

AXIOM MEDIATION AGREEMENT

In order to promote communication among the parties and to facilitate and to encourage resolution of the dispute, for good and valuable consideration receipt of which is hereby acknowledge the participants agree as follows:

1. This mediation process is to be considered settlement negotiations for the purpose of all state and federal rules protecting disclosures made during such process from later discovery and/or use in evidence.

2. As used herein the following terms are defined:

a) “**Mediation**” means a process in which a neutral person or persons facilitate communication between the disputants to assist them in reaching a mutually acceptable agreement.

(b) “**Mediator**” means a neutral person who conducts a mediation. “Mediator” includes any person designated by a mediator either to assist in the mediation or to communicate with the participants in preparation for a mediation.

(c) “**Mediation consultation**” means a communication between a person and a mediator for the purpose of initiating, considering, or reconvening a mediation or retaining the mediator.

3. This mediation process and communications by and among the participants and the mediator in the mediation process will be held confidential. The confidentiality extends to all present and future civil, judicial, quasi-judicial, arbitral, administrative or other proceedings. Accordingly the participants agree to the following:

(a) No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, a mediation or a mediation consultation is admissible or subject to discovery, and disclosure of the evidence shall not be compelled, in any arbitration, administrative adjudication, civil action, or other noncriminal proceeding in which, pursuant to law, testimony can be compelled to be given.

(b) No writing that is prepared for the purpose of, in the course of, or pursuant to, a mediation or a mediation consultation, is admissible or subject to discovery, and disclosure of the writing shall not be compelled, in any arbitration, administrative adjudication, civil action, or other noncriminal proceeding in which, pursuant to law, testimony can be compelled to be given.

(c) All communications, negotiations, or settlement discussions by and between participants in the course of a mediation or a mediation consultation shall remain confidential.

(d) Neither a mediator nor anyone else may submit to a court or other adjudicative body, and a court or other adjudicative body may not consider, any report, assessment, evaluation, recommendation, or finding of any kind by the mediator concerning a mediation conducted by the mediator, other than a report that is mandated by court rule or other law and that states only whether an agreement was reached, unless all parties to the mediation expressly agree otherwise in writing.

(e) The mediation process may continue after the date appearing below. Therefore, the participants' subsequent oral and written communications with the Mediator or between the participants in a continuing effort to resolve the dispute are subject to this Agreement.

(f) Confidential materials and communications are not subject to disclosure in discovery or in any judicial or administrative proceeding except (i) where all parties to the dispute resolution proceeding agree, in writing, to waive the confidentiality, (ii) in a subsequent action between the neutral or dispute resolution program and a party to the dispute resolution proceeding for damages arising out of the dispute resolution proceeding, (iii) statements, memoranda, materials and other tangible evidence, otherwise subject to discovery, that were not prepared specifically for use in and actually used in the dispute resolution proceeding, (iv) where a threat to inflict bodily injury is made, (v) where communications are intentionally used to plan, attempt to commit, or commit a crime or conceal an ongoing crime, (vi) where an ethics complaint is made against the neutral by a party to the dispute resolution proceeding to the extent necessary for the complainant to prove misconduct and the neutral to defend against such complaint, (vii) where communications are sought or offered to prove or disprove a claim or complaint of misconduct or malpractice filed against a party's legal representative based on conduct occurring during a mediation, (viii) where communications are sought or offered to prove or disprove any of the grounds listed in § 8.01-576.12 in a proceeding to vacate a mediated agreement, or (ix) as provided by law or rule (and may include report of suspected child abuse or neglect).

(g) Nothing herein precludes the participants from enforcing a settlement agreement reached by and between the participants, or from disclosure as is necessary to enforce the fee agreement for services rendered by the Mediator.

4. Evidence otherwise admissible or subject to discovery outside of a mediation or a mediation consultation shall not be or become inadmissible or protected from disclosure solely by reason of its introduction or use in a mediation or a mediation consultation. This Agreement does not limit any of the following:

(a) The admissibility of an agreement to mediate a dispute.

(b) The effect of an agreement not to take a default or an agreement to extend the time within which to act or refrain from acting in a pending civil action.

(c) Disclosure of the mere fact that a mediator has served, is serving, will serve, or was contacted about serving as a mediator in a dispute.

(d) Efforts to enforce a settlement agreement reached by and between the participants, or from disclosure as is necessary to enforce the fee agreement for services rendered by the Mediator. A written settlement agreement prepared in the course of, or pursuant to, a mediation, is not made inadmissible, or protected from disclosure, by provisions of this Agreement if the agreement is signed by the settling parties and any of the following conditions are satisfied: (1) The agreement provides that it is admissible or subject to disclosure, or words to that effect; (2) The agreement provides that it is enforceable or binding or words to that effect; (3) The agreement is used to show fraud, duress, or illegality that is relevant to an issue in dispute; or (4) The disclosure is necessary to prove the existence of and/or to enforce the Agreement.

5. If a person subpoenas or otherwise seeks to compel a mediator to testify or produce a writing, and the court or other adjudicative body determines that the testimony or writing is inadmissible under this chapter, or protected from disclosure under this Agreement or by law, the court or adjudicative body making the determination shall award reasonable attorney's fees and costs to the mediator against the person seeking the testimony or writing.

6. The participants' sole purpose in conducting or participating in mediation is to compromise, settle or resolve their dispute, in whole or in part.

