

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK**

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In Re:

Chapter:

Case No.:

Debtor.

-----X

Plaintiff,

Adv. Pro. No.:

-against-

Defendant.

-----X

AGREEMENT TO MEDIATE

The parties named below having a dispute in the above adversary proceeding / contested matter (the “Contested Matter”) agree to utilize the mediation services of _____

to facilitate a settlement of the disputes between them, and acknowledge and accept the following terms and conditions:

1. The parties consent to the appointment of _____ to act as mediator in the Contested Matter (the “Mediator”), as provided by the Order dated _____, a copy of which is annexed hereto as Exhibit A (the “Appointment Order”). The parties further acknowledge that the mediation shall be conducted under the terms and conditions of Local Bankruptcy Rule 9019-1 of the Eastern District of New York.

2. The parties acknowledge that the Mediator shall act as an advocate for resolution and shall use his/her best good faith efforts to assist the parties in reaching a mutually acceptable resolution. Each of the parties agrees to abide by this agreement and commits to participate in the mediation process in good faith with the intention of resolving the disputes among them.

3. The Mediator is a Registered Mediator with the United States Bankruptcy Court for the Eastern District of New York, and is a member of the firm of _____

where he/she specializes in the representation of parties addressing financial difficulties, whether as debtors, creditors, trustees, or otherwise. Annexed hereto as Exhibit B is the affidavit of _____ regarding his conclusion that he is a disinterested person in accordance with the requirements of Local Bankruptcy Rule 9019-1 of the Eastern District of New York and the Bankruptcy Code (the “Affidavit”). Each of the parties has read the Affidavit, acknowledges that the Mediator may from time to time have cases before this Court, including cases in which the Mediator serves as an attorney for parties who seek compensation from the Bankruptcy Court. The parties accept the conclusion that the Mediator is disinterested and will maintain impartiality toward all parties. Until termination of the mediation, the Mediator will have responsibility and authority over the mediation process as and to the extent set forth in the Appointment Order and Local Bankruptcy Rule 9019-1 of the Eastern District of New York.

4. Mediation is a voluntary process for settlement negotiations. In this context, the Mediator acts as an impartial third party exclusively and does not represent any of the parties, and does not otherwise practice law. The Mediator will not give legal advice. The Mediator does not have authority to decide any issue which is the subject of the dispute among the participants. Likewise, the Mediator is not a judge. The Mediator does not have the power or authority to force a settlement on the parties. Participants are encouraged to consult with their own attorneys regarding their legal rights and responsibilities. The parties are responsible for negotiating a resolution of this case that is satisfactory and/or acceptable to them. There is no assurance that resolution will result from the mediation process or that a settled resolution is in the best interest of any or all parties.

5. All statements, written or oral, that are initially made during or created or first disclosed as a part of the mediation process are deemed to be inadmissible for any purpose in this case as well as any other proceeding and not available through discovery or other court

process directed at the mediator or otherwise seeking materials prepared for or as a part of the mediation process. The parties will not subpoena or otherwise require the Mediator to testify or produce records, reports, notes, or other documents reviewed, received, or prepared by the Mediator during the course of the mediation process.

6. Additionally, the Mediator may hold a private meeting or “caucus” with one participant. Information revealed in a private meeting is confidential and will not be disclosed by the Mediator unless the participant authorizes disclosure.

7. Unless otherwise agreed or as Ordered by the Court, the parties to the mediation (with the exception of _____) shall be responsible equally for the fees and expenses of the Mediator (the “Responsible Parties”). The Mediator shall be compensated based on actual time expended, at an hourly rate of \$_____ to be shared equally between the parties subject to the limitations in the Appointment Order. In addition to the foregoing fees, the Responsible Parties shall be responsible equally for the out-of-pocket expenses and disbursements incurred by the mediator.

The Responsible Parties further agree to each provide the mediator with an initial payment of \$_____ on account to secure payment of the first \$_____ of the mediator’s fees and expenses. In the event the mediator’s fees and expenses exceed \$_____, the Responsible Parties shall provide additional \$_____ retainers. These advances shall be applied against the mediator’s fees and expenses incurred and any amount not so applied shall be returned to the parties.

8. To the extent an order of this Court is required to approve any payments to the Mediator, the Mediator will make appropriate application therefore, and will be entitled to compensation for the additional time incurred from the Responsible Parties.

9. Each of the parties hereto recognizes that there is no adequate remedy at law for breach of this agreement and agrees to submit to the jurisdiction of this Court to provide for the specific performance of this agreement. In executing this agreement, each of the parties hereto agree to accept and abide by the terms and conditions of Local Bankruptcy Rule 9019-1 of the Eastern District of New York and the rules of mediation set forth on Exhibit C annexed hereto, which are expressly adopted and incorporated by reference.

10. This agreement may be executed in counterparts.

Dated:

"", 20__

Mediator

_____ aaaa, 20__

By: _____
Attorney for""]'.....' _

_____ a, 20__

By: _____
Attorneyu for"]'.....' _

_____ a, 20__

By: _____

Agreement to Mediate in the Matter
of