



Collaborative Journeys - Mediation Services

Agreement to Mediate

Between: *(name of disputing party)*

And: *(name of disputing party)*

And: *(mediator)*

The parties wish to settle matters in dispute between them without resorting to the adversarial process. The parties and the Mediator will make a serious effort to resolve all issues fairly.

The Parties Agree:

1. Process

- i. The Mediator will act as an impartial facilitator to assist the parties in a negotiation aimed at the resolution of issues between them.
- ii. All parties should be prepared to come to the mediation with an open mind, ready to analyze new information; not simply to argue their position.
- iii. All parties will work with the mediator to identify issues, and points of agreement or disagreement, and explore resolution options.
- iv. The parties understand that the Mediator may have separate meetings with each of them and/or with their counsel, at any time during the mediation.
- v. The mediator is neutral, will not act as a lawyer for any party and cannot give legal advice to any party. Legal advice must be obtained from a lawyer acting for a party.

2. Authority to Settle

- i. To have an effective mediation it is important that the representative of each party with authority to settle the dispute be present during the mediation. If that party is an individual, then the party has authority to settle the dispute during mediation; and, if that party is not an individual, then the party's duly authorized representative has authority to settle the dispute during the mediation.

3. Disclosure of Information

- i. The parties acknowledge that full disclosure of all relevant information is essential to the mediation process, and they agree to fully, completely and honestly disclose all relevant information to each other and to the Mediator.
- ii. The parties understand that any agreement arising out of mediation may be set aside if full and frank disclosure has not been made.
- iii. All relevant information is to be exchanged by the parties in advance of the mediation session to assist all parties in making realistic, informed settlement decisions during the mediation.
- iv. Preparation of all participants is an integral part of reaching resolution. At least seven days before the mediation, the parties will exchange all relevant information and documents, by sending copies to the other party and the Mediator, using email or other means.
- v. Each party or representative must bring to the mediation session all relevant documents – including any written contracts, invoices, reports, estimates or photographs.

4. Confidentiality of Information

- i. All communications between the parties and with the Mediator, are part of an effort to settle issues, and are conducted on a without prejudice basis.
- ii. All communications occurring in the context of the mediation are confidential, and are inadmissible in any legal proceeding.
- iii. No party will require the Mediator to testify about any spoken or written information disclosed as part of the mediation, or to disclose documents made or exchanged as part of the mediation.
- iv. Without limiting the generality of the foregoing, no party will disclose or attempt to compel disclosure of:
 - a. any views expressed or suggestions made by another party in respect of the possible settlement of the dispute;
 - b. any admissions made by a party in the course of the mediation; or
 - c. the fact that another party had indicated a willingness to accept a proposal made by any party to the mediation.

5. Effecting a Resolution

- i. Where resolution of some or all of the issues in dispute between the parties is reached, the Mediator will draw up a Settlement Agreement that outlines the understanding reached by the parties, and give a copy to each party. The Settlement Agreement is a complete statement of the resolution reached by the parties at the Mediation.
- ii. Should the parties wish to create a legally binding document, the parties and their counsel must prepare either a written agreement or a court order.

6. Ending the Mediation

- i. Participation in mediation is voluntary. A party or the Mediator may end the mediation at any time for any reason.

7. Mediation Fees and payment

- i. Mediation costs will include the mediator's fees and any out-of-pocket expenses incurred by the mediator for telephone calls, correspondence, etc. The Mediator's fees will be calculated as follows:
 - ii. The parties will share the fees and expenses as follows:

- iii. Our policy is payment in full in advance of the mediation session. Any unused portion of a deposit will be refunded promptly. Any additional balance is due within five days of the mediation. The Mediator is entitled to full compensation for all time spent on the dispute; including preparation and telephone time.
- iv. Any confirmed appointment that is cancelled within 14 days of the confirmed date will be charged half the amount of the time booked.
- v. Payments can be made by cheque or electronic payment using PayPal.

8. Publication

- i. By attending this mediation session, unless we are notified to the contrary prior to the mediation session, all participants authorize the Mediator to:
 - a. describe this matter to colleagues for education purposes, and may publish the fact pattern and results of this mediation, provided no disclosure is made of the participants' names or any other information which would specifically identify the participants.

9. Counterparts

- i. This Agreement may be entered into by each party signing a separate copy and delivering it to the other party and the Mediator by scanned e-mail attachment, or other means.

Dated:

_____, 2009, at _____

Signed by:

_____ (Party)

_____ (Address)

_____ (Counsel *[if applicable]*)

_____ (Party)

_____ (Address)

_____ (Counsel *[if applicable]*)

_____ (Mediator)

_____ (Address)