

Pactum Factum

Mediation Agreement, Ground Rules & Consent

1. VOLUNTARINESS AND MUTUALITY. Mediation is a way to resolve disputes collaboratively, often with more flexibility than a court process. In mediation you have the opportunity to negotiate your own settlement instead of having one imposed on you by the court. The process of mediation is mutual and voluntary. You should come out of it with a settlement that is acceptable to both of you and controlled by both of you.
2. IMPARTIALITY. The function of the mediator is to impartially assist you in reaching a settlement that is fair and meets both your needs. The mediator will help you identify areas of agreement and disagreement and areas where legal problems arise. When you disagree, the mediator may point out how a court might look at the problem and provide you with suggestions of alternative solutions. All final decisions must be yours.

The parties acknowledge that the amount of time spent in private caucuses with each of you may not match. This is not because the mediator has failed to maintain impartiality. Understand that it may take longer for one of you to express what you need to say or, it may take the mediator longer to communicate the perspective of the other party, develop acceptable options, etc. People communicate and process information in different ways and at different rates. The mediator's job is to "meet the parties where they are." You agree that all mediation fees are borne equally, regardless of the apportionment of time spent with each side in private communications outside of any joint sessions.

3. THE MEDIATOR IS NOT YOUR LAWYER. The mediator does not represent either of you, and cannot be your individual lawyer or the lawyer for both of you. The mediator's role is to remain impartial while supporting discussions that can lead to settlement. The mediator does not tell anyone what to decide. Instead, they help you understand all aspects of the dispute so that you can make the best decisions for yourselves.

There may be complex legal questions, questions of property valuation, and tax and accounting problems involved in your settlement. You may obtain your own independent legal, tax, accounting or other expert advice at any time, and it may be advisable to do so. Understand that the mediator is not responsible for setting the value of any item that may be the subject of a dispute or settlement.

4. INDEPENDENT COUNSEL. Any settlement that is reached will be written and signed in an Agreement. You should review any agreement with your own independent legal counsel before signing it.
5. CONFIDENTIALITY AND PRIVACY. It is understood between the participants and the mediator that the mediation will be strictly **private and confidential**. As such, all mediation discussions, **including all written, oral and digital communications** with both participants and their advisors, any draft resolutions, and any unsigned mediated agreements shall not be admissible in any court proceeding. Only a mediated agreement, signed by the participants, may be so admissible.

The participants further agree to not call the mediator to testify concerning the mediation or to provide any materials from the mediation in any court proceeding between the participants.

The participants understand the mediator has an ethical responsibility to break confidentiality if they suspect a party or other person may be in danger of physical harm.

The participants and the mediator agree that their online mediation shall also be fully private. It is agreed that participants and the mediator will do their best to ensure that other "third" parties are not able to see nor hear nor otherwise experience the participants' private and confidential mediation discussions. Further, the mediator and participants agree that neither they nor anyone under their control or influence shall in any way record, photograph, scan or otherwise share any aspect of the participants' online mediation discussions or materials with anyone outside of the participants and mediator.

6. MEDIATION ENDS. Mediation ends when: you reach a complete written and signed Settlement Agreement; when you reach an oral agreement that is reduced

to writing within 72 hours; when the mediator or either party terminates the mediation in writing.

7. **MEDIATOR'S FEE.** The parties agree to a flat fee of **\$2,000 for up to 4 hours** of the mediator's time (invoiced and paid upon signing Agreement to Mediate), then **\$500** per hour after the first 4 hours. The fee is to be split evenly between the parties, unless there is a good reason to adopt some other apportionment. The mediation "clock" starts upon the mediator's review of each party's Pre-Mediation Intake Form for all time spent preparing for the mediation and all pre-mediation communications, during the actual mediation sessions and outside of the sessions (e.g. research and drafting, correspondence sent and received and phone calls).

The mediator may adjust the hourly rate after, but not sooner than six (6) months after the date of this agreement. Fees shall be payable as follows:

- a. The Parties will be sent an invoice (payable online) for a retainer of **\$2,000** to be paid immediately and to be held in the mediator's trust account.
 - b. After 4 hours, parties will be invoiced and payment shall be made immediately after each mediation session for for time spent as indicated above.
 - c. In the event payment is not made within 30 days of billing, a late payment charge of 1% per month on the unpaid balance will apply.
8. **PRE-MEDIATION STATEMENTS.** Each Party may submit a pre-mediation statement to the Mediator **no later than 48 hours prior** to the first joint mediation session start time. Any pre-mediation statement should be limited to 3 pages. The Parties may decide whether to exchange the pre-mediation statements between them, or to keep the pre-mediation statements confidential.
 9. **7-DAY CANCELLATION POLICY.** Please understand that the mediator manages a schedule for disputes other than yours, and has spent time on your case in advance of the joint mediation session. For mediations **canceled less than 7 calendar days before the scheduled mediation date, the \$2,000 Retainer is non-refundable.**

GROUND RULES AND CONSENT

1. Mutual and Voluntary. The process of how we work together is mutual and to be determined by the parties and the mediator. The mediator will not impose an immutable process. Nothing binding happens in a mediation process until you reach agreement and it has been written up and signed by all parties. It is highly recommended that your own lawyers review settlement documents reviewed before you sign anything. Any participant is free to terminate the mediation at any time.
2. Good Faith Negotiation. You agree to participate in the mediation process in good faith. Any statements made by either party are inadmissible in court as evidence against the other. The basis for this is to allow you to say whatever you would like (with or without legal representation) during the mediation process.
3. No Personal Attacks and Listening. You can always fight later on if you do not reach an agreement through mediation. You agree to work hard on the problem, but not be hard on each other or engage in personal attacks, insults, sarcasm and the like. You agree to listen when the other participant(s) speak, without interrupting. Everyone will have the chance to say everything they would like to say (which is not the case if you go to court).
4. Opinion or Advice of the Mediator. The mediator's highest priority is for you to reach an agreement that you each believe to be fair. The mediator will not offer my advice or opinion about any particular issue unless one or two conditions exist: (a) it appears that one party is taking advantage of the other in the process, or (b) that you are reaching an agreement that appears to be sufficiently unfair in that it would be difficult to enforce or a severe miscarriage of justice.
5. Confidentiality and Full Disclosure. Each party promises to fully disclose any and all relevant facts, documents, etc., that may have relevance to the mediation. What you say to the mediator in a private caucus or conversation is confidential, unless specifically instructed that the mediator may share certain information with the other party. The mediator will not speak with either of your lawyers about anything that was said in the mediation unless both parties give me permission.
6. The Role of Law. If you ask, the mediator may predict what a court would do and may role play what they think your lawyers would say in a given situation. The

mediator will try to strike a balance between keeping law or prediction about what could happen in court from being the only focus of the discussion and from being disregarded entirely. The law is more subjective than most people experience it, and lawyers disagree about what the law is, as do judges. Juries can be very unpredictable. The law is just one aspect of things which are relevant in mediation, having no greater or lesser strength than other equally important factors.

- 7. Lawyer Review. Have your individual attorneys review the agreement reached.

- 8. Authority of Participants. The individuals who participate in the mediation must have authority to make a deal. Mediation will not work if, five hours into the process, someone needs to call a third person (who has not been a part of the process) for authority. The mediator will confirm, at the outset of the mediation, that the persons present have the necessary authority to finalize a deal.

We agree to the foregoing Mediation Agreement and Ground Rules:

DATED: _____

DATED: _____

DATED: _____

DATED: _____

DATED: _____