

SMARTSETTLE™ AGREEMENT TO MEDIATE / FACILITATE
(hereinafter referred to as the “Agreement”)

Case Name:

Place:

Facilitator(s)/Mediator(s):

(hereinafter referred to as the “*Facilitator*”)

Party A:

Party B:

Other Parties: See attached Schedule, if required.

(hereinafter Party A and Party B and any Other Parties are together referred to as the “*Participants*”, and each a “*Participant*”)

WHEREAS:

- A. The Facilitator is licensed to use the Smartsettle™ negotiation system (hereinafter referred to as the “*System*”), which System is described at www.smartsettle.com;
- B. The participants are familiar with the System and desire to engage the Facilitator in a negotiation process compatible with the use of the System so that the Participants may seek some form of mutually agreeable result;

NOW THEREFORE in consideration of the mutual premises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the parties agree as follows:

- 1. All information disclosed to the Facilitator or used by the System during the course of the Facilitation, other than information generally publicly disclosed, (“*Confidential Information*”) shall be treated as confidential by all parties and shall be used solely to facilitate the System in accordance with this Agreement, and all documents containing or disclosing such Confidential Information shall at all times be and remain the property of the party making the disclosure.
- 2. No Confidential Information shall be disclosed to anyone not a Participant or Facilitator under this Agreement without the prior written consent of the disclosing party.
- 3. Nothing contained in this Agreement shall prevent the disclosure of Confidential Information by mutual agreement of the parties or by the Facilitator to its professional advisors or inadvertently to technicians employed for the purpose of maintaining the System, provided such technicians have first been properly instructed to maintain such Confidential Information in confidence. Furthermore, nothing contained in this Agreement shall prevent the disclosure of Confidential Information to any lawful court or quasi-judicial body duly authorized and empowered to compel disclosure, and pursuant to the lawful exercise of such power, provided

the disclosing party shall first notify the other parties and give them an opportunity to contest the requirement for disclosure.

4. Nothing in this Agreement shall prevent a Participant from disclosing Confidential Information, limited to the extent reasonably necessary to enforce any agreement reached as a result of participating in the negotiations, or from disclosing Confidential Information that is otherwise publicly available through no breach of this Agreement.
5. iCan Systems Inc. shall be responsible to ensure that Confidential Information submitted to the System is contained in a secure online environment. A secure online environment means that every reasonable precaution is taken to provide the best commercially available protection for Confidential Information, and other information, to prevent unauthorized or inadvertent access, transmission, loss or destruction. This may include such things as password protection, encryption, backing up of data and use of special commercial or proprietary software. iCan Systems Inc. will be the sole judge of what constitutes the “best commercially available protection”. So long as iCan Systems Inc. provides such protection, no party shall seek to hold any of iCan Systems Inc., the System and the Facilitator liable for any disclosure of, or any real or potential harm flowing from, the disclosure of Confidential Information, whatever the cause, including as the result of malicious or other attacks, faults, failures or compromises.
6. No party will assert that actions taken or statements made pursuant to this Agreement or in the negotiation are the basis for the waiver of legal privilege. Unless otherwise identified, Confidential Information disclosed by one Participant to another Participant or to the Facilitator is disclosed on a “Without Prejudice” basis and the Participants agree that information so disclosed shall not be admissible by the Participant receiving such information in any legal or other proceeding connected with the subject matter of the negotiation process, or otherwise, nor shall such Participant seek to admit it, except by the mutual agreement of all parties to this Agreement.
7. No Participant shall compel or seek to compel the Facilitator to be a witness, consultant or expert in any pending or future investigation, action or proceeding relating to the subject matter of the negotiation. No Participant shall seek discovery of or testimony of the Facilitator, nor will they seek Confidential Information that is or may be in the possession of the Facilitator. In the event of the Facilitator being so compelled, the Participants agree that this Agreement may be tendered as evidence to support the Facilitator’s application to avoid appearing or disclosing any Confidential Information. All costs, expenses, fees incurred by the Facilitator in relation to such proceedings will be the responsibility of the Participant who compelled or sought to compel the Facilitator.
8. No Participant will seek to discover or obtain Confidential Information from another Participant in any legal proceeding. All Participants will oppose any effort to disclose or to compel disclosure of Confidential Information and any party subject to such effort shall promptly notify the other parties.
9. Participants hereby authorize the Facilitator to enter Confidential Information into computer storage media associated with the System and acknowledge that they have verified that sufficient security exists within the System for adequate protection of said Confidential Information. After the completion of the negotiation process, the Facilitator will, at the written request and expense of the Participants, destroy all or any Confidential Information in the

Facilitator's possession or control, whether in hard copy form or resident in any computer storage media, including hard drives, removable discs, tape drives and compact discs.

10. Participants acknowledge that use of the Facilitator and the System is voluntary and based on the good faith of all Participants, with a view to reaching a mutually acceptable result. Any of the Participants or the Facilitator may terminate these proceedings at any time, if it appears that further sessions are unlikely to resolve the conflict within a reasonable amount of time and the Facilitator may terminate these proceedings at any time as determined appropriate in the Facilitator's sole discretion.
11. Participants acknowledge that, unless specified otherwise in a final signed agreement, all discussion between them and any understanding or agreement that is reached is 'without prejudice' as to the rights of either party to use other proceedings to resolve their disputes.
12. The Participants acknowledge that, due to the inherent complexity of computer programs and mathematical models, the System may not be completely free of errors and may be the subject of malicious or other attacks, faults, failures or compromises. The Participants agree not to base any decisions solely on results that may be generated by the System or suggestions of the Facilitator without independent verification.
13. The Participants hereby declare that none of them, jointly or severally, will hold the Facilitator, Smartsettle™ or iCan Systems Inc. responsible for any act or omission in connection with the Facilitation and hereby release, indemnify and save harmless, the Facilitator, Smartsettle™ and iCan Systems Inc., their employees, successors and assigns, from any present or future claims, howsoever arising, from the Facilitation.
14. Participants understand that they should seek independent legal and/or financial advice prior to making any agreement. Any agreement reached during this process and signed by a Participant shall be considered an offer binding upon acceptance by another Participant, or Participants, as its terms specify and it shall be a term of such offers or agreements that the parties may sign in counterparts, or indicate acceptance by fax or email or other electronic means, and that such counterparts or acceptances taken together shall constitute one and the same instrument.
15. From time to time, the System may provide Participants with a potential outcome, in writing. Unless it specifies otherwise, such outcome shall be deemed to be a binding agreement between two or more Participants that accept it, whether or not they were aware of any other Participant's prior acceptance.
16. If any provision of this agreement or the application thereof to any person or circumstance shall, to any extent, be declared invalid or unenforceable, the remainder of this agreement, or the application of the provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected by this declaration. Each provision of this agreement shall be valid and enforceable to the fullest extent permitted by law and shall be independent of every other provision of this agreement.
17. This agreement may not be varied or assigned by the Participants except with the prior written agreement of the Facilitator and iCan Systems Inc. Without restricting the generality of the foregoing, this agreement shall survive any termination of the negotiation process.
18. The Participants agree to the following payment arrangement:

19. This Agreement may be executed in any number of counterparts, which may be delivered by fax, with the same effect as if all parties hereto had signed the same document.

By signing this document, the Facilitator and Participants acknowledge that they have read the contents of this Agreement, understand its terms and are willing to adhere to it effective as of this ___ day of _____, 200__.

SIGNED, SEALED AND DELIVERED)
 by Party A in the presence of:)
) *(If a company, print name of Company above signature)*
)
)
 _____)
 Witness signature)
)
 _____)
 Print Name of Witness) **By:** _____
) *(Signature of Party A)*
) **Authorized Signatory**
 _____)
 Address of Witness)
)
) *(Print Name of person signing as Party A)*
)
 _____)
 Occupation of Witness) *(If Party A is a company, print title of signatory)*
)

SIGNED, SEALED AND DELIVERED)
 by Party B in the presence of:)
) *(If a company, print name of Company above signature)*
)
)
 _____)
 Witness signature)
)
 _____)
 Print Name of Witness) **By:** _____
) *(Signature of Party B)*
) **Authorized Signatory**
 _____)
 Address of Witness)
)
) *(Print Name of person signing as Party B)*
)
 _____)
 Occupation of Witness) *(If Party B is a company, print title of signatory)*
)

_____)
)
 _____)
 Witness Signature) *(Signature of Lead Facilitator)*
)
 _____)
 Witness Signature) *(Signature of other Facilitator)*
)

(Any adult may witness. Witnesses are not required for companies.)