



## AGREEMENT TO MEDIATE

This is an agreement between \_\_\_\_\_ and \_\_\_\_\_, hereinafter “participants,” and Cheryl M. DiMaio of Brite Horizons Mediation Services, LLC, hereinafter “mediator,” to enter into mediation with the intent of resolving issues related to:

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The participants and the mediator understand and agree as follows:

### 1. Nature of Mediation

The participants hereby appoint Cheryl M. DiMaio of Brite Horizons Mediation Services, LLC as mediator for their negotiations. The participants understand that mediation is an agreement-reaching process in which the mediator assists participants to reach agreement in a collaborative, consensual and informed manner. It is understood that the mediator has no power to decide disputed issues for the participants. The participants understand that mediation is not a substitute for independent legal advice. The participants are encouraged to secure such advice



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throughout the mediation process and are strongly advised to obtain independent legal review of any mediated agreement before signing that agreement. The participants understand that the mediator's objective is to facilitate the participants themselves reaching their most constructive and fairest agreement. The participants also understand that the mediator has an obligation to work on behalf of each party equally and that the mediator cannot render individual legal advice to any party and will not render therapy within the mediation.

### **2. Scope of Mediation**

The participants understand that it is for the participants, with the mediator's concurrence, to determine the scope of the mediation and this will be accomplished early in the mediation process.

### **3. Mediation Is Voluntary**

All participants here state their good faith intention to complete their mediation by an agreement. It is, however, understood that any party may withdraw from or suspend the mediation at any time, for any reason.

The participants also understand that the mediator may suspend or terminate the mediation if s/he feels that the mediation will lead to an unjust or unreasonable result, if the mediator feels that an impasse has



been reached, or if the mediator determines that s/he can no longer effectively perform his/her facilitative role.

#### **4. Confidentiality**

It is understood between the participants and the mediator that the mediation will be strictly 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 mediation is considered by the participants and the mediator as settlement negotiations. The participants understand the mediator has an ethical responsibility to break confidentiality if s/he suspects a party or another person may be in danger of physical harm.

#### **5. Full Disclosure**

Each party agrees to fully and honestly disclose all relevant information and writings as requested by the mediator and all information requested by



any other party of the mediation if the mediator determines that the disclosure is relevant to the mediation discussions.

## **6. Mediator Impartiality**

The participants understand that the mediator must remain impartial throughout and after the mediation process. Thus, the mediator shall not champion the interests of any party over another in the mediation or in any court or other proceeding. The participants agree that the mediator may discuss the participants' mediation process with any attorney any party may retain as individual counsel. Such discussions will not include any negotiations, as all mediation negotiations must involve all participants directly. The mediator will provide copies of correspondence, draft agreements, and written documentation to independent legal counsel at a party's request. The mediator may communicate separately with an individual mediating party, in which case such "caucus" shall be confidential between the mediator and the individual mediating party unless they agree otherwise.

## **7. Litigation**

The participants agree to refrain from pre-emptive maneuvers and adversarial legal proceedings (except in the case of an emergency



necessitating such action), while actively engaged in the mediation process.

## **8. Mediation Fees**

The participants and the mediator agree that the fee for the mediator shall be \$145.00 (\$72.50 Each Party) per hour for time spent with the participants and for time required to study documents, research issues, correspond, telephone call, prepare draft and final agreements, and do such other things as may be reasonably necessary to facilitate the participants' reaching full agreement. The participants further understand that copying, postage and long-distance phone calls will be billed to them. The mediator shall be reimbursed for all expenses incurred as a part of the mediation process. A deposit payment of \$145.00 toward the mediator's fees and expenses shall be paid to the mediator along with the signing of this agreement. Any unearned amount of this deposit fee will be refunded to the participants.

The participants shall be jointly and severally liable for the mediator's fees and expenses. As between the participants only, responsibility for mediation fees and expenses shall be divided equally between participants unless an alternative payment agreement has been reached by the participants.



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The participants will be provided with a monthly accounting of fees and expenses by the mediator. Payment of such fees and expenses is due to the mediator no later than 15 days following the date of such billing, unless otherwise agreed in writing.

Should payment not be timely made, the mediator may, at his/her sole discretion, stop all work on behalf of the participants, including the drafting and/or distribution of the participants' agreement, and withdraw from the mediation.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2023

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_