

MEDIATION RETAINER AGREEMENT

CASE NAME AND NUMBER:

Mediation Date: _____ ; _____ AM/PM

Please sign, date, and return this form by email to Scott@ScottMillerMediation.com within five days of receipt. In the absence of a signed Agreement, participating in the below-scheduled mediation shall be an acceptance of the terms of this Agreement by counsel and their client.

Parties:

Mediator: Scott R. Miller
ScottRMillerPC d/b/a Scott Miller Mediation
11282 Loch Lomond Road
Rossmoor, CA 90720-2912
Scott@ScottMillerMediation.com
(562) 618-7771

The parties and their representatives hereby agree to the conditions and terms of this Mediation Agreement.

I. Purpose

The purpose of this mediation will be to attempt to arrive at a mutually acceptable resolution of the issues in dispute between the parties in a cooperative, flexible and informal manner.

II. Mediation Process- Duties and Responsibilities

1. Scott R. Miller, serving as third party neutral and Mediator, will facilitate discussions, negotiations and meetings with the parties and their representatives, as appropriate, in order to attempt to accomplish the purpose and objectives of this agreement. The Mediator will review written submissions and information provided by parties and counsel. He will meet, either in-person or online, with the parties and their representatives in joint sessions as well as in

private, confidential meetings with each party and their counsel to discuss issues in the dispute and the parties' underlying interests.

2. In addition to their respective counsel, the mediation sessions must be attended by party representatives who have full authority to reach a settlement or resolution of the matters in dispute. During the mediation sessions, counsel and parties should be prepared to present their views of the issues and matters in dispute and any underlying interests of the parties, which may go beyond the particular issues in the litigation.

3. The parties and their counsel will participate in good faith, including the sharing of any and all information deemed to be necessary to help facilitate the settlement of this matter.

4. The mediation process will focus on the interests and objectives of the parties and possible solutions that the parties believe would be fair, equitable or mutually beneficial. Accordingly, each party will be asked to creatively consider possible solutions and to work with the Mediator in identifying and evaluating possible solutions that would satisfy and meet the respective needs of the parties. Both in the initial statement of the case and in subsequent meetings, each party will have an opportunity to candidly disclose to the Mediator the facts, theories, law, opinions, and other concerns on which it intends to rely with regard to the matters in dispute.

5. No formal rules of evidence or rules of court procedure will apply. If parties seek to bring witnesses, experts or other parties to the mediation, such will be decided jointly with the Mediator and the parties prior to the mediation. Counsel should be aware of all formal legal objections or other actions that they may need to utilize to protect and preserve any formal legal objections, privileges or legal rulings for subsequent proceedings.

6. Submissions. Prior to the mediation session, by a date mutually agreed to by the parties and the Mediator but in any event not later than ten (10) days before the session, the parties shall each submit to the Mediator a confidential mediation statement.

The confidential mediation statement shall not exceed seven double-spaced pages and should contain a short statement of the key facts and key legal authorities as well as a short recitation of the history and status of the litigation to date. If the parties wish to submit attachments of pleadings or other documents, e.g., the complaint, preliminary injunction or summary judgment motions already filed, in lieu of repeating all their legal points in the Statement, that will be acceptable.

In addition, the confidential mediation statement should briefly set forth any negotiation and settlement history, as well as the parties' underlying objectives, interests and needs with respect to the dispute. It should include a frank brief list of perceived strengths and weaknesses of one's own case as well as that of the other party. This part may also indicate what resolution suggestions the parties have both already discussed and any confidential suggestions or ideas the parties have contemplated, including any views or perceptions as to barriers to settlement. The confidential mediation statement will be kept highly confidential by the Mediator and will not be exchanged disclosed to any other party except to the extent the party grants permission to do so during the mediation.

No confidential mediation statement shall be offered as evidence and both parties agree that these statements are not admissible in any court proceeding as they are documents prepared in the furtherance of settlement discussions.

7. The Mediator will from time to time meet with the parties in private sessions (caucuses). The Mediator will keep any and all statements and information that is not public knowledge shared in private sessions confidential unless specifically authorized by a party.

8. The Mediator's role is to facilitate the resolution of the dispute, not to judge or adjudicate it. Opinions offered by the Mediator are not legal opinions, will be given only with the consent of the parties and are not to be relied on in resolving this matter. The parties agree that the Mediator, who is an active member of the California Bar, has not been retained as an attorney, is not acting as an attorney or legal representative of or for any party, is not providing legal advice on behalf of or for the benefit of any party and that no attorney-client relationship or attorney-client privilege shall arise from the Mediator's actions and statements.

9. Resolution of this matter shall be by consent of the parties and any and all necessary principals or agents or other necessary parties to this dispute. Attendance by others than the principal parties may become desirable and advisable to resolve this dispute. All agreements as to confidentiality of these proceedings shall bind all participants, and those in privity with them, at any mediation session or in other communications (including telephonic or electronic) with the Mediator.

10. At the successful conclusion of mediation, the parties should draw up an agreement or statement of understanding, to be followed by whatever formal documents may be required to effectuate the agreement. The Mediator strongly recommends that counsel for the parties come prepared to draft a document that sets for the key terms of any agreement that can be signed and act as a binding agreement between the parties before the mediation is concluded. The Mediator is not responsible for the drafting of legal documents but upon the request of the parties may assist both parties as a neutral in such process without giving rise to any personal liability therefrom.

11. If necessary, and if such discussions seem likely to be useful, the parties, counsel or other representatives may make themselves available for further discussions or meetings after the mediation sessions, including telephonic communications.

12. The Mediator may employ legal, clerical or other assistance and all of his employees will be bound by the confidentiality and other terms of this agreement.

13. The Mediator and his employees or agents shall not be liable for any act or omission in connection with, or any aspect of, this proceeding, including but not limited to the parties' decision to enter into an agreement, the terms of any such agreement, or their failure to reach agreement, other than as a result of his own willful misconduct. The parties will indemnify the Mediator for any and all costs and expenses in any subsequent litigation involving this matter. The parties agree not to call the Mediator as a witness in any litigation arising from or about this matter, or seek to compel, by subpoena or otherwise, any documents held by the Mediator. The Mediator and any and all agents, employees and any person assisting the Mediator

shall not be a necessary party or compelled to testify in any arbitral or judicial proceeding relating to this mediation or to the subject matter of the dispute.

III. Confidentiality

1. This entire mediation process is a facilitated negotiation in contemplation of settlement or compromise and thus should remain confidential and inadmissible pursuant to common law and state and federal rules of evidence regarding settlement discussions. All parties agree to abide by and be bound by the Confidentiality Agreement provided by the Mediator.

IV. Disclosures and Disqualifications

1. The Mediator has made a reasonable effort to learn and will disclose to the parties:

- a) all business and professional relationships the Mediator has had or may have with the parties;
- b) any financial interest the Mediator may have in any party;
- c) any significant social, business or professional relationship the Mediator has had with an officer or employee of a party or with individuals representing a party in this proceeding; and
- d) any other circumstances that may create doubt regarding the Mediator's impartiality in the proceedings.

2. Each party and representative has made a reasonable effort to learn and has disclosed to every party and the Mediator any relationship described in paragraph IV. 1. above not previously identified and disclosed by the Mediator.

3. The parties and the Mediator are satisfied, upon signing this agreement, that any relationships disclosed pursuant to the above paragraphs will not affect the Mediator's impartiality and independence. Notwithstanding such relationships or others, the Mediator and the parties did not discover with good faith efforts, the parties wish the Mediator to serve as Mediator in this proceeding, waiving any claims based on, such relationships and the Mediator agrees to serve. If, at any time, the parties or the Mediator discover any other such relationship, which may affect the Mediator's impartiality, the parties may seek to terminate this proceeding. The ability of the Mediator to continue serving as Mediator shall be explored with each such disclosure of potential conflict or other impediment to impartiality.

V. Fees and Costs

1. Pursuant to the rules of the Mediation Panel of the United States District Court for the Central District of California, the Mediator shall not be compensated for the time expended in connection with his preparation for, and the first three (3) hours of, the mediation for this

proceeding (the “Non-Compensated Time”). The mediator is entitled to compensation at his normal rate for any time that exceeds the Non-Compensated Time (the “Excess Time”).

2. Scott Miller’s standard professional hourly fee is \$700 per hour which may be charged, at Mr. Miller’s discretion, for any Excess Time. If requested, invoices will be rendered to the parties as to their respective shares as agreed upon between them and payment tendered to the Mediator on a timely basis. Payment for any billed Excess Time shall be due within fifteen (15) days of services being rendered.

3. Scott Miller Mediation does not charge travel fees or expenses for cases in the greater Los Angeles area. To the extent travel is required, all reasonably required expenses, which may include airfare, hotel and ground transportation, are billed at cost. Unless otherwise agreed or waived, non-productive travel time is billed at 25% of the neutral’s hourly rate.

4. Any excess fees are payable to Scott R Miller PC and may be made by check (sent to our office at 11282 Loch Lomond Road, Rossmore, CA). Each party shall pay its share of the fees and expenses in full not later than fifteen (15) days after the date of the mediation. The parties agree to divide the mediation fees and any other professional fees or expenses as follows:

- a) Each party shall agree to pay 50% of any Excess Time mediation fees and the expenses. Any additional charges shall likewise be split 50% each unless agreed to in writing.
- b) Scott Miller Mediation is not bound by agreements between or among the parties with respect to the payment of mediation fees and/or expenses.

VI. Consent

1. By their signatures below, the parties to this dispute hereby certifies that s/he has read this entire Agreement and agrees with all matters stated herein, consents to this mediation and agrees to be bound by the terms and conditions of this agreement. In the absence of a signed Agreement, the parties adopt the terms and conditions of this Agreement upon appearing for the mediation in the above-reference case.

2. The terms and conditions of this agreement may be modified at any time by mutual consent of all the parties and the Mediator in writing.

3. This agreement may be executed in any number of fax or electronic image documents (e.g., PDFs) counterparts, each of which shall be considered an original and all of which together shall be deemed to constitute one and the same agreement. By entering into this

agreement, the parties agree to bind themselves and the Mediator, and this agreement may be enforced by the Mediator or any party.

Dated: _____

/Scott R. Miller/
Mediator

(Party)

(Party)

(Party's Attorney)

(Party's Attorney)

(Party)

(Party)

(Party's Attorney)

(Party's Attorney)

(Party)

(Party)

(Party's Attorney)

(Party's Attorney)