

AGREEMENT TO MEDIATE
(Long Version)

The undersigned parties agree to participate in a mediation for the purpose of settling and resolving a disputed claim. The mediation will be conducted by _____ and the parties agree that the mediation will be governed by the following terms and conditions:

PRE-MEDIATION ISSUES

1. **GOOD FAITH:** The parties agree to negotiate in good faith at all times during the mediation proceeding. They may refuse to divulge information, but they will not give false information.
2. **PARTIES:** The parties agree to have in attendance all parties necessary for productive negotiations to occur and/or whose decision or authority will be required in order for settlement to be reached.
3. **MEDIATOR IMPARTIALITY:** The mediator's role is to act as a neutral party for the purpose of assisting the parties in resolving their dispute. The parties acknowledge that the mediator is not acting as an attorney or advocate for any party, and has no duty to provide advice or information to a party or to assure that a party has an understanding of the problem or the consequences of his/her actions. The function of the mediator is to promote and facilitate voluntary resolution of the issues relating to the disputed claim. The mediator has no responsibility concerning the fairness or the legality of the resolution. The parties acknowledge that they do not know of any circumstances that would cause reasonable doubt as to the impartiality of the mediator.

Though the mediator may at times offer opinions, recommendations, or settlement proposals, he/she has no authority to make, or compel the parties to make, any binding decisions or enter into any binding settlement agreement. The parties acknowledge that they will seek and rely on the legal advice of their counsel in connection with entering into any settlement or other agreement relating to the mediation proceeding.

4. **POSITION STATEMENT:** In order for the mediator to be fully prepared for the mediation, briefs or position statements are strongly recommended (insert "required" if that is the case) and should be delivered to the mediator one week in advance of the mediation. The parties are encouraged but not required to exchange their position statements with each other prior to the mediation.
5. **COSTS OF MEDIATION:** The mediator's services shall include attendance at mediation conferences, review of mediation position statements and other documents,

participation in telephone or follow up conferences, and any other services requested by the parties. (*Insert any specific terms such as hourly rate, fee for travel time, administrative fees, etc.*) The parties agree that they will divide the mediator's fees and costs equally or in a manner as determined between the parties. Counsel for the parties guarantee payment of such fees and expenses.

THE MEDIATION

1. **PRIVILEGED STATEMENTS AND DISCLOSURES:** Each participant's sole purpose in conducting and participating in this mediation is to settle and resolve the dispute, in whole or in part. As such, any statements or admissions made during the course of the mediation, or documents prepared or disclosed in anticipation of the mediation, shall not be admissible in evidence or used for impeachment or other purposes whatsoever in any later legal, administrative or other proceeding. However, evidence that is admissible or subject to discovery independent of the mediation shall not be excluded from discovery or admission into evidence, or otherwise considered confidential or privileged, simply as a result of it having been used in connection with the mediation process.

If an impasse is declared, settlement offers and final positions of the parties may not be disclosed in any judicial proceedings, including a conciliation before a trial court judge, magistrate or special master, unless consented to by all parties to the dispute. Evidence that the parties have entered into a written settlement agreement during the course of the mediation may be disclosed and is admissible to the extent necessary to enforce the settlement.

2. **PRIVILEGE SURVIVES DISCLOSURE:** The privileged character of any information is not altered by disclosure to the mediator. Disclosure of any records, reports, or other documents received or prepared for or by the mediator cannot be compelled. The mediator shall not be subpoenaed or otherwise compelled to testify in any later proceedings, including, but not limited to civil, criminal, and administrative proceedings, and shall not be required to produce any notes or documents, as to any aspect of the dispute that was the subject of the mediation proceedings. If so called or subpoenaed, the mediator may refuse to testify or produce the requested notes or documents. Should any party attempt to compel such testimony or production, such party shall be liable for, and shall indemnify the mediator against any liabilities, costs or expenses, including reasonable attorney's fees, which the mediator may incur in resisting such compulsion.

No aspect of the mediation shall be relied upon or introduced in evidence in any legal, administrative or other proceedings, including but not limited to:

- (a) views expressed or suggestions made by a party with respect to a possible settlement of the dispute;
- (b) admissions made in the course of the mediation proceedings;

- (c) proposals made or views expressed by the mediator or the response of any party, and
- (d) the fact that another party had or had not indicated willingness to accept a proposal for settlement made by the mediator.

Because the parties are disclosing sensitive information in reliance upon this privilege of confidentiality, any breach of this agreement could cause irreparable injury for which monetary damages would be inadequate. Consequently, any party to this agreement may obtain an injunction to prevent disclosure of any such confidential information in violation of this agreement.

Any party breaching this agreement shall be liable for and shall indemnify the non-breaching parties and the mediator for all costs, expenses, liabilities, and fees, including attorney's fees, which may be incurred as a result.

3. **JOINT SESSION:** The mediation will begin with a joint session to be attended by all participants. Each party will be prepared to present a brief overview of the case from their perspective including their estimate of damages and theory of liability. The parties shall have discretion to utilize whatever presentation form is most effective, including charts, audio/visual, and oral presentations by counsel and principals.
4. **PRIVATE CAUCUS SESSIONS:** After the joint session, the mediator will divide the parties in order for the mediator to discuss privately with each party the strengths and weaknesses of their case. During these private discussions, the mediator will encourage each party to establish a basis on which the parties would be willing to settle the case. The mediator reserves the right to share information learned in the private caucuses with the opposing party if the mediator believes that such information will facilitate a resolution of the dispute. However, should a party divulge information to the mediator during the private session that the party does not want divulged to the opposing side, regardless of its usefulness in moving the case toward resolution, the mediator will honor the party's request for complete confidentiality regarding the information in question.
5. **AGREEMENT:** Caucusing will generally continue until an option has been developed which all sides feel is acceptable. At that point, the mediator will summarize the terms of the settlement agreement in a written document to be signed by the parties. Once signed, the parties agree that this document is completely binding as to the terms of the document.

POST MEDIATION FOLLOW-UP

If a resolution is not reached in the initial mediation session, the mediator reserves the right to follow-up with the parties in order to further facilitate a resolution of the case. This follow-up work may consist of telephone conferencing with the parties and/or their counsel, further investigation or information exchange among the parties, and/or an additional mediation session.

GENERAL TERMS: Any provision in this agreement may be amended by written agreement of the parties. No party may unilaterally amend or nullify this agreement once it has been signed. The agreement when executed shall inure to the benefit of and be binding on the undersigned parties as well as their respective representatives or other persons they have caused to be present during these mediation proceedings. This agreement may be executed in counterparts and shall be as valid as though all signatures were set forth on a single document.

The undersigned acknowledge that they have read and understand the meaning, ramifications, and intent of this Agreement and hereby sign voluntarily.

Party's Signature: _____
Date: _____

Party's Signature: _____
Date: _____

Party's Signature: _____
Date: _____

Mediator's Signature: _____
Date: _____