



## AGREEMENT TO MEDIATE

This is an agreement between \*\*\*\*\* (hereinafter referred to as the parties), their representatives and BAY Mediation & Arbitration Services, LLC, represented by \*\*\*\*\* (hereinafter referred to as the mediator). The parties have agreed to enter into mediation with BAY Mediation & Arbitration Services, LLC with the intention of reaching a consensual settlement of their dispute. **By signing this agreement, all parties agree to participate in good faith and work toward a resolution of the issues.**

1. The parties and their representatives understand that the purpose of the mediation is to attempt to find a mutually acceptable resolution of the dispute through cooperative attempts to solve the problems that presently separate them. To achieve a mutually acceptable resolution, the mediator, the parties and their counsel will work to ensure that each party understands the facts asserted and the contentions of all parties.
2. In order for the mediation to be successful, open and honest communications are essential. Accordingly, the parties will make complete and accurate disclosures of all matters relevant to the process of settlement. This includes providing each party and the mediator with all relevant information, which would be available in the discovery process in a legal proceeding. If a party deliberately withholds information or supplies false information relevant to the settlement, then the agreement reached in mediation may be set aside.

All such communications by the parties shall be treated as strictly confidential by the mediator, by the parties and their representatives. The mediator will not disclose any information learned during the mediation session without the express permission of the parties. Confidential information discussed in a private meeting (caucus) with one party will not be divulged to the other party without the express consent of the party making the disclosure.

In order to maintain confidentiality, the parties and their representatives by this agreement, agree not to call the mediator as a witness at any proceeding nor to subpoena or otherwise seek discovery of any written materials in the mediator's possession developed for or in the course of mediation. To the extent that the law permits such discovery from the mediator, the parties hereby waive their rights thereto.

3. If, at a later time, either party decides to subpoena the mediator, BAY Mediation & Arbitration Services, LLC will move to quash the subpoena. Any party seeking discovery from the mediator shall be liable for and shall indemnify the mediator for any liabilities, costs, and expenses, including attorneys' fees and lost professional time, which may be spent in resisting such discovery.
4. The exceptions to the confidentiality rules stated in paragraphs 2 and 3 is that this Agreement to Mediate and any written agreement made and signed by the parties as a result of mediation may be used in any relevant proceeding, unless the parties, by written agreement decide otherwise.
5. This mediation is a settlement negotiation procedure, which should remain as confidential as possible. Nevertheless:
  - a) Evidence that would be discoverable and admissible at trial had the contemplated mediation not been held does not lose its character as discoverable, usable or admissible at trial merely because it is disclosed or used in the mediation. The settlement agreement reached in mediation will be enforceable and to that extent is not secret. In some areas, the requirements of law or ethics may require certain disclosures whether or not the information was first disclosed in mediation, such as disclosures concerning child abuse, fraud or a planned future crime. Further, in the case of government agency disputes, open meeting statutes may apply.
  - b) Information already known to a party or properly coming later to a party outside the parameters of this mediation should not become burdened by mediation restraints beyond the duty to keep confidential the fact that it was revealed or discussed in mediation.
6. It is expressly understood by the parties and their representatives that the mediator does not offer legal advice in this mediation, and is not functioning as an attorney whether or not the mediator is, in fact, an attorney. In this mediation, the mediator's role is to aid the parties in seeking a fair agreement in accordance with their respective interests. The construction of a proposed agreement and any question of law should be referred by the parties to their own legal counsel.

7. The mediator will not represent any party or participant in this mediation in any subsequent legal proceeding or matter relating to the subject of the mediation.
8. BAY Mediation & Arbitration Services, LLC recommends that each party be represented by counsel to whom all questions of law should be addressed. BAY Mediation & Arbitration Services, LLC will work with counsel for the parties throughout the mediation to facilitate an agreement.
9. Mediation is a voluntary process. Either party may terminate the mediation at any time. The parties, however agree that the subject of termination is a proper one for discussion at the mediation session. The mediator may terminate the mediation in the event that the mediator finds that one of the parties is not acting in good faith, or if it is felt that further negotiations might not be productive.
10. Parties are advised that a mediated agreement, once signed, can have a significant effect upon the rights of the parties and the status of the case.
11. The parties agree to share the fee of BAY Mediation & Arbitration Services, LLC, unless other agreements have been reached. The fee in this mediation is \*\*\*\* per party per hour (two party), or \*\*\*\* per party per hour (three party), or \*\*\*\* per party per hour (four party), or part thereof of mediation time including preparation and pre-session discussions with the parties or their counsel. The administrative fee per party is \$125.00. The attorneys whose signatures are below are primarily responsible for the payment of the fees in this proceeding within 30 days of the conclusion of the mediation. Parties who are not represented by counsel are responsible for the payment of their share of the fees at the conclusion of the mediation by check or cash. Payment will be due within 30 days regardless of the outcome of the mediation proceedings.
12. Neither BAY Mediation & Arbitration Services, LLC nor any mediator shall be liable to any party for any act or omission in connection with any mediation connected under this Agreement.

I have read, understand and agree to each of the provisions of this agreement  
this \_\_\_\_\_ day of \_\_\_\_\_, 200\*.

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

Print Name: \_\_\_\_\_ Print Name: \_\_\_\_\_

Title: \_\_\_\_\_ Title: \_\_\_\_\_

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

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Print Name: \_\_\_\_\_ Print Name: \_\_\_\_\_

Title: \_\_\_\_\_ Title: \_\_\_\_\_

**BAY Mediation & Arbitration Services, LLC**

\_\_\_\_\_  
\*\*\*\*\*, Mediator  
\*\*Date\*\*