



## **MEDIATION AGREEMENT**

The parties agree to participate in a voluntary mediation conducted by Warren Fitzgerald as the Mediator relating to the case or matter of

(hereafter referred to as this "Mediation")

The Parties and the Mediator agree as follows:

1. The Parties attending this Mediation shall have full authority to settle the dispute unless otherwise disclosed and agreed amongst the parties.
2. The Mediation may be conducted in any form or format agreed amongst the Parties and the Mediator. The usual format followed by the Mediator is to start the mediation session with a meeting amongst all Parties and the Mediator. At this meeting, the Mediator will discuss his role and procedures and the Parties may present their view of the case or dispute being mediated. Each Party will limit its presentation to 20 minutes unless agreed differently amongst all the Parties. Following the initial meeting, the Mediator may meet separately with the Parties for confidential discussions. The Mediator will then communicate amongst the Parties as they authorize.
3. The Participants in this Mediation, including the Parties and their attorneys, agents, employees, experts and other invited attendees, and the Mediator, will not disclose any information including offers, demands, promises, conduct, or statements whether oral or written, made by any of the Participants or the Mediator in connection with this Mediation, except where disclosure is required by law or court rule, and no party shall seek to introduce any such information before any court or tribunal, provided however that any such information or evidence which is independently obtained or created shall not be rendered confidential or inadmissible because it is referred to or presented in the mediation process. The entire mediation process, including all written submissions and communications created for the purpose of this Mediation shall be confidential pursuant to M.G.L.c. 233, § 23C, and shall be treated as a compromise negotiation for the purposes of the Federal Rules of Evidence and applicable state and federal law .

The confidentiality provided for in this section shall not apply to information which all parties to this Mediation agree in writing may be disclosed or to any information about mediation fees, payment and payment arrangements. The

Parties may disclose information about this Mediation to their respective attorneys, financial advisors, or counselors, and, in the case of a business or non-profit organization, those within the business or organization with a need to know, provided however that all such individuals shall be informed by the Party providing them with the information that it is confidential and governed by the terms of this Agreement. The Mediator may disclose information obtained in the course of this Mediation concerning (a) child abuse or neglect, (b) the risk of serious harm to an individual, or (c) the planned commission of a crime and (d) evidence relating to the liability of the Mediator in any action or proceeding against the Mediator arising from this Mediation.

4. We understand that the Mediator may speak with a Party separately as part of the mediation process and that in any such separate conversation said Party may request that the Mediator keep confidential from other Parties all or part of that conversation. The Mediator agrees to honor all such requests unless such a discussion involves (a) child abuse or neglect, (b) the risk of serious harm to an individual, or (c) the planned commission of a crime.

5. Nothing in this agreement shall prevent a Party from offering an executed settlement agreement or signed memorandum of understanding resulting from this Mediation to a court of competent jurisdiction for purposes of enforcement, unless otherwise agreed in writing by the Parties to the agreement or memorandum.

6. No Party shall (a) call the Mediator as a witness in any pending or future investigation, action or proceeding relating to the subject matter of this Mediation (including any investigation, action or proceeding which involves persons not party to this mediation) or (b) subpoena the Mediator or any documents in the Mediator's possession in any such investigation, action or proceeding, and the Parties will oppose any effort to have the Mediator and documents subpoenaed whether undertaken by a Party to this mediation or otherwise.

7. There shall be no stenographic or other recording by any means of any portion of this Mediation.

8. We understand that the Mediator is not acting as an advocate or providing legal representation to any Party in connection with this Mediation whether the Party is represented by legal counsel or not and that any information, evaluation or advice which may be given by the mediator during this Mediation does not constitute legal advice. If any written settlement agreement is created in connection with this Mediation, each party to the agreement is advised to have it independently reviewed by their own counsel prior to executing it.

9. We understand that the Mediator has practiced law as a trial attorney since 1979, continues to practice law through Fitzgerald Law Firm, LLC, has served as President of the Massachusetts Bar Association and the Massachusetts Academy of Trial Attorneys and has had contact with thousands of parties and attorneys. The Mediator will endeavor to discover and disclose to all Parties any relationship with any Party to this Mediation and avoid any conflict which may arise. We understand that if we become aware of any basis for a conflict between the Mediator and any Party to this Mediation we will disclose it to all Parties and the Mediator.

10. The Mediator will not act as an advocate for any party or undertake legal representation through Fitzgerald Law Firm, LLC or otherwise with respect to the case or matter which is the subject of this Mediation. We agree that the Mediator may represent Parties or Participants to this Mediation in matters unrelated to the case or matter which is the subject of this Mediation through Fitzgerald Law Firm, LLC or otherwise.

11. Any Party may terminate participation in this Mediation for any reason by written notification to the Mediator and the other Parties to this Mediation at any time. The Mediator may terminate his participation in this Mediation if (a) the Parties fail to pay for his services (b) continuation of this Mediation would involve a violation of applicable ethical rules or (c) the Mediator determines that he can no longer in good conscience act as a neutral amongst the parties.

12. Fees for this Mediation shall be paid in advance in accordance with the prevailing Fitzgerald Dispute Resolution LLC Fee and Payment Terms or as otherwise agreed between the Mediator and the Parties. The date and time for the Mediation will be confirmed upon the receipt of all fees by the Mediator. Each Party shall pay the same fees unless agreed otherwise amongst all Parties and the Mediator.

13. The Parties may submit memoranda or materials pertinent to the matter to the Mediator in advance of the Mediation for the purpose of acquainting the Mediator with the case or dispute. The review of materials limited to 10 pages per Party is included in the standard fee for mediation provided in the mediation fee schedule. If a Party desires the Mediator to review more extensive documentation, agreement to do so and fee arrangements amongst the Parties and the Mediator should be made in advance.

14. This Agreement constitutes the entire agreement of the Parties and the Mediator as to the subject of this Mediation and supersedes all previous oral or written agreements between or among them as to this Mediation. No modification of this Agreement may be made except in writing signed by the Parties and the Mediator. The terms of this Agreement shall be governed by the law of the Commonwealth of Massachusetts. 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

\_\_\_\_\_  
Party

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

By \_\_\_\_\_

Fitzgerald Dispute Resolution LLC

\_\_\_\_\_  
Warren Fitzgerald

Dated: \_\_\_\_\_