

SAMPLE AGREEMENT TO MEDIATE

1 THE PROCESS

The parties agree to attempt to settle their dispute through the mediation process on terms contained in this agreement.

2 PARTY CONFIDENTIALITY

The parties acknowledge and agree that mediation is a confidential settlement process, and is without prejudice.

3 MEDIATOR CONFIDENTIALITY

The mediator will not disclose to anyone who is not a party to the mediation anything said in the mediation or any materials submitted to the mediator, except:

- a. To the lawyers or other professionals retained on behalf of the parties, as deemed appropriate or necessary by the mediator;
- b. To any other individual providing the parties have given written consent;
- c. For research or education purposes on an anonymous basis;
- d. Where ordered to do so by a judicial authority or where required to do so by law; or
- e. Where the information suggests that there will be an actual or potential threat to human life or safety, or the commission of a crime in the future.

4 IDENTITY OF MEDIATOR

The mediator is *[name of mediator]*

5 MEDIATORS AS A WITNESS

At no time will any party call the mediator as witness to testify as to the fact of the mediation or as to any oral or written communication made at any stage of the mediation. No party will seek access to any documents prepared for or in connection with the mediation, including, but not limited to, any records, notes or work product of the mediator other than this agreement to mediate. Any party or the mediator may produce and rely upon the agreement as proof of the terms and conditions by which the mediation was governed.

6 MEDIATOR'S ROLE

The mediator's role is to assist the parties to negotiate. The mediator will not make decisions for the parties about how the matter should or must be resolved.

7 PRE-MEDIATION INFORMATION

To facilitate an understanding of the controversy and the issues to be mediated, the parties will provide the mediator with a brief written summary (to a maximum of 10 pages) of the controversy as they see it, not less than four days prior to the first mediation session.

8 AUTHORITY TO SETTLE

The parties or those representing them at the mediation will have full, unqualified authority to settle the controversy.

9 PARTIES' OWN LAWYERS

The parties agree that they may seek legal representation or advice prior to or during the mediation. They may have lawyers present at the mediation if they so desire. Although the mediator might be a qualified lawyer he or she will not provide legal representation or legal advice to any party at any time, and has no duty to assert or protect the legal rights and responsibilities of any party, to raise any issue not raised by the parties themselves, or to determine who should participate in the mediation.

10 RIGHT TO WITHDRAW

Each party's participation in the mediation is voluntary. While each party intends to participate in the mediation to attempt to reach settlement, any party or the mediator may withdraw from the mediation at any time for any reason. The mediator may also terminate the mediation.

11 MEDIATION SESSIONS

The scheduled mediation session will be on *[date]* at *[time]*.

12 COST OF THE MEDIATOR

The cost of the mediation is *[\$cost]* for one day of mediation (including preparation time) *[or per hour]*, plus expenses *[and taxes, if any]*.

13 CONSENT TO THIS AGREEMENT

Each of us read this agreement and agrees to proceed with the mediation on the terms contained herein.

This agreement may be executed in counterparts. Execution and delivery of a facsimile copy shall be considered binding and sufficient in the same manner as an original.

[Agreement to be signed by all of those in attendance at mediation.]

1. In the event of any dispute or difference arising between the parties to this agreement from or in connection with this agreement or its performance, construction or interpretation, such dispute shall be referred to arbitration by a single arbitrator in accordance with the provisions of the Arbitration Act 2009, or any amendments thereto, whose decision in relation to any such dispute or difference shall be final and binding on all the parties hereto.

2. Any dispute or difference arising out of or in connection with this contract shall be determined by the appointment of a single arbitrator to be agreed between the parties, or failing agreement within fourteen days, after either party has given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by:
The President of the Bahamas Bar Association, or
The CEO of the Chamber of Commerce, or
A Fellow of the Chartered Institute of Arbitrators, Bahamas Branch.