Monroe County Bar Association
Alternative Dispute Resolution Program

<u>Agreement to Arbitrate</u>

The undersigned Parties ("Parties"), along with their legal representatives, agree to submit the Parties' dispute to Arbitration pursuant to the Monroe County Bar Association ("MCBA") Alternative Dispute Resolution Program ("Program"). The Parties, in executing this Agreement, warrant and represent that they have reviewed and agree to abide by the Program Guidelines, which are incorporated by reference and made a part of this Agreement. The Parties further agree to the following:

Selection of Arbitrator

1. The Parties have reviewed the qualifications of the Arbitrators on the MCBA's panel of approved Arbitrators and have done their own background checks regarding the qualifications of the Arbitrators they might want to use.

2. Based upon this review, the Parties select their Arbitrator as follows [check one]:

    [   ]   We have selected _____ to serve as our Arbitrator(s), subject to his/her/their acceptance of the appointment.

    [   ]   We request that the MCBA appoint an Arbitrator from the Panel of Arbitrators, subject to his/her acceptance of the appointment.

3. In the event that the Arbitrator designated above is unable or unwilling to serve, the Parties will be contacted by the MCBA to provide another selection, or to authorize the MCBA to appoint an Arbitrator from the remaining members of the Panel.

Parties' Agreement as to the Arbitrator

4. Each of the Parties agrees not to subpoena or otherwise call the Arbitrator to testify as a witness or to produce any records or documents in any pending or subsequent judicial, administrative, or arbitration proceeding involving the Parties and relating in any way to the dispute which is the subject of the Arbitration. Each of the Parties further agrees to disqualify the Arbitrator as a witness or as an expert in any such proceeding. Each of the Parties further agrees that any Party issuing a subpoena in violation of this paragraph shall be responsible to the Arbitrator for all costs and expenses incurred by the Arbitrator in connection with objecting to and defending against such subpoena, including, without limitation, attorneys' fees.

5. Each of the Parties agrees that the Arbitrator shall be immune from, and not have any liability for, any act or omission in connection with the Arbitration or for any decisions made by the Arbitrator during the Arbitration or in connection with any agreement or understanding reached during the Arbitration.

6. The initial fee for participation in the Program is $950.00 ("Arbitration Fee"), to be paid for equally by the Parties (or as otherwise agreed by the Parties). Of this fee MCBA will retain an administrative fee of $100.00 and a rental fee of $50.00 (includes two (2) rooms for up to four

(4) hours) and will transmit the remaining $800.00 to the Arbitrator as prepayment for the Arbitrator's pre-hearing preparation and two (2) hours of the Arbitrator's time in the hearing ("Initial Time Period"). The Arbitrator may use the Initial Time Period for pre-Arbitration proceedings, Arbitration preparation and or attendance at the Arbitration session. *Please note: the quoted participation fee refers to Arbitration occurring during standard MCBA business hours (Monday – Friday, 9:00 AM – 4:45 PM). Arbitration occurring outside of standard MCBA business hours will incur additional fees.*

7. In the event that the Initial Time Period is not sufficient to conclude the Arbitration, the Parties shall bear equally (or as otherwise agreed by them in the Agreement to Arbitrate) the Arbitrator's hourly rate, as disclosed by the Arbitrator to the Parties at the time of engagement ("Additional Fees"), for all additional time incurred by the Arbitrator to conclude the Arbitration. IF THE PARTIES DESIRE TO LIMIT THE ARBITRATION TO THE INITIAL TIME PERIOD, THE PARTIES SHALL SO ADVISE THE ARBITRATOR, IN WRITING, PRIOR TO THE COMMENCEMENT OF THE ARBITRATION SESSION AND BE PREPARED TO PRESENT THEIR EVIDENCE AND ARGUMENTS TO THE ARBITRATOR WITHIN THAT TIME PERIOD.

8. The Arbitrator may require the prepayment of the additional fees prior to continuing beyond the Initial Time Period. Payment of any Additional Fees shall be made directly to the Arbitrator. Failure by one or more of the Parties to prepay the additional fees when requested by the Arbitrator may result in the suspension or termination of the Arbitration, at the discretion of the Arbitrator.

9. The MCBA administrative fee is nonrefundable. The Arbitrator compensation portion of the Arbitration Fee is refundable only up until an Arbitrator has accepted appointment. Refunds, when allowed, will be made by the MCBA to the Parties in equal shares, unless the MCBA is notified in writing by all Parties as to a different proportion.

Confidentiality of Arbitration

10. Arbitrations – including communications before or after it and documents prepared for it – are only confidential if the Parties agree in advance that they are. The MCBA Arbitration Program is intended to provide a private dispute resolution process. For that reason, unless the Parties otherwise agree in writing, the Parties agree that all Arbitration communications and Arbitration documents, except as provided below, are privileged and confidential. Disclosure of Arbitration communications and Arbitration documents may not be required or compelled through discovery or any other process. Arbitration communications and Arbitration documents are not admissible as evidence in any action or proceeding, including but not limited to a judicial, administrative, or arbitration action or proceeding.

11. The Parties further acknowledge that exceptions to the general rule of confidentiality, include the following: (1) the Arbitrator's Award (decision) and opinion (if given) may be introduced in an action or proceeding to enforce the Award/decision; (2) communications of a threat of personal injury or property damage under circumstances constituting a felony, or conduct during an Arbitration causing injury to a person, may be introduced as relevant evidence in a criminal proceeding, and (3) fraudulent communications may be introduced as relevant evidence in an action to enforce or set aside an Arbitration Award.. Otherwise, unless the Parties have agreed, everything done or said in an Arbitration is intended and agreed to be confidential and private.

12. The Parties further recognize that facts or documents that exist independent of the Arbitration, and are otherwise public or discoverable, are not rendered confidential, private, inadmissible or undiscoverable as a result of their use during Arbitration.

13. The Parties further acknowledge and agree that the Arbitrator may report to the MCBA whether the Arbitration has resulted in a resolution of the dispute, without disclosing the nature or content of the resolution, and that such reporting shall not be considered a breach of any confidentiality requirements imposed by the MCBA Program, statute, or decisional law.

Agreement as to MCBA

14. By executing this Agreement, the Parties acknowledge that the MCBA serves the limited role of administering the commencement of the Arbitration. The Parties further acknowledge that the MCBA makes no representations or warranties regarding the Arbitration services to be provided by the Arbitrator to the Parties. The Parties fully release the MCBA, its officers, directors, members, agents and employees, of and from any and all claims and or damages arising out of or relating to the Arbitration and or the Parties' participation in the Program.

Arbitrator's Rights Under Agreement

15. The Arbitrator selected by the Parties, or otherwise appointed by the MCBA, shall be deemed a third party beneficiary of this Agreement for purposes of enforcing the obligations of the Parties with respect to the Arbitrator pursuant to this Agreement. The MCBA shall have no obligation to enforce any rights on behalf of the Arbitrator.

IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound hereby, have signed this Agreement to Arbitrate on the date(s) indicated below in acknowledgement of and agreement with its scope and terms.

PARTIES: DATE:

_____   _____

_____   _____

_____   _____

_____   _____