission, and a fax or e-mail copy of a signature shall be deemed to be the same as an original.

Dated: _____, 2018

_____, Party

_____, Party

_____, Representative

_____, Representative

_____, Mediator