

## AGREEMENT TO MEDIATE

- and -

### TERMS OF MEDIATION

#### AGREEMENT TO MEDIATE

1. We, \_\_\_\_\_ and \_\_\_\_\_, agree to participate in mediation with **Kathryn d'Artois**, Mediator, Barrister & Solicitor ("the mediator") in order to try to settle our dispute(s).

#### ROLE OF THE MEDIATOR

2. We acknowledge that the role of the mediator is to assist us with negotiating a resolution of the issue(s) which are in dispute between us.
3. We acknowledge that the mediator will not make decisions about how the matter(s) in dispute between us should or must be resolved.
4. We acknowledge that although the mediator will provide us with information about the law, she will not provide either one of us with any legal advice at any time.

#### THE PROCESS

5. Before we meet jointly with the mediator, each one of us will meet separately with her for approximately one (1) hour in order to provide her with background information, a list of issues in dispute and to receive information about financial disclosure and the mediation process generally.
6. We will then meet together with the mediator in order to try to settle our dispute(s).
7. We recognize that, from time to time, it may be beneficial to us for the mediator to meet separately with either or both of us to discuss an issue which is particularly difficult or about which there is a significant degree of conflict in order to best determine how to move the mediation process forward. This process is known as "caucusing". We also recognize that the mediator may meet with one of us for a longer or shorter period of time than the other.
8. We both acknowledge that from time to time, the mediator may need to communicate with our counsel and other experts by telephone, email or letter.

9. We acknowledge that it is our responsibility to raise all issues which we feel need to be addressed in any final Agreement prepared for our consideration and that it is not the mediator's responsibility to raise issues on behalf of either one or both of us.
10. Once we have reached a settlement of the issue(s) in dispute, the mediator will prepare an Agreement which we will then each review with our legal counsel. The mediator has strongly encouraged each one of us to receive independent legal advice before signing any Agreement that is negotiated during the mediation process.

### **COURT PROCEEDINGS**

11. We agree that in order to maximize our opportunities for settlement during the mediation process, we will not start any court proceedings. We also agree that if court proceedings are ongoing at the time that we begin mediation, the proceedings will be suspended while mediation is ongoing.

### **FINANCIAL DISCLOSURE**

12. We understand the importance of negotiating with one another in good faith during the mediation process. We also understand that in order to have a valid and binding Agreement between us, we are required to make complete and full financial disclosure in a form acceptable to both of us, the mediator and our lawyers. We acknowledge that we will, from time to time, be asked to produce documentation relating to various financial issues. We agree to produce whatever documentation is necessary to allow both of us to make informed decisions about the financial issues we are negotiating and to allow both of us the opportunity to receive independent legal advice relating to those issues.
13. We understand that from time to time, it may be necessary for us to consult with various experts in relation to income tax issues, valuation issues and other issues which may require expert opinions. We understand that Kathryn d'Artois will not retain any expert without our consent and that if an expert is retained, we will be responsible for paying the expert's fees and disbursements.

### **PARTY AND MEDIATOR CONFIDENTIALITY**

14. We agree that the mediation process in which we agree to participate is "closed mediation".
15. Neither one of us, or our lawyers, if any, will disclose to anyone outside the

mediation process information and / or documentation received during the mediation process. All communications made by one of us to the other during the mediation process are confidential communications. We understand this means that if we do not reach an agreement about any issue(s) in dispute, neither one of us or our lawyers, may disclose any information and / or documentation disclosed during the mediation process or any offer made during the course of the mediation process to the court or to an arbitrator in writing or verbally. In other words, if no agreement is reached during mediation, the only information which may be communicated to the court or to an arbitrator is the fact that we participated in mediation and were not successful in negotiating an Agreement.

16. We understand that the mediator will not disclose to anyone who is not a party to the mediation process anything said during the mediation sessions whether during a joint session or during a caucus session. Similarly, we acknowledge that the mediator will not produce to anyone who is not a party to the mediation process any materials or documents produced during the mediation process, except:
- a. to the lawyers or other professionals retained on behalf of either or both of us or to non-parties, provided that we consent, in advance, to the information and/or documentation being disclosed to any such person, as deemed necessary by the mediator; **or**
  - b. to any other individual, provided that we consent in advance, in writing; **or**
  - c. for research or educational purposes on an anonymous basis; **or**
  - d. where ordered to do so by a judicial authority or where required to do so by law; **or**
  - e. where the information suggests that there will be actual or potential threat to human life or safety, or the commission of a crime and the information must be disclosed by law.
17. We acknowledge that at no time will either one of us or our lawyers call the mediator as a witness to testify about any verbal or written communications made at any stage during the course of mediation. Neither one of us will summons, subpoena or seek access to any documents prepared for or in connection with the mediation, including, but not limited to any records, notes or work product of the mediator other than this Agreement to mediate. Either one of us or the mediator may produce and rely upon the Agreement to Mediate as proof of the terms and conditions by which the mediation was governed.

## **LEGAL ADVICE**

18. We both acknowledge that either or both of us may seek legal representation or legal advice prior to, during or after the mediation process. Provided that we agree, we may have lawyers present during mediation.
19. We acknowledge that we have been advised by the mediator to obtain independent legal advice about our respective rights and obligations under the current law as it relates to the issue(s) in dispute so that we can independently determine whether any proposed Agreement is fair. In addition, we acknowledge that the mediator has advised us to obtain independent legal advice before signing any draft Agreement prepared by her.
20. There may be occasions on which either one or both of us do not wish to review the draft Agreement with a lawyer before we sign it. In these circumstances, the Agreement will reflect the fact that we have both been asked to review the Agreement with a lawyer before signing it and that either one or both of us prefer not to do so.
21. We acknowledge that if we choose not to obtain independent legal advice before signing the Agreement prepared by the mediator, we personally assume the risk of not doing so.

#### **PARTY'S RIGHT TO WITHDRAW FROM MEDIATION**

22. We acknowledge that our participation in mediation is entirely voluntary. While each one of us intends to participate in the mediation process in an attempt to reach an agreement of the issue(s) in dispute, either one of us may withdraw from mediation at any time.

#### **MEDIATOR'S RIGHT TO TERMINATE MEDIATION**

23. We acknowledge that the mediator may, in her absolute discretion, terminate the mediation process if she feels that the process is no longer appropriate in the circumstances.

#### **MEDIATOR'S FEES**

24. We agree to pay to the mediator's fees at a rate of **\$275.00 per hour plus HST**. We acknowledge that the mediator will charge fees for time spent preparing for mediation sessions, participating in mediation sessions with us jointly or separately, communicating with either or both of us, our lawyers or other professionals who we agree to consult from time to time by telephone or in writing, including by email and

for drafting temporary, partial and / or final Agreements.

- 25. In addition, we agree to pay disbursements incurred by the mediator for photocopying, fax charges, courier charges and postage charges.
- 26. We agree to pay the mediator at the end of each session for time spent preparing for the session and participating in the session. In addition, we agree to provide the mediator with a retainer in an amount agreed to before any temporary, partial or final Agreement is drafted.

**RELEASE OF LIABILITY ON THE PART OF THE MEDIATOR**

- 27. We acknowledge that Kathryn d’Artois will act only as a mediator for us and not as a lawyer as we negotiate a resolution of issues outstanding between us.
- 28. We release the mediator from all liability in relation to the terms of any Agreement which we negotiate during the mediation process.

**CONSENT TO MEDIATE**

- 29. Each of us has read this Agreement and agrees to proceed with the mediation on the terms set out in this Agreement.

	Dated
	Dated
Kathryn d’Artois	
	Dated