

**AGREEMENT TO MEDIATE**

**PARTIES**

The undersigned parties \_\_\_\_\_ and \_\_\_\_\_ (hereinafter "The Parties") have agreed to voluntary, non-binding mediation conducted by \_\_\_\_\_.

The parties and the Mediator agree as follows:

**PURPOSE:**

The purpose of the mediation is to assist the above named parties to attempt to reach a mutually acceptable agreement in \_\_\_\_\_ in a cooperative, informal manner and to resolve all issues relating to the dispute.

**DUTIES AND OBLIGATIONS**

1. The parties attending the mediation shall have full authority to settle the dispute.
2. Mediation is a voluntary, non-binding process. The parties agree to participate in good faith in the entire mediation process.
3. The parties understand that the Mediator, \_\_\_\_\_ is an attorney but in this mediation will not serve as any party's now all parties' legal counsel.
4. The parties understand that mediation is not a substitute for independent legal advice. The parties are encourage to obtain outside legal advice throughout the mediation process and are strongly advised to secure independent legal review of any formal, mediated Agreement before signing the Agreement. The mediator may require one or both parties to obtain legal counsel before signing the Agreement to insure that the party

is providing reasonably informed consent. The parties understand that part of the mediator's responsibility is to facilitate the parties reaching the optimal Agreement they are able to reach.

5. Any Party may terminate or his/her participation in the mediation, at any time and for any reason, by written notification to the Mediator and the other Party or Parties to the mediation.
6. The Parties understand that is for the Parties, with the mediator's concurrence, to determine the scope of the mediation and that this will be accomplished in the early stages of the mediation.

### **MEDIATOR RESPONSIBILITIES**

7. The Parties further understand that the mediator may suspend or terminate the mediation, if the mediator believes that the mediation will lead to an unfavorable result, or that an impasse has been reached, or determines that s/he can no longer perform the consultative role.
8. The Mediator may: a) review written information submitted by the Parties; b) have private, confidential conversation with participants to develop information pertinent to the mediation; c) conduct a joint session.

### **CONFIDENTIALITY**

9. The parties agree that the entire mediation process is confidential and shall be treated as a compromise negotiation pursuant to the Federal Rules of Evidence and applicable Massachusetts law. Neither the Parties nor the Mediator will disclose any information, including but not limited to: offers, promises, conduct and statements, either written or oral, made in the course of the mediation by any of the Parties, their agents, employees, experts or attorneys, or by the Mediator. Such offers, promises, conduct and statement will not be disclosed to third parties and are privileged and inadmissible for any purpose, including impeachment under Rule 408 of the Federal Rules of Evidence as well as applicable federal or state statute, rule, or common law. However, evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non discoverable as a result of its use in the mediation.

10. The Mediator may disclose to appropriate authorities information obtained in the course of the mediation concerning: a) child abuse or neglect; b) the risk of serious harm to an individual; c) the planned commission of a crime.
11. The Parties may disclose information about the mediation to their attorneys, financial advisors or counselors, or, in the case of a business, those within the organization with a need to know, provided the Party providing the information informs those listed above that it is confidential information governed by the terms of this Agreement.
12. Either party, during a separate conference with the Mediator as described in paragraph 10. a-c. may request that the Mediator keep confidential all or part of that conversation. The Mediator agrees to honor such requests with the exception of those items set forth in paragraph 10. a-c.
13. Unless otherwise agreed by the Parties and the Mediator, no Party shall a) call the Mediator as a witness in any pending or future, action, proceeding or investigation relating to the subject matter of the mediation (including actions, proceedings and investigations involving persons not party to this mediation); or b) subpoena the Mediator or any documents in the Mediator's possession in any action, proceeding or investigation. The Parties will oppose all efforts to have the Mediator or documents subpoenaed and agree that the Mediator is not a necessary Party in any future actions, proceedings or investigations.
14. Only the mediated Agreement signed by all Parties will be admissible in any court or arbitration proceeding.

#### **PRIOR RELATIONSHIPS**

15. The Mediator has undertaken reasonable efforts to learn and has disclosed to the Parties: a) all social, business or professional relationships has/had with the Parties or counsel; b) any financial interest the Mediator has in any Party or the outcome of the case; or c) any other circumstance that may create doubt regarding the Mediator's impartiality.

#### **COMPENSATION**

16. Professional services for this mediation will be billed at the rate of \$\_\_\_\_ per hour for the Mediator's time. This includes: all meetings, emails and phone conferences with the parties, before, during and after the mediation and review of memos and written

material submitted by the Parties, research on issues arising out of the mediation, and preparing draft and final Agreements. Each party will be responsible for one half unless other arrangements are made and set forth in writing.

17. Each party will also be responsible for a \$150 administration fee which is non refundable.

18. Out of pocket expenses, including long distance phone calls, travel expenses, copying charges, or any other similar expense will be billed at cost.

### **PAYMENT**

19. All fees are due and payable upon receipt of an invoice and must be paid in full and up to date in advance of a mediation session.

20. A Party will provide a credit card number and agrees in advance to be billed for outstanding invoices if: a) not paid within 15 days of invoice date; or 2) has not contacted the Mediator to arrange for an alternative payment.

### **CANCELLATION**

21. If a mediation session is canceled more than 30 days before a session, professional fees are fully refundable, except where preparation or other professional time has already been expended.

22. If a booked session is canceled less than 14 days before the session, the cancelling Party will be charged 50% of the applicable fee for the session unless the time can be rescheduled for another matter.

### **RETAINER**

23. A payment of \$\_\_\_\_\_ by each Party toward the Mediator's fees and expenses shall be paid along with the signing of this Agreement. Any unearned amount of the retainer will be returned to the Parties. The Parties shall be jointly and severally liable for mediation fees and expenses.

### **MISCELLANEOUS**

24. The Parties understand that the Mediator must remain impartial throughout and after the mediation process and regard regarding the outcome and each party.

25. This Agreement constitutes the entire agreement of the Parties and the Mediator regarding this matter and supersedes all previous oral or written agreements. Modification

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may only occur in writing signed by the Parties and the Mediator. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

Party A

Party B

\_\_\_\_\_  
By Counsel:

\_\_\_\_\_  
By Counsel

\_\_\_\_\_, Esq.

\_\_\_\_\_, Esq.

PLEASE REVIEW THIS AGREEMENT, SIGN AND DATE IT, AND RETURN BY MAIL WITH ACCOMPANYING CHECK BY \_\_\_\_\_