Mediation in British Columbia

This document is designed to provide an introduction to mediation as a process for resolving disputes in British Columbia.

Information is provided in a question-and-answer format. You may wish to read the document in sequence, or use the menu below to jump to the particular pages in which you are most interested.

Contents

What is mediation?

Mediation is a process for resolving disputes. Two or more parties to a dispute meet and attempt, with the assistance of a mediator, to settle the matters in dispute. The mediation takes place in a private, informal setting, where the parties participate in the negotiation and design of the settlement agreement. The mediator is trained to help people settle conflicts collaboratively and has no decision-making power. The dispute is settled only if all of the parties agree to the settlement.

Traditionally, people have relied on the courts to resolve their legal disagreements. However, going through the court system can be time-consuming, expensive and confrontational.

Mediation is an alternative to going to court. In mediation, an impartial mediator helps to bring the parties

involved in the dispute together and supports them in working out a solution in a non-confrontational setting.

Mediation can be used to resolve many different types of disputes, including disagreements involving contracts, debts, wills and estates, business, corporate or commercial claims, real property or construction disputes, wrongful dismissal and personal injury claims.

Mediation can also be extremely useful in family law cases. There are government programs available in B.C. which offer mediation to resolve disputes about child custody and access or child protection, and there are many family mediators in the private sector. Because family disputes tend to be different from other kinds of legal disputes, such as disagreements involving business or commercial claims, family mediation is not discussed in this document.

Mediation can be faster and cheaper than going to court and, in many situations, you can reach a settlement that is acceptable to everyone involved.

This document deals mainly with voluntary mediation, but some mediation processes are mandatory. For instance, under the recently introduced Notice to Mediate Regulation, a person can require the other party to a motor vehicle claim to attend mediation. Although a mandatory mediation program or a mediation process outlined under a specific piece of legislation is likely to have its own rules and procedures, the information in this document is relevant to mediation in general.

Why mediate?

Cost - Time and money can be saved and emotional stress can be reduced through early resolution of the dispute.

Speed - Mediation can be arranged in a relatively short period of time and has the effect of bringing settlement negotiations "to a head" quite quickly.

Privacy - Mediation takes place in private and the details of the dispute and its resolution need not be publicly disclosed.

Control - Each of the parties maintains control of the dispute and its resolution because, unlike the trial process, the parties design the settlement and agree to live by it only if it is acceptable to them.

Informal atmosphere - The informal setting and atmosphere of mediation is conducive to productive communication between the parties. Many of the tensions and stresses of the adversarial process are avoided.

Separating the people from the problem - Very often in disputes, personal feelings or emotions become confused with substantive legal issues and play a powerful role in fueling litigation. The mediator helps to separate the personal dimension from the issues in dispute, reducing tension and making settlement more likely.

Preserving relationships - Many parties to a dispute must continue to deal with one another, either in business or otherwise, after the dispute is resolved. Mediation, because it tries to avoid polarizing the parties, can help to preserve a working relationship.

When should I consider using mediation?

While mediation cannot solve all legal disputes, it can be helpful in most cases. Although there are no set rules about what can or cannot be mediated, mediation is more appropriate in some situations than others.

Consider mediation when:

- the people involved in the dispute are at least willing to meet and try to settle it
- parties want a flexible and informal process
- no party can get away with simply ignoring the problem
- other options for resolving the dispute are unacceptable
- each party needs something from the other
- both parties have an interest in maintaining a relationship (business or otherwise) after the dispute is resolved
- the dispute involves more than two people or businesses
- the case is complex and requires a creative solution
- the parties would prefer to settle the dispute in private
- there are clear issues to be resolved, such as those involving money, property, behaviour, rights or licences.

Mediation is probably not appropriate when:

- the parties to the dispute do not have the power to change things or to resolve the problem
- any of the parties are completely unwilling to consider working toward compromise
- a party is challenging the validity of a law
- an issue of law needs to be settled to govern future legal cases or serve as a legal precedent
- people not directly involved in the dispute may be unreasonably affected by the outcome of mediation
- the issue is one that should be debated in the public eye
- there is fear of violence between any of the parties.

You need not be confident that the case will settle in order to go to mediation. All that is needed is the willingness to sit down and talk. Settlement rates in mediation are quite high and cases often settle even when parties are initially far apart and pessimistic about resolving the dispute outside of court.

What does a mediator do?

Mediators are specially trained to help people work together to reach a resolution to a dispute that is acceptable to everyone involved.

There are no universally accepted certification programs for mediators, and mediators come from many different backgrounds. Before hiring a mediator you should ask for information about their training and experience.

Mediators are impartial and unbiased. They do not have the power to make decisions about the case or impose a resolution. Instead, their role is to ensure that the discussion remains focused, organized and respectful. They are experts in making negotiations work.

A mediator will:

- establish ground rules for respectful conduct
- structure and manage the negotiation process
- help clarify the facts and issues
- help the parties analyze what they need out of a resolution and help them to generate options to resolve their dispute
- keep lines of communication open and discussions on track
- be a sounding board, innovator and reality tester.

Most mediations are conducted informally in an office setting. Everyone involved in the dispute sits around a table with the mediator. Coffee, tea and juice are often available for participants. Depending upon the kind and complexity of the issues, mediations are booked anywhere from two hours to two days. A great many commercial mediations resolve in about four to six hours.

Who needs to be involved in the mediation?

The mediator and all the parties involved in the legal dispute must attend the mediation.

The other people who might attend depend, in part, on the issues being mediated. It's important to ensure that everyone who has the authority to reach an agreement is there.

Some of the other people you may wish to have at the mediation include:

- You may choose to have your lawyer attend the mediation or you may seek the advice of your lawyer before, during or after the mediation.
- A friend or family member might attend to provide you with support.
- It might be useful to have someone attend who is an expert in the subject that the dispute is about.
- If insurance is involved, you might need someone from the insurance company to attend.
- If anyone involved in the dispute is an incorporated company, then the person representing the company must attend, and should have the authority to settle the case on behalf of the company.

All the parties to the mediation should agree about the rules for the involvement of others before beginning the mediation.

Do I need a lawyer to mediate?

You do not need to have a lawyer to mediate. However, having a lawyer attend the mediation with you can be particularly useful when:

- a lawsuit has been commenced
- you feel the other party has more power or knowledge than you do
- the other parties involved in the mediation will be using lawyers
- the financial or other stakes are high.

Whether or not you choose to have your lawyer at the mediation, it can be helpful to consult with your lawyer

while you are preparing for the mediation. You also have the option of getting independent legal advice before committing to any settlement agreement. This is particularly important if your lawyer has not participated in the mediation.

How do I initiate mediation?

First, you need to see if the other side is interested. Mediation is a relatively new process and it is not always well understood. You should not be surprised or discouraged if the other people involved in the disagreement start out less than enthusiastic about the idea of mediation.

Here are some steps you can take:

- Give them, or send them a printed copy of this document with the proposal that you discuss the possibility of mediation.
- If a lawsuit has been commenced or if you are receiving advice on the dispute from a lawyer, discuss your interest in mediation with the lawyer and have him or her raise it as a possibility with the other side.
- Approach a mediator who will, for a fee, contact everyone involved in the dispute and inform them of the benefits of mediation while encouraging them to take part.
- For names of mediators in your area, contact the British Columbia Mediator Roster Society, or check the telephone book for mediator service providers and mediation organizations.

> The Mediator Roster Society can be contacted c/o the Dispute Resolution Office. In Victoria, call 356-8147. If elsewhere in B.C., call Enquiry BC and they will forward your call at no charge. Ask to be connected to the Dispute Resolution Office, Ministry of Attorney General. In Vancouver, the Enquiry BC number is 660-2421; elsewhere in B.C., it is 1-800-663-7867 toll free. You can also contact the society by e-mail at mediators@mediator-roster.bc.ca or on the Internet at www.mediator-roster.bc.ca

It is important to understand the differences between mediation and other kinds of dispute resolution and to consider if your dispute is appropriate for mediation. If you have questions or comments about the mediation process, or about how to initiate the mediation process, you should consider contacting a qualified mediator for further information or contact the Mediation Roster Society. There is more information about mediation available in the Dispute Resolution Office bulletins.

Once there is an agreement to try mediation, all the people involved in the dispute will have to agree on the selection of a mediator. The mediator will work with everyone to reach an agreement about how the process will happen. Everyone will need to agree on the ground rules and payment of fees. The agreement to mediate will be in writing.

If the people involved in the disagreement refuse to try mediation, then you will have to find a different way to resolve the dispute.

How do we choose a mediator?

Choosing a mediator is a key part of the mediation and all parties to the dispute must agree on the mediator.

You can get the names of mediators from:

- personal referrals
- your lawyer
- the Mediator Roster
- a private mediation service provider or mediation organization
- the Lawyer Referral Program of the Law Society of British Columbia.

The mediator must not have any personal or business involvement with any of the people involved in the dispute. While it is often very helpful, it is not always necessary that the mediator have expertise in the subject matter of the dispute. The mediator's expertise is in helping to manage the negotiation process.

There are no universally recognized certification processes for mediators, and mediators have different backgrounds and training. Mediators should be able to provide you with information about their training and experience. It's a good idea to ask for résumés and references and to contact more than one mediator before making a decision.

Key questions to ask mediators include:

- What training have they received? (It should be through a well-recognized institution, university, professional or legal organization.)
- How long have they been doing mediations, and how many cases and what types of cases have they mediated?
- What standards of conduct do they abide by? (Mediators on the Mediator Roster agree to adhere to the roster's own standards of conduct and mediators who belong to professional organizations are bound by other codes of conduct.)
- What do they charge and what is included in their fee? How are travel, administrative and clerical time handled? Does the mediator charge for an initial consultation?
- Can the mediator provide a neutral location where the mediation session will take place and what is the charge for this service?
- Does the mediator think the dispute is appropriate for mediation, or should some other form of dispute resolution be considered?

After you have agreed on a mediator, everyone participating will want to sign an agreement setting out the ground rules for the mediation. The agreement to mediate will address important issues including information sharing, confidentiality and fees. All the people involved in the dispute should receive a copy of the agreement to mediate.

If all the people involved in the dispute cannot agree among themselves who the mediator will be, using the Mediator Roster can help with the selection process, or you can contact a mediation organization or service provider for help.

What is the Mediator Roster?

The British Columbia Mediator Roster Society has been incorporated to establish and administer a province-wide Mediator Roster. The roster is a list of trained and experienced mediators. The mediators now on the roster are most likely to have experience in mediation of civil/non-family cases, including legal disputes that would otherwise go to the British Columbia Supreme Court. Later, the roster will expand to include lists of

mediators for other kinds of disputes such as family law.

The society was set up after consultation led by the Dispute Resolution Office of the Ministry of Attorney General. All the major groups who work in the justice system (such as lawyers and judges) and in the mediation community (such as training organizations and service providers) had an opportunity to comment on how a list of mediators should be set up, who should administer the list, and what the qualifications should be for mediators to be listed.

The elements of qualification for admission to the roster are:

- **Training and education requirements**— At least 80 hours of core training and 100 hours of training in a related field.
- **Experience prerequisites**—A minimum number of mediations, relevant work experience, and a demonstrated ability to work successfully with people.
- **Insurance**—A minimum amount of liability insurance.
- **Code of conduct**—Agreement to abide by standards of conduct endorsed by the Board of Directors of the British Columbia Mediator Roster Society.

The information bulletin The British Columbia Mediator Roster, published by the Dispute Resolution Office, gives more information about the Mediator Roster. You can also contact the Dispute Resolution Office at:

Ministry of Attorney General
P.O. Box 9280, Stn. Provincial Government
Victoria, British Columbia
Phone: (250) 356-8147
Fax: (250) 387-1189

Enquiry BC can forward telephone calls at no charge. If you're in Vancouver, call 660-2421; elsewhere in B.C., call 1-800-663-7867. Ask to be connected to the Dispute Resolution Office, Ministry of Attorney General. Or you can e-mail the office at dispute.resolution.office@ag.gov.bc.ca

What is included in an Agreement to Mediate?

Once those involved in a dispute agree to mediate, a written agreement will usually be made between the mediator and the parties, setting out the rules and procedures to be followed in the mediation. It is usually signed before or at the first mediation session.

Individual mediators often have their own form of agreement, but most forms include:

- **Parties** - The names of all persons involved in the dispute.
- **Subject** - A very general statement of what the dispute is about.
- **Goals** - What you are trying to accomplish in the mediation.
- **Mediator's role** - The neutral and impartial role of the mediator.
- **Confidentiality** - Agreement that details discussed at the mediation cannot be used in court and that

the mediator cannot be required to testify. The general rule is that negotiations in mediation are off the record. Records made during the mediation are confidential but original documents brought to the mediation to support an argument may later be used in court (the rules of court decide what is admissible as evidence if a legal dispute proceeds to court).

- **Full disclosure** - All relevant information will be made available to everyone involved in the mediation. Often, it is most effective to agree to the exchange of information before the first mediation session.
- **Involvement of lawyers** - Agreement that parties may attend the mediation with legal counsel or that they have the option to obtain independent legal advice before committing to an agreement.
- **Fees and costs** - Agreement regarding how much the mediator will be paid, what the other costs will be, and who will pay.
- **Voluntariness and ending the mediation** - Agreement that participation in the mediation is voluntary and that any party, or the mediator, may terminate the mediation.

Click here to see a sample Agreement to Mediate that shows the items commonly included.

How much does mediation cost?

The cost of mediation varies, depending upon who the mediator is and how long the mediation takes. Experienced, legally trained mediators typically charge from $125 to $225 an hour, and these rates are sometimes negotiable. Mediators who are not legally trained often fall within the same range or, on occasion, charge less. Private mediation service providers will offer a full range of services, including setting up, planning, and carrying out mediations, for a flat rate of about $800 per party (plus GST) for a four-hour mediation.

The cost of mediation is usually shared equally by the parties participating in the mediation, but the agreement to mediate can provide for any other arrangement. Sometimes other arrangements are negotiable as part of the final settlement.

If lawyers attend the mediation, they will usually charge for preparation time as well as any time spent at the mediation, unless they are working on a contingency basis. The precise amount of the lawyer's fee will depend upon his or her hourly rate.

How do I prepare for mediation?

Think about some important questions before you go to the mediation:

- What is the best outcome that you could reasonably hope for?
- What is the worst outcome you should prepare for?
- What are you most concerned about and what can the other person do to respond to those concerns?
- What is the other person most concerned about and what can you do to respond to those concerns?
- What are your options if you do not reach a settlement in mediation?

Gather together any documents that you need to help resolve the dispute. This might include statements, invoices or photographs. Bring to the mediation the originals and copies for each party and the mediator.

Lawyers will usually consider exchanging the information before the first mediation session so everyone has a chance to become familiar with it and the mediation is more efficient.

Sometimes the mediator will ask you to provide him or her with a short summary report before the first session. It is likely to include:

- what you think needs to be resolved
- the facts or circumstances that led to the dispute
- what you and the other party disagree about and what you agree about
- what has already been done to try to settle the dispute (i.e., any court proceedings, negotiations or settlement proposals).

What if we settle the dispute before the mediation?

Any settlement agreement should be clearly understood by all parties. You may formalize the terms of the settlement with a written settlement agreement signed by all parties (a contract) or you can go to court and get a consent order. A consent order is signed by a judge and makes the settlement enforceable by the court.

Make sure you let the mediator know that the dispute has been settled. If you have already signed an agreement to mediate, ensure that you have done everything you are obliged to do, including giving the mediator proper notice of the cancellation.

What happens in the mediation?

Everyone involved in the dispute meets together with the mediator in an office. The mediation session usually takes three or four hours to complete, although sometimes mediations will be scheduled for one or two days.

The process often follows these steps:

- The mediator makes a short opening statement explaining the process, establishing the ground rules for conduct, reviewing the agreement to mediate, and describing his or her own role.
- The mediator asks each party to explain the facts of the dispute from their perspective and describe what they think needs to be resolved.
- The mediator works with the parties to identify clearly and concisely the issues that are in dispute. The mediator helps develop goals for the mediation that incorporate the needs and interests of the parties.
- The parties discuss the issues one at a time and identify options for resolving them. The mediator helps to assess and analyze the options, but does not take sides.
- At some point during the mediation, the mediator may want to meet separately with the parties for a private "caucus." You can take a break any time you want to talk to your lawyer or someone else.
- If settlement is reached on some or all of the issues, you will probably formalize the settlement through a settlement agreement signed by all the parties. Any settlement agreement must be completely voluntary and you can choose at any time to review the document with a lawyer before signing it.

What happens once the mediation is over?

If the mediation settles all the issues, or only some of them, the matters that have been agreed to will be put in writing and signed. Alternatively, where a court action has been commenced, the parties may go together to

court and ask for a consent order, which is a court order made by agreement at the request of all parties.

If some or all of the issues are not settled through mediation, those aspects of the dispute that have not been resolved can proceed through the court process. Even if mediation does not settle all the issues in dispute, it may still be helpful in making the court process shorter and easier.

If your dispute ends up in court, the parties or lawyers for either party may advise the judge of any agreement made in mediation, but neither will disclose anything said during the mediation.

Why should we consider getting a consent order?

After you reach a settlement, you will usually formalize the terms of the settlement by a written agreement or, where a court action has been commenced, by a consent court order.

A consent order sets out the terms of the settlement agreement and is signed by a judge and all the parties. Once you have a consent order, your agreement is enforceable by the court. Having the order gives you more options for enforcement if one party fails to live up to the settlement agreement.

Consent orders are most common when lawyers are involved in the mediation. For more information about how to get a consent order, ask your lawyer.

What if I am not satisfied with the mediation process?

You are never forced to agree to anything in mediation. If you are not satisfied with the process or if you are unable to reach agreement, the mediation will be ended. The dispute must then be resolved some other way, usually through the court system. However, to give the mediation process a fair chance of success, it is often recommended that you continue as long as the mediator thinks it is worthwhile.

What if the other side breaches the settlement agreement?

If, after a written settlement agreement is signed or a consent court order is made, one party breaks the agreement, it is usually advisable to get legal advice. You are likely to be advised that if all parties have properly signed a correctly drafted settlement agreement, it is legally binding on everyone. This is because the agreement is a contract and if any party fails to live up to its terms, it is possible to go to the courts to seek an order to enforce it.

If you have a consent order setting out the terms of the agreement and a party does not obey the agreement, you should seek legal advice. Often, court-sanctioned enforcement mechanisms are available.

Definition of mediation terms

Consent order - A settlement agreement that has been put into form of a court order and signed by a judge.

Mediation - A cooperative process for resolving disputes facilitated by a neutral third party with no decision making power.

Agreement to mediate - A legal agreement describing the mediation process.

Mediator - A neutral third person specially trained to help people work together to reach a resolution to a dispute that is acceptable to everyone involved. Mediators are neutral and unbiased. They do not have the power to make decisions or impose a resolution. Their role is to ensure that the discussion is focused, organized and respectful.

Settlement agreement - The written document or signed contract setting out the terms of settlement agreed to in mediation.

The information bulletin Dispute Resolution Terminology, published by the Dispute

Resolution Office, gives an explanation of more mediation terms.

Besides mediation, other forms of dispute resolution you may see referred to include:

Arbitration - A process in which parties present evidence, arguments and proposed solutions to a neutral third party (the arbitrator), who has the power to make a binding decision.

Negotiation - Any form of direct or indirect communication between opposing parties in a legal dispute, without the assistance of a neutral third party, to discuss steps they could take to resolve a dispute between them.

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DISPUTE RESOLUTION OFFICE

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DISPUTE RESOLUTION TERMINOLOGY

ADR

When the term ADR first appeared, it meant alternative dispute resolution. In recent years it has come to mean appropriate dispute resolution. The change in language reflects a shift in perspective. Dispute resolution options are not alternatives to, or opposed to, the litigation process. Rather, dispute resolution options range along a continuum from collaborative, non-binding processes to binding arbitration and litigation processes. People attempting to resolve disputes can consider the range of dispute resolution options and select the one most appropriate to the situation.

Arbitration

Arbitration is a dispute resolution process in which disputes are submitted to a neutral adjudicator through presentation of evidence and arguments. The arbitrator is empowered to render a binding decision. Arbitration is generally a private, voluntary method of adjudication; however, government sometimes requires that certain disputes be submitted to arbitration (e.g., disputes under the Residential Tenancy Act). Also, a contract may provide that disputes will be resolved by arbitration rather than litigation.

Case management

Case management refers to control of the movement of cases through a court, or a method of managing cases within the litigation process. Case management is not usually considered an ADR process, but ADR systems are often designed to be integrated with case management systems.

Court-annexed dispute resolution programs

In court-annexed dispute resolution programs (sometimes referred to as "court-sponsored" and "court-based" programs), the court is responsible for managing the program and delivering or administering the dispute resolution service. These programs can be distinguished from "court-referred" or "court-connected" programs, in which cases are referred by the court to outside agencies or resources for dispute resolution services.

Mediation

Mediation is a non-binding process in which a neutral, impartial third party with no decision-making authority attempts to facilitate a settlement between disputing parties. Mediation is generally a private, voluntary dispute resolution process.

Mandatory mediation

Some jurisdictions have established mandatory mediation programs in which parties to all court actions, or groups or classes of actions, are required to mediate. The goal of mandatory mediation is to provide support for early and collaborative settlement of disputes, thereby reducing cost, delay and overloading of the courts.

Rather than establish a blanket requirement for mediation, B.C. has developed a Notice to Mediate process for motor vehicle and residential construction cases. (See Notice to Mediate.) The Notice to Mediate is not considered mandatory because it comes into play only when one of the parties to a dispute determines that mediation would be an appropriate approach for resolving the dispute.

Multi-door courthouse

As dispute resolution options proliferate, choosing the correct option becomes a problem in itself. The multi-door courthouse has been proposed as an answer to this problem. This approach to managing civil cases recognizes that particular disputes may be suited to particular dispute resolution options. Disputes are analyzed and diverted to the appropriate dispute resolution option. The multi-door courthouse is a fundamental ADR model that is common in the U.S.; while not used in B.C., it is recommended by the Canadian Bar Association (see Systems of Civil Justice Task Force Report, pp. 23-25).

Negotiation

Negotiation is any form of "unfacilitated" communication in which opposing parties discuss steps they could take to resolve a dispute between them. Negotiation can occur directly between the parties or indirectly through agents acting on behalf of the parties, such as lawyers.

Neutral evaluation

Neutral evaluation is a process in which parties obtain from an experienced (and possibly expert) neutral third party a non-binding, reasoned evaluation of their case on its merits. The opinion or assessment is expected to have persuasive value, especially because the neutral third party is jointly selected.

Notice to Mediate

The Notice to Mediate is unique to B.C. It is a process by which any party to an action in the Supreme Court can require that all other parties to the action attend a mediation session to attempt to settle the matters in dispute. While the Notice to Mediate process requires that the parties attend a mediation session, it does not force them to reach an agreement. For more information about the Notice to Mediate process, see the Dispute Resolution Office bulletins *Notice to Mediate Regulation (Motor Vehicle), Notice to Mediate (Residential Construction) Regulation, and Notice to Mediate (General) Regulation.*

Settlement conference **(also case conference or pre-trial conference)**

These terms are used to describe a broad range of activities involving an informal dialogue between a judge, legal counsel and sometimes parties, before a trial. They tend to be either primarily settlement-oriented or trial-preparation-oriented. Objectives can include settlement of the dispute, expediting the disposition of the action, discouraging wasteful pre-trial activities, and improving efficiency of the trial through more thorough preparation.

For more information

For more information on mediation, contact:

Dispute Resolution Office
Ministry of Attorney General
PO Box 9280, Stn Prov Govt
Victoria, BC V8V 9J7
Phone: (250) 356-8147
Fax: (250) 387-1189
E-mail: dispute.resolution.office@ag.gov.bc.ca
Web site: www.ag.gov.bc.ca/dro

Enquiry BC will forward long distance calls at no charge:

– in Vancouver, call 660-2421
– elsewhere in B.C., call 1-800-663-7867.

When you call, ask to be connected to the Dispute Resolution Office, Ministry of Attorney General.

Mediators

For names of mediators in your area, contact the British Columbia Mediator Roster Society, or check the telephone book for mediator service providers and mediation organizations. The British Columbia Mediator Roster Society can be contacted through the Dispute Resolution Office at the numbers listed on this page, above, or:

Call the Society's toll-free number:
1-888-713-0433

E-mail at:
mediators@mediator-roster.bc.ca

Visit the society's Web site at:
www.mediator-roster.bc.ca

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Sample Agreement to Mediate

BETWEEN:

_____

(name of party involved in dispute)

AND:

_____

(name of party involved in dispute)

AND:

_____

(the "Mediator")

Because:

The parties wish to settle matters in dispute between them without resorting to the adversarial process.

The parties, their lawyers and the Mediator will make a serious attempt to resolve all issues fairly in mediation.

The Parties Agree:

1. Process

Mr./Ms. _____ will be the Mediator.

The Mediator will act as an impartial facilitator to assist the parties in a negotiation aimed at the resolution of issues between them. All parties will work with the Mediator to isolate points of agreement and disagreement, to identify their interests, to explore alternative solutions and to consider compromises or accommodations.

2. Disclosure

There will be full and timely disclosure by each of the parties to the other, and to the Mediator, of all information and documents relevant to the matters under discussion.

3. Exchange of Documents

At least seven days before the mediation conference, the parties will exchange all relevant information and documents.

4. Summary Reports

Each party (or their counsel) will prepare a brief summary of the issues in dispute and their views on them. The parties will deliver the summaries to the Mediator at least seven days before the mediation begins.

5. Without Prejudice Communications and Inadmissibility

All communications between the parties, either with one another or with the Mediator privately, are settlement negotiations conducted on a without prejudice basis. All communications occurring in the context of the mediation are confidential, and are inadmissible in any legal proceeding. No party will subpoena the Mediator to testify or to produce records or notes. 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;

c) the fact that another party had indicated a willingness to accept a proposal made by any party to the mediation.

6. Confidentiality of Information Disclosed to the Mediator

Parties will discuss with the Mediator the matter of confidentiality of information disclosed to the Mediator.

7. Authority to Settle

To have an effective mediation it is important that a representative of each party with authority to settle a dispute be present at the mediation conference.

8. Effecting a Settlement

Where a settlement is reached in the dispute, the parties and their counsel will formalize the terms of the settlement agreement as soon as possible, either in a written agreement or in a court order.

9. Independent Legal Advice

The mediator does not act as legal counsel for any party during the mediation. Each party is encouraged to secure independent legal advice to ensure that legal rights and obligations, and the consequences of any potential settlement are fully understood.

10. Ending the Mediation

Participation in mediation is voluntary. A party or the mediator may end the mediation at any time.

11. Mediation Fees

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:

The parties will share the fees and expenses as follows:

[*Signed by all parties, counsel and the mediator*]

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