

## **AGREEMENT TO MEDIATE**

The undersigned have agreed to participate in a mediation to be conducted by Sheldon J. Stark in the matter of \_\_\_\_\_ vs. \_\_\_\_\_ for the purpose of compromising, settling or resolving disputed claims and agree as follows:

1. Mediation Proceedings. All proceedings in connection with this mediation shall be subject to this Agreement, and applicable provisions of Michigan law, including MCR 2.411 and 2.412. The purpose of the mediation is to attempt to compromise, settle or resolve disputed claims between and/or among the parties. The Mediator's role is to act as a neutral party for the purpose of assisting the parties to resolve their claims. During the course of the mediation, the Mediator is authorized to conduct joint and separate communications and/or meetings with the parties. The parties acknowledge that the Mediator is not acting as an attorney or advocate for any party and that any recommendations or statements by the Mediator do not constitute legal advice by the Mediator. The parties acknowledge that they have been advised to seek and are relying on the advice of their own counsel in connection with any settlement or other agreement. The Mediator is, however, authorized to provide an evaluation of each party's case, if requested, and to make recommendations for settlement.
  
2. Confidential Nature of Mediation Proceedings. In order to encourage communications designed to facilitate settlement of disputed claims, the parties agree that all proceedings in connection with this mediation shall be confidential, subject to Rule 2.411 and 2.412 of the Michigan Court Rules and Section 408 of the Federal and Michigan Rules of Evidence. This includes any communications between the Mediator and any party as well as communications made in mediation sessions. The rules generally provide and the parties agree that evidence of conduct, anything said or any admissions made in the course of mediation/or settlement discussions, or in documents prepared for or introduced in the course of mediation and/or settlement discussions, shall not be admissible in evidence or subject to discovery and that disclosure of said evidence shall not be compelled in any civil action. The participants agree they will not use a tape or digital device to create an audio or video recording of the mediation proceeding. Evidence that the parties have entered into a written settlement agreement during the course of the mediation may be disclosed and is admissible to the extent necessary to enforce the settlement. This agreement is subject to the Mediator's obligation to comply with the Michigan Rules of Professional Conduct as same may exist from time to time, and to the extent inconsistent with the terms of this Agreement, said Rules shall take precedence.
  
3. Exclusion of Mediator Testimony and Limitation of Liability. Each party agrees not to subpoena the Mediator, his notes or files, or otherwise

compel the Mediator to testify in any proceeding relating to the subject matter of the mediation, nor to provide a declaration or finding as to any fact or issue, relating to the subject matter of the mediation or dispute which is the subject of said mediation proceedings. The parties understand that the Mediator will not voluntarily testify on behalf of a party in any proceeding, nor voluntarily produce any documents or information in the Mediator's possession. If a party issues a subpoena regarding the Mediator or such documents, the party shall pay the Mediator his hourly rate and reasonable expenses including any attorneys' fees and administrative costs to resist the subpoena. The Mediator shall not be liable to any party for any act or omission in connection with the mediation proceedings conducted pursuant to this Agreement.

4. Mediator's Services and Compensation. The Mediator's services shall include attendance at mediation conferences, letters, review of briefs and other written materials, participation in telephone or follow up conferences and any other services requested by the parties. The Mediator shall be compensated at the rate of \$275.00 per hour for his services, plus reimbursement for actual costs incurred, including copying and printing of documents such as those emailed to the Mediator. The Mediator's fees shall be shared equally by the undersigned parties. Counsel for the parties guarantee payment of all fees and expenses. Nothing contained in this agreement shall bar the Mediator from seeking to enforce payment.
5. Conflict of Interest; Disclosures; Waiver. The parties and their counsel acknowledge and agree that in the Mediator's capacity of mediator neither he, nor the University of Detroit Mercy School of law, his employer, is acting as an attorney or advocate for a party in connection with the mediation. The parties and their counsel have disclosed to the Mediator, and the Mediator has disclosed to each of them, all matters that each reasonably believes requires disclosure pursuant to MCR 2.411. The parties and their counsel further acknowledge and agree that no conflict of interest has been or will be deemed to exist in any matter which the Mediator has represented in the past or may represent in the future, including interests that may be adverse to the parties or their counsel.
6. Counterpart Execution; Binding on Representatives. This agreement may be executed in any number of counterparts which when taken together shall constitute one fully executed Agreement. This Agreement when so executed shall inure to the benefit of and be binding on the undersigned parties as well as their lawyers, respective representatives or other persons they have caused to be present during these mediation proceedings.

By: \_\_\_\_\_  
Plaintiff's Name & Date

By: \_\_\_\_\_  
Plaintiff's Counsel & Date

By: \_\_\_\_\_  
Second Pls Name & Date

By: \_\_\_\_\_  
Addl Pls Counsel & Date

By: \_\_\_\_\_  
Counter Defs Name & Date

By: \_\_\_\_\_  
Counter Defs Counsel & Date

By: \_\_\_\_\_  
Defense Representative & Date

By: \_\_\_\_\_  
Defense Counsel & Date