**SAMPLE EDR AGREEMENT**

[ ] and [ ] enter into this agreement as of [ ] (“Start Date”) to govern the early dispute resolution (“EDR”) process to try to resolve their dispute voluntarily without litigation.

1. **Alternative Dispute Resolution**. The parties agree that this EDR process is a form of alternative dispute resolution with the meaning of Tex. Civ. Prac. & Rem. Code § 154.001 et seq.
2. **Voluntariness**. This is a voluntary process. Either party may terminate the process by giving the other party notice in writing that it is terminating the process (the “Termination Notice”). The termination shall be effective ten days following service of the Termination Notice.
3. **Tolling & Standstill**. As of Start Date, each party’s claims against the other are tolled until ten days after either party gives the other party a Termination Notice or the EDR process is otherwise completed. Before expiration of this ten-day period, neither party may initiate a lawsuit or arbitration against the other. If a lawsuit or arbitration was commenced prior to the Start Date, the parties agree to standstill and take no further action other than to file pleadings as necessary to meet deadlines imposed by the court, common law, statute or the applicable Rules of Civil Procedure. Nothing in this Agreement shall waive, affect or impair any defense or claim that is, was, may be or may have been available to any party hereto as of the Start Date and this Agreement shall not be deemed to revive any claim or defense that is or was already barred on the Start Date
4. **Neutral**. The parties select **[NAME OF NEUTRAL]** to serve as the neutral during the EDR process. The neutral shall act as an advocate for resolution and shall assist the parties in attempting to reach a mutually acceptable resolution. The neutral does not have the authority to decide any issue for the parties, but may attempt to facilitate the voluntary resolution of the dispute by the parties. The neutral is authorized to conduct joint and separate meetings with the parties and to offer suggestions to assist the parties in achieving a resolution. The parties understand that the neutral does not warrant or guaranty that a resolution satisfactory to all parties will be reached. If necessary, the neutral may also obtain expert advice concerning technical aspects of the dispute, provided that the parties agree and assume the expenses of obtaining such advice. Arrangements for obtaining such advice shall be made by the neutral or the parties, as the neutral shall determine.
5. **Neutral’s Fees.** The neutral’s fee shall be $\_\_\_\_\_\_\_ per hour and, unless otherwise agreed to with the neutral, shall be paid via a retainer of $\_\_\_\_\_\_ to be shared equally by the parties. For purposes of the fee, each party represented by an attorney is considered one party for the fee.
6. **Protocols**. In carrying out EDR, the parties agree to adopt the then-current Early Dispute Resolution Practice Protocols of the Early Dispute Resolution Institute (www.EDRinstitute.org).
7. **Schedule**. Within [ ] days following selection of the EDR neutral, the parties shall begin the EDR process, and shall in good faith seek to comply with the following schedule (all days are business days):

* Initial dispute assessment – 6 days
* Information exchange – 7 days
* Objective dispute valuation – 3 days
* Final resolution– 6 days

1. **Discovery guidelines**. The stage of document and information exchange shall be governed by the following rules:
   1. Either party may request from the other party documents or information through written requests for documents, written answers to questions, interviews, or depositions.
   2. Each party should limit its document and information request solely that information needed to obtain sufficient knowledge to understand the merits of each party’s position and leverage, and to make an informed judgment as to the value of each party’s case. (“Sufficient Knowledge”)
   3. If either party thinks the other party’s requests exceed the goal of Sufficient Knowledge, the parties shall discuss in good faith whether the requesting party would limit its requests.
   4. In responding to requests for documents and information, each party shall conduct a reasonably-diligent, good-faith search, and shall produce the reasonably responsive documents and information (a “Compliant Response”). In producing the documents and information, counsel for each party shall represent in writing to the other party that it has made a Compliant Response. If the parties should enter into a settlement agreement as part of this process, both parties shall represent that they made a Compliant Response, and that that representation is a material inducement to settlement.
   5. If either party chooses not to make a Compliant Response, it shall terminate the process pursuant to a Termination Notice before the other party produces any documents or information.
2. **Party consent.** By consenting to this process, each party consents to its counsel’s abiding by the steps in this process, including making a Compliant Response to document and information requests from the other party, and verifying that it has made a Compliant Response.
3. **Confidentiality**. To facilitate the free flow of information throughout the EDR process, the parties agree to abide by Tex. Civ. Prac. & Rem. Code § 154.073 which relates to the confidentiality of records and communications obtained or used during alternative dispute resolution procedures. Unless the parties agree otherwise in writing, all records and information exchanged during the EDR process, including any interviews or recorded statements taken as part of the EDR process, shall remain confidential and not be used as evidence in any judicial or administrative proceeding. However, nothing herein should be seen as preventing or limiting any party from seeking to discover records and communications related to a dispute that are independently discoverable in a judicial or administrative process.
4. **No Stenographic Record.** There shall be no stenographic record of the EDR process, and no person shall making any audio or video recordings of any portion of the EDR process.

*[Signatures of each party and each party’s counsel]*