



[Date]

Privileged and Confidential Settlement Discussions
Protected by MRE 408, MCR 2.412 and the Terms of This Letter

Re: Agreement to an Early Mediation by Client A and Client B

Dear :

As you requested, this letter confirms the agreement between [Client A] and [Client B] to enter into an early facilitative mediation with _____ (the “Mediator”) acting as the mutually agreed upon Mediator of the pending dispute (the “Dispute”). The parties have also agreed to raise all other claims and counterclaims they might have against each other so they might also become a part of the Dispute. We will both cooperate with the Mediator in the selection of a mutually acceptable mediation date at the earliest practicable time. We have agreed the mediation must take place on or before [insert date]. Should the parties fail to conduct the mediation by that date, then this agreement will terminate in accordance with the terms of this letter.

By copy of this letter, the Mediator is requested to convene a conference call (the “Conference Call”). During this Conference Call we will provide the Mediator such additional information as may be requested, establish the applicable dates for the exchange of information, and take such other steps necessary to conduct the mediation in accordance with the process agreed upon with the Mediator. We will both cooperate with the Mediator in meeting the time schedules and deadlines established during this Conference Call. The parties and their counsel also agree to sign such confidentiality and other agreements reasonably requested by the Mediator and all such agreements will be incorporated into this letter of understanding. The costs and expenses of the Mediator’s services, including any deposit or retainer, will be equally shared by the parties and timely paid in accordance with the Mediator’s requirements. Each party will be solely responsible for its own attorney fees and costs of mediation unless a judge [arbitrator] determines, should the matter not fully resolve, that such attorney fees and costs are a compensable damage under applicable law [and the arbitration agreement between the parties].

As a preliminary matter we have made the following agreements to achieve the mutual objectives of our clients:

1. We will request the Court [Arbitrator] to [dismiss the action without prejudice] [stay the case and suspend all further actions or proceedings otherwise required by] [the Michigan General Court Rules and the Local Court Rules] [the Arbitration Agreement and applicable rules governing the Arbitration]. The parties will also request the Court [Arbitrator] to place the [Complaint] [Demand for Arbitration] under seal pending the termination of the early mediation as provided for in this letter. In the absence of the Court [Arbitrator] entering the [dismissal without prejudice] [stay] as set forth in Exhibit A, the early mediation agreement will immediately terminate as provided in this letter.



2. In the event of a dismissal without prejudice, the [Court] [Arbitrator] initially assigned to this matter will be re-assigned to any subsequent action arising out of the Dispute, in whole or in part, and the [Court] [Arbitrator] will agree to this re-assignment of any such complaint.
3. In making the limited appearance, if any, necessary to effectuate the entry of Exhibit A, no party is waiving its right to challenge the jurisdiction, venue or raise any other preliminary objection to the [Court] [Arbitrator] assigned the Dispute and the parties agree they will not assert the entry of Exhibit A, or any other actions required by this agreement, constitute a waiver of any such objection.
4. The parties and the Mediator agree that all mediation communications will be confidential in accordance with MCR 2.412. We will enter into the protective agreement attached as Exhibit B to govern the confidentiality of any designated information that is exchanged in anticipation of the early mediation. Should the mediation fail to result in a complete resolution of all claims involved in the pending dispute, the parties will stipulate to the entry of Exhibit B as a Protective Order by the [Judge] [Arbitrator] with jurisdiction over any ongoing dispute. Should a party seek a modification or material change to Exhibit B for any reason, the parties agree that will be available only upon good cause shown by the moving party.
5. The parties agree to toll any applicable statute of limitations from the date of this letter until such date as the parties receive the Mediator's declaration in writing the facilitative mediation has come to a termination or this letter of understanding is terminated in accordance with its provisions. The parties further agree they will not assert the affirmative defense of the statute of limitations that has not expired solely as a result of the agreed upon tolling period.
6. The parties agree prior to the scheduled mediation to exchange the following documentary information pursuant to and subject to the provisions of Exhibit B:

[List as appropriate]

Absent an agreement by the parties to an earlier exchange, this documentary information will be exchanged at the time agreed upon with the Mediator during the Conference Call. With regard to any additional information that either party believes will be necessary to obtain prior to the mediation, if the parties are unable to come to an agreement, the parties agree to seek the assistance of the Mediator in resolving any such issue. In resolving any such issues, the parties' primary goal is to achieve the speediest, just and most cost efficient resolution of the Dispute.

7. The parties agree that prior to the scheduled mediation to make the following individuals available for depositions, provide a sworn statement from, or otherwise reduce their sworn testimony to writing or recording pursuant to and subject to the provisions of Exhibit B:



[List as appropriate]

- Absent an agreement by the parties to an earlier exchange, this discovery will be provided in accordance with the manner and schedule agreed upon with the Mediator during the Conference Call. With regard to additional testimony that either party believes will be necessary to obtain prior to the mediation, if the parties are unable to come to an agreement, the parties agree to seek the assistance of the Mediator in resolving any such issue. In resolving any such issues, the parties' primary goal is to achieve the speediest, just and most efficient resolution of the Dispute.
8. Should all or a portion of the Dispute proceed to [Court] [Arbitration], the resolution of any issues pursuant to Paragraphs 6 or 7 will not be binding on any party in the event a Motion to Compel is filed. The parties agree the manner in which any discovery dispute was resolved during the early mediation process will be confidential and not disclosed during any subsequent [Court] [Arbitration] proceeding.
 9. The parties agree the discovery provided pursuant to Paragraph Nos. 6 and 7 will be admissible in any subsequent [trial] [arbitration] between the parties concerning the subject matter of the Dispute and that no party will object to the admission of such evidence (either in whole or in part) except on the basis of relevancy. Any portion(s) deemed irrelevant by the [Court] [Arbitrator] will be redacted prior to submission to the trier of fact.
 10. Until the mediation is declared terminated in accordance with the terms of this letter, the nature and fact of the parties' Dispute will be held confidential and not disclosed to any third party other than necessary witnesses and internal personal of the parties. Before any such disclosure takes place, those third parties will agree to be bound by the terms of Exhibit B.
 11. Except as specifically provided in Paragraph 10, should any other third party inquire about the fact, status or nature of the Dispute, the sole response that will be given is "I am not at liberty to discuss the matter" or words to that effect.
 12. Should there be a conflict of interest on the part of the Mediator disclosed during the Conference Call that is not waived by the parties after a full disclosure, or any other reason believed by the Mediator to be disqualifying, the Mediator will be relieved of any further obligations under this letter agreement and the parties will endeavor to appoint a successor Mediator. If a successor Mediator cannot be agreed upon this letter agreement will immediately terminate.
 13. This mediation may be terminated only in accordance with the provisions of Paragraphs 1 and 12, the failure to meet the mediation deadline of [date], or upon the parties' receipt of the Mediator's written notice the mediation has been terminated. However, any such termination shall not affect the enforceability of any confidentiality or other agreements entered into as



the result of the mediation or the provisions of Paragraphs 3, 4, 7 and 8, the applicable provisions of which shall continue following the termination of this letter agreement.

14. Upon the termination of the mediation in accordance with Paragraph 13, the Mediator is authorized to advise the [Court] [Arbitrator] of that fact by the submission of the approved SCAO Mediation Report to the Courts. The Mediator agrees not to disclose any other aspects or events of the mediation to the [Court] [Arbitrator] absent the express written permission of both parties.
15. Neither party will disclose any settlement discussions, offers or demands made during the mediation process to any third party unless both parties agree in writing that such a disclosure will be made confidentially to the [Court] [Arbitrator] with jurisdiction over that portion of the Dispute that has not settled.
16. If the parties are unable to completely resolve the Dispute but, as a result of the mediation, the parties do come to written agreements concerning the scope and timing of further discovery and other procedural matters, the parties agree that all such agreements may be provided to the [Court] [Arbitrator] with jurisdiction over that portion of the Dispute that has not settled and the [Court] [Arbitrator] will be requested by both parties to enforce any such agreements.
17. The terms of this letter agreement are confidential and not to be disclosed for any purpose other than to secure the enforcement of its provisions or unless the [Court] [Arbitrator] requests a copy of this letter. The parties acknowledge this letter contains the entire and exclusive agreement of the parties on the subject matter of an early mediation of the Dispute, has been mutually drafted by the parties, and may only be modified by the parties in a subsequent written agreement signed by both parties that specifically evidences an intent to modify this agreement. The parties further acknowledge that in entering into this agreement they have not relied upon any written or oral statements or representation of any party, its representatives or counsel.
18. This letter agreement will be governed and construed in accordance with Michigan law without recourse to any choice of law or conflict of law provisions otherwise required under Michigan law.

My client has already signed this letter and my signature is an acknowledgement of my acceptance. Please execute this letter along with your client and return a copy to my office and provide a copy to the Mediator at your earliest convenience.

Should you have any questions or concerns please contact me as soon as possible.

Very truly yours,



Client A

Date: _____

Client B

Date: _____

Attorney for Client B

Date: _____

cc: Mediator (with attachments)

SAMPLE