

# The Mediation Agency

## 1. Nature of Mediation

The parties hereby appoint The Mediation Agency and its agent(s),

\_\_\_\_\_ as mediator(s) for their negotiations. The parties understand that mediation is an agreement-reaching process in which the mediator assists parties to reach agreement in a collaborative, consensual and informed manner. It is understood that the mediator has no power to decide disputed issues for the parties. The parties understand that mediation is not a substitute for independent legal advice. The parties are encouraged to secure such advice throughout the mediation process and are strongly advised to obtain independent legal review of any mediated agreement before signing that agreement. The parties understand that the mediator's objective is to facilitate the parties themselves reaching their most constructive and fairest agreement. The parties also understand that the mediator has an obligation to work on behalf of each party equally and that the mediator cannot render individual legal advice to any party and will not render therapy within the mediation.

## 2. Scope of Mediation

The parties understand that it is for the parties, with the mediator's concurrence, to determine the scope of the mediation and this will be accomplished early in the mediation process.

## 3. Mediation Is Voluntary

All parties here state their good faith intention to complete their mediation by an agreement. It is, however, understood that any party may withdraw from or suspend the mediation at any time, for any reason.

The parties also understand that the mediator may suspend or terminate the mediation if s/he feels that the mediation will lead to an unjust or unreasonable result, if the mediator feels that an impasse has been reached, or if the mediator determines that s/he can no longer effectively perform his/her facilitative role.

## 4. Absolute Confidentiality

It is understood between the parties and the mediator that the mediation will be strictly confidential. Mediation discussions, written and oral communications, any draft resolutions, and any unsigned mediated agreements shall not be admissible in any court proceeding. Only a mediated agreement, signed by the parties may be so admissible. The parties further agree to not call the mediator to testify concerning the mediation or to provide any materials from the mediation in any court proceeding between the parties. The mediation is considered by the parties and the mediator as settlement negotiations. The parties understand the mediator has an ethical responsibility to break confidentiality if s/he suspects another person may be in danger of harm.

## 5. Full Disclosure

Each party agrees to fully and honestly disclose all relevant information and writings as requested by the mediator and all information requested by any other party of the mediation if the mediator determines that the disclosure is relevant to the mediation discussions.

## 6. Mediator Impartiality

The parties understand that the mediator must remain impartial throughout and after the mediation process. Thus, the mediator shall not champion the interests of any party over another in the mediation or in any court or other proceeding. The parties agree that the mediator may discuss the parties' mediation process with any attorney any party may retain as individual counsel. Such discussions will

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not include any negotiations, as all mediation negotiations must involve all parties directly. The mediator will provide copies of correspondence, draft agreements, and written documentation to independent legal counsel at a party's request. The mediator may communicate separately with an individual mediating party, in which case such "caucus" shall be confidential between the mediator and the individual mediating party unless they agree otherwise.

## 7. Litigation

The parties agree to refrain from pre-emptive maneuvers and adversarial legal proceedings (except in the case of an emergency necessitating such action), while actively engaged in the mediation process.

## 8. Mediation Fees

The parties and the mediator agree that the fee for the mediator shall be \$ \_\_\_\_ per hour for time spent with the parties and for time required to study documents, research issues, correspond, telephone call, prepare draft and final agreements, and do such other things as may be reasonably necessary to facilitate the parties' reaching full agreement. The parties further understand that copying, postage and long-distance phone calls will be billed to them. The mediator shall be reimbursed for all expenses incurred as a part of the mediation process. A deposit payment of \_\_\_\_\_ toward the mediator's fees and expenses shall be paid to the mediator along with the signing of this agreement. Any unearned amount of this deposit fee will be refunded to the parties.

The parties shall be jointly and severally liable for the mediator's fees and expenses. As between the parties only, responsibility for mediation fees and expenses shall be \_\_\_\_\_

The parties will be provided with a monthly accounting of fees and expenses by the mediator. Payment of such fees and expenses is due to the mediator no later than 15 days following the date of such billing, unless otherwise agreed in writing. A 1.5% monthly service charge will be made for any payment of fees and expenses not so timely made.

Should payment not be timely made, the mediator may, at his/her sole discretion, stop all work on behalf of the parties, including the drafting and/or distribution of the parties' agreement, and withdraw from the mediation. If collection or court action is taken by the mediator to collect fees and/or expenses under this agreement, the prevailing party in any such action and upon any appeal therefrom shall be entitled to attorney fees and costs therein incurred.

The parties understand that they shall be responsible for two hours of the mediator's time at the above stated rate for any appointment which they do not attend and do not provide at least 24 hours advance notice of the cancellation.

Dated this \_\_\_\_ day of \_\_\_\_\_, 200\_.

Signed: \_\_\_\_\_ Party: \_\_\_\_\_  
Mediator  
\_\_\_\_\_  
Mediator Party: \_\_\_\_\_