

## Agreement to Mediate

### A. Parties

The parties to this Agreement to Mediate are \_\_\_\_\_  
and \_\_\_\_\_

Believing it to be in their individual and mutual best interests to attempt to resolve issues between them by means of a negotiated settlement, the parties hereby agree to enter into serious settlement discussions with one another utilizing the mediation procedures herein set forth, in a good faith effort to achieve a complete and final resolution by agreement and without the necessity of a judicial determination.

### B. Selection Of Mediator

The parties agree that the professional mediator is to be \_\_\_\_\_ .  
The professional mediator shall be compensated at the rate of \$ \_\_\_\_\_ per hour, and reimbursed for travel, telephone and other out-of-pocket expenses. Services and expenses will be the responsibility of the parties, payable in equal shares unless the parties shall have reached written agreement as to an alternative allocation.

### C. Ground Rules Of Mediation Proceeding

The ground rules of the proceedings shall be:

1. The process is voluntary and non-binding. Each party may withdraw at any time by notifying the mediator and the other party in writing of his/her intent to withdraw.
2. The mediator shall be neutral and impartial.
3. The mediator shall not provide legal advice to the parties.
4. The mediator has no authority to force the parties to reach an agreement. A settlement will be reached between the parties only if they believe that it is fair and in their best interests.
5. The mediator controls the procedural aspects of the mediation. The parties will cooperate fully with the mediator.
  - During the mediation there will be no direct communication between the parties or their attorneys concerning issues to be negotiated without the concurrence of the mediator.
  - During the mediation, the mediator is free to meet and communicate separately with each party.
6. Each party may be represented by more than one person. At least one representative of each party will be authorized to negotiate a settlement of the dispute. Each party will notify the mediator and the other party of its designated representatives at least two (2) days prior to the mediation.
7. The process will be conducted expeditiously. Each representative will be available for meetings throughout the entire time period set aside for the mediation.
8. The entire process is confidential. No record of the proceedings, stenographic, electronic or otherwise, will be made. The parties and the mediator will not disclose information regarding the process, including settlement terms, to third parties, unless the parties otherwise agree. In no case shall any conversations or communications originating during the mediation process, either written or oral, be used for any other purposes.

In no event shall any discovery, in any action, be taken concerning discussions or communications during the mediation. The mediator will be disqualified as witness, consultant or expert in any pending or future action relating to the subject matter of the mediation, including those between persons not parties to the mediation.

The parties agree that they will not call the mediator as a witness in any legal, arbitration or administrative proceeding, nor shall they call for or subpoena any records, notes, or work product of the mediator.

9. If the parties should subsequently agree to submit the dispute to arbitration, the mediator shall not serve as arbitrator.
10. The mediator shall not be liable for any act or omission in connection with his/her role as mediator in this proceeding.
11. Additional depositions, interrogatories or requests for production will not be initiated by any party between the date of this agreement and the time of the mediation.

#### **D. Mediation Session**

The mediator will decide when to meet or confer separately with each party and when to hold joint meetings. The mediator will fix the time and place of each session and the agenda, in consultation with the parties. The mediator may assist the parties in arriving at a settlement in such ways as he/she deems advisable and proper under the circumstances.

Once the mediator has become familiar with the case, he/she will hold discussions with the representatives of the parties at \_\_\_\_\_, on \_\_\_\_\_, between \_\_\_\_\_ and \_\_\_\_\_.

Efforts to reach a settlement will continue until:

- a. a settlement is reached,
- b. a party withdraws, or
- c. the mediator concludes and informs the parties that further efforts would not be useful.

#### **E. Settlement**

If a settlement is reached, the mediator, or one of the parties at the mediator's request, will draft a written settlement document incorporating all settlement terms. The draft will be circulated among the parties, edited as necessary and, when found acceptable, formally executed.

IN WITNESS WHEREOF, the parties have hereunto set their respective hands this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date