

MC3-Certified Mediator Agreement

BY ELECTRONICALLY SIGNING BELOW, YOU ACKNOWLEDGE THAT YOU HAVE READ AND AGREE THAT THE FOLLOWING TERMS AND CONDITIONS GOVERN YOUR CERTIFICATION AND ANY SERVICES UNDER THIS MC3-CERTIFIED MEDIATOR AGREEMENT ("AGREEMENT"). IF YOU DO NOT AGREE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT, DO NOT ELECTRONICALLY SIGN THE AGREEMENT.

This Agreement is entered into between you and the Mediator Certification Consortium of California ("MC3," "we," "us," or "our"), as described below.

1. Definitions

For purposes of this Agreement, the following terms have these defined meanings:

- a. "Certification Requirements" means the requirements for attaining MC3 Certification that are set forth in the Requirements for Certification document available online at mc3certified.org/requirements.
- b. "Confidential Information" means any information that relates to an MC3 Examination and any information that we disclose to you that has not been made available to the general public.
- c. "MC3 Certification" means the certification awarded by MC3 to those individuals that successfully demonstrate that they have met the initial and ongoing Certification Requirements and who remain in good standing.
- d. "MC3-Certified Mediator" means an individual that has achieved MC3 Certification and remains in good standing.
- e. "MC3 Certification Mark" means the certification mark used to identify MC3-Certified Mediators as found in the MC3 Certification Mark Usage Guide available online at mc3certified.org/certificationmarkguide.
- f. "MC3 Examination" means any examination created by MC3 that applicants or MC3-Certified Mediators must satisfactorily pass to attain or maintain MC3 Certification.
- g. "MC3 Grievance Procedure" means the procedures used by MC3 to respond to reports to MC3 that an MC3-Certified Mediator has not appropriately followed the applicable standards of

conduct for mediators. The MC3 Grievance Procedure is available online at mc3certified.org/grievanceprocedure.

- h. “MC3 Grievance Proceeding” means a proceeding instituted by MC3 in accordance with the MC3 Grievance Procedure.
- i. “Online Mediation” means any mediation in which the primary means of communication is through software.

2. Purpose

Subject to the terms of this Agreement, individuals who successfully meet the initial and ongoing Certification Requirements and remain in good standing are entitled to become MC3-Certified Mediators and to use the MC3 Certification Mark.

3. Your Responsibilities

At all times when you hold yourself out as a recipient of MC3 Certification or as an MC3-Certified Mediator, or at any time that you are providing mediation services, you will:

- a. Abide by the Model Standards of Conduct for Mediators adopted by the American Arbitration Association, the American Bar Association, and the Association for Conflict Resolution and by the Standards of Conduct for Mediators in Court-Connected Mediation Programs adopted by the California Judicial Council;
- b. Conduct your activities in a professional and competent manner;
- c. Promote MC3 Certification in a manner that maintains the good name and reputation of MC3 and MC3 Certification;
- d. Not engage in any illegal, false, or deceptive acts or practices; and
- e. Otherwise comply with the terms of this Agreement.

You acknowledge that MC3, in its sole discretion, may impose discipline against you for violating any of these responsibilities. This discipline may include but is not limited to: a reprimand; a requirement to obtain additional training, supervision, or experience; suspension for a specified period of time or until additional training, supervision, or experience has been completed; or revocation of MC3 Certification with a prohibition against reapplying for MC3 Certification for a specified period of time.

4. Your Ongoing Affirmative Duty to Notify MC3 of Involvement in Any Activity that Violates MC3's Background Check Requirements

You acknowledge that you have an ongoing affirmative duty to notify MC3 in writing if you are involved in any activity that violates MC3's Background Check Requirements, which are available online at mc3certified.org/backgroundcheck. This includes:

- a. Being convicted of, pleading guilty or nolo contendere to, receiving a final disposition on appeal, or being charged with a felony or misdemeanor commonly understood to be a crime of moral turpitude. This includes but is not limited to:
 - i. Any felony;
 - ii. Any crime involving violence, injury or harm or threat of violence, injury or harm to a person;
 - iii. Any crime involving harm to or exploitation of a minor, an elder, or a dependent adult;
 - iv. Any crime of a sexual nature or classified as a sex offense, and crimes in which sexual relations is an element;
 - v. Any crime involving theft, misappropriation, fraud or similar acts, including cybercrime or identity theft;
 - vi. Any crime involving blackmail or extortion;
 - vii. Any crime involving negligent, reckless, or impaired use of a motor vehicle;
 - viii. Any crime involving weapons;
 - ix. Any crime involving possession, use, manufacture, sale, or distribution of a controlled substance;
 - x. Any crime involving destruction or damage to property;
 - xi. Any crime involving cruelty to animals; and
 - xii. Inclusion on a sex offender registry.
- b. Being disbarred, having disbarment proceedings instituted against you, being removed from a statutorily regulated licensure, or being removed by an organization funded by the Dispute Resolution Programs Act (DRPA) on the basis of malfeasance. This does not include becoming voluntarily inactive or where the removal is administrative in nature, i.e., the result of not renewing a license by not paying the required fees.

You acknowledge that MC3 cannot certify individuals involved in these or similar activities and that your MC3 Certification will be revoked.

5. MC3 Certification Mark

Subject to your attaining MC3 Certification and remaining in good standing, we grant you the limited right to use the MC3 Certification Mark solely to indicate your status of holding MC3 Certification. You must use the MC3 Certification Mark in accordance with the MC3 Certification Mark Usage Guide and the terms of this Agreement. This right terminates when your MC3 Certification is no longer valid or is revoked or terminated (including for use of the MC3 Certification Mark in a manner not authorized by this Agreement or the MC3 Certification Mark Usage Guide). We may revoke your license to use the MC3 Certification Mark at any time by giving you written notice.

You acknowledge that MC3 is the sole owner of the MC3 Certification Mark and that nothing in this Agreement, in your performance as an MC3-Certified Mediator, or that might otherwise be implied by law, shall give you any right, title, or interest in the MC3 Certification Mark other than the authorization specifically granted in this Agreement. You shall not use or reproduce the MC3 Certification Mark in any manner except as described in the MC3 Certification Mark Usage Guide. You shall not use the MC3 Certification Mark in a manner that negatively impacts MC3's rights in the MC3 Certification Mark. You shall also not take any action that interferes with or diminishes MC3's rights in the MC3 Certification Mark during the term of this Agreement or after its termination or expiration. Nothing in this Agreement authorizes you to use any MC3 trademarks, service marks, certification marks, or logos except as expressly specified in this Agreement and the MC3 Certification Mark Usage Guide.

6. Online Mediations

For any online mediation you conduct, you agree to provide the participants with advance written guidance as to the protocols and procedures that you will use. The written guidance must be signed by all participants in the mediation. The written guidance must describe:

- a. The choice of software platform and instructions for accessing it;
- b. The security risks associated with an online mediation, including the potential ramifications that a security breach may have on the privacy and confidentiality of the mediation;
- c. The procedures for signing documents during the mediation;
- d. The necessity of each participant having a secure internet connection; and
- e. The protocol to follow in the event of a technology failure.

The written guidance must require that each participant agree to:

- a. Only access the online mediation from a location that protects mediation confidentiality;
- b. Not record or photograph any part of the online mediation; and
- c. Keep confidential all mediation communications, including invitations and passwords.

7. MC3 Grievance Procedure

You affirm that you have read the MC3 Grievance Procedure and agree to abide by and cooperate with this procedure and with any amendments to it. In order to maintain and enhance the credibility of the MC3-Certified Mediator designation, to fulfill the expectations of persons who rely on the designation in selecting a mediator, and to facilitate the resolution of

inquiries or grievances that MC3 may receive about MC3-Certified Mediators, you further agree as follows:

- a. You shall have a written and signed confidentiality agreement with all of the participants in each mediation that you conduct. If you receive compensation for the conduct of the mediation, you must also have a written fee agreement signed by the parties.
- b. Any communications made in the course of or in connection with any mediation or mediation consultation that you conduct or otherwise participate in may be disclosed in an MC3 Grievance Proceeding, notwithstanding mediation confidentiality.
- c. You shall include the following text in a written confidentiality agreement with all persons who participate, in any manner, in each mediation that you conduct:

As an MC3-Certified Mediator, mediator has agreed to abide by the Model Standards of Conduct for Mediators adopted by the American Arbitration Association, the American Bar Association, and the Association for Conflict Resolution and by the Standards of Conduct for Mediators in Court-Connected Mediation Programs adopted by the California Judicial Council. MC3 has established a confidential Grievance Procedure for addressing any reports that an MC3-Certified Mediator has not appropriately followed applicable standards of conduct. The undersigned participants agree that any communications in the course of this mediation, including any that might otherwise be confidential or protected from disclosure based on mediation confidentiality, may be disclosed in an MC3 Grievance Proceeding, for the limited purpose of asserting, defending, investigating, and resolving a report that an MC3-Certified Mediator did not appropriately follow the applicable standards of conduct. The undersigned participants further agree not to call or subpoena MC3 or its representatives to testify with respect to an MC3 Grievance Proceeding or to subpoena MC3 records related to or arising out of an MC3 Grievance Proceeding in any civil or criminal proceeding.

- d. You shall obtain the names and contact information of all persons who participate, in any manner, in each mediation that you conduct, maintain this information for at least 2 years after the mediation ends, and provide it to MC3 upon request.

- e. If MC3 receives a grievance indicating that you may not have appropriately followed an applicable standard of conduct, you shall abide by the requirements of the MC3 Grievance Procedure and shall promptly respond to and cooperate with any inquiries and requests from MC3 representatives relating to the investigation and resolution of the grievance.
- f. You understand and agree that your MC3 Certification may be conditioned, suspended, or revoked if you do not appropriately follow the applicable standards of conduct or do not comply and cooperate with Grievance Procedure requirements.

If you conduct a mediation as a volunteer for an organization funded under the California Dispute Resolution Programs Act (DRPA), you are exempt from requirements (a)–(f) above for the conduct of that mediation only. MC3 will refer any grievance it receives relating to your conduct while acting as a volunteer for an organization funded under the DRPA to the appropriate DRPA agency for resolution.

8. Disclaimer of Warranty

TO THE EXTENT PERMITTED BY APPLICABLE LAW, MC3 SPECIFICALLY DISCLAIMS ANY AND ALL STATUTORY OR IMPLIED WARRANTIES RELATING TO MC3 CERTIFICATION, INCLUDING BUT NOT LIMITED TO THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.

9. Limitations of Liability

IN NO EVENT SHALL MC3 OR ANY AFFILIATE OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, OR REPRESENTATIVES BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, DIRECT, INDIRECT, PUNITIVE, OR SPECIAL DAMAGES RESULTING FROM ANY BREACH OF WARRANTY OR CONDITION, OR UNDER ANY LEGAL THEORY, INCLUDING, BUT NOT LIMITED TO: LOSS OF USE; LOSS OF REVENUE; LOSS OF ACTUAL OR ANTICIPATED PROFITS (INCLUDING LOSS OF PROFITS ON CONTRACTS); LOSS OF THE USE OF MONEY; LOSS OF ANTICIPATED SAVINGS; LOSS OF BUSINESS; LOSS OF OPPORTUNITY; LOSS OF GOODWILL; LOSS OF REPUTATION; LOSS OF, DAMAGE TO, CORRUPTION OF, OR COMPROMISE OF DATA; OR ANY INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGE CAUSED, ARISING FROM, OR RELATED TO YOUR MC3 CERTIFICATION, FAILURE TO ACHIEVE MC3 CERTIFICATION, OR USE OF OR INABILITY TO USE THE MC3 CERTIFICATION MARK, OR ARISING FROM OR RELATED TO THE TERMINATION OR REVOCATION OF YOUR MC3 CERTIFICATION, EVEN IF MC3 HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE

LIMITATIONS IN THIS SECTION APPLY ONLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

10. Indemnification

You agree that MC3 shall have no liability to you or any of your employees, agents, clients, or customers and that you shall defend, indemnify, and hold MC3, its affiliates, subsidiary corporations, and their respective officers, directors, employees, agents, successors, and assigns harmless from and against any and all actions, demands, claims, and/or liabilities (including, but not limited to, personal injury or product liability claims) arising out of:

- a. your use of the MC3 Certification Mark in a manner which is in any way inconsistent with the terms of this Agreement and/or the MC3 Certification Mark Usage Guide; or
- b. the performance, promotion, sale, or distribution of your services as an MC3-Certified Mediator; or
- c. the termination of this Agreement by MC3, pursuant to the terms herein.

The terms in this section apply only to the maximum extent permitted by applicable law.

In the event MC3 seeks indemnification from you under this provision, MC3 will promptly notify you in writing of the claim(s) brought against MC3 for which it seeks indemnification. MC3 reserves the right, at its option and sole discretion, to assume full control of the defense of such claim with legal counsel of its choice. You may not enter into any third-party agreement which would, in any manner whatsoever, affect the rights of, or bind MC3 in any manner, without the prior written consent of MC3. In the event MC3 assumes control of the defense of such claim, MC3 shall not settle any such claim requiring payment from you without your prior written approval. Upon MC3's request, you shall reimburse MC3 for any expenses reasonably incurred by MC3 in defending such a claim, including, without limitation, attorney fees and costs, as well as any judgment on or settlement of the claim in respect to which the foregoing relates.

11. Confidentiality

Anyone obtaining access to MC3's Confidential Information is obligated to maintain the confidentiality of this information. If you are caught violating the terms of this provision, you will be permanently ineligible from MC3 Certification and your MC3 Certification will be revoked. You agree to protect MC3's Confidential Information, using at least the same degree of care that you use to protect your own confidential and

proprietary information of similar importance, but no less than a reasonable degree of care.

You agree to use MC3's Confidential Information for the sole purpose of evaluation in connection with purpose of this Agreement. You will not disclose, publish, or disseminate Confidential Information. You may disclose Confidential Information to the extent required by law, provided you make reasonable efforts to give MC3 notice of such requirement prior to any such disclosure and take reasonable steps to obtain protective treatment of the Confidential Information. Except as expressly set forth herein, no license or other rights to Confidential Information are granted or implied hereby and MC3 retains all of its rights therein.

12. Term and Termination

Either party may terminate this Agreement at any time, with or without cause, by giving thirty days prior written notice to the other party. MC3 may terminate this Agreement immediately, including termination and revocation of MC3 Certification to which this Agreement relates, and termination of your use of the corresponding MC3 Certification Mark, upon the occurrence of any one of the following events (each a "Cause"):

- a. you fail to comply with any of the terms of this Agreement, including, without limitation, the terms governing the use of the MC3 Certification Mark;
- b. you misappropriate or disclose any trade secret or Confidential Information of MC3 (including, but not limited to, any exams or Confidential Information with respect to which you are under obligation of confidentiality), or otherwise infringe any other intellectual property right of MC3, or engage in any other activities prohibited by law;
- c. you fail to comply with the continuing Certification Requirements for MC3 Certification; or
- d. a government agency, regulatory agency, or court finds that mediation services you provided are defective in any way.

In the event any of the above occurs, MC3 may provide you with written notice of termination of this Agreement. Immediately upon termination of this Agreement, you shall immediately cease all use of the MC3 Certification Mark. MC3's termination under this section shall not prejudice any rights MC3 may have under this Agreement or in law, equity or otherwise. Sections 7, 8, 9, 10, 15, 16, 17, 18, 19, and 20 shall survive termination of the Agreement for any reason.

13. Your Relationship with MC3

You acknowledge that nothing in this Agreement shall be construed as creating a partnership, joint venture, or agency relationship between you and MC3. You shall not advertise, promote, or suggest in any manner that the mediation services you provide are provided by, sponsored by, or associated in any way with MC3, or that you are employed by, affiliated with, or sponsored by MC3, except to state that you have successfully completed all Certification Requirements for MC3 Certification and remain in good standing.

14. Choice of Law

THIS AGREEMENT SHALL, FOR ALL DOMESTIC AND INTERNATIONAL PURPOSES, BE GOVERNED, INTERPRETED, CONSTRUED, AND ENFORCED SOLELY AND EXCLUSIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, U.S.A., WITHOUT REGARD TO CONFLICTS-OF-LAW PROVISIONS. YOU EXPRESSLY AGREE THAT THE EXCLUSIVE JURISDICTION FOR ANY CLAIM OR ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE FILED ONLY IN THE STATE OR FEDERAL COURTS LOCATED IN THE STATE OF CALIFORNIA, AND YOU FURTHER AGREE AND SUBMIT TO THE EXERCISE OF PERSONAL JURISDICTION OF SUCH COURTS FOR THE PURPOSE OF LITIGATING ANY SUCH CLAIM OR ACTION.

15. Data Protection

You agree and understand that it is necessary for MC3 to collect, process, and use your data in order to evaluate you for MC3 Certification and to confirm compliance with MC3's policies and applicable laws. MC3 will protect your information in accordance with the MC3 Privacy Policy. The MC3 Privacy Policy is available online at mc3certified.org/privacy.

16. No Assignment

You may not assign your rights or obligations under this Agreement. Any unauthorized assignment will be void.

17. Performance or Delays

MC3 will not be liable for performance or delays beyond its reasonable control.

18. Waiver

A waiver of any breach or default under this Agreement shall not constitute a waiver of any subsequent breach or default.

19. Severability

If a court of competent jurisdiction holds that any provision of this Agreement is invalid or unenforceable, the remaining portions will

remain in full force and effect, and the parties will replace the invalid or unenforceable provision with a valid and enforceable provision that achieves the original intent of the parties and the economic effect of the Agreement.

20. Entire Agreement

This Agreement, including any additional terms referenced herein, constitutes the entire agreement between MC3 and you with regard to MC3 Certification and supersedes all prior negotiations, agreements, and understandings with respect to the subject matter, and no addition to or deletion from or modification of any of the provisions hereto shall be binding upon MC3 unless made in writing and signed by an authorized representative of MC3. Any term or condition on any other document submitted by you shall be of no force or effect whatsoever and is specifically rejected.

21. Modifications

MC3 reserves the right to change this Agreement at any time and without notice. MC3 will give notice of changes to the Agreement by posting the changes on MC3's website. The changes will be deemed given when posted. You will have a commercially reasonable time to implement such changes made by MC3, not to exceed thirty days.