

MED/ARB MEDIATION AGREEMENT

1. Role of the Mediator. The undersigned parties agree to submit the matter of _____ v _____, _____ County Circuit Court Case No. _____, for mediation pursuant to MCR 2.411 and arbitration pursuant to the agreement of the parties and/or order of the court with Martin C. Weisman ("MCW") undertaking both roles. The parties understand that the role of the mediator is not to render a decision but to assist the parties in reaching agreement, while the arbitrator's role is to issue a final and binding award. The parties accept responsibility for any agreement they reach. Such agreement may not involve all parties in the mediation. No agreement shall be enforceable unless it is in writing and signed by the parties involved.

2. Exchange of information, copies of cases, participant lists and use of documents. In order to avoid surprise, not less than one (1) week prior to the mediation, or as otherwise agreed by the parties, each party shall exchange all memorandum, documents, and meditation participant lists, relating to this matter, including any documents known to the parties herein but within the possession or control of others, that are intended to be referenced in the mediation and which have not been previously exchanged. Additionally, each party shall submit to MCW a short mediation summary describing the facts, circumstances and legal position to the mediator one week prior to the mediation, along with a separate confidential settlement position, which confidential settlement position is not to be shared with the opposing party. Documents not previously exchanged or described and participants not previously identified shall not be considered in the mediation unless by mutual agreement or if deemed necessary by the mediator. MCW will have complete authority over all mediation procedures and may require a pre-mediation telephone conference with counsel of record prior to the mediation. Counsel shall also

provide MCW with copies of non-Michigan cases, statutes or articles cited in memorandums submitted to the mediator. In the event a settlement is not arrived at as a result of the mediation, the information, documents, and summaries provided to the mediator shall be destroyed and not used nor referred in the arbitration to follow unless introduced into evidence during the arbitration by either party.

3. Limited Questions to Be Asked of Participants. The mediation is not a discovery deposition. However, decision makers often need to have issues or positions clarified. Therefore, MCW may encourage clarifying questions, particularly by decision makers.

4. Settlement Authority. All parties agree to have an individual present at the mediation who has settlement authority. When such an individual is not available, other parties shall be notified prior to the mediation.

5. Confidentiality. The mediation is a settlement discussion. Thus, all statements by the parties, their counsel, or MCW relating to any part of the mediation process, and any documents created for or during these proceedings are confidential, and are also inadmissible and not discoverable (except a signed, settlement agreement), for any purpose, including impeachment, and in any pending or subsequent judicial, quasi-judicial, arbitration, or other proceeding. However, evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Inasmuch as the parties hereto have requested MCW to act as both mediator and arbitrator during the mediation portion, the undersigned acknowledge that MCW may conduct private sessions/caucuses with one party, exclude the other party, and receive confidential information. MCW confirms that any confidential information received during the mediation will not be used by MCW in rendering a decision as arbitrator and that the undersigned will not use the dual

capacity and/or the receipt of confidential information to disqualify MCW as mediator, or as a basis to challenge any agreement arrived at during the mediation process. The parties further acknowledge and agree that MCW has advised them of the benefits and criticisms of this process and confirm that they understand and knowingly consent to same.

6. Subpoenas. The parties agree not to subpoena the mediator/arbitrator or to request the mediator/arbitrator to testify for any reason, and the parties agree to defend the mediator/arbitrator in connection with any subpoena arising out of this med/arb process if they do not want any testimony to be provided. They further agree not to subpoena notes or any other materials generated during this process by anyone.

7. Caucus. When a party representative meets alone with the mediator, he or she will clearly inform MCW what statements or documents shall remain confidential, and what may be shared with the other party(ies). But in any event, nothing disclosed in these private discussions may be considered in the arbitration unless introduced by either party independently during the arbitration.

8. Limited Immunity/Necessary Party. Given the very limited time and nature of this professional retention, MCW shall have the same limited immunity as judges and court employees would have under federal or state law. MCW is not a necessary party in any judicial or arbitration proceeding relating in any way to this mediation.

9. Legal Advice. There is no attorney/client relationship between MCW and any party herein. For example, the parties recognize that in the process of reaching an agreement, they may choose to forego a claim or defense, ask MCW for his perspective on a particular issue, or MCW may prepare a draft settlement agreement. The parties will consult an attorney if they

have any questions about their legal rights. The parties recognize that MCW does not provide legal advice.

10. The Mediation May Be Voluntary. Unless mediation has been ordered by the Court, any party may withdraw from the mediation on written notice to all other parties and MCW. In the event of such withdrawal, such parties shall remain responsible for its share of the fees and expenses incurred by MCW up to the date of withdrawal, and remain subject to the other provisions of the agreement and/or order to arbitrate. The remaining parties shall become responsible to equally share all fees and expenses after such withdrawal.

11. Fees and Appointment. The undersigned hereby agree to the appointment of Martin C. Weisman as Mediator and Arbitrator and agree to pay all of his time (and/or the time of other attorneys employed by Weisman, Young & Ruemenapp, P.C. who assist Martin C. Weisman) for travel, reading, research, telephone conferences or meetings with any party to arrange the mediation, attempt to reach settlement or any other aspect of this mediation, and the mediator's involvement in this and any subsequent related judicial or other proceeding will be billed at _____00/100 (\$_____.00) DOLLARS per hour with a total advance due upon execution hereof in the amount of _____ AND 00/100 (\$_____.00) DOLLARS to be divided equally between Plaintiff and Defendant or as otherwise agreed upon by the parties.

By the signatures below, each party, either directly or through their counsel, certifies that they agree with everything stated. All participants at the mediation will also be bound by the terms of this Agreement. This Agreement may be signed in counterparts.

Claimant

Attorney for Plaintiff

Dated: _____, 20____

By: _____

Its: _____

Dated: _____, 20____

Respondent

Attorney for Defendant

Dated: _____, 20____

By: _____

Its: _____

Dated: _____, 20____