

Agreement to Mediate

Parties agree to enter mediation with Sugarloaf ADR with the intention of reaching a mutually agreeable settlement of their dispute. Parties have selected a Sugarloaf ADR Neutral to facilitate resolution of their dispute. By attending mediation, Parties agree to the following terms and conditions:

- ❖ In all respects the mediation shall be governed by and conducted in accordance with this Agreement in addition to any Rules of Mediation provided by the Neutral.
- ❖ Mediation is a voluntary process. By participating in this mediation, Parties are affirming that they have the capacity to conduct good-faith negotiations and make decisions for themselves, including a decision to declare an impasse in the mediation, if necessary. The Neutral may also declare an impasse in the mediation if the Neutral finds that one of the Parties is not acting in good faith, or it is felt that further negotiations will not be productive.
- ❖ 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 Neutral, the Parties, and their counsel will work to ensure that each party understands the facts asserted and the contentions of all Parties.
 - In order for the mediation to be successful, open and honest communications are essential. Parties will make complete and accurate disclosures of all matters relevant to the process of settlement. This includes providing each party and the Neutral 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.
- ❖ It is understood by the Parties that the Neutral does not offer legal advice in this mediation and is not functioning as an attorney. The Neutral's role is to aid the Parties in seeking an 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.
 - The Neutral will not represent any party or participant in this mediation in any subsequent legal proceeding or matter relating to the subject of the mediation.
- ❖ All such communications by the Parties shall be treated as strictly confidential by the Neutral and by the Parties. The Neutral will not disclose any information learned during the mediation sessions 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 consent of the party making the disclosure.
 - In order to maintain confidentiality, the Parties, by this agreement, agree not to call the Neutral as a witness at any proceeding nor to subpoena or otherwise seek discovery of any written materials in the Neutral's possession developed for or in the course of the mediation. To the extent that the law permits such discovery from the Neutral, the Parties hereby waive their rights hereto.
 - If, at a later time, either party decides to subpoena the Neutral, Sugarloaf ADR will move to quash the subpoena. Any party-seeking discovery from the Neutral or Sugarloaf ADR shall be liable for and shall indemnify the Neutral for any liabilities, costs, and expenses, including attorney's fees and lost professional time which may be spent in resisting such discovery.
 - The Neutral is expressly permitted to meet privately with any of the parties in separate, private caucus communications before, during or after the mediation as the Mediator determines is necessary and appropriate. Mediation begins at moment of first communication with neutral.
- ❖ Parties are advised that a mediated settlement agreement, once signed, can have a significant effect upon the rights of the Parties and the status of the case.
- ❖ The Parties agree that neither Sugarloaf ADR nor any Neutral shall be liable to any party for any act or omission in connection with any mediation conducted under this Agreement, and specifically waive any right to make any such claim.

- ❖ While the settlement negotiations in this mediation should remain confidential:
 - Evidence 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, it is not confidential. In some areas, the requirements of law and 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.
 - 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.
- ❖ The Parties agree to equally share the fee of Sugarloaf ADR unless otherwise agreed; any agreement otherwise must be communicated to Sugarloaf ADR prior to mediation. The Rates and Fees for services provided on the Sugarloaf ADR website (www.sugarloafadr.com) and incorporated herein by reference and is made part of this agreement to mediate. Fees are payable at the close of each mediation session. Attorneys are primarily responsible for the payment of fees in this proceeding, except when prohibited by law. Parties not represented by counsel are responsible for the payment of their share of the fees.
 - Payment is expected from the attorney upon receipt of the invoice, unless otherwise agreed, regardless of whether the client has provided funds to satisfy this invoice.
 - Should the Neutral continue to work with the Parties to reach a resolution of this matter after impasse, additional billing will be completed for hours incurred after the day of the mediation. Invoices will be distributed separately for the additional work and are due upon receipt.
- ❖ There is a \$100 per party fee for any mediations that take place in person at any of our Sugarloaf ADR Offices.
- ❖ Travel costs will be a flat fee of \$30.00 per party within 1 hour of Sugarloaf ADR offices. Any travel outside of 1 hour will be billed at neutral's hourly rate in quarter hour increments. Any additional travel arrangements can be discussed on a case by case basis.
- ❖ Sugarloaf ADR prohibits recording of any kind.

Signatures ~

Print Name ~ Party Represented ~ Signature ~ Date ~

Print Name ~ Party Represented ~ Signature ~ Date ~

Print Name ~ Party Represented ~ Signature ~ Date ~

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