

AGREEMENT TO MEDIATE

This Agreement is made on the _____ day of _____, 2000, between:

FIRST PARTY:

Name: _____
Address: _____

ATTORNEY NAME & FIRM: _____
Address: _____
Telephone: _____ Fax: _____
Email: _____

SECOND PARTY:

Name: _____
Address: _____

ATTORNEY NAME & FIRM: _____
Address: _____
Telephone: _____ Fax: _____
Email: _____

THIRD PARTY:

Name: _____
Address: _____

ATTORNEY NAME & FIRM: _____
Address: _____
Telephone: _____ Fax: _____
Email: _____

The parties and their attorneys, as named above, have agreed to participate in a voluntary mediation in an attempt to resolve a dispute between the parties. If an agreement is reached, that agreement will be reduced to writing and will become binding when signed by both parties and the mediator. The parties, their attorneys, and the mediator agree as follows:

A. PROCEDURE

1. The mediation will take place at the office of Holland & Knight LLP in Boston unless otherwise agreed.
2. At least 48 hours prior to the first mediation session, each party shall provide the mediator with a confidential, short (not to exceed 5 pages in length, unless otherwise agreed) statement of what they consider to be the relevant facts and issues. The parties will also forward copies of the most pertinent relevant documents.
3. The parties, or the representatives of the parties attending the mediation, shall have full authority to settle the dispute.
4. The parties may have counsel attend the mediation with them.
5. Unless all the parties agree that a person not a party or related to a party may attend the mediation, that person may not attend.
6. No stenographic record of the mediation session(s) may be made.
7. The role of the mediator is to assist the parties in reaching a mutually acceptable resolution of their dispute, and not to render a decision as to how the dispute should be resolved. In addition, the parties understand and agree that the mediator is not to provide legal advice to any of the parties in connection with the mediation.
8. If the mediation results in a written settlement agreement, the parties shall provide in the agreement whether the terms of the agreement may be disclosed in a court proceeding in connection with any action to enforce the agreement or be disclosed under any other circumstances.
9. The parties and counsel agree to participate in good faith in the mediation process.

B. CONFIDENTIALITY

1. The parties understand and agree that the mediation process shall be treated as a compromise /settlement negotiation for the purposes of Massachusetts state law and of Rule 408 of the Federal Rules of Evidence.
2. As the mediation process is confidential under Massachusetts General Laws, c. 233, § 23C, all material and information presented to and received by the mediator and the mediator's file on this case shall be treated as being confidential and shall not be subject to disclosure in

any judicial or administrative proceeding involving the parties to this mediation. Accordingly, the mediator will not voluntarily disclose to any person not participating in the mediation any information the mediator obtains in the mediation, unless required to do so by law.

3. In addition, the parties and their counsel hereby agree that any communication made in the course of and relating to the subject matter of the mediation shall be treated as being confidential and shall not be subject to disclosure in any judicial or administrative proceeding.
4. The parties, and their attorneys, further agree that none of the parties shall call the mediator as a witness in any proceeding relating to the subject matter of the mediation, or subpoena the mediator or any of the mediator's documents in connection with any such proceeding, and that the parties will oppose any effort to have the mediator or the mediator's documents produced at any such proceeding.

C. DISCLOSURE OF PRIOR RELATIONSHIPS

1. The mediator, parties and the parties' counsel confirm that they have disclosed any information that a reasonable person would believe would influence the mediator's impartiality. That information includes any business, professional or social relationship the mediator has or had with any party, any officer of a party, or the parties' counsel. This disclosure relates to all attorneys in the attorneys' or mediator's law firms to the extent that any of the participating attorneys or the mediator has actual knowledge of such relationships.

D. COMPENSATION

1. The parties and their attorneys agree to the fee schedule as set forth in Exhibit A to this Agreement, which exhibit is incorporated in and made a part of this Agreement by reference.

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

FIRST PARTY:

By: _____

Attorney for (the FIRST PARTY)

SECOND PARTY:

By: _____

Attorney for (the SECOND PARTY)

THIRD PARTY:

By: _____

Attorney for (the THIRD PARTY)

MEDIATOR

By: _____

Stephen S. Young