

## **Smith Inc/Roe Inc: FLEXX LAW, PS COOPERATIVE LAW AGREEMENT:**

### **(FLEXX FORM: Business Disputes)**

#### **A. GOALS**

We want to engage in civilized negotiations to reach a settlement of all of our issues, without litigation, if at all possible. We understand that litigation can be extraordinarily expensive, time consuming, disruptive and stressful. It can also damage business and/or personal relationships. The outcome of litigation is never certain and may not be completely satisfactory to either party.

We will show respect to all participants in this process. Even if we strongly disagree with someone else's viewpoint we will make every effort to voice our disagreement in a respectful manner. We strive to be sensitive to the feelings of other participants. We understand that others may see things differently than we do. We will avoid statements which belittle others.

We will avoid inflammatory language or statements.

We encourage a trust relationship between all participants based on a liberal disclosure of information, an honorable ethical approach to the process and a sincere effort to negotiate and not litigate. The trust relationship does not mean that we rely on the other party or his/her attorney to work for our interests. We know that each party and his/her attorney are negotiating to protect that party's interests not ours. However, we do expect an ethical approach from all concerned. We will not engage in any underhand behavior. We will not take advantage of the other party or his/her attorney when we see that they are under a mistaken impression as to fact or law. We will try to correct any misunderstandings.

We understand that we may not succeed, at all times during this process, in reaching our higher end goals. We recognize that we have typical human failings. However, we will make a sincere effort to get back on track when we fall short.

#### **B. THE AGREED PROCESS**

We agree to try to resolve our differences without litigation. To that end, we will not file a Complaint in the Court (or, if we have already filed the Complaint, we will not file a motion in the Court) without first giving the other participants written notice of a pre-litigation cooling-off period of 30 days. The cooling-off period shall not apply in exigent circumstances.

During the cooling-off period we agree to attend mediation to attempt to resolve the disagreement. (OPTIONAL: We agree that either party may ask a Court to order the parties to

enter mediation on a disputed matter pursuant to this agreement. However, that request may only take place after 30 days from the written notice of the cooling- off period.)

Prior to the final disposition of the case it is possible that we will enter into agreed temporary orders (for example restraining certain conduct) which we will file with the Court. This is not inconsistent with the spirit of this cooperative agreement. We acknowledge that, for some people, negotiation will be facilitated with temporary Court orders in place.

We will make a good faith effort to disclose all relevant information whether or not the other party asks for it.

We intend that this be a cooperative process. However, we understand that each attorney represents only one party. We also recognize that each attorney will represent only his/her own client's interests.

We understand that each attorney and client will have confidential privileged communications with each other and we are not entitled to disclosure of those communications.

## **I. CAUTIONS**

We understand that there is no guarantee as to the outcome of this process. We understand that each party will be expected to look after his/her own interests in the process, with the help of that person's own attorney.

## **II. ATTORNEY FEES AND COSTS**

We agree that each party will pay their own attorney fees and costs during this cooperative process. (OPTIONAL: RESERVED)

## **III. PRIVACY AND CONFIDENTIALITY**

We want to maintain our privacy and the privacy of our families and others who associate with us. Litigation can be very public and we want to avoid a very public dispute. We understand that in court records are generally open to the public. We understand that public disclosure can be damaging to our business interests or careers or merely be embarrassing. We wish to avoid this, to the extent possible. To that end we agree not to speak disparagingly of the other party or disclose any information learned in this process about the other party to anyone outside the cooperative process unless (a) the information is discoverable and we need to disclose it for a legitimate purpose, or (b) we are required to disclose by law, or (c) to protect any person or property from harm. (OPTIONAL: WE AGREE THAT, TO THE EXTENT ALLOWED BY LAW, EITHER PARTY MAY ENFORCE THIS PROVISION IN COURT)

## **IV. EXPERTS AND CONSULTANTS**

If we the parties need experts we will consider retaining them together to represent both parties. This, it is hoped, will save costs and reduce the possibility of disagreement between the parties.

They will be paid equally by both parties. If either party wishes to retain his/her own expert that expert will be paid exclusively by that party.

## **V. NEGOTIATION IN GOOD FAITH**

Both parties and their attorneys may have differing positions on any issue. However it is agreed that neither side will maintain a position which he/she knows to be unsupportable. The participants acknowledge that the attorneys will represent only the interests of their own client and neither party will rely on the other attorney for advice. We agree to negotiate in good faith and not use the threat of litigation to get a settlement. We acknowledge that we may have to compromise to reach a settlement. This does not mean that we will certainly compromise; it only means that we are ready to consider the possibility.

## **VI. CONFIDENTIALITY OF SETTLEMENT PROCESS COMMUNICATIONS**

It is understood that this process is to a great extent a settlement process. In a settlement process people sometimes communicate “off the record”, for example they may make an offer or discuss potential failing in their case. It is also a process where information is produced as a normal part of discovery (finding out about the facts) a discovery process.

All communications exchanged within this settlement process will be confidential and without prejudice. If subsequent litigation occurs, the parties mutually agree that (a) neither party will introduce as evidence in Court information disclosed to each other during this process, offers or proposals for settlement, or other statements by any of the parties to the process or their attorneys; and (b) neither party will subpoena the production at any Court proceedings of any notes, records, or documents in the lawyer’s possession or in the possession of one of the consultants.

However, non-privileged information which is independently obtained (i.e., not purely obtained as part of the settlement process) and admissible shall not be rendered confidential or inadmissible because it is referred to or was produced in this process.

In addition, neither party will offer as evidence the testimony of either attorney, nor will they subpoena either of the lawyers to testify, in connection with this matter.

## **VII. ABUSE OF THE PROCESS**

We enter this process with the expectation of honesty and full disclosure in all dealings by all individuals involved in the spirit of collaboration. Each party understands that his/her attorney will withdraw from our case as soon as possible upon learning that his or her client has failed to uphold this Agreement or acted so as to undermine or take unfair advantage of the process. Such failure or abuse of the process would include the withholding or misrepresentation of information, or acting to undermine or take unfair advantage of this process.

### **VIII. COURT DEADLINE RULES**

It is an agreed goal that neither party should be procedurally disadvantaged by the expiration of a litigation/Court rule/Court ordered deadline due to his/her good faith reliance on this agreement. For example, no party should be disadvantaged by the expiration of the discovery (information gathering) period during the process. It is agreed that the disadvantaged party may ask the Court for assistance to cure the disadvantage. Both parties agree to cooperate in this request. In the event that the Court refuses to allow more time then the parties agree that they will jointly seek a dismissal of the case “without prejudice”. In that case we agree that either party or both may re-file if desired.

### **IX. DISPUTES ABOUT THE PROCESS**

If there are any disputes as to the meaning or intent or compliance with this agreement these disputes shall be subject to the 30 day cooling off period and mediation.

### **X. ARBITRATION**

If there is no agreement as a result of the mediation provided for in this agreement we understand that we may agree to have any disputed matters arbitrated, if we wish. In order to arbitrate the parties and their counsel will need to agree upon and sign a separate arbitration agreement.

### **XI. PLEDGE**

**BOTH PARTIES AND THEIR ATTORNEYS HEREBY PLEDGE TO COMPLY WITH AND TO PROMOTE THE SPIRIT AND LETTER OF THIS AGREEMENT, UNLESS MODIFIED BY WRITTEN AGREEMENT SIGNED BY BOTH PARTIES AND THEIR ATTORNEYS.**

\_\_\_\_\_  
Betsy Smith, \_\_\_\_\_ for Smith Inc, a Party  
Date:

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Patrick Roe \_\_\_\_\_ for Roe Inc, a Party  
Date:

\_\_\_\_\_  
Gordon Bennett, WSBA# \_\_\_\_\_.  
Attorney for Smith Inc  
Date:

\_\_\_\_\_  
Marguerite Smith, WSBA# \_\_\_\_\_

FLEXX LAW, PS  
Attorney for Roe Inc  
Date: