

MEDIATION AGREEMENT

This Mediation Agreement is entered into by the undersigned parties (“Party” or “Parties”) and mediator(s) (“Mediator”), and shall be effective as of the latest date indicated by any of the Parties on the execution page.

The Mediation Process

This is a voluntary dispute resolution process. The Parties agree to participate in good faith in the mediation process.

The Parties agree to comply with the schedule in Attachment A to this Agreement. The Parties agree to compensate the Mediator as set forth in Attachment B to this Agreement.

The Parties and their Representatives with full settlement authority are required to attend mediation sessions. No one else may attend without the permission of both of the Parties and the consent of the Mediator.

During the mediation sessions, the Mediator may conduct either joint and/or separate meetings with the Parties and their counsel. If a Party informs the Mediator that information is being conveyed to the Mediator in confidence, the Mediator will not disclose the information. Otherwise, the Mediator may disclose information to each of the Parties at his or her discretion.

If any Party wishes to terminate its participation for any reason, it may do so by giving notice to the Mediator and the other Parties. However, the Parties and the Mediator will continue to be bound by the confidentiality provisions of this agreement and will also continue to be bound by their agreement to pay to the Mediator for services rendered.

The Parties agree that the Mediator is not acting as an attorney or providing legal advice on behalf of any Party, even though the Mediator may discuss legal issues with the Parties. In this regard, the Parties are relying upon the advice and counsel of their representatives..

Disclosures

The Mediator, each Party, and counsel confirm that they have disclosed any past or present relationship or other information that may influence or bring into question the Mediator's impartiality. The Mediator will seek to disclose any facts which would indicate any possible conflict of interest or appearance of a conflict of interest known to exist. The Mediator is not aware of any aspect of these relationships that would create a conflict or interfere with his/her acting as a mediator in this matter. The Parties acknowledge that these factors do not constitute a conflict of interest or the appearance of a conflict of interest.

Protection of Information Disclosed at Mediation

The Mediator and, the Parties and their Representatives, and any other participants to this mediation are prohibited from disclosing, outside of the mediation, any oral or written information disclosed during the course of the mediation. No person may rely on or introduce as evidence in any arbitral, judicial, or other proceedings, evidence pertaining to any aspect of the mediation, including but not limited to:

- (a) views expressed or suggestions made by a Party with respect to a possible settlement of the dispute;
- (b) the fact that another Party had or had not indicated willingness to accept a proposal for settlement made by the Mediator;
- (c) proposals made or views expressed by the Mediator;
- (d) statements or admissions made by a Party in the course of the mediation;
- (e) documents prepared for the purpose of, in the course of, or pursuant to the mediation;
- (f) statements or actions which may otherwise constitute a waiver of a legally protected privilege; and

- (g) documents prepared subsequent to the mediation which refer to any of the foregoing.

In addition, without limiting the foregoing, Rule 408 of the Federal Rules of Evidence and any applicable federal or state statute, rule, common law or judicial precedent relating to the privileged nature of settlement discussions, mediation or other alternative dispute resolution procedure shall apply. Parties and their Representatives may disclose information obtained at the mediation session to members of their respective organizations who shall also be bound by the confidentiality provisions of this Rule. Information otherwise discoverable or admissible in evidence, however, does not become exempt from discovery, or inadmissible in evidence, merely by being used by a Party in this mediation. These provisions shall not preclude a Party, its Representatives or the Mediator from responding in confidence to appropriately conducted inquiries or surveys concerning the use of mediation generally.

Discovery from Mediator

The Mediator shall not be compelled to disclose to any court or to any person outside the mediation conference any of the records, reports, summaries, notes, communication, or other documents received or made by a Mediator while serving in such capacity. The Mediator shall not testify or be compelled to testify in regard to the mediation in connection with any arbitral, judicial, or other proceeding. The Mediator shall not be a necessary Party in any proceedings relating to the mediation. Nothing contained in this subsection shall prevent the Mediator from reporting the status, but not the substance, of the mediation effort to a court in writing in compliance with any court order pertaining to the mediation.

Preservation of Privileges

The disclosure by a Party of privileged information to the Mediator does not waive or otherwise adversely affect the privileged nature of the information. The Parties jointly and severally

agree to indemnify and defend the Mediator from any subpoenas from outside Parties arising out of this Agreement or the mediation.

Court Approval

The Parties represent that no court authorization is required for this engagement.

Miscellaneous

Any documents provided to the Mediator by the Parties or counsel will be destroyed 45 days after the conclusion of the mediation, unless the Mediator is otherwise instructed by the Parties or counsel. This Agreement is governed by Massachusetts law, is executed under seal, and may be executed in counterparts, by facsimile or electronic signature.

Party Name: _____

By: _____

Date: _____

Party Name: _____

By: _____

Date: _____

Party Name: _____

By: _____

Date: _____

Party Name: _____

By: _____

Date: _____

Representatives:

Party Name: _____

Rep Name: _____

By: _____

Date: _____

Party Name: _____

Rep Name: _____

By: _____

Date: _____

Mediator:

Date: _____

SCHEDULE A

1. Parties shall submit pre-mediation statements to Mediator by 4:00 p.m. on _____
_____, _____, serving a copy on the opposing Party or Parties covering the following points:

- Identification of the person(s), in addition to counsel, who will attend the session as representative of the party with decision making authority;
- A factual summary of the dispute;
- An explanation of the significant issues which are believed will arise in the mediation or of which it is felt the mediator should be aware, including significant decisional or statutory law bearing on the issues;
- A history of settlement discussions to date;
- Where money damages are claimed, the claimant's calculation of such damages;
- The Party's best estimate of future cost and fees through trial;
- Copies of core documents that are believed will be helpful for the mediator to see in advance - typically, a contract or lease, a complaint and answer, and other evidentiary documents which will help familiarize the mediator with the nature of the dispute. Answers to interrogatories, deposition transcripts, and argumentative or positioning materials are generally not particularly helpful for this purpose;
- The presently scheduled dates for further status conferences, pretrial conferences, and trial or other hearing.
- Parties may also concurrently submit a confidential memo to the Mediator should it be desired. The existence of such memos will be disclosed, but the content of the memo will not be disclosed if requested to be kept confidential.

Such Statements should be limited to five (5) pages in length, not including attachments.

2. The first mediation session shall be held on _____, _____, _____, at 9:30 a.m.

It is anticipated that this session shall be for one (1) day.

The next session, if needed, will be scheduled at the conclusion of the first session.

SCHEDULE B

The Mediator shall be compensated in the amount of \$1,500.00 per party participating for time expended in mediation sessions, and for time expended outside of mediation sessions relating to the dispute. The minimum charge for a scheduled one day session is \$3,000.00. The Mediator shall render to the Parties written statements setting forth time and costs, which statements shall be payable in advance of the Mediation and upon execution of this Agreement. The Parties agree to provide an advance payment as requested by the Mediator for any mediation sessions subsequent to the first session.