

**AMERICAN ARBITRATION ASSOCIATION**

..... x:  
  
XXX :  
  Claimant, :  
-- and -- :   Case No. 12345  
  
YYY :  
  Respondent. :  
  
..... x

**STIPULATION**

The parties to the above-referenced proceeding hereby acknowledge, agree and stipulate as follows:

On April 8, 2015, in his capacity as the panel chair of an arbitration panel appointed by the American Arbitration Association (the “AAA”), Steven A. Certilman conducted a preliminary hearing in connection with this proceeding between XXX as Claimant and YYY as Respondent. Both parties were represented by counsel at the hearing.

An arbitration award has not as yet been issued in this proceeding. The parties have requested that the AAA, and specifically Mr. Certilman, assist them in reaching a comprehensive settlement of the dispute between them.

Subject to the parties’ acknowledgment, agreement and stipulation to the terms and conditions set forth below, Mr. Certilman has agreed to act as a mediator of issues relating to the terms of a settlement of the parties’ dispute. The mediator is an impartial intermediary

who assists the parties in reaching a settlement. The mediator cannot impose settlement terms upon the parties, but assists the parties in achieving their own settlement.

A mediator is a neutral third-party and not an advocate for any party. The mediator shall not give legal advice, and no attorney-client relationship will be created between any party and the mediator. In the event that the mediation discussions do not result in a settlement of the dispute, Mr. Certilman will proceed to participate in the arbitration as the chair of the arbitration panel, in the decision of the case in that capacity, and in the issuance of a written arbitration award.

During the mediation phase of this proceeding, Mr. Certilman may meet privately with each party (and its attorneys). During those private discussions, Mr. Certilman may receive confidential information from a party that will not be shared with, and might be subject to dispute by the other party. In an arbitration proceeding, in which the arbitrator or arbitration panel decides the outcome of the case based upon evidence received in open session with both parties present, it would be improper for an arbitrator to receive information from one party in the absence of the other party.

For that reason, a dispute resolution process in which the same person serves as both the arbitrator and the mediator may proceed only with the express written consent of both parties. The AAA will administer such a process, and Mr. Certilman will participate in such a process, only if the parties have explicitly waived their right to have the panel's decision based solely upon information received by the panel in the presence of all parties, and their right to challenge the award on the any basis which relies upon Mr. Certilman having received

information in the mediation process which he may not have been intended to receive in the arbitration process.

The parties acknowledge that during the private mediation discussions, certain information may be communicated by a party to Mr. Certilman in confidence and shall not be communicated to the other party. The parties further acknowledge that such information, which the absent party may believe to be false, may influence Mr. Certilman's decision if the settlement discussions are unsuccessful and it becomes necessary for Mr. Certilman to sit on the panel deciding the case and issues an arbitration award. The parties also acknowledge that concern for the avoidance of such influence may have a chilling effect on the mediation discussions, which itself may undermine the likelihood of success of the mediation.

The parties acknowledge having been informed of the potential disadvantages of having the same person serve as both the arbitrator and the mediator. For example, the parties acknowledge that (a) during the mediation discussions, the parties may disclose to Mr. Certilman, on a confidential, *ex parte* basis, information that could include, without limitation, their respective settlement positions, potentially damaging facts and law, their views of the strengths and weaknesses of their case, and other matters that would not be disclosed to a person serving only as the arbitrator of the dispute; and (b) if the dispute is not resolved as a result of the mediation discussions, and it becomes necessary for Mr. Certilman to sit on the panel deciding and issuing an arbitration award, the confidential information disclosed during the private mediation discussions could consciously or unconsciously influence the outcome or Mr. Certilman's decision as the arbitrator. Notwithstanding these factors, the parties desire to have Mr. Certilman serve as the mediator of their dispute.

The parties acknowledge that neither the AAA nor Mr. Certilman shall incur any liability for any act or omission arising out of or in connection with Mr. Certilman's service as the mediator of the parties' dispute. No claim or challenge to the arbitration proceeding, or to the arbitration award, shall be made by either party based upon the fact that Mr. Certilman served as both the arbitrator and the mediator, or based upon his receipt of confidential information disclosed on an *ex parte* basis during the private mediation discussions and not shared with the absent party. The parties expressly waive and relinquish (a) any and all claims or objections to Mr. Certilman serving as both an arbitrator and the mediator of the dispute; (b) any and all objections to an arbitration award issued by the arbitration panel on which Mr. Certilman serves a result of his service as the mediator of the dispute, and his receipt of confidential information disclosed on an *ex parte* basis during the private mediation sessions and not shared with the absent party; (c) any claim of prejudice, conflict of interest, or impropriety due Mr. Certilman having served as the mediator of the dispute under the circumstances described above; and (d) any right to challenge the outcome or the decision of the arbitration panel due to Mr. Certilman having served as the mediator of the dispute under such circumstances. The parties further acknowledge that Mr. Certilman's service as the mediator under the circumstances described above shall not provide a basis for seeking his disqualification as an arbitrator in this matter, and the parties expressly waive and relinquish the right to do so.

The parties acknowledge that they are free to consult with counsel of their choice at any time during the mediation discussions. The parties further acknowledge that they are free to appoint another person to serve as the mediator of the dispute.

The parties acknowledge that they have had an opportunity to discuss this contemplated dispute resolution process with counsel of their choice. The parties further acknowledge that they believe themselves to be fully informed of the potentially adverse characteristics of this process, and have determined that they nevertheless wish to proceed as set forth above.

Any attorneys whose signatures appear below attest that they have fully informed their clients of the particular characteristics and risks of the dispute resolution process described above.

Dated: \_\_\_\_\_

CLAIMANT:

\_\_\_\_\_  
XXX

\_\_\_\_\_  
LLL  
Attorney for Claimant

RESPONDENT:

\_\_\_\_\_  
YYY

\_\_\_\_\_  
MMM  
Attorney for Respondent