

## **SAMPLE AGREEMENT TO MEDIATE**

This is an Agreement between \_\_\_\_\_ and James E. Jones, J.D., hereinafter "mediator," to enter into mediation with the intent of resolving all issues regarding: \_\_\_\_\_. The parties and the mediator understand and agree as follows:

### 1. Nature of Mediation

The parties hereby appoint and retain James E. (Jim) Jones as mediator for their negotiations. The parties understand that Jim is an attorney, but will in this mediation not serve as any party's nor all parties' legal counsel. The parties understand that mediation is an agreement-reaching process in which the mediator assists parties to reach agreement in a collaborative, consensual and informed manner. It is understood that the mediator has no power to decide disputed issues for the parties. The parties understand that mediation is not a substitute for independent legal advice. The parties are encouraged to secure such advice throughout the mediation process and are strongly advised to obtain independent legal review of any formal mediated Agreement before signing that Agreement. The mediator may come to require one or both parties to have their agreement reviewed by legal counsel to ensure that party is reaching a reasonably informed agreement. The parties understand that the mediator's objective is to facilitate the parties themselves reaching their best agreement. The parties also understand that the mediator has an obligation to work on behalf of all parties and that the mediator cannot render individual legal advice to any party and will not render therapy nor arbitrate within the mediation.

### 2. Scope of Mediation

The parties understand that it is for the parties, with the mediator's concurrence, to determine the scope of the mediation and this will be accomplished early in the mediation process.

### 3. Mediation is Voluntary

All parties here state their good faith intention to complete their mediation by an agreement. It is, however, understood that any party withdraw from or suspend the mediation process at any time, for any reason or no reason.

The parties also understand that the mediator may suspend or terminate the mediation, if the mediator feels that the mediation will lead to an unreasonable result, if the mediator feels that an impasse has been reached,

or if the mediator determines that he can no longer effectively perform his facilitative role.

#### 4. Confidentiality

It is understood between the parties and the mediator that the mediation will be strictly confidential. Mediation discussions, any draft resolutions and any unsigned mediated Agreements shall not be admissible in any court, administrative or other contested proceeding. Only a mediated Agreement signed by any parties may be so admissible. The parties further agree to not call the mediator to testify concerning the mediation nor to provide any materials from the mediation in any court or other contested proceeding between the parties. The mediation is considered by the parties and the mediator as settlement negotiations. All parties also understand and agree that the mediator may have private caucus meetings and discussions with any individual party, in which case all such meetings and discussions shall be confidential between the mediator and the caucusing party(ies), unless the parties agree otherwise.

#### 5. Mediator Impartiality and Neutrality

The parties understand that the mediator must remain impartial throughout and after the mediation process. Thus, the mediator will not champion the interests of any party over another in the mediation nor in any court or other proceeding. The mediator is to be impartial as to party and neutral as to the results of the mediation. The mediator will seek to affirmatively reveal any operative biases and will disclose any and all prior contacts with the parties and their legal counsel.

#### 6. Mediation Fees

The parties and the mediator agree that the fee for the mediator shall be \$250 per hour for time spent with the parties and for time required to study documents, research issues, correspond, telephone call, prepare draft and final Agreements and do such other things as may be reasonably necessary to facilitate the parties reaching full Agreement. The mediator shall also be reimbursed for all expenses incurred as a part of the mediation process.

A payment of \$2000 toward the mediator's fees and expenses shall be paid to the mediator along with the signing of this agreement. Any unearned amount of this retainer fee will be refunded to the parties. The parties shall be jointly and severally liable for the mediator's fees and expenses.

As between the parties only, responsibility for mediation fees and expenses shall be: \_\_\_\_\_.

The parties will be provided with a monthly accounting of fees and expenses by the mediator. Payment of such fees and expenses is due to the mediator no later than 15 days following the date of such billing, unless otherwise agreed in writing.

It is so agreed.

DATED this \_\_ day of \_\_\_\_\_, 20\_\_