

AGREEMENT TO MEDIATE

The undersigned parties (collectively, the "Parties") have agreed to participate in a voluntary, non-binding mediation conducted by _____ (the "Mediator"). The Parties and the Mediator agree as follows:

1. The Mediation Process

The purpose of the mediation process is to assist the parties in negotiating a fair and reasonable resolution of their dispute – a resolution that works better for the parties than their alternatives to settlement.

a. Role of the Mediator. The Mediator's role is to serve as an impartial facilitator of the negotiation. The Mediator has no power to order or dictate any terms of any agreement – all such power belongs to the Parties.

b. Voluntary process. Either Party may terminate the mediation for any reason by written notification to the Mediator and to the other Party. The Mediator may terminate his/her participation in the mediation if (1) the Parties fail to pay for the Mediator's services, (2) continuation of the mediation would involve a violation of applicable ethical rules, or (3) other reasonable cause; in the event of such termination, the Mediator shall maintain the confidentiality of all information to which the obligation of confidentiality applies under this Agreement.

c. Authority to settle. The Parties attending the mediation shall have full authority to settle the dispute.

d. Respectful communications. The Parties agree that respectful communications are essential to the mediation process and that they shall endeavor to communicate with each other in that manner.

2. Legal Representation

The Parties understand that the Mediator is not undertaking to provide legal advice or representation on behalf of any Party in connection with the mediation and shall not represent either Party as an attorney at any time in connection with the mediation. The Parties understand that they may consult counsel at any time, and, if the Parties have not already arranged for legal representation in connection with the mediation, they are strongly urged to do so.

3. Confidentiality

a. Scope of Confidentiality. The Parties and the Mediator agree that the entire mediation process is confidential and privileged pursuant to Mass. Gen. Laws ch. 233, § 23C, and shall be treated as a compromise negotiation for the purposes of the Federal Rules of Evidence and applicable Massachusetts law. The Parties and the Mediator agree not to disclose any communications including offers, promises, conduct, statements or settlement terms whether oral or written, made by the Parties or their counsel in connection with the mediation, except where disclosure is required by law or court rule or as otherwise provided in this Agreement.

b. Exceptions to Confidentiality.

i. The Parties may disclose information about the mediation to their

respective attorneys, therapists (if any), financial advisors, and, in the case of a business or non-profit organization, those within the business or organization with a need to know, so long as each such individual is made aware of the confidentiality provisions of this Agreement prior to disclosure and agrees to be bound by them.

ii. The Mediator may disclose to appropriate authorities information obtained in the course of the mediation concerning (a) child abuse or neglect, (b) elder abuse or neglect, (c) the risk of serious harm to an individual, or (d) unlawful activity.

iii. The confidentiality and privilege provided for in this Agreement shall not apply to (a) evidence relating to the liability of the Mediator or a fee dispute involving the Mediator if submitted in judicial, administrative, or disciplinary proceedings or a fee arbitration, or (b) information that the Parties and the Mediator agree in writing, after the conclusion of the mediation, may be disclosed.

iv. Unless the Parties agree otherwise in writing, nothing in this Agreement shall prevent any Party from presenting an interim agreement or signed memorandum of understanding executed as part of the mediation process to a court for purposes of enforcement.

c. Testimony. The Parties agree that they shall not seek to obtain (i) the testimony of the other Party or of the Mediator regarding the mediation or (ii) the disclosure of the Mediator's file, and that if either Party seeks such testimony or disclosure by the Mediator in contravention of this provision, that person shall reimburse the Mediator for all costs in connection therewith, including reasonable attorney's fees, and shall compensate the Mediator for time spent, such compensation to be at the Mediator's then-current hourly rate.

d. Separate Meetings. We understand that the Mediator may communicate with either or both Parties or their counsel separately as part of the mediation process and that, in connection with any such separate communication, a Party or his/her counsel may request that the Mediator keep confidential all or part of what was communicated. The Mediator agrees to honor all such requests except to the extent that the substance of the communication falls within one of the exceptions to confidentiality set forth in this Agreement.

e. Stenographic Record. The Parties and the Mediator agree that there shall be no stenographic record or other recording of any meeting, but that the Parties and the Mediator may take notes during the mediation sessions.

f. Documents. Any documents exchanged by the Parties in connection with the mediation shall be considered confidential and privileged, provided however that documents that are independently obtained and admissible shall not be rendered confidential or inadmissible because they are produced in connection with the mediation process.

g. Email Communications. Email often plays a large role in the Parties' communications with the Mediator. Please note that if the Parties use email hosted on an employer's server or a shared email account, the ordinary rules concerning privilege may not apply, and therefore the Parties are encouraged to use a private email account for all such communication.

h. Research, Education and Training. The Parties agree that a description of the case may be used for research, education, or training (or any combination of these), but only if information that might identify the parties has been removed.

i. Duration of Confidentiality Obligations. The confidentiality obligations set forth in this Agreement shall remain in effect even after the completion of the mediation process, regardless of whether the case is resolved by settlement or not.

4. Disclosure of Prior Relationships

a. The Mediator's Obligation. The Mediator has made a reasonable effort to learn and has disclosed to the Parties (a) all social, business or professional relationships of which the Mediator is aware that the Mediator and/or the Mediator's firm has had with the Parties or their counsel; (b) any financial interest the Mediator has in any Party or in the outcome of the case; and (c) any other circumstances that may create doubt regarding the Mediator's impartiality in the mediation.

b. The Parties' Obligation. The Parties hereby confirm that they are not aware of any conflict of interest with regard to the Mediator's serving in this matter, or any prior relationship with the Mediator or the Mediator's firm that has not been disclosed. The Mediator's resume is available at our website: www.blc.law, and it lists the firms and organizations with which the Mediator has been affiliated; the Parties agree to advise the Mediator as soon as possible if they have any difficulty accessing this document.

5. Future Relationships

a. Neither the Mediator nor the Mediator's firm shall undertake any work for or against either Party regarding the subject matter of the mediation.

b. The Mediator shall not personally work on any matter for or against either Party, regardless of subject matter, until one year after termination of his/her services as Mediator.

c. The Mediator's firm may work on matters for or against either Party if such matters are unrelated to the subject matter of the mediation, provided however that if such work is done, the Mediator shall establish appropriate safeguards to insure that other members and employees of the Mediator's firm working on any such matter do not have access to any confidential information obtained by the Mediator during the course of the mediation.

6. Compensation

a. Services Covered by this Agreement. The Parties agree to pay Boston Law Collaborative, LLC ("BLC") for the Mediator's time at the hourly rate of \$____. The Parties understand that they will be billed for all time spent in preparation for and at mediation sessions, in telephone conferences, for sending and responding to emails, preparing documents, whether before, during, or after the mediation session(s), and review of memos and other material submitted to the Mediator by the Parties. The Parties will be billed (at BLC's cost) for necessary expenses such as copies, faxes, and long distance telephone calls. A \$250 per party administration fee will also be charged for administrative services performed by BLC staff (i.e. - scheduling sessions and

telephone conferences, responding to email, phone calls, organizing and filing documents, etc.).

b. Allocation of Costs. The Parties agree to pay these fees and costs in the following manner: ___% by _____ and ___% by _____.

c. Retainer. The Parties agree to pay a retainer of \$ _____ (to be paid as follows: ___% by _____ and ___% by _____) at the commencement of the mediation process, which will be applied toward the mediation services rendered and applicable costs. If the mediation continues beyond the initial mediation session, the Parties agree to replenish the retainer as needed. **The retainer is not an estimate of the cost of the mediation.** The retainer will be deposited in a segregated client funds account, and any unused portion of the retainer will be returned to the Parties at the conclusion of the mediation or at such time as the Parties may wish to terminate the mediation.

d. Cancellation. In the event that a Party cancels a scheduled mediation session on less than two week's notice to the Mediator, that Party shall pay the Mediator a cancellation charge equal to 50% of the time charges for the time reserved for the mediation (the "cancellation fee"). If all Parties cancel a scheduled mediation session on less than two week's notice to the Mediator, the Parties shall divide the cancellation fee in the same manner as in paragraph 6(b), above. If three or more days of mediation have been scheduled, the cancellation fee will apply as above for notice given four weeks or less prior to the first scheduled session. For purposes of this provision, "cancellation" includes cancellation or rescheduling of the mediation session for any reason, including, without limitation, situations in which a court appearance is required in the same or another case.

e. Billing. BLC issues bills monthly, normally on or about the 15th of each month, for the work done in the previous month, and payments are due upon receipt of the statement. Bills show the amount of time, in tenths of an hour, spent on the case, as well as costs and expenses. If a bill remains unpaid for more than 30 days after it is sent, BLC charges interest at the rate of one percent (1%) per month on the unpaid balance starting on the first day of the following month – in other words, approximately 45 days after the bill is sent. (Bills will be sent via email unless the Parties prefer to have them sent by mail.) The Parties agree that if they have an objection to a bill, they will bring it to BLC's attention within 60 days from the date that the bill is sent; absent such an objection, the bill will be considered final. Any changes in BLC's bills or billing arrangements need to be made in writing. In the event of a disagreement about BLC's charges for fees or expenses, the Parties and BLC agree to place the matter before the Legal Fee Arbitration Board of the Massachusetts Bar Association and agree to be bound by the decision of the arbitrator(s). If BLC is the prevailing party in any action to collect its fees, BLC shall be entitled to recover its cost of collection, including reasonable attorney's fees.

f. Responsibility for Payment. The mediation fees are the responsibility of the Parties and the attorneys requesting the mediation.

7. Miscellaneous

a. Entire Agreement. This Agreement constitutes the entire agreement of the Parties and the Mediator as to the mediation described above and supersedes all previous oral or written agreements between or among them regarding this mediation.

b. Modification. No modification of this Agreement may be made except in a writing signed by the Parties and the Mediator.

c. Governing Law. The terms of this Agreement shall be governed by the law of the Commonwealth of Massachusetts.

d. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall be deemed to be one and the same instrument.

[PARTY A]

[PARTY B]

By Counsel: _____, Esq.

By Counsel: _____, Esq.

Date: _____

Date: _____

_____, Mediator

Date: _____