JOINT-ENGAGEMENT AGREEMENT

 This Agreement made between and among Amy Smith (“Smith”) and Robert Jones (“Jones”) (each, a “Client”; collectively, the “Clients”) and \_\_\_\_\_\_\_\_\_\_ (“Mediator”) shall be effective as of the date on which it has been signed by all of them.

Background

A. The Clients engaged the Mediator to serve as their divorce mediator in an Agreement to Mediate dated \_\_\_\_\_\_\_\_\_\_\_\_ (a copy of which is attached to this Agreement). The Clients and the Mediator expressly agreed in the Agreement to Mediate that the Mediator’s services as a mediator would not be governed by Rule 9(e)(iv) of SJC Rule 1.18 (Uniform Rules on Dispute Resolution) (copy attached) as the Mediator’s mediation services were not provided as a result of a referral by a court.

B. The Mediator and the Clients met \_\_\_\_ times (via videoconference, phone, and/or in person) during the period between \_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_\_ to negotiate the terms of the Clients’ divorce.

C. The Clients have reached agreement on all of the terms of their divorce, and those terms have been memorialized in memos and emails exchanged between the Mediator and the Clients.

D. The Clients are each represented by counsel. \_\_\_\_\_\_\_\_\_\_\_\_\_, Esq. represents Smith, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Esq. represents Jones.

E. The Clients believe it will be more efficient for the Mediator to prepare a first draft of their Separation Agreement, as opposed to having either of their attorneys do it.

F. The Mediator is a lawyer in good standing as a member of the bar of Massachusetts.

G. The Clients are aware that Rules 1.7 and 1.12 of the Massachusetts Rules of Professional Conduct (copies of which are attached to this Agreement) govern whether the Mediator can provide the following legal services jointly to Smith and Jones: (1) preparing the first draft of the Clients’ Separation Agreement; and (2) assisting the Clients and their Counsel with the editing of the first draft.

H. Prior to signing this Joint-Engagement Agreement, the Clients consulted with their respective attorneys about the material risks and reasonably available alternatives to having the Mediator prepare the first draft of their Separation Agreement, and each of the Clients hereby confirms that s/he is satisfied with the advice of counsel that they have received in this regard.

I. The Clients are entering into this Joint-Engagement Agreement freely and voluntarily, and without duress of any kind, and have had adequate time to receive advice from their respective Counsel about it.

Agreement

1. The Mediator shall prepare a first draft of the Clients’ Separation Agreement based on the terms that the Clients have agreed upon. Because this engagement is limited to a specific undertaking only, this engagement does not involve an undertaking by the Mediator to provide any other services to the Clients whatsoever. After completion of the Mediator’s services, changes may occur in pertinent laws or regulations that will have an impact upon the Clients’ future rights and liabilities. The Mediator will have no obligation to provide any advice to the Clients with respect to future legal developments.

2. Each of the Clients shall obtain advice from their respective Counsel with regard to any editing that is needed in the draft Agreement prior to signing the final draft of the Separation Agreement.

3. The Clients, with the help of their respective Counsel, shall prepare the forms necessary for filing their divorce petition with the Probate and Family Court, including without limitation each Client’s Rule 401 Financial Statement form.

4. The Mediator represents that he is able to provide competent and diligent drafting services for both Clients and that his ability to do so is not materially limited in any way by his joint engagement by both Clients in this matter.

5. The Clients understand that any information shared by either of them in connection with this engagement is not privileged or confidential as to the other Client. In addition, the provisions of MGL c. 233, sec. 23C (a copy of which is attached to this Agreement), which applied to the Mediator’s services to the Clients as their divorce mediator, shall not apply to the Mediator’s services in preparing a first draft of the Clients’ Separation Agreement. The Mediator represents that he has not learned any information from either Client in a private session or discussion while serving as their divorce mediator that either Client has requested to be maintained as confidential from the other Client, the disclosure of which the Mediator believes is or would be necessary for the Mediator to prepare a first draft of the Clients’ Separation Agreement.

6. If during the course of this joint engagement, the Mediator or the Clients become aware of an unresolved, material, divorce-related issue, with respect to which the Clients have conflicting interests, the Mediator shall withdraw from this engagement.

7. The fee for the Mediator’s services shall be $\_\_\_\_\_\_/hour, with each Client paying 50% of that amount. The payment arrangements for this Joint-Engagement Agreement shall be the same as those in the Agreement to Mediate, and the applicable payment provisions are incorporated by reference.

8. This Agreement constitutes the entire agreement of the Clients and the Mediator as to the matters addressed in this Agreement and supersedes all previous oral or written agreements between or among them regarding this mediation.

9. No modification of this Agreement may be made except in a writing signed by the Clients and the Mediator.

10. Either of the Clients or the Mediator may terminate this engagement at any time for any reason by providing written notice, subject on the part of the Mediator to the requirements of any applicable rules of professional conduct. The Mediator’s work for the Clients will terminate upon his sending a final statement for services rendered.

11. The results, and the time required to obtain such results, in a given matter will depend on many uncertain factors. Therefore, the Mediator is unable to guarantee or even predict with any degree of certainty the result in any matter.

12. The terms of this Agreement shall be governed by the laws of the Commonwealth of Massachusetts.

13. 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.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Amy Smith Robert Jones [Name], Mediator

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

*[This form of agreement is being used by Boston Law Collaborative, LLC (“BLC”), while it monitors the development of issues addressed in the case of Reid v. Kroll (Massachusetts Superior Court). BLC makes no representation as to the legal effectiveness of this Agreement in addressing those issues. Anyone using any part of this Agreement should do so only with the advice of qualified counsel. BLC’s sharing of this Agreement shall not constitute legal advice.]*

**Massachusetts Uniform Rules on Dispute Resolution**

**Rule 9(e) – Ethical Standards: Conflict of Interest**

 

**Massachusetts Rules of Professional Conduct for Lawyers**





 

**Massachusetts Gen. Laws ch. 233, s. 23C**

**Confidentiality of Mediation**

All memoranda, and other work product prepared by a mediator and a mediator's case files shall be confidential and not subject to disclosure in any judicial or administrative proceeding involving any of the parties to any mediation to which such materials apply. Any communication made in the course of and relating to the subject matter of any mediation and which is made in the presence of such mediator by any participant, mediator or other person shall be a confidential communication and not subject to disclosure in any judicial or administrative proceeding; provided, however, that the provisions of this section shall not apply to the mediation of labor disputes.

For the purposes of this section a ''mediator'' shall mean a person not a party to a dispute who enters into a written agreement with the parties to assist them in resolving their disputes and has completed at least thirty hours of training in mediation and who either has four years of professional experience as a mediator or is accountable to a dispute resolution organization which has been in existence for at least three years or one who has been appointed to mediate by a judicial or governmental body.