

**RETIRED JUDGE DISPUTE RESOLUTION SERVICES LLC
AGREEMENT TO MEDIATE**

STYLE OF CASE OR DISPUTE

The parties agree to mediate one or more disputes which now exist between them. The mediation will be conducted by Retired Judge Dispute Resolution Services L.L.C. (Hereinafter RJDRS or Mediator), and with all the parties agreeing to the following terms:

1. Mediation is a voluntary process in which the hereinbelow parties to a dispute retain a **Mediator, also known as a “Neutral” to assist them in the resolution of a dispute without litigation or to end pending litigation with a written agreement.**
2. The mediator serves as an impartial facilitator of the negotiations. The mediator is not a legal advisor to the parties nor does he or she act as an advocate for any party. The mediator does not in any way provide legal advice nor does he or she engage in the practice of law in any manner.
3. In the unlikely event that the parties request that the mediator draft a settlement agreement, it is agreed and understood that the mediator will only be acting as a scrivener. If a draft agreement or any document prepared as a result of the mediation, at the request of the parties or party, the parties agree to have the document reviewed by their counsel and to be advised by their counsel as to the validity, acceptability and the legal meaning of the document.
4. All statements, documents and other matters generated in connection with the mediation are strictly confidential. In addition, and specifically:
 - a. all memoranda, work product and other materials contained in the case files of the mediator are confidential;
 - b. any communication made in or in connection with the mediation which relates to the case being mediated is completely confidential. If this mediation occurs in the State of California, in order to promote communication and candor between and among the parties and their respective counsel, advisers and insurers, the undersigned agree that the mediation confidentiality protections provided by California law, including but not limited to California Evidence Code Sections 703.5 and 1115-1128 shall apply.
 - c. notwithstanding the confidentiality provisions set forth herein, any mediated agreement herein shall be admissible in any action or proceeding to enforce any term or provision of this agreement and/or to prove the existence of the agreement;
 - d. allegations of child abuse are not confidential, as mediators are mandatory reporters of this information;

- e. in reporting on the outcome of the mediation to a referring court, the mediator shall advise whether an agreement was reached, the terms of the agreement, the fact that no agreement was reached, or the fact that the mediation did not occur. The mediator shall not disclose any of the actions or observations made of the parties or their counsel during and after mediation.
 - f. audio and/or visual recordings of any parts of the mediation are strictly prohibited unless all the parties, the mediator, and their counsel agree in writing.
5. Confidential materials and communications are not subject to disclosure in discovery or in any judicial or administrative proceeding except:
- a. in any subsequent dispute between the mediator and a party to the mediation for damages arising from the mediation, but only the extent allowed by law and/or by contract herein;
 - b. where a threat to inflict bodily injury is made;
 - c. where communications are intentionally used to plan, attempt to commit, or commit any crime or conceal an ongoing crime;
 - d. where an ethics complaint is made against the mediator by a party to the dispute resolution process to the extent necessary for the mediator to defend against such complaint;
 - e. where communications are sought or offered to prove or disprove any of the grounds listed in Virginia Code 8.01-581.26 in a proceeding to vacate a mediated agreement.
 - f. as provided by law or rule.
6. The mediator shall not be subpoenaed to testify or to produce any files, documents or materials pertaining to the mediation or any parts thereof. In the event any person or entity files suit or seeks a subpoena in violation of the provisions of this paragraph or any other part of this **agreement, such person or entity shall be responsible for all reasonable attorneys' fees, costs and expenses** incurred by the mediator in responding to any such actions.
7. After a mediation has been scheduled by RJDRS, if the session is cancelled by one or more of the parties less than ten (10) business days prior to the scheduled mediation, the parties and their counsel shall **be responsible to four hours of the mediator's hourly rate as set forth herein**
8. **The mediator will be retired Judge H. Thomas Padrick, Jr. The mediator's fee is \$375.00 per hour.** There shall be a four-hour minimum charge.

9. **The mediator's hourly rate** will be charged for all time expended for the mediator to perform **professional services including, but not limited to, review of the parties' submissions prior to the mediation session(s), including the consideration of the parties' pre-mediation briefs, the mediation sessions, conferences, and, if any, post mediation conferences or additional negotiations.** Travel time is billed at \$100.00 per hour in excess of one hour. All costs incident to the mediation, including but not limited to travel costs (airfare, taxis etc.), hotel bills and the like, shall be paid equally by the parties and their counsel as set forth herein.
10. Unless otherwise agreed in writing, the mediation fees shall be equally divided between the parties. If in the sole discretion of RJDRS a fee deposit may be required before any services are rendered.
11. The attorney and his or her law firm shall be responsible for payment to RJDRS of the amounts it bills for services rendered under this agreement as a cost advance to its client(s).
12. This agreement may not be modified orally. Any modification or amendment must be in writing and signed by all parties, counsel and RJDRS. No obligation or undertaking shall be implied that is not set forth expressly herein.
13. The undersigned acknowledge and agree that RJDRS has made no promises, guarantees, or representations to the parties or counsel to the parties that they will be able to achieve a negotiated resolution of their disputes through mediation, and hereby release RJDRS from any and all claims arising out of (a) their potential failure to reach agreement, or (b) their decision to enter into any agreement at the mediation. Also, RJDRS shall not be liable to the parties to this agreement for any act or omission related to this mediation.
14. The parties and their counsel represent that all discovery material has been disclosed to the other party(s) and represent that any and all relevant property and financial information have been fully and completely produced to the opposite parties and their counsel. Discovery is defined in Rule 4:1 of the Rules of the Supreme Court of Virginia and is specifically incorporated by reference herein *IN HAEC VERBA*.
15. If the mediation is based on a referral from a court in the District of Columbia or the State of Maryland, the mediator's report will indicate the following:
- a. Whether an agreement was reached;
 - b. The terms of the agreement if authorized by the attorneys and the parties; (c) The fact that no agreement was reached.
16. All invoices for professional services shall be due and owing upon presentment. If not paid, the parties and their attorneys agree to pay all costs of collection including reasonable **attorneys' fees.**
17. If there is a dispute as to the validity of or any other issue related to this agreement, as it pertains to the mediator, the parties agree to waive jury trial and proceed with a bench trial. It is agreed that venue for Virginia cases shall be in the Circuit Court of the City of Virginia Beach. If in

California, venue shall be in the Superior Court of Orange, unless agreed by all parties and RJDRS in writing.

All the persons signing below do so on behalf of themselves and the people and/or entities on whose behalf they are participating in this process.

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Full Name of Person Signing (Please Print)

Signature

Date

Full Name of Person Signing (Please Print)

Signature

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Retired Judge Dispute Resolution Services L.L.C.

By _____