

Sample Participation Agreement

The parties to this Agreement (the parties) listed in Attachment A agree to enter into a mediated negotiation for the purpose of discussing *[insert reference to case]*.

The parties agree as follows:

1. Mediator: The mediator in all cases serves at the pleasure and with the consent of all of the parties. The parties agree that the mediator for this case shall be *[insert name]*. The mediator agrees to voluntarily withdraw his(her) services if one or more parties formally make such a request, and good faith efforts to resolve the problem are unsuccessful.

The mediator's role shall be to facilitate negotiations between the parties. The mediator will meet and communicate separately and together, as necessary, with the parties and their designated representatives, consultants and legal counsel to discuss possible ways of resolving the issues in dispute. The mediator shall not offer an opinion on the merits of the position of any of the parties or recommendations as to any final settlement.

2. Schedule: The parties will make a good faith effort to conclude negotiations by *[insert date]*. Dates of negotiation sessions will be set by the mediator, in consultation with the parties.

3. Confidentiality: To promote frank and productive discussion, the mediator and the parties agree to protect the confidentiality of any information provided or proposals made in confidence. Specific offers, proposals, terms of settlement, or other statements made during the mediation process may not be used by any of the parties for any other purpose. Mediation sessions shall not be recorded, although some or all meetings may be open to the public, by agreement of the parties.

The mediation shall be treated as compromise negotiations under Rule 408 of the Federal Rules of Evidence and relevant state law. Participation in the mediation, including attendance at proceedings, statements made and documents prepared or furnished by any Party, attorney or other participant, shall not be construed for any purpose as an admission of liability or otherwise against interest.

The mediator, in his or her capacity as mediator, shall not be deemed a "necessary or indispensable" party, as those terms are used in connection with Rule 19 of the Federal Rules of Civil Procedure and any relevant state law equivalent, in any future judicial, administrative or arbitral proceeding pertaining to the issues in this mediated negotiation. The parties shall not subpoena or otherwise seek to obtain from the mediator any documents relating to the mediation process submitted to the mediator by a Party. The parties shall not subpoena the mediator to testify as a witness regarding the mediation process. In no event will the mediator voluntarily testify on behalf of one or more Party, or participate as a consultant or expert, in any pending or future legislative, judicial, administrative, or arbitral action or proceeding relating to any of the matters discussed in the mediation process, except for the purpose of communicating about the process as agreed to in the ground rules.

The parties shall remain bound by these confidentiality provisions following termination of this Agreement.

4. a. Costs of the Mediation: The parties agree to pay the fees and expenses of the mediator as follows. The mediator's fees and expenses for the services outlined in the proposal included as Attachment B shall not exceed *[insert amount]* unless the parties otherwise agree in writing. Each party will pay equal shares of the mediator's fees and expenses, unless all parties agree to an alternate arrangement in writing.

b. Retainer Provision: Each party agrees to deposit with *[name]* in advance *[amount]* to be applied to payment of the mediator's fees and expenses and refundable on a pro rata basis. The mediator will provide the parties with an accounting of the time and expenses and bill monthly. When and if the fees exceed the amount of the retainer, and subject to the limitation set forth above, the parties agree to pay their share of the additional costs within 30 days of being billed. Payment by the parties shall be sent to *[name]*.

5. Good Faith: All parties will act in good faith in all aspects of these negotiations. Specific offers, proposals, terms of settlement, or other statements made during the negotiations may not be used by any party for any other purpose.

6. Right to Withdraw and Termination by the Mediator: Any party may withdraw from the negotiations at any time without prejudice. Withdrawing parties remain bound by the provisions of Paragraph 3 of this Agreement and the obligation to pay their share, through the effective date of withdrawal, of the mediator's fees and expenses. The parties agree that the mediator has the discretion to terminate the mediation at any time if the mediator believes that the case is inappropriate for mediation or that it would not be productive to continue.

7. Additional Parties: Additional persons or entities may join the negotiations, as specified in the ground rules. Parties added to the negotiations will be bound by all provisions of this Agreement including the obligation to pay their share of costs as outlined in Paragraph 4, from the effective date of this Agreement.

8. Additional Provisions: Agreements among the parties on other issues or ground rules may be developed and incorporated into this Agreement at any time during the negotiations, by a written modification to this Agreement signed by all of the parties.

9. Counterpart Signatures: This Agreement may be executed in one or more counterparts, which together shall constitute one instrument.

The parties to this Agreement have executed or caused this Agreement to be executed by their duly authorized officers or representatives. The effective date of this agreement is *[insert date]*.

By : _____ Date: _____

Name: _____

Title: _____

Organization: _____

MEDIATOR: _____ Date: _____