



MEDIATION AGREEMENT

The Parties to the dispute to be mediated are:

_____ and _____.

The attendance at the mediation of any person (whether or not a named party) or counsel shall constitute an agreement by that person to abide by this Agreement unless timely written objection is delivered to the Mediator and all other parties in advance of the scheduled mediation. All mediation attendees are referred to in this Agreement as "Parties."

1. PURPOSE

The Parties have agreed to enter into a voluntary, nonbinding mediation process for the purpose of attempting to arrive at a mutually acceptable resolution of the dispute in a cooperative and informal manner. Mediation is a structured problem-solving process in which a neutral, impartial third party assists the Parties to the dispute to reach a voluntary agreement to resolve the dispute. The Mediator facilitates the negotiations, but cannot impose his views of what the agreement should be or compel the Parties to settle. This mediation is expressly conducted under the auspices of confidentiality as provided and permitted in Ohio Revised Code § 2710.07.

In addition, the mediation process will focus on the interests and objectives of the Parties and possible solutions that the Parties believe would be fair, equitable, and mutually beneficial. Accordingly, each Party will be asked to work with the Mediator in considering and evaluating solutions that would satisfy its own interests and those of the others.

2. MEDIATION PROCESS

Mediation is not a day, but a process. The Mediator, as an advocate for compromise and settlement, will use reasonable efforts to facilitate the negotiations of the parties. Where parties are represented by counsel, counsel shall be responsible for reviewing with, and advising, their clients regarding the wisdom of any proposed settlement and the terms of any settlement agreement. To prepare and conduct the mediation, the Mediator may:

The Parties will follow the recommendation of the Mediator regarding the agenda most likely to resolve the dispute. During the session, the Mediator may have joint and separate meetings with the Parties. Private meetings will be confidential. If a Party informs the Mediator that information is conveyed by the Party to the Mediator in confidence, the Mediator will not disclose the information.

At the discretion of the Mediator or upon the request of the Parties, the Mediator will provide an evaluation of the Parties' cases and of the likely resolution of the dispute if not settled. The Parties agree that the Mediator is not acting as an attorney or providing legal advice on behalf of any Party.

If necessary and if such discussions seem likely to be useful, the Parties and their representatives will make themselves available for further discussions or meetings after the mediation session.

- Request confidential written statements from each of the Parties in advance of the mediation session.
- Review written information submitted by the Parties.
- Have private, confidential conversations with the participants in advance of the mediation session to develop information about the Parties' contentions and objectives.
- Conduct a mediation session with representatives of the Parties.

3. AUTHORITY OF REPRESENTATIVES.

Each party shall have one or more representatives physically present at the mediation with full authority to settle the disputes. Unless excused by the Mediator and all other parties, the Mediator strongly recommends the following:

To facilitate a resolution, the Mediator and the Parties will work to ensure that each Party appreciates the strengths and weaknesses of each side's factual and legal contentions. Both in the exchange of information and opinions, and in the evaluation of that information, each Party will have the opportunity and responsibility to candidly disclose to the Mediator the facts, theories, and opinions on which it intends to rely with regard to the matters in dispute.

- The named parties themselves shall be present during the entire mediation, in addition to any other agents or representatives. If a party is not a natural person such entity must be represented by an authorized director, officer or employee of the organization.
- Counsel for the named parties shall be present.
- Authorized representatives of all carriers providing insurance coverage for damages alleged in the dispute shall be present.



4. CONFIDENTIALITY.

This Mediation is a “compromise negotiation” as contemplated by Ohio and Federal Rules of Evidence 408. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the Parties, their agents, employees, experts, and by the Mediator for purposes of these compromise negotiations, are confidential. Such offers, promises, conduct, and statements will not be disclosed to third parties and are privileged and inadmissible for any purpose, including impeachment, under Rule 408, and any applicable federal or state statute, rule or common law provisions. No party may seek to introduce, for any purpose, evidence of a statement or of conduct during mediation at any trial or hearing that may later be held between the parties. However, evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or not discoverable as a result of its use in the mediation.

If the applicable dispute resolution rules of the jurisdiction controlling the mediation shall provide more or less privacy or confidentiality than this Agreement requires, the parties agree that the rules or laws requiring greater privacy and greater confidentiality shall apply to the maximum extent allowed by law. Confidential information disclosed to a Mediator by the parties or by others in the course of the mediation shall not be divulged by the Mediator without permission. The “course of the mediation” shall include all pre-mediation communications with the Mediator and with other parties, representatives, and counsel regarding the mediation, all activities associated with the mediation session, and all post-mediation communications between and among the parties and Mediator associated with any ongoing effort at settlement. All records, reports or other documents generated or received by a Mediator while serving in that capacity shall be confidential and not subject to subpoena, disclosure, or production. The Parties shall maintain the confidentiality of the mediation and shall not rely on, offer, or introduce as evidence in any arbitral, judicial or other proceeding:

- Views expressed or suggestions made by another party or the Mediator with respect to a possible settlement of the dispute;
- Admissions made by another party in the course of the mediation proceedings;
- Proposals made or views expressed by the Mediator;
- The fact that another party had or had not indicated willingness to accept a proposal for settlement made by another party or the Mediator; or
- Mediation presentation exhibits, Power Points, charts, graphs, summaries, etc. unless such information is otherwise discoverable.

Notwithstanding the rule of mediation confidentiality, in certain instances applicable law may require disclosure of information revealed as part of the mediation process. Additionally, all parties authorize the Mediator to disclose any threat of physical harm made by any participant.

There shall be no stenographic record of the mediation process and no person shall tape record any portion of the mediation session. No subpoena, summon, complaint, citation, writ, deposition notice, or other process may be served upon any party at or near the site of any mediation session upon any party entering, attending or leaving the session.

5. COMPENSATION

The Mediator’s services will be billed at an hourly rate of \$_____/hr. The parties will share the cost of mediation equally, unless allocated differently in a settlement agreement.

6. JURISDICTIONAL APPEARANCE.

Participation in, or attendance at, the mediation shall not constitute an appearance within the locale of the mediation or contact with the locale of the mediation for purposes of determining whether a person or entity is subject to the jurisdiction of, or the laws of, the courts for such locale. Attendance shall be considered a “Special Appearance” for mediation purposes only.

7. DISQUALIFICATION OF MEDIATOR AND EXCLUSION OF LIABILITY.

The parties agree:

- not to call the Mediator as a witness or as an expert in any pending or subsequent litigation or arbitration involving the Parties and relating in any way to the dispute which is the subject of the mediation;
- that the Mediator will be disqualified as a witness or as an expert in any pending or subsequent proceeding relating to the dispute which is the subject of the mediation;
- that the Mediator will not provide legal advice or legal representation for any party;
- that the Mediator is not a necessary Party in any arbitral or judicial proceedings relating to the mediation or to the subject matter of the mediation;
- to defend the Mediator from any subpoenas from outside parties arising out of this Agreement or mediation;
- that the Mediator shall not be liable to any Party for any act or omission in connection with any mediation conducted under this Agreement.



8. OTHER REPRESENTATIONS AND DISCLOSURES

The Mediator discloses the following matters:

- 1. _____
- 2. _____

By signing below, the Parties expressly agree that, despite those representations and disclosures, the Mediator may provide these mediation services.

9. TERMINATION OF MEDIATION.

This is a voluntary, nonbinding process. The parties agree to participate in good faith in the entire mediation, but any party may terminate its participation for any reason by written notification to the Mediator and the other parties. The mediation shall be deemed terminated upon the execution of a settlement agreement or settlement agreement in principle or by declaration of the Mediator that further efforts at mediation are no longer worthwhile; provided, however, that the mediation shall be deemed to continue for confidentiality and privacy purposes for all post-impasse communications, Mediator proposals, and follow-up settlement efforts.

In Witness Whereof, each of the Parties have signed this Agreement.

Mediator:

Dated: _____

Party 1:

Dated: _____

Party 2:

Dated: _____