

**LANCASTER BAR ASSOCIATION
ALTERNATIVE DISPUTE RESOLUTION PROGRAM**

MEDIATION AGREEMENT

1. **Introduction**

The undersigned parties recognize that the Lancaster Bar Association (“LBA”) sponsors and administers an Alternative Dispute Resolution (“ADR”) Program as a public service to the community. The goal of the program is to provide an opportunity for an expeditious resolution of disputes which are, or could be, pending as civil actions in the Lancaster County Court of Common Pleas. This includes all civil actions, except for cases involving divorce, equitable distribution, custody, child or spousal support, alimony, alimony pendente lite, or paternity.

2. **Role of the Bar Association**

The Lancaster Bar Association sponsors the Alternative Dispute Resolution Program. The role of the Bar Association in the Alternative Dispute Resolution Program, however, is merely one of administering the request for ADR. The undersigned parties, by voluntarily participating in the program, accept and recognize that:

The Lancaster Bar Association, mediator, and LBA-ADR Committee shall have no liability, expressed, implied or otherwise, with respect to any aspect of the Alternative Dispute Resolution Program, including the actions or omissions of any mediator.

3. **Definition of Mediation**

Mediation is typically a settlement discussion. Negotiations are assisted by a neutral, impartial third party ("mediator") who promotes or facilitates an understanding among the parties of their common interest in reconciling or settling the matter. The mediator does not make any decision for the parties, except by special agreement. Although the mediator assigned may be a member of the Lancaster Bar Association and a practicing attorney, no attorney/client privilege attaches to the communication between the parties and the mediator. No attorney/client relationship is established with the mediator. **THE MEDIATOR WILL NOT BE SERVING AS AN ATTORNEY OR ADVOCATE FOR ANY PARTY.**

4. **Selection of a Mediator**

a. The parties will have twenty days from the date they submit the completed Request For ADR to review the list of approved mediators and select a mediator acceptable to all parties. In the event that the parties agree on the mediator, that name should be supplied immediately to the Lancaster Bar Association.

b. In the event that there is no agreement on the mediator within twenty (20) days, the Lancaster Bar Association Executive Director or her/his designee will provide the parties with written notice of 3 possible mediators, whose selection will be based on a rolling, random assignment of approved mediators on the Lancaster Bar Association list. Each side may strike one name. The remaining person, or the first one selected by the LBA if more than one remain, shall be assigned as the mediator.

5. **Mediator Not To Be Called As Witness**

The parties agree not to call the mediator or any member of the Lancaster Bar Association Alternative Dispute Resolution Program as a witness or an expert in any pending or subsequent litigation as to any matter related to this arbitration. The parties will defend the mediator and any members of the Lancaster Bar Association Alternative Dispute Resolution Program from any Subpoena from any party as to the subject of this arbitration. **The mediator is not liable to any party for any act or omission in connection with this mediation.**

6. **Scheduling the ADR Conference**

After the Bar Association has been notified of the selection of a mutually agreeable mediator, or after the Bar Association has appointed a mediator in the instance where there has been no agreement, it will then be the responsibility of the mediator to schedule the date, time and place of the mediation conference, and to notify the parties and the Bar Association of the schedule. All mediation conferences will be held in Lancaster County, unless there is special agreement otherwise.

7. **Exchange of Documents**

At least ten (10) days prior to the mediation conference, each party shall provide opposing parties and the mediator with a mediation conference statement which must include the following information:

- a. a succinct statement of position regarding liability and damages;
- b. a description of the legal issues involved, with citation of legal authority;
- c. copies of any controlling documents in dispute;
- d. copies of expert reports on which they intend to rely;
- e. an itemized list of damages; and
- f. the parties' current settlement positions and rationale.

If a party fails to provide the mediation conference statement, the party who fails to provide the required statement may be required to pay the entire mediation fee and the reasonable

attorney's fees and expenses for preparation of the mediation conference statement by those parties who have timely filed their statements, as assessed and ordered by the mediator.

8. **Participation at Mediation Conference**

a. The decision to mediate a case is voluntary. However once a mediator has been selected by the parties or the LBA, the attendance of parties at the mediation conference shall be mandatory. A representative of any party's insurance company which may be involved in the case shall be available in person or by telephone during the course of the mediation conference. If a party fails to appear, the non-appearing party shall, within thirty (30) days from the mailing of the mediation conference report, pay the entire mediation fee as well as the opposing party's reasonable expenses in attending the mediation conference, as assessed and ordered by the mediator.

b. All parties are expected to make only truthful statements to each other and the mediator during the mediation process. Failure to do so may be determined by a Court to be a fraudulent act sufficient to void the terms of the Agreement and any mediation result.

9. **Confidentiality**

a. All statements made during the course of the mediation are intended by the parties to be privileged settlement discussions made without prejudice to any party's legal position, and non-discoverable for any purpose in any legal proceeding. Any information disclosed by any party, or by a representative of a party, or by a witness on behalf of a party, to the mediator is intended to be confidential. No privilege is intended to be waived by any such disclosure. However, final determination of the matter is up to a court of competent jurisdiction.

b. Disclosure of any records, reports or other documents received by the mediator cannot be compelled. The mediator shall not be compelled to disclose or to testify in any proceeding as to information disclosed or representations made in the course of the mediation conference or communicated to the mediator in confidence.

c. The parties agree that no party to this mediation will attempt to subpoena the mediator for testimony, deposition or discovery related to any documents or discussions arising during ADR. If a party breaches this Agreement and attempts to subpoena the mediator, that party will be liable for and shall indemnify the mediator for any costs, expenses, liabilities and/or fees, including attorneys' fees, that might be incurred by the mediator in objecting to the subpoena. The parties agree to maintain the confidentiality of the mediation conference and shall not in any proceeding attempt to rely on or introduce discussions regarding settlement, admissions made by any party during the course of the mediation, or any matter relating to proposals made and/or views expressed by the mediator.

d. The mediator shall have no liability for any act or omission in connection with the mediation.

10. **Conclusion of Mediation Process**

If the parties reach a settlement, the mediation process shall be concluded by the execution of a settlement agreement to be drafted by the parties themselves at the conclusion of the mediation conference. After the initial conference, the mediation process also will be terminated if any party or the mediator makes a formal written request for termination on the grounds that any further efforts at mediation would no longer be worthwhile.

11. **Special Agreement.**

The parties by special agreement have also entered into the following understanding regarding the conduct of mediation:

12. **Fees and Expenses of the Mediator**

a. The parties have agreed that they will each be responsible for an equal share of the fees and expenses of the mediator, unless there is specific written agreement otherwise.

b. The initial \$150 administrative fee paid to the Bar Association is not refundable. The \$600 initial mediator fee is only refundable up until the point in time that a mediator has been appointed. After the appointment of the mediator, the \$600 fee is not refundable. The \$600 covers three (3) hours of the mediator's time for the initial review and preparation for the conference, and the initial conference (the initial conference itself not to exceed 2 hours). In the event that the initial review and preparation and the initial conference exceeds three (3) hours, the parties agree to bear equally (or as otherwise agreed by the parties) an hourly fee for the mediator in the amount of \$200.00 per hour.

c. Any expenses of the mediation process incurred by the mediator, such as travel outside of Lancaster County, long distance telephone calls and/or photocopies, shall likewise be borne equally by the parties.

ACKNOWLEDGEMENT:

The undersigned parties, intending to be legally bound, acknowledge that we have read and agree with the terms and scope of the Mediation Agreement set forth above.

Date:

Parties

Please sign this Agreement and return it to:

Lancaster Bar Association
Alternative Dispute Resolution Program
28 East Orange Street
Lancaster, PA 17602