



MASTERS & RIBAKOFF
ATTORNEYS AT LAW
mediation · arbitration · investigation

AGREEMENT TO MEDIATE

The undersigned agree to participate in a mediation conducted by _____ ("the mediator") in an attempt to reach a settlement of their existing dispute and further understand and agree as follows:

- 1. Good Faith Mediation:** We will mediate in good faith in an attempt to resolve the existing controversy without any obligation to reach a settlement.
- 2. Voluntary Agreement:** We understand that mediation is a consensual and voluntary process; the mediator has no authority to make binding decisions or recommendations. We further understand that any decision made by us to enter into an agreement is voluntary and that our participation in the mediation does not guarantee that an agreement will be reached. Any party has the right to terminate the mediation at any time, provided they first advise the mediator of such intent to allow an opportunity to resolve the concerns raised.
- 3. Attorney Consultation:** We have the right to be represented by attorneys of our choice before and during the mediation process and understand that we are specifically encouraged to have our attorneys review any document prior to its execution. We further understand that the mediator is acting in a neutral capacity and is not serving as an advocate, representative or fiduciary for anyone, that nothing said by the mediator should be considered legal advice, and that the mediator is not liable for the outcome of the mediation.
- 4. Confidentiality:** It is understood and agreed that California Evidence Code §§ 1119 *et seq.* and Federal Rule of Evidence § 408 apply to this mediation in order to promote communication and facilitate settlement of the dispute. All statements made during the course of the mediation are confidential, privileged settlement discussions, made without prejudice to any party's legal position, and inadmissible for any purpose in any subsequent legal or administrative proceeding. However, if this matter is not resolved, nothing in this agreement precludes the use of knowledge gained during the mediation to conduct discovery and otherwise prepare and assemble the facts necessary for presenting the parties' cases. Notwithstanding the above, the fact that the mediation took place, the time and dates of the sessions, the identities of the participants, and the fact that a final settlement agreement was, or was not reached, is not confidential.

This agreement of confidentiality extends to all information disclosed during the course of the mediation, including all statements made by the mediator, each party, their representatives and witnesses. Specifically, and without limiting the foregoing agreement, the parties agree that they will not seek, nor will they encourage or permit another, to compel the mediator to disclose any information in any legal or administrative proceeding, that the mediator is not competent to testify as set forth in Evidence Code § 703.5, and that they will not attempt to waive the mediator's privilege. Notwithstanding Evidence Code

§1125 (a) (5), which states that the mediation ends ten calendar days after the last communication between the mediator and any of the parties relating to the dispute, the parties to this agreement specifically agree that the mediation and thus the mediation privilege shall continue indefinitely. All disclosures made during the course of this mediation are conditioned upon this promise and agreement of confidentiality. It is specifically agreed that breaching this agreement will cause irreparable injury and that monetary damages will be an inadequate remedy, and accordingly, any party to this agreement may obtain an injunction to prevent disclosure of confidential information in violation of this agreement. If any party breaches this agreement, that party shall be liable for and shall indemnify the other parties and the mediator for all reasonable costs, expenses, and fees, including attorney's fees, that may be incurred as a result of such breach.

5. Mediator's Fees: The mediator shall be paid for time spent in the review of written briefs and documents, other time required to prepare for the conference, during the mediation conference and any appropriate follow up as outlined in the Mediation Fee Schedule, sent with the confirmation letter, and incorporated herein by reference. Unless modified by agreement of the parties, each party shall bear his/her/its pro rata share of the applicable fees. The parties and their counsel acknowledge that they are jointly and severally liable for all fees assessed in the mediation process.

6. Release and Indemnification: We agree to release the mediator from any and all claims arising out of a failure to reach agreement or a decision to enter into any agreement or any other aspect of the mediation process. If any party attempts to, or does bring such a claim, that party agrees to indemnify the mediator from any loss or damage, including costs and attorney fees incurred in connection with such claim.

7. Miscellaneous: No subpoenas, summons, complaints, or other service of process may be effectuated at or near the mediation site upon any person attending or in any way connected with the mediation.

Date: _____

Mediator

PARTICIPANTS: Please sign and print your name.

Date	Print Name	Signature

Please contact the Case Administrator if you have any questions regarding our fees or the cancellation policy.