

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. 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. All parties to this agreement represent they will not secretly or overtly record (audio, video or electronic) any of the mediation proceedings and that they will not carry or bring firearms or weapons into the mediation facility or site. 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. COVID-19 Protocol: In order to participate in an in-person mediation session, we agree (i) to abide by whatever pandemic protocols may be in place at the venue where the mediation takes place; (ii) to be fully vaccinated and boosted; and provide a vaccination “passport” to the mediator showing proof of same; (iii) to not attend the session if we have any virus symptoms or have not been fully vaccinated and boosted, (iv) if we have actual knowledge that we have been exposed to the coronavirus within the two weeks preceding our session, to disclose that fact, and (v) to conduct a home COVID test within 48 hours of the mediation and report a negative test to the mediator. If the venue is a participating law firm, host counsel will advise the participants of any office pandemic protocols a few days before the session. The Mediator has been fully vaccinated and boosted. So, absent a contrary protocol from the host office, the Mediator will likely not be wearing a mask during the mediation unless circumstances on the date of our mediation warrant such. All mediation participants will be asked to verbally affirm their vaccination status at the start of the mediation session.
5. 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 \$ _____ 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. The parties to this agreement consent and submit to venue in Washtenaw County for any action Mediator may bring to enforce payment.
6. Conflict of Interest; Disclosures; Waiver. The parties and their counsel acknowledge and agree that the Mediator is not 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.
7. 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: _____

By: _____

Plaintiff's Name & Date

By: _____
Second Pls Counsel & Date

By: _____
Defense Counsel & Date

Plaintiff's Counsel & Date

By: _____
Defendant Representative & Date

By: _____
Second Defense Counsel & Date