

McCrary Law, P.C. Mediation Agreement

THIS AGREEMENT is made this the _____ day of _____, 20____, between and among **McCRARY LAW, P.C.**, a Georgia professional corporation ("Mediator"), and the following parties (collectively, the "Parties"):

WHEREAS, the Parties have requested that Mediator mediate and, as neutral, assist the Parties in attempting to settle, certain existing disputes between them; and,

WHEREAS, Mediator has agreed to accept such duties, subject to the terms and conditions of this Agreement, and both Mediator and the Parties desire to set forth in this contract the terms of their agreement in the foregoing regards.

THEREFORE, for and in consideration of the mutual promises, covenants and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, these parties hereby agree as follows:

1. Mediator's Fees: Mediator shall be paid a fee for Mediator's services as set forth in **Exhibit "A."** Such fee is payable whether or not the parties obtain a settlement between them.

2. Voluntary Process: The Parties acknowledge and agree that mediation is a non-adversarial settlement negotiation that can only result in a resolution if all parties voluntarily agree. Nothing is mandatory in the mediation process, except to the extent that a court may have ordered you to *attend*.

3. Good Faith and Authority: By signing this agreement: (a) all parties pledge to cooperate and participate in good faith in all mediation sessions and to use their best efforts to obtain a mutual agreement; and, (b) all parties certify that they have all necessary legal authority to settle this dispute.

4. Mediator's Role: The Mediator will not act as a judge nor as an attorney and will not offer legal advice. The Mediator shall be neutral and only act to facilitate a mutual agreement between the Parties. The Mediator's opinions, suggestions or advice, if any, shall not be binding on anyone.

5. Caucus: Sometimes, the Mediator may convene a caucus (private meeting) with each Party and their counsel, as applicable, for clarification of issues. Information developed during the caucus may or may not be confidential as between the Parties. ***Unless you notify the Mediator otherwise, the Mediator is entitled to assume that any information provided to the Mediator during a caucus may be shared with the other Party(ies).***

6. Confidentiality: Otherwise, everything that occurs during the mediation process shall be confidential and shall not be revealed in any subsequent legal proceedings or otherwise, except as allowed or required by applicable law. All Parties agree not to institute any action based on the mediation or to subpoena the Mediator to testify or produce any records or do anything, at any future legal proceedings. If any Party does so, that party hereby agrees to indemnify and hold the Mediator harmless from and for any liability, expense and cost, including attorney fees, incurred by the Mediator, as a result of such action, and to pay Mediator a fee of \$300 per hour for the Mediator's own time incurred in participating in such proceedings.

7. Other Terms: By signing below, you agree that you have read and understand the "*Ten Points of Mediation*" reflected on the back of this form. You further agree that this Agreement constitutes the sole and entire agreement between Mediator and the Parties concerning the subject mediation. No other agreements or representations shall be of any force or effect. This Agreement shall be governed by Georgia law.

MEDIATOR: McCrary Law, P.C.

PARTIES:

By: _____
J. Patrick McCrary, President

Party

Address

Phone Number(s)

Email Address(es)

Party

Address

Phone Number(s)

Email Address(es)

Ten Points of Mediation

1. **Role of the Mediator:** *It is not the Mediator's job to settle your dispute. Only you can settle your dispute.*

It is the role of the Mediator to act as a neutral person who will facilitate discussion between the parties. It is not the role of the Mediator to coerce or control the outcome of the mediation.

2. **The Mediation Process:** *Different mediations follow different procedures.*

Most mediations entail some combination of joint sessions involving all parties, and private meetings between the Mediator and each Party. The Mediator will determine exactly what process is most suitable to your particular situation and discuss that with you during the mediation. The goal of any mediation is the execution of a written agreement between the parties which settles their disputes, based upon the terms upon which they have agreed during the mediation.

3. **Confidentiality:** *Everything said during your Mediation is absolutely confidential.*

With few limited exceptions, everything discussed during Mediation is confidential and privileged. Statements made during mediation are generally inadmissible in court and cannot be used against any party.

Exceptions to this rule are: (a) where disclosures are made or authorized in a written mediation agreement signed by all parties; (b) when the Mediator believes that a child has been, or likely will be, abused; (c) the Mediator believes that the safety of any party or a third person is in danger; (d) insofar as is necessary to identify, e.g. in court-mandated mediations, that a party has or has not attended the mediation; (e) where there is a statutory duty to report information; and/or, (f) when disputes arise concerning the conduct of the *Mediator* during the mediation. Subject to those exceptions, you may authorize or disauthorize the Mediator to discuss with another party (to the mediation) what you have said during a private meeting with the Mediator.

4. **Mediator as Attorney or Expert:** *The Mediator is not your attorney and cannot give you professional advice.*

Your Mediator may be *an* attorney, but he or she is not, and cannot act, as *your* attorney, or give you legal or financial advice, for purposes of this mediation. If you need an attorney or other expert to give you advice about your case, you should seek that advice from someone else.

5. **Court Ordered Mediation:** *A court may order you to mediate, but not to settle.*

If this mediation has been mandated by a court or other tribunal, then you may have been ordered to *attend* the mediation, but you cannot be ordered by any court to *settle* your dispute. Settlement is always voluntary, even if your attendance is not.

6. **Termination:** *The mediation may be terminated at any time.*

Again, this mediation is voluntary. Any party may terminate the mediation at any time. The Mediator may terminate the mediation at any time.

7. **Good Faith:** *You should negotiate only in good faith*

Though the mediation is voluntary, you still will be expected to negotiate in good faith and with full disclosure of all matters material to any agreement reached. If the Mediator feels that you are not negotiating in good faith, you should expect that the Mediator may terminate the mediation session.

8. **Consult with Counsel:** *You should seek legal counsel before agreeing to settle.*

You are free to consult with your own attorney at any time, and are encouraged to seek independent legal advice before you enter into a mediation agreement.

9. **Mediation Agreements:** *Settlements reached during mediation are binding.*

Any mediation settlement agreement, once signed, will be binding upon you and may affect your rights and, in the instance of court-referred proceedings, may have a substantial impact upon the status of your pending case.

10. **Capacity and Authority:** *You agree that you have capacity and authority to participate.*

By participating in this mediation, you will be agreeing and affirming: (a) that you have the *capacity* to conduct good faith negotiations and to make decisions for yourself, including a decision to terminate the mediation if necessary. You are also agreeing that you have all necessary authority to settle your dispute. Among other things, this means that you are not taking drugs or other substances which will impair your ability to understand and participate in the mediation, and have no physical or psychological impairments that would prevent you from understanding what you are doing. It also means that you have come equipped with all legal authority to accomplish settlement of your dispute.

By initialing below, you agree that you have read and understand these terms:

Initials: _____