

## **AGREEMENT TO MEDIATE**

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

### **I. PRE-MEDIATION ISSUES**

**GOOD FAITH:** The parties agree to negotiate in good faith at all times during the mediation proceeding. You may refuse to divulge information, but you will not give false or misleading information.

**PARTIES:** The parties agree to have in attendance, all persons that are necessary for productive negotiations to occur, and/or whose decision or authority will be required in order for a settlement to be reached.

**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.

**POSITION STATEMENT:** In order for the mediator to be fully prepared for the mediation, briefs or position statements are strongly recommended, but not mandatory, and should be delivered to the mediator at least 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.

**COSTS OF MEDIATION:** Fees are based on payment in cash, check, money order, or certified funds. 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. Further the mediator will be reimbursed for costs associated with providing said services. Reimbursable expenses may include travel, copies, electronic transmissions, phone calls and other related expenses. The mediator's fees do not include any required court filing or case filing fees.

The parties may choose to divide the mediator's fees and costs equally, or in a manner as determined between the parties. In any event, the mediator's fees are due and payable at the end of each session, and in accordance with the attached fee estimate. Until the mediator's fees, charges, and expenses are paid in full, the parties remain jointly and severally liable to the mediator for all charges. The mediator's fees are fully earned and non-refundable.

**MEDIATION CANCELLATION POLICY:** The mediator requires at least three business days notice for a change in a mediation session. In most cases this gives the mediator adequate time to re-book the time slot. If you are unable to make your scheduled appointment, and you do not provide the mediator with at least three business days notice, you will be charged for the entire session.

## **II. THE MEDIATION**

**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.

**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 and all liabilities, costs or expenses, including reasonable attorney's fees, which the mediator may incur in resisting such compulsion.

Further if the mediator is forced or required to appear as a result of your actions, you will promptly upon demand reimburse the mediator for time and expenses, at the mediator's then prevailing hourly billable rate. The mediator may require an advance payment from you commensurate with the perceived charges and expensed. All the provisions of Florida Statutes, Chapters 44.102; 44.106; 44.107 shall apply to any mediations conducted between the parties by this mediator.

No aspect of the mediation shall be relied upon or introduced into 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.

**REFRAIN FROM LEGAL ACTION DURING MEDIATION:** The parties agree that no legal action of any kind will be taken by either of them during the course of mediation, except with the express agreement of the other party and notice to the mediator. Further, if either or both parties have retained counsel prior to mediation, they shall direct their attorney in writing that no legal action is to be taken on their case while the matter is in mediation.

**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.

**THIRD PARTY INVOLVEMENT:** To facilitate the mediation process, the parties shall refrain from discussing the matters in mediation with friends, relatives or others. However, they are encouraged to consult with legal counsel at any time and they may consult with mental health professionals or clergy as they may find helpful. Children or other persons having a direct interest in the mediation may participate in mediation sessions related to their interest with consent of the parties and the mediator.

**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.

**TRANSFERS OF PROPERTY DURING MEDIATION:** During the mediation process neither of the parties shall; transfer, encumber, conceal, sell or in any other way dispose of any tangible or intangible property except in the usual course of business or for the necessities of life. In addition, large expenditures by either party outside regular monthly expenses shall be disclosed prior to such expenditure.

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: Provisions in this agreement may only 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.