

## AGREEMENT TO MEDIATE

The undersigned Parties wish to mediate issues involved in their divorce, and they are willing to make a good faith effort to reach agreement. They have agreed to hire \_\_\_\_\_ (the "Mediator") to mediate.

### 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. Sharing information. The Parties agree to share with each other during the mediation process all information, both financial and non-financial, that is pertinent to the case, whether requested or not. The Parties must make their own determination as to whether they are satisfied with these voluntary disclosures or instead wish to undertake, on their own or with their own counsel, further inquiry.

d. Interest-based negotiation. The Parties understand that the goal of the mediation process is to arrive at a resolution of all issues that need to be addressed in connection with their divorce by focusing on their respective interests and the interests of the Parties' children, if any, and the Parties agree to be flexible in considering the various options that might best serve those interests.

e. Informed consent. An important principle of mediation is that, in signing any agreement, the Parties need to give informed consent – i.e., having an understanding of what the Parties' respective rights and obligations would be in the absence of an agreement. (See Section 2, below, regarding legal representation.)

f. Self-determination. An equally important principle of mediation is that, in signing any agreement, the Parties are freely and voluntarily accepting the agreement's terms, free of any coercion, and based on their own views as to what is a fair and reasonable resolution.

g. Joint experts. The Parties' agree to consider jointly retaining any experts (such as valuation experts or, if there are minor children, a child specialist) that may be needed in connection with the mediation process.

h. 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.

i. Preserving the financial status quo. The Parties agree that, commencing with the signing of this Agreement, and unless a Court orders otherwise or both Parties agree otherwise in writing:

i. Neither party shall borrow against, cancel, transfer, dispose of, or change the beneficiaries of any pension, retirement plan or insurance policy or permit any existing coverage to lapse, including life, health, automobile and/or disability held for the benefit of either party or the child(ren).

ii. Neither party shall change any provisions of any existing trust or will or execute a new trust or will.

iii. Neither party shall sell, transfer, encumber, conceal, assign, remove or in any way dispose of any property, real or personal, belonging to or acquired by, either party, except: (a) as required for reasonable expenses of living; (b) in the ordinary and usual course of business; (c) in the ordinary and usual course of investing; or (d) for payment of reasonable attorney's fees and costs in connection with the action.

iv. Neither party shall incur any new debts that would burden the credit of the other, including but not limited to borrowing against any credit line secured by the marital residence, unreasonably using credit cards or cash advances against credit or bank cards or incurring any liabilities for which the other may be responsible.

## 2. Legal Representation

a. The Parties understand that the Mediator (who is an attorney, but is not serving in that capacity in this mediation) is not undertaking to provide legal advice in connection with the mediation. The Mediator may, however, provide information about applicable statutes, rules, or other provisions of law.

b. 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.

c. Although the Mediator will provide the Parties with copies of the basic forms that they, or their counsel, need to submit to the Court, and the Mediator will answer questions about those forms, neither the Mediator nor the Mediator's staff will fill out the Parties' financial statement forms, since the Mediator (a) does not represent either or both of the parties, (b) does not engage in any independent inquiry into the Parties' finances, and therefore (c) cannot vouch for the accuracy or completeness of the Parties' financial disclosures.

## 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 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, or any communications of the Mediator, 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), and financial advisors, so long as each such individual is made aware of this confidentiality provision prior to disclosure and agrees to be bound by it.

ii. 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, disciplinary proceedings, or a fee arbitration, and (b) information that the Parties and the Mediator agree in writing, after the conclusion of the mediation, may be disclosed.

iii. 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, may be disclosed to appropriate authorities.

iv. Unless the Parties agree otherwise in writing, nothing in this Agreement shall prevent any Party from presenting a separation agreement, 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, in his/her discretion, 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 and privilege set forth in this Agreement. If, in a separate meeting, the Mediator learns of material information that has not been disclosed to the other Party, and it is information that is reasonably required for the other Party to make an informed decision with respect to the resolution of the case, the Mediator may be required to withdraw from participation in the mediation unless that information is disclosed to the other Party.

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. Video/Audio Record. Neither the Mediator nor the Parties shall make a video or audio recording of the mediation session, or stream the audio or video on the Internet or elsewhere, unless all participants and the Mediator agree otherwise in writing. When using video-conferencing for the mediation, all participants shall keep non-participants from hearing or seeing the mediation.

g. Financial Statements and Other Financial Documents. Notwithstanding the foregoing, any financial statements or other financial documents exchanged by the Parties in connection with the mediation shall be considered admissible if the Parties' dispute is not resolved in the mediation. In addition, documents that are independently obtained and admissible shall not be rendered confidential or inadmissible because they are produced in connection with the mediation process.

h. 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.

i. 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. Information about the Mediator's professional experience is available at our website: [www.BLC.law](http://www.BLC.law), including 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 information.

#### 5. Future Relationships

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

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

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 ensure 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. If travel is needed for meetings or other events outside of the office, that time will be billed at half of our ordinary hourly rates. The Parties will be billed (at BLC's cost) for necessary expenses such as copies, faxes, and long distance telephone calls. A one-time \$200 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 \$7,000 (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 to \$7,000 when the retainer falls below that amount. 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. **Please note that the retainer is not an estimate of the total cost for your case.**

d. Cancellation. In the event that a Party cancels a scheduled mediation session, for any reason, on less than one week's notice to the Mediator, that Party shall pay the Mediator a cancellation charge equal to half of the time charges for the time reserved. If both Parties cancel a scheduled mediation session on less than one week's notice to the Mediator, each Party shall pay the Mediator half of the cancellation charge.

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 shall 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, jointly and severally, of both Parties.

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 laws of the Commonwealth of Massachusetts.

d. Not Court-Connected Mediation. The Parties agree that this mediation was not referred to the Mediator by any court and therefore it is not a court-connected mediation for purposes of Rule 9(e) of the Massachusetts Uniform Rules on Dispute Resolution (copy attached).

e. 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.

\_\_\_\_\_  
[Name]

\_\_\_\_\_  
[Name]

\_\_\_\_\_  
[Name]  
Mediator

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## Rule 9 of the Massachusetts Uniform Rules on Dispute Resolution

(e) Conflict of interest. A neutral shall disclose to all parties participating in the dispute resolution process all actual or potential conflicts of interest, including circumstances that could give rise to an appearance of conflict. A neutral shall not serve as a neutral in a dispute resolution process after he or she knows of such a conflict, unless the parties, after being informed of the actual or potential conflict, give their consent and the neutral has determined that the conflict is not so significant as to cast doubt on the integrity of the dispute resolution process and/or neutral.

(i) As early as possible and throughout the dispute resolution process, the neutral shall disclose to all parties participating in the process, all actual or potential conflicts of interest, including but not limited to the following:

(aa) any known current or past personal or professional relationship with any of the parties or their attorneys;

(bb) any financial interest, direct or indirect in the subject matter of the dispute or a financial relationship (such as a business association or other financial relationship) with the parties, their attorneys, or immediate family member of any party or their attorney, to the dispute resolution proceeding; and

(cc) any other circumstances that could create an appearance of conflict of interest.

(ii) Where the neutral determines that the conflict is so significant as to cast doubt on the integrity of the dispute resolution process and/or neutral, the neutral shall withdraw from the process, even if the parties express no objection to the neutral continuing to provide services.

(iii) Where the neutral determines that the conflict is not significant, the neutral shall ask the parties whether they wish the neutral to proceed. The neutral shall obtain consent from all parties before proceeding.

(iv) A neutral must avoid even the appearance of a conflict of interest both during and after the provision of services.

(aa) A neutral shall not use the dispute resolution process to solicit, encourage or otherwise procure future service arrangements with any party.

(bb) A neutral may not subsequently act on behalf of any party to the dispute resolution process, nor represent one such party against the other, in any matter related to the subject of the dispute resolution process.

(cc) A neutral may not subsequently act on behalf of any party to the dispute resolution process, nor represent one such party against the other, in any matter unrelated to the subject of the dispute resolution process for a period of one year, unless the parties to the process consent to such action or representation.

(v) A neutral shall avoid conflicts of interest in recommending the services of other professionals.