

**THIS AGREEMENT** is dated on the date set out in **ITEM 4** of **SCHEDULE 1**

## **PARTIES**

**THE PARTY LISTED IN ITEM 1 OF SCHEDULE 1 (Processor)**

**THE PARTY LISTED IN ITEM 2 OF SCHEDULE 1 (Farmer)**

## **RECITALS**

- A. The Farmer operates a dairy farm and supplies milk to processors of dairy products.
- B. The Processor is a processor of dairy products and is based in South Australia.
- C. The Processor wishes to engage the Farmer for the supply of milk (**Milk**), and the Farmer agrees to supply the Milk to the Processor, in accordance with this Agreement.

## **IT IS AGREED**

### **1 TERM**

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This Agreement will commence and conclude the dates set out in Item 5 of Schedule 1, unless terminated earlier under clause 7 of this Agreement (**Term**).

### **2 OBLIGATIONS AND ACKNOWLEDGEMENTS**

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#### **2.1 Farmer Obligations**

The Farmer will, during the Term:

- (a) supply to the Processor the:
  - (i) quantity of Milk detailed in Item 6 of Schedule 1 (**Quantity Requirements**);
  - (ii) quality of Milk detailed in Item 1 of Schedule 2 (**Quality Requirements**); and
  - (iii) Milk at the times, on the days and at the location detailed in Item 9 of Schedule 1 (**Collection Procedure**).
- (b) promptly communicate with and notify the Processor where the Farmer is (or is of the opinion it may be) unable to meet the Quantity Requirements or Quality Requirements;
- (c) where the Farmer does not meet the Quality Requirements (**Quality Non-Compliance**), bear the cost of any consequences detailed in Item 4 of Schedule 2, including where the Processor rejects the Milk under that Item 4 (**Rejection Event**); and
- (d) undertake the necessary actions to remedy the Quality Non-Compliance at the time and in the manner detailed in Item 4 of Schedule 2.

#### **2.2 Processor Obligations**

The Processor will, during the Term:

- (a) as payment for the supply of the Milk, pay to the Farmer the amounts detailed in Item 7 of Schedule 1, at the time and in the manner detailed in Item 8 of Schedule 1 (**Supply Fee**);
- (b) collect the Milk from the Farmer, at the Processor's cost, in accordance with the Collection Procedure (detailed in Item 9 of Schedule 1);
- (c) undertake the sampling procedures and volume accuracy assurances in relation to the Milk, as detailed in Schedule 2 (**Processor Testing**);

- (d) as soon as reasonably practicable after the Processor Testing, provide written notice of the results of the Processor Testing to the Farmer, with reference to the quality and quantity of Milk, in accordance with Item 2.2 of Schedule 2 (**Processor Testing Results**);
- (e) undertake the actions detailed in Item 4 of Schedule 2 in the event of Quality Non-Compliance;
- (f) as soon as reasonably practicable after the occurrence of a Rejection Event (under in Item 4 of Schedule 2) notify the Farmer in writing of the rejection of the Milk, including the reasons for the rejection and consequences of the rejection;
- (g) provide to the Farmer written statements regarding the Milk within 16 calendar days of the conclusion of each calendar month specifying the:
  - (i) quantity and quality of the Milk purchased from the Farmer in the preceding calendar month;
  - (ii) Supply Fee paid for the Milk and the dates of those purchases; and
  - (iii) a summary of the calculation of the Supply Fee, (**Written Statement**); and
- (h) assist the Farmer to remedy the Quality Non-Compliance (where applicable).

### 2.3 Farmer and Processor Acknowledgment

The parties understand that:

- (a) there are no “price step downs” at any stage during the Term;
- (b) no loyalty payments are applicable to this Agreement; and
- (c) there are no services the Processor may or must perform for the Farmer in relation to the Milk under this Agreement, and there will be no fees payable by the Farmer to the Processor for any such services.

## 3 TITLE

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Title in the Milk passes from the Farmer to the Processor as soon as the Processor collects the Milk from the Farmer through the Collection Procedure (**Collection**). At all times prior to the Collection, the Farmer is responsible for the Milk.

## 4 RIGHTS OF EXTENSION

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- 4.1 If the Term is greater than 3 years, the Farmer has one right to extend the Term by a 12-month period provided that the Farmer gives to the Processor written notice of their desire to extend the Term:
  - (a) no earlier than 30 calendar days before; and
  - (b) no later than 7 calendar days before,
 the conclusion of the Term.
- 4.2 If the Term is 3 years or less, the Farmer has no rights of renewal unless otherwise notified in writing by the Processor.

## 5 EXCLUSIVITY AND MAXIMUM SUPPLY

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- 5.1 To the extent the supply of Milk by the Farmer to the Processor under this Agreement is an exclusive supply, the parties understand that:
- (a) there shall be no maximum supply of Milk from the Farmer to the Processor under this Agreement; and
  - (b) the minimum price payable for a specified amount of Milk supplied by the Farmer to the Processor, must not be greater than the minimum price payable for Milk that is supplied in excess of that amount.
- 5.2 The parties understand that under no circumstances will there be a penalty or lower rate paid for Milk under a non-exclusive supply of Milk, compared with an exclusive supply of Milk.
- 5.3 The parties will indicate whether this Agreement is for the exclusive supply of Milk under Item 10 of Schedule 1.

## 6 CONFIDENTIALITY

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- 6.1 Each party must, at all times during and after the Term, keep the Confidential Information of the other party confidential, unless such disclosure is required by law, in which case the disclosing party must notify the owner of the Confidential Information before such disclosure.
- 6.2 For the purposes of this Agreement, “**Confidential Information**” means:
- (a) know-how, trade secrets, ideas, concepts, technical and operational information confidential to, or used by either party;
  - (b) information concerning the affairs or property of either party or any business, property or transaction in which either party may be or may have been concerned or interested;
  - (c) information about the existence, terms and effect of this Agreement; and
  - (d) information which, by its nature or by the circumstances of its disclosure, is or could reasonably be expected to be regarded as confidential to:
    - (i) either party; or
    - (ii) any third party with whose consent or approval either party uses that information,

but specifically excluding all information that is in the public domain, other than by breach of this Agreement or any other duty of confidence.

## 7 TERMINATION

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- 7.1 Either party may terminate this Agreement immediately by written notice to the other party, if the other party:
- (a) breaches any material term of this Agreement (that is capable of remedy) and does not remedy such breach within 30 calendar days of being notified in writing of the breach; or
  - (b) has committed a material breach of a term of this Agreement (that is not capable of remedy).
- 7.2 Any written notice for the termination of this Agreement, must include the:
- (a) reasons for the termination; and
  - (b) date the termination comes into effect.

## **8 COOLING OFF RIGHTS**

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The Farmer may terminate this Agreement, on or before the end of the 14<sup>th</sup> calendar day after the date that this Agreement was signed, by giving written notice to the Processor.

## **9 DAIRY INDUSTRY CODE OF CONDUCT**

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9.1 This Agreement is prepared in accordance with the *Competition and Consumer (Industry Codes – Dairy) Regulations 2019* (Cth) (**Code**).

9.2 To the extent of any:

- (a) inconsistency between the terms of this Agreement and the Code, the Code shall prevail in all respects; and/or
- (b) ambiguity between a term of this Agreement and the Code, the term should be construed in a way that complies with the Code.

## **10 INDEMNITY**

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10.1 The Farmer indemnifies and holds harmless the Processor against any claim, loss, actions, proceedings, demands, costs and expenses that arise in connection with the breach of any term of this Agreement by the Farmer.

10.2 The Processor indemnifies and holds harmless the Farmer against any claim, loss, actions, proceedings, demands, costs and expenses that arise in connection with the breach of any term of this Agreement by the Processor.

## **11 RECORD KEEPING**

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11.1 The parties will keep a record of:

- (a) this Agreement from the date of this Agreement and for a period of 6 years from the conclusion of the Term;
- (b) any amendments to this Agreement from the date of those amendments and for a period of 6 years from the conclusion of the Term; and
- (c) the notice of termination from the date of that notice and for a period of 6 years from the conclusion of the Term.

11.2 The Processor will (in addition to the records in clause 11.1 of this Agreement) keep a record of:

- (a) any written notices provided by any party under this Agreement from the date of those notices and for a period of 6 years from the conclusion of the Term; and
- (b) all Written Statements from the date of those statements and for a period of 6 years from the conclusion of the Term.

## **12 COMPLAINTS AND DISPUTES**

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In the event of any complaints or disputes in relation to this Agreement, the parties agree to comply with the Complaints and Disputes Procedure set out in Schedule 3 of this Agreement.

**13 GENERAL**

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**13.1 Notices**

- (a) A notice under this Agreement must be in writing and may be given to the addressee by:
  - (i) delivering it to the address of the addressee;
  - (ii) sending it by pre-paid registered post to the address of the addressee; and
  - (iii) sending it by electronic mail to the last notified email address of the addressee,
 and the notice will be deemed to have been received by the addressee on receipt.
- (b) An email is deemed to have been received on the day it is actually received, but if it is not received on a day that is a day (excluding Saturday or Sunday) on which banks are generally open for business in South Australia (**Business Day**) or after 5.00 pm on a Business Day, it is regarded as received at 9.00 am on the following Business Day.

**13.2 Counterparts**

This Agreement may be executed in any number of counterparts. All counterparts together will be taken to constitute one document.

**13.3 Entire Agreement**

This Agreement contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Agreement and has no further effect.

**13.4 Variation**

The Processor may amend this Agreement by notice in writing to the Farmer where such amendment is necessary due to a change in Commonwealth, State or Territory law. This Agreement may only otherwise be amended in writing signed by all the parties and may not be amended in any other manner.

**13.5 Special Conditions**

The special conditions set out in Item 11 of Schedule 1 apply to this Agreement.

**13.6 Governing Law**

This Agreement is governed by the laws of South Australia.

**EXECUTED as an AGREEMENT**

**PROCESSOR SIGNING**

**EXECUTED** by **THE PARTY LISTED IN ITEM 1 OF SCHEDULE 1** by a duly authorised representative:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Signature

Print Name

Print Position

**FARMER SIGNING**

**EXECUTED** by **THE PARTY LISTED IN ITEM 2 OF SCHEDULE 1** by a duly authorised representative:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**SCHEDULE 1**  
**SPECIFIC DETAILS**

ITEM	DETAIL
1. <b>Processor</b>	(a) <b>Name:</b> Fleurieu Milk Company Pty Ltd (ACN 110 369 223) (b) <b>Address:</b> 325 Rowley Road, Myponga SA 5202 (c) <b>Primary Contact Name:</b> Nicholas Hutchinson (d) <b>Primary Contact Phone Number:</b> (08) 8558 6020 (e) <b>Primary Contact Email:</b> nick@fleurieumilkco.com.au
2. <b>Farmer</b>	(a) <b>Name:</b> (b) <b>Address:</b> (c) <b>Primary Contact Name:</b> (d) <b>Primary Contact Phone Number:</b> (e) <b>Primary Contact Email:</b>
3. <b>Complaint Handling Officer</b>	(a) <b>Name:</b> Kristina Filippidis (b) <b>Phone Number:</b> (08) 8558 6020 (c) <b>Email:</b> tina@fleurieumilkco.com.au
4. <b>Signing Date</b>	This Agreement was signed on the ____ day of _____ 202__
5. <b>Term</b>	This Agreement: (a) commences on 01 day of July 2020; and (b) concludes on 30 day of June 2023.
6. <b>Quantity of Milk</b>	The Farmer: (a) will provide to the Processor a consistent supply of Milk throughout each calendar year during the Term, at the request of the Processor; and (b) understands that there must not be more than a 30% variance in the Farmer's highest producing month and lowest producing month, in any one calendar year during the Term.

<p>7. <b>Supply Fee</b></p>	<p>As payment for the supply of Milk, the Processor will pay to the Farmer the following amounts per litre supplied.</p> <p>All prices below exclude GST.</p> <table border="1" data-bbox="368 322 1455 1184"> <thead> <tr> <th></th> <th>2020/21</th> <th>2021/22</th> <th>2022/23</th> </tr> </thead> <tbody> <tr><td>July</td><td>\$0.52</td><td>\$0.53</td><td>\$0.53</td></tr> <tr><td>August</td><td>\$0.52</td><td>\$0.53</td><td>\$0.53</td></tr> <tr><td>September</td><td>\$0.52</td><td>\$0.53</td><td>\$0.53</td></tr> <tr><td>October</td><td>\$0.52</td><td>\$0.53</td><td>\$0.53</td></tr> <tr><td>November</td><td>\$0.52</td><td>\$0.53</td><td>\$0.53</td></tr> <tr><td>December</td><td>\$0.52</td><td>\$0.53</td><td>\$0.53</td></tr> <tr><td>January</td><td>\$0.54</td><td>\$0.58</td><td>\$0.58</td></tr> <tr><td>February</td><td>\$0.61</td><td>\$0.66</td><td>\$0.66</td></tr> <tr><td>March</td><td>\$0.54</td><td>\$0.66</td><td>\$0.66</td></tr> <tr><td>April</td><td>\$0.64</td><td>\$0.66</td><td>\$0.66</td></tr> <tr><td>May</td><td>\$0.56</td><td>\$0.58</td><td>\$0.58</td></tr> <tr><td>June</td><td>\$0.53</td><td>\$0.55</td><td>\$0.55</td></tr> </tbody> </table>		2020/21	2021/22	2022/23	July	\$0.52	\$0.53	\$0.53	August	\$0.52	\$0.53	\$0.53	September	\$0.52	\$0.53	\$0.53	October	\$0.52	\$0.53	\$0.53	November	\$0.52	\$0.53	\$0.53	December	\$0.52	\$0.53	\$0.53	January	\$0.54	\$0.58	\$0.58	February	\$0.61	\$0.66	\$0.66	March	\$0.54	\$0.66	\$0.66	April	\$0.64	\$0.66	\$0.66	May	\$0.56	\$0.58	\$0.58	June	\$0.53	\$0.55	\$0.55
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<p>8. <b>Payment Terms</b></p>	<p>(a) The Processor will pay to the Farmer the Supply Fee (detailed in Item 7 of Schedule 1) within 15 calendar days of the conclusion of each calendar month during the Term (<b>Payment Date</b>).</p> <p>(b) If the Payment Date falls on a:</p> <p>(i) Saturday, the payment will be due on preceding Friday; and</p> <p>(ii) Sunday, the payment will be due on the following Monday.</p> <p>(c) The Processor will pay the Supply Fee to the Farmer's nominated bank account as follows:</p> <p>(i) <b>BSB:</b></p> <p>(ii) <b>Account:</b></p> <p>(iii) <b>Account Name:</b></p>																																																				
<p>9. <b>Collection Procedure</b></p>	<p>The Farmer will supply to the Processor, and the Processor will collect, the Milk on the following days at the following times:</p> <p>(a) <b>Collection Days</b> (tick applicable):</p>																																																				

	<p style="text-align: center;"> <input type="checkbox"/>   <input type="checkbox"/>   <input type="checkbox"/>   <input type="checkbox"/>   <input type="checkbox"/>   <input type="checkbox"/>   <input type="checkbox"/>   <input type="checkbox"/> </p> <p style="text-align: center;"> Mon   Tues   Wed   Thurs   Fri   Sat   Sun   All </p> <p>(b) <b>Collection Times:</b> _____</p> <p>(c) <b>Collection Address:</b></p>
10. <b>Exclusivity</b>	The parties agree that this Agreement is (tick applicable): <p><input type="checkbox"/> <b>for</b> the exclusive supply of Milk by the Farmer to the Processor; or</p> <p><input type="checkbox"/> <b>not for</b> the exclusive supply of Milk by the Farmer to the Processor.</p>
11. <b>Special Conditions</b>	

## SCHEDULE 2

### QUALITY AND TESTING PROCEDURES

#### 1. QUALITY REQUIREMENTS

The Farmer understands that the Milk supplied by the Farmer to the Processor must comply with the following Quality Requirements under the Category labelled "Expectation":

MEASURE	CATEGORY			
	<b>EXPECTATION</b> (no further action necessary) - Premium Quality -	<b>IMPROVEMENT REQUIRED</b> (in accordance with Item 4 of Schedule 2) - Grade B Quality -	<b>REVIEW &amp; RETEST</b> (in accordance with Item 4 of Schedule 2) - Grade C Quality -	<b>REJECTION</b> (subject to Item 4 of Schedule 2) - Unsatisfactory Quality -
<b>ANTIBIOTICS</b>	Not to be detected			If any are detected
<b>TOTAL BACTERIAL COUNT</b>	<80,000 ibc/ml	>80,000 to <150,000 ibc/ml	>150,000 to <200,000 ibc/ml	>200,000 ibc/ml and sensory indicators are below standard
<b>SOMATIC CELL COUNT</b>	<200,000 cells/ml	>200,000 to <300,000 cells/ml	>300,000 to <400,000 cells/ml	>400,000 cells/ml
<b>PSEUDOMONAS</b>	<100 cfu/ml	>100 cfu/ml to <1,000 cfu/ml	>1,000 cfu/ml to <10,000 cfu/ml	>10,000 cfu/ml
<b>FAT</b>	>3.9/100ml	>3.6g/100ml to <3.9g/100ml	>3.4g/100ml to <3.6g/100ml	<3.4g/100ml
<b>PROTEIN</b>	>3.3g/100ml	>3.15g/100ml to <3.3g/100ml	>2.9g/100ml to <3.15g/100ml	<2.9g/100ml

#### 2. PROCESSOR TESTING AND RESULTS

##### 2.1 Processor Testing

The Processor will undertake the Processor Testing:

- (a) at the expense of the Processor;
- (b) as soon as reasonably practicable after Collection (of the Milk);
- (c) to determine whether the quality of the Milk complies with the Quality Requirements detailed in Item 1 of this Schedule 2; and
- (d) in relation to the specific Measure at time of the Testing Frequency, as detailed in Item 3 of this Schedule 2.

##### 2.2 Processor Testing Results

The Processor will notify the Farmer of the outcome of the Processor Testing and the accompanying results (i.e. the Processor Testing Results), within 7 calendar days of those tests having been conducted, including whether the Milk complies with the Quality Requirements.

### 3. TESTING FREQUENCY

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The Processor will undertake the Processor Testing at the following times:

MEASURE	TESTING FREQUENCY
<b>Antibiotics</b>	Every Collection
<b>Total Bacterial Count</b>	Daily
<b>Somatic Cell Count</b>	Weekly
<b>Pseudomonas</b>	Fortnightly
<b>Fat</b>	Weekly
<b>Protein</b>	Weekly

#### 4. QUALITY NON-COMPLIANCE

The Farmer understands that, if the Processor Testing Results indicate that the Milk does not meet the Quality Requirements under the Category labelled “Expectation” (detailed in Item 1 of this Schedule 2), the following consequences shall apply under the following circumstances:

MEASURE	CATEGORY					
	IMPROVEMENT REQUIRED - Grade B Quality -		REVIEW & RETEST - Grade C Quality -	REJECTION - Unsatisfactory Quality -		
	CIRCUMSTANCE	CONDITIONS	CONSEQUENCE	CIRCUMSTANCE	CONDITIONS	CONSEQUENCE
<b>ANTIBIOTICS</b>	N/A			If any are detected	A 3-day allowance will be given for results to return to Premium Quality.  If results do not return to Premium Quality within 3 days Consequences will apply.	The Processor will reject the Milk (i.e. a Rejection Event).  The Processor will, as soon as reasonably practicable after the Rejection Event, notify the Farmer in writing of the rejection of the Milk, including the reasons for such rejection and the associated consequences.
<b>TOTAL BACTERIAL COUNT</b>	>80,000 to <200,000 ibc/ml	The Processor will work with the Farmer to: (a) identify the cause; and (b) reduce the occurrence, of the Circumstance.	The Farmer will use reasonable endeavours to achieve <80,000 ibc/ml	>200,000 ibc/ml and Sensory indicators are below standard		
<b>SOMATIC CELL COUNT</b>	>200,000 to <400,000 cells/ml		The Farmer will use reasonable endeavours to achieve <200,000 cells/ml	>400,000 cells/ml		
<b>PSEUDOMONAS</b>	N/A			>100 cfu/ml	One warning will be allowed per annum during the Term, for each Circumstance, without penalty.  For each occurrence of the Circumstance after the first warning during that same year in the Term, the Consequence will apply.	The Processor will not be required to pay to the Farmer the Supply Fee for the rejected Milk.  It is the Farmer's responsibility to arrange for the disposal of the rejected Milk, at the Farmer's own cost, within 7 calendar days of the Processor notifying the Farmer of the Rejection Event.
<b>FAT</b>	>3.4g/100ml to <3.9g/100ml	The Processor will work with the Farmer to: (a) identify the cause; and (b) reduce the occurrence, of the Circumstance.	The Farmer will use reasonable endeavours to achieve >3.9g/100ml	<3.4g/100ml		
<b>PROTEIN</b>	>2.9g/100ml to <3.3g/100ml		The Farmer will use reasonable endeavours to achieve >3.3g/100ml	<2.9/100ml		

## SCHEDULE 3

### COMPLAINTS AND DISPUTE PROCEDURE

In the event of a dispute or complaint under this Agreement:

#### Informal Discussions

1. a party must (**Complainant**) in the first instance:
  - (a) contact the Primary Contact of the other party (**Other Party**), as listed in Item 1 to 2 of Schedule 1;
  - (b) discuss any grievances the Complainant has in respect of the Other Party's compliance with the Agreement (**Complaint**); and
  - (c) act in good faith and use best endeavours to resolve the Complaint in an informal manner,  
**(Informal Discussions)**;
2. if the Complaint:
  - (a) can be resolved through the Informal Discussions, the Complainant and Other Party must document the resolution in writing; and
  - (b) cannot be resolved through the Informal Discussions, the Complainant should proceed to the formal complaint procedure detailed in 3 to 6 **below**.

#### Internal Complaint Handling Procedure

3. the Complainant must formally notify the Other Party of the Complaint by providing to the Complaint Handling Officer (listed in Item 3 of Schedule 1), a written notice specifying:
  - (a) the nature of the Complaint;
  - (b) that the Complainant wishes for the Complaint to be dealt with under this Internal Complaint Handling Procedure; and
  - (c) the outcome that the Complainant wants,  
**(Complaint Notice)**;
4. the Complaint Handling Officer must immediately notify the Other Party of the Complaint and furnish the Other Party with the Complaint Notice;
5. within 5 Business Days of the Other Party receiving the Complaint Notice, the Other Party must:
  - (a) notify the Complainant (in writing) that the Complaint Notice has been received; and
  - (b) provide the steps that the Other Party proposes to be undertaken to resolve the Complaint,  
**(Complaint Acknowledgement)**;
6. if, within 60 calendar days of the Complaint Acknowledgement, the Complaint has not been resolved, either party may refer the Complaint to mediation under 7 to 11 **below**;

#### Mediation

7. if a party wishes for the Complaint to be resolved by mediation, that party must request that the "mediation adviser" as defined in the Code appoint a mediator within 14 calendar days of such request (**Mediator**);

8. the Mediator will decide:
  - (a) how the mediation meeting will be conducted;
  - (b) the time and place for the mediation; and
  - (c) the day the mediation will commence,

**(Mediation);**
9. the Complainant and Other Party must attend the Mediation and attempt to resolve the Complaint;
10. the decision of the Mediator will be final and binding; and
11. the costs associated with the Mediation will be shared equally by the parties.