

## **MEDIATION AGREEMENT**

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 Robert F. Saint-Aubin of Saint-Aubin Mediation, Monarch Beach, California (Mediator). The parties agree that the mediation will be governed by the following terms and conditions:

1. **PARTY OBLIGATION:** The parties will not give false or misleading information to one another or to the Mediator. However, failure by either party or the Mediator to divulge certain information will not be deemed a violation of this obligation, nor will failure to reach a settlement for any reason be a breach.

2. **PARTIES:** The parties will have in attendance all participants necessary for productive negotiations. Participants will have settlement authority necessary to reach a settlement up to the total amount in controversy.

3. **MEDIATOR ROLE:** The Mediator functions as a neutral 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 the party's actions. 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, the Mediator 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. If a party does not have counsel, the party acknowledges in signing this agreement that the party has been told by the Mediator that it would be advisable to obtain counsel for assisting in the mediation and before reaching or signing any agreement.

4. **POSITION STATEMENT AND OTHER DOCUMENTS:** In order for the Mediator to be fully prepared for the mediation, briefs or position statements should be delivered to the Mediator one week in advance of the mediation. The statements should be brief but include a description of the controversy, a short CV or resume of each participant, strengths of the opponent's case and weaknesses of the party's case; perceived obstacles to settlement and the settlement or demand history. Periodically during the mediation process, the parties may on their own, or at the Mediator's request, provide supplementary position papers to one another and/or the Mediator. The parties may provide the Mediator with any documents they wish considered in advance of the mediation.

5. **COSTS OF MEDIATION:** The Mediator's services 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 or authorized by the parties. The Mediator's fees, fees for travel time, and expenses (meeting space, travel costs, long distance telephone, fax, etc.) are set forth in Attachment A, incorporated herein as if fully set forth. The parties agree that they will divide the Mediator's fees and costs equally or in a manner as determined between the parties. For the purposes of this agreement, each party is responsible for payment within 30 days of one-half of any statement submitted by the Mediator and will submit such payment, subject to later reallocation among themselves, if necessary.

Counsel for the parties guarantee timely payment of such fees and expenses. The parties also agree to cancellation and postponement fees in accordance with Attachment A.

6. CONFIDENTIALITY, 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, will 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 will 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. This mediation agreement will be admissible to show the existence of the terms hereof.

7. 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 and the parties agree that they will defend against any request or order for such disclosure, and will do so jointly and independently. The Mediator will not be subpoenaed or otherwise compelled to testify in any later proceedings, including, but not limited to civil, criminal, and administrative proceedings, and will 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 will be liable for, and will 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 will 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 will be liable for and will indemnify the nonbreaching parties and the Mediator for all costs, expenses, liabilities, and fees, including attorney's fees, which may be incurred as a result.

8. INITIATION OF MEDIATION. The Mediator will, in his discretion, confer with the parties one or more times in advance of the first formal session. The Mediator may confer with counsel or parties ex parte at any time during the mediation process (that is, without the presence of the other party or party's representative, and by telephone, email or in person). After any preliminary conferences, 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 will have discretion to utilize whatever presentation form is most effective, including charts, audio/visual, and oral presentations by counsel and principals. Principals will be expected to actively participate.

9. PRIVATE CAUCUS SESSIONS: After the joint session, the Mediator will meet privately with each party to discuss other relevant information and the strengths and weaknesses of their case. During the private discussions, the Mediator will encourage each party to establish a basis on which the parties will 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, the party may request that specific information not be divulged to the opposing side, regardless of its usefulness in moving the case toward resolution, in which case the Mediator will honor the party's request for complete confidentiality regarding the information in question.

10. AGREEMENT RESULTING FROM MEDIATION: Caucusing will generally continue until a solution acceptable to all parties has been developed. The parties 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 agreement.

11. 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 or counsel, further investigation or information exchange among the parties, or an additional mediation session or sessions. Because the Mediator is likely to be cognizant of the likelihood of success if further efforts are made, the parties commit to one another that they will attend at least a second mediation session if one is convened by the Mediator.

12. OTHER 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 will 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, including execution by fax, and will 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.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Mediator: \_\_\_\_\_

Date: \_\_\_\_\_

