**IN THE MATTER OF THE ARBITRATION ACT R.S.A. 2000c A-43 as amended**

BETWEEN:

**FULLNAMEPARTY1**

 “**FIRSTNAMEPARTY1”**

- and -

**FULLNAMEPARTY2**

 **“FIRSTNAMEPARTY2”**

- and -

**ARBITRATOR**

 **“Arbitrator”**

**FAMILY MEDIATION/ARBITRATION AGREEMENT**

**1. INITIAL MATTERS**

* 1. FULLNAMEPARTY1 and FULLNAMEPARTY2 have been unable to resolve issues arising from their separation and/or divorce and have chosen this alternative dispute resolution process [“ADR”]. FIRSTNAMEPARTY1 and FIRSTNAMEPARTY2 want to resolve their issues in this mediation/arbitration process, and that there be a final resolution of the legal issues between them by binding arbitration pursuant to the provisions of the *Arbitration Act* of Alberta, R.S.A. 2000, C.A-43, and any amends [the “*Act*”] and the laws of the Province of Alberta applicable to the issues in dispute.
	2. FIRSTNAMEPARTY1 and FIRSTNAMEPARTY2 acknowledge that they are not under any duress or undue influence of the other party or anyone else and that they are voluntarily entering into this Agreement. It is also acknowledged that if any party needs translation of the Agreement, or any other aspect of the mediation/arbitration process that they have accepted responsibility for making translation available for themselves for any and all parts of the process.
	3. The parties acknowledge that they understand the time and financial benefits of mediation and arbitration as opposed to litigation through the Courts. Each is satisfied that it is in their mutual interests to proceed by way of a binding mediation or arbitration rather than struggling through the court system.
	4. This Agreement is an Arbitration Agreement entered into pursuant to s. 5 of the *Act*. The parties acknowledge that they can access a copy of this *Act* to review at http:/www.canlii.org or on the Arbitrators website: conflictsolutionsinc.ca under the resources tab.

**Certificate of Independent Legal Advice**

* 1. **PARTY1COUNSEL** represents **FIRSTNAMEPARTY1** and **PARTY2COUNEL** represents **FIRSTNAMEPARTY2.** The Certificates of Independent Legal Advice or Waivers of Independent Legal Advice appended to this Agreement are part of this Agreement.

 **Unrepresented Parties**

1.6 If one of more of the parties are unrepresented, they will have either sought or obtained legal advice prior to signing this Agreement or they acknowledge that they have been advised to seek legal advice and been given a reasonable opportunity to seek that advice before signing this Agreement. If either party does not seek their own legal advice on this Agreement, and sign the Agreement, they will be deemed to have waived this right and acknowledge that this Agreement is still binding on them.

 **Execution in Counterpart / Remote Execution**

* 1. This Agreement may be executed remotely by video and shared by fax or email. It may be signed in counterparts, each of which shall be deemed to be an original and all of which when taken together shall constitute on and the same Agreement.

**Place of Sessions and / or Hearings**

* 1. The med/arb sessions [which refer to the mediation phase coupled with a consent arbitration award] or arbitration hearings shall be held at the offices of Trauma Informed Conflict Solutions Inc., or such other place as may be agreed upon by the parties and the Arbitrator.
	2. If appropriate the med/arb sessions or arbitration hearings may take place by telephone or video conference.

**Definitions**

1.10 In this Agreement:

1. “Party-1” represents **FULLNAME PARTY1,** [hereinafter **“PARTY1”**] who is one of the parties to this agreement.
2. “Party-2” represents **FULLNAME PARTY2,** [hereinafter **“PARTY2”**] who is one of the parties to this agreement.
3. “Party” or “Parties” means Party-1 or Party-2 separately or collectively.
4. “Legal Counsel” when referred to in this Agreement, are acknowledged by the parties to be a reference to their respective legal counsel, or the parties themselves if they are unrepresented by legal counsel for all or a part of the Arbitration.
5. “Property” has the same meaning as used in the *Divorce Act* and the *Family Property Act*
6. “*Arbitration Act”* means the *Arbitration Act,* R.S.A. 2000 CA-43 as amended.

(f) “*Adult Interdependent Relationships Act”* means that *Adult Interdependent Relationships Act,* S.A.C.A. -4.5 as amended

1. “*Divorce Act”* means the *Divorce Act,* R.S.C. 1985 (2ns Supp.), c.3, as amended.
2. *“Family Law Act”* means the *Family Law Act*, S.A.CF. -4.5 as amended; and
3. *“Family Property Act”* means the *Family Property Act,* RSA 2000 RSA 2000 c.F-4.7 as amended.
4. To the extent permitted by law, an Act of the legislature or parliament referred to by name, whether or not it is defined in paragraph 1.10 above, will mean that Act in force as of the date of the signing of this Agreement. If this provision invalidates the operation of any of the other provisions of this Agreement at the time they are sought to be enforced, then the Act referred to will be the one in force at the material time and will include any amendment or successor Act.

1.11 Now in consideration of the mutual agreements and promises contained in this Agreement the Arbitrator and all the parties agree as follows:

**2. Appointment of Arbitrator**

2.1 We appoint **Sharon J. Crooks, K.C.** as the sole Arbitrator to hear and determine the issues in dispute in accordance with the terms of this Agreement and the *Arbitration Act*. As set out in this Agreement, the Arbitrator may act as a Mediator or an Arbitrator in different phases of the process, but throughout shall be referred to as “the Arbitrator”.

**Temporary and/or Alternate Arbitrator**

* 1. In the event that the Arbitrator is not available for any reason, and we have a matter that must be dealt with urgently then the Arbitrator may provide a temporary and/or substitute Arbitrator who shall be agreed to by the parties and/or their legal counsel (if applicable) or failing such agreement, as appointed by the Arbitrator.

**Duties of Arbitrator**

* 1. The Arbitrator will:
1. remain independent and impartial in all contact with us and our legal counsel (if applicable),
2. treat us fairly and equally, and
3. not advance the interests of one party over those of the other.

**3. WAIVER OF RIGHTS TO LITIGATE IN THE COURTS**

3.1 The parties are litigants in the Court of King’s Bench action # 4801- ?????

3.2 We waive any right to further litigate the issues listed in paragraph 4.1 below in court, pursuant to the *Family Law Act*, the *Adult Interdependent Relationship Act*, the *Divorce Act,* the *Family Property Act*, or any other statute of law, subject to the rights of judicial review, appeal and any other rights set out in the *Arbitration Act*, to the extent those rights have not been waived or limited by the provision of paragraph 17 herein. For the sake of greater clarity, this means that for the purposes of the *Alberta Rules of Court*, this Agreement is a stand-still agreement and brings any existing litigation to a stop until the med/arb, or arbitration process ends, even if a consent or other award is granted as part of the process.

3..3 Nothing in this Agreement impairs any enforcement rights that either of us may have through the courts, maintenance enforcement programs or otherwise, conforming to any award or direction of the Arbitrator.

3.4 On application by either of us, and subject to the court’s discretion, the operative terms of this Agreement may be incorporated into a Consent Court Order.

**4. JURISDICTION OF THE ARBITRATOR**

4.1 It is our intention that there be a final and binding resolution of the outstanding legal issues between us, in accordance with the provisions of the *Arbitration Act*. To that end, the interpretation of the jurisdiction of the Arbitrator will be expansive, not restrictive so that any legal issues between us will be within the jurisdiction of the Arbitrator unless specifically excluded, and jurisdiction will continue until the issue is fully resolved.

 **OPTIONAL - Extended Jurisdiction Clause**

4.2 The Arbitrator shall have continued jurisdiction after any interim or final award to make such additional directions, awards, or costs determinations, etc., as either of us may on reasonable notice to the other party and application to the Arbitrator request assistance in implementing or securing or enforcing any aspect of any award or direction or costs award made by the Arbitrator. For clarity without restricting the generality of the foregoing, this means that after the Arbitrator makes an award either of us can ask the Arbitrator to make such additional follow up awards as may be needed to collect the money awarded or transfer property, etc. It also means that the Arbitrator can add such additional terms to a previous Award or direction as may be necessary to make such an Award or direction effective. The party making the application may have to pay the Arbitrator’s fees up front and include costs as part of their application.

 **Issues in Dispute**

4.3 The following issues are being submitted to the Arbitrator by us for the determination of temporary relief if appropriate, and otherwise for final determination. The issues in dispute are any and all issues related to our separation and divorce, including but not limited to the following:

* + 1. Parenting of children
	1. Guardianship of children
	2. Decision making for children
	3. Parental responsibilities
	4. Parenting time or contact with children, including a parenting plan and/or schedules, including regular, holiday, vacation, and children’s activities
	5. Exchange of children, where, when, with whom, and who can attend
	6. Communication between the children and parents
	7. Counselling for child/ren and related expert reports
	8. Parenting Co-ordination, with or without an arbitration function
	9. Involvement of new partners and extended family
	10. Gender identity and/or body image
	11. Interventions required: PN7, PN8, Mental Health assessments, related expert reports.
		1. Communication between parties
		2. Co-parent Counselling, Family counselling, Communication App’s, etc.
		3. Support issues including liability, entitlement, quantum, periodic or lump sum or both, whether it should be payable retroactively, as arrears, or going forward, and any issues arising therefrom.
		4. Setting Incomes and Related disclosure
		5. Child support, past, present, or future including Section 7 expenses and/ or shared parenting expenses
		6. Spousal / partner support, past, present, or future.
		7. Matrimonial / Family Property division of real and personal property and any issues arising such as use, related disclosure, expert reports, exclusive possession, injunctions, and issues of exemption, unjust enrichment etc.
	12. Allocation of responsibility for debt
	13. Any other requested relief
	14. Any preliminary or Interim Applications
	15. Disclosure
	16. Interim fees
	17. Disbursements
	18. Financial advances
	19. Costs of the med/arb and/or arbitration
	20. Costs generally

**5. CONFIDENTIALITY**

5.1 The Arbitration proceedings under this Agreement and the record thereof are acknowledged and agreed by us to be private and confidential, except as may be necessary to implement or to enforce the Arbitrator’s award[s], and subject to their being produced in proceedings for judicial review or appeal or as required by law. We, our legal counsel (if applicable), and the Arbitrator shall not disclose any information about any parties or the Arbitration to anyone, except as agreed upon in writing or as required by law.

5.2 In the med/arb portion of these proceedings under this Agreement we agree that all communication, documents, notes, and information discussed is privileged and confidential and may not be recorded, shared, or published outside the med/arb process, including on social media.

5.3 We agree that the Mediator will be free to disclose to one party information and documentation provided by the other party. We shall not ask nor require the Arbitrator in their role as Mediator to withhold information from the other party.

5.4 Except in an emergency all communication with the Arbitrator shall be copied or shared with all parties and their legal counsel (if applicable). In an emergency situation private communication may be allowed where irreparable harm may occur, i.e. an *ex parte* application to prevent the removal of a child from the jurisdiction. We understand that the general rule for communication is that all parties are entitled to know what the Arbitrator is told, hears, or is advised by the other party.

5.5 We acknowledge and agree that the Arbitrator’s legal obligations to disclose may include:

1. reporting a child in need of protection in accordance with *The Child Youth and Family Enhancement Act,* R.S.A. 2000 c.c-12, amended; and

(b) where she believes upon reasonable grounds that there is an imminent risk to an identifiable person or group of death or serious bodily or psychological harm, disclosing such confidential information that is required in the circumstances to prevent such death or harm.

**6. APPLICABLE LAW**

6.1 The med/arb and/or arbitration of the parties’ issues shall be conducted in accordance with the law of Alberta and the law of Canada as it applies in Alberta regardless of where either party or the child[ren] lives and regardless of the location of any property. By signing this Agreement, we agree to attorn to the jurisdiction of Alberta in relation to any of our issues.

6.2 The Arbitrator, when making decisions about the guardianship of children, decision-making in respect of children and parenting time or contact with children will do only taking into consideration the best interests of the child[ren].

**7. PROCEDURE FOR MED/ARB PHASE**

7.1 The Arbitrator shall conduct med/arb session(s) in respect of the issues in dispute in an attempt to resolve all outstanding issues by consent. The issues not resolved in med/arb will be decided by the Arbitrator in an arbitration hearing. The procedure for the med/arb, including the date, time, and place, shall be determined by the Arbitrator in consultation with us, and our legal counsel (if applicable).

 **Conferencing / Zoom**

7.2 If the med/arb takes place by video conferencing technology, the Arbitrator will use the Zoom video platform or such other technology that may be agreed upon by the Arbitrator and the parties.

7.2.1 If the Zoom platform is used the mediator shall host the med/arb session[s] at no additional cost to us. All med/arb sessions are private and confidential, and we agreed to the following terms with respect to the Zoom video session[s]:

a. NO MED/ARB SESSIONS SHALL BE RECORDED BY ANY PARTY.

b. Each party and /or their legal counsel (if applicable) shall ensure that the space used to participate in the Zoom session will be private and confidential with no other person being present, and no recording devices being used. The parties will advise the Arbitrator if this changes.

7.2.2 We acknowledge that we have made our own inquiries about the Zoom platform and of any risks related to security, privacy, or confidentiality, and we agree with using it for med/arb session[s].

**Arbitrator Roles**

7.3 We specifically agree that the Arbitrator may act as Mediator in this matter and that the Arbitrator is not disqualified from adjudicating any or all issues because they have acted as Mediator while trying to resolve any of the issues before them.

 **Med/Arb is Without Prejudice**

7.4 We agree that the med/arb sessions are settlement negotiations and that oral or documentary disclosures made during the med/arb sessions are made on a *without prejudice* basis and are inadmissible in the arbitration phase of this process, and in any future litigation or arbitration, without the express written consent of all parties and the Arbitrator. No transcripts shall be kept of the med/arb proceedings. No party or legal counsel may record the med/arb sessions.

 **Evidence of Arbitrator**

7.4.1 We agree not to subpoena or otherwise require the Arbitrator to testify regarding the med/arb or to produce communications, records, notes, work product or any interim reports prepared for the med/arb in any future legal or administrative proceedings. To the extent that we may have a right to call the Arbitrator or demand such documentation, that right is waived.

7.4.2 If the Arbitrator or communications, records, notes, work product or any interim reports prepared for the med/arb are subpoenaed by either party the Arbitrator will oppose such subpoena and that party agrees to:

(a) immediately pay the Arbitrator the sum of $2,500.00 as liquidated damages for breach of contract, and

(b) reimburse the Arbitrator for whatever expense she incurs in opposing the subpoena or in testifying, including legal fees plus $500 per hour for all of her time that is expended as a result of her being called as a witness, including reviewing documents and preparing to give evidence, whether or not she actually has to testify.

7.4.3 The exceptions to the non-disclosure provisions set out above are this Agreement, and any interim or final Consent Awards resulting from the med/arb session[s].

7.5 The Arbitrator may meet with us together or separately with or without counsel present (if applicable) and with whomever the Arbitrator deems relevant to a resolution of the issues between us. Any meeting between the Arbitrator and any person who is not one of the parties shall be held with the consent of both of us if it occurs during the med/arb phase of the procedure.

7.6 We acknowledge that no one other that the parties and their legal counsel (if applicable) may attend meetings, sessions, or hearings in this med/arb process without the agreement of both parties, or an award by the Arbitrator.

**Opinions are not “legal advice”**

7.7 We acknowledge and agree that in assisting us in resolving the issues set out in paragraph 4.3 above, the Arbitrator will be acting in their capacity as a Mediator and that they will not provide legal advice to us individually or collectively. If, during the med/arb, the Arbitrator expresses an opinion or comments on an issue, we acknowledge that the opinion or comment is not to be constructed in any way as a statement of the law or legal advice.

**Caucusing or “Shuttle Med/Arb”**

7.8 The mediator may choose, where she deems it appropriate, to use caucusing or “shuttle med/arb”, which is meeting with each of us separately [and with legal counsel (if applicable)] and alternating between us to share the views and positions of each party with the other.

 **Med/Arb Style**

7.9 The Arbitrator in their capacity as a Mediator will use a blended style of interest-based, educational, and insightful, practiced in a trauma informed manner. She will conduct a “facilitative” med/arb and not an “evaluative” med/arb, unless expressly requested to do so by us and/or our legal counsel (if applicable), and thereafter agreed to by the Arbitrator.

 **Termination of Med/Arb Phase[s]**

7.10 The med/arb shall continue until one of us, or the Arbitrator determines that continued med/arb is unlikely to result in a settlement, at which point the Arbitrator may terminate the med/arb and set a date for an arbitration. We acknowledge that during this med/arb process we may move back and forth between med/arb and arbitration as agreed upon, appropriate, and contemplated under S. 35 in the *Act*.

**8. PRE-MED/ARB**

8.1 We understand that the Arbitrator in her role as Mediator practices in a trauma informed manner and that she will meet with each of us separately in a pre-med/arb session to:

1. provide information on the process, answer any procedural questions, and prepare each party for the med/arb.
2. explain the roles of the parties, legal counsel (if applicable), and the Arbitrator in their role as Mediator and in their role as Arbitrator.
3. do a safety screen and discuss any safety issues, power imbalances etc.
4. Make parties aware of independent therapists or therapies or other services where appropriate.
5. do a brief trauma screen, discuss any trauma background, and how to deal with trauma symptoms and triggers during med/arb.
6. discuss brain science and how to manage emotional regulation.
7. discuss communication processes that will be used during the med/arb.
8. discuss any capacity/competence, addiction/medication, health, or other issues that might affect the timing or process of the med/arb.
9. gather background information and a brief description of the agenda items that the party wishes to be included in the agenda.
10. discuss logistics and any accommodations required by each party.

We will not raise the pre-med/arb session[s] as a procedural issue in any administrative or court applications, including applications to suspend, set aside, vary, or appeal an award made in the course of this med/arb.

8.2 We also understand that any written or oral information provided in these pre-med/arb sessions, including any safety or trauma screening questions shall be held in **strictest confidence** by the Arbitrator and that she shall not be required to produce any information or documentation gathered during the pre-med/arb process to any other party, person, Court, or legal or administrative entity. To the extent that we may have a right to request that information, that right is hereby waived.

**Accommodations**

8.3 We both understand that the Arbitrator in their role as Mediator may propose certain accommodations for either or both of us to better facilitate our effective participation in the med/arb and our ability to make an informed decision. The mediator will discuss the proposed accommodations with both of us to obtain our consent, which will not be unreasonably withheld.

**9. DOCUMENTS FOR MED/ARB**

9.1 We understand that full disclosure of all relevant information is essential to this process. We agree that we will each provide complete and honest disclosure of all relevant information and documents. If either of us fails to make full and complete disclosure, then the Consent Award reached in the med/arb phase of the process may be set aside. Full disclosure is necessary to ensure that we can each make informed decisions.

9.2 If there is an Agreement between the Arbitrator and both of us and our legal counsel (if applicable), each of us shall submit to the Arbitrator and the other party at least seven (7) clear days [or such other time as has been agreed upon between us and the Arbitrator] prior to the commencement of the med/arb the following:

1. Any relevant information about the relationship between us that each of us considers important, such as pleadings or summary statements from each of us or information from our legal counsel (if applicable).
2. Copies of any relevant reports, assessments or appraisals and any other documents upon which he/she wishes to rely. This will include CYFEA [The Child Youth and Family Enhancement Act] s. 126.11 disclosure, if any.
3. Copies of any relevant Court or Administrative Orders or Agreements.
4. Schedule 1 Financial Disclosure shall be provided prior to the discussion of financial matters.
5. Receipts for section 7 expenses.
6. Childview and/or Spousal Support Advisory Guideline records.
7. Such other documents that the Arbitrator directs.

 Otherwise, we will agree during med/arb what materials should be submitted and any deadlines for those materials.

 **Privileged or Restricted Documents**

9.3 If any materials provided to the Arbitrator are confidential or have had their use restricted in any way by the Courts or other authorities, the Arbitrator will respect those restrictions and will not disseminate the material outside of those restrictions. Such documentation shall only be used by the Arbitrator as necessary in the med/arb.

**10. PROCEDURE FOR ARBITRATION**

10.1 If we do not resolve all of our issues in in med/arb, we agree that any unresolved issues shall be determined by the Arbitrator in a binding arbitration subject to the *Act*. The arbitration shall take place at the dates and times to be set by the Arbitrator in consultation with us and our legal counsel (if applicable).

10.2 Unless otherwise set out in this agreement, either of us or the Arbitrator in her sole discretion may trigger the arbitration process. Applications for Arbitration shall be made verbally in a session or by letter/email to the Arbitrator, copied to the other party and setting out:

1. The specific relief requested.

 (b) The grounds for the relief requested

 **Evidence, Procedure, and Natural Justice**

10.3 In the Arbitration hearing the laws of evidence and procedure do not apply and the Arbitrator shall not be bound by the strict rules of evidence in force in the Courts of Alberta. In determining the issues before her, the Arbitrator shall apply the relevant laws of Canada, Alberta and the principles of fairness and natural justice.

**Pre-Arbitration**

10.4 The procedure for the arbitration shall be determined by the Arbitrator in consultation with us and/or our legal counsel (if applicable) at a pre-arbitration conference[s].

10.5 If we and Arbitrator are unable to agree on any procedural matter, the Arbitrator shall determine the process having regard to our financial resources and proportionality as suggested by the Supreme Court of Canada in Hryniak and by the Alberta Court of King’s Bench in Esfahini v. Amimi [Dec 2022]. In doing so it is understood and agreed by us that the process may be abbreviated in various ways to save time and money. While there may be less ability to review every fact or argument, the process will still allow for the material facts and arguments to be presented. We acknowledge that we are entitled to a fair hearing not a perfect one, as perfection is subjective to each party’s individual perception.

10.6 If a hearing is conducted, it may be conducted in person, electronically, by telephone, teleconference, video conference, written submissions, or any other procedure which shall be determined by the Arbitrator in consultation with us and their legal counsel (if applicable).

 **Disclosure and Production of Documents**

10.7 The Arbitrator may determine a timetable for the delivery of briefs, financial disclosure, and other documents, as well as determine other procedural interim matters to receive any evidence to be submitted to her by us which the Arbitrator believes to be relevant to the matters in dispute or that will enable her to arrive at a fair and proper decision.

 **Procedural Directions**

10.8 The Arbitrator shall have the power to issue all necessary interim awards or procedural directions [which cannot be appealed during the process] to deal with both procedural and substantive issues before her. The Arbitrator’s procedural directions shall have the same force and effect as an award, notwithstanding that they may not be formally issued until they become part of a final award. Subject to the rules of natural justice, the Arbitrator may issue procedural directions that shorten or expedite the process in the interest of time, expense, and to ensure that the resources expended in the process are proportionate to the importance of the disputed issues.

 **Adverse Interest**

10.9 The Arbitrator shall not consider any documentation that is not provided in accordance with this Agreement. The Arbitrator is at liberty to draw an adverse inference from a parties’ failure to produce documentation in accordance with this Agreement when making her decision and drafting her Arbitration Award.

10.10 The Arbitrator may deliver Notices, Awards, or other communications to us via ordinary mail, fax, or e-mail.

 **Failure of One Party to Appear**

10.11 We acknowledge and agree that the Arbitrator may, if one of us fails to appear at a hearing or produce documentation as per this Agreement without sufficient reason, continue the arbitration and make an award on the evidence before them. We understand that if either of us fails to appear at the date and time set for a hearing or fail to produce evidence that we do so at our own risk and the hearing may go ahead without our input or evidence and that a final Arbitration Award may be made in our absence.

**Undue Delay**

10.12 We acknowledge and understand that failing to produce disclosure or other related documentation may result in an adverse inference being drawn against a party. We also understand that failing to disclose documentation cannot be used to unduly delay the process.

**11. CONDUCT OF HEARING**

11.1 We understand that at the Arbitration hearing[s], the Arbitrator shall apply the principles of natural justice and shall not be bound by the strict rules of evidence and procedure in force in the Courts of this Province. The Arbitrator may receive any evidence submitted to them by us which the Arbitrator believes to be relevant to the matters in controversy or that will enable the Arbitrator to arrive at a fair and proper decision.

11.2 The Arbitrator shall have full power and authority to rule on any questions of law applying to the admission of evidence or determination of the issues in the same matter as a Justice of Court of King’s Bench.

11.3 The Arbitrator may draw an adverse inference about a parties’ failure to produce documentation as set out in the Agreement, or otherwise agreed upon, when drafting the Award.

 **Evidence from Med/Arb Session[s]**

11.4 Notwithstanding the inadmissibility of documents or evidence from the med/arb sessions, the Arbitrator may with the consent of both of us, admit into evidence documents or other information received during the med/arb phase.

11.5 If a hearing is held and unless we agree otherwise:

1. all witnesses shall be sworn under oath or affirmed and shall be subject to cross-examination and re-examination, except that the Arbitrator may direct that some or all of the evidence be given by Affidavit and/or limited examination in such manner as the parties agree upon or she may direct.

# Court Reporter

11.6 We agree that the use of a Court Reporter [“Reporter”] for the Arbitrator will be as deemed necessary by the Arbitrator, us, and our legal counsel (if applicable). The cost of the Reporter and transcript shall be paid by us as agreed between us or as decided by the Arbitrator.

 **Arbitrator Recordings**

11.7 During the Arbitration the Arbitrator may record some or all of the proceedings for her own use in drafting the Award[s] and any such recording or any transcript of same will not be made available to us or our counsel (if applicable) or anyone else. The Arbitrator has no obligation to keep her recording after the Award has been issued.

11.8 No one, other than a Court Reporter hired to do so or the Arbitrator as set out above will be allowed to record any portion of these proceedings.

 **End of Arbitration Hearing**

11.9 The Arbitration hearing will end when:

1. all of the legal issues are settled by agreement of the parties during arbitration,
2. the parties advise the Arbitrator that they have no further evidence to present or arguments to make, or any time limits for the presentation of the parties’ evidence or arguments have expires, or
3. the Arbitrator determines that continuing the hearing is unnecessary or inappropriate.

11.10 The Arbitrator may, in exceptional circumstances, reopen the arbitration hearing at any time before the final award is made.

**12. PRE-ARBITRATION CONFERENCE**

12.1 At the pre-arbitration conference[s] the following matters will be determined:

1. the legal issues to be decided,
2. who is the claimant and who is the respondent,
3. the processes, procedures and rules of evidence that will be followed,
4. the order and method of presentation of evidence, ie: the delivery of opening and closing statements,
5. a timetable for pre-arbitration events, including the exchange of expert reports, the exchange of document briefs and questioning, if required,
6. what documents need to be produced and when they need to be exchanged,
7. what witnesses and/or experts that will be called to present oral evidence, their contact information, and if a synopsis of their evidence will be provided and by what date,
8. estimates of the time required for the arbitration.
9. whether all or a portion of the evidence given shall be transcribed by a court reporter, and
10. whether there are any preliminary or interim matters that need to be decided or ruled on,
11. when, where, and how [in person, telephone conference, or video conference] the arbitration hearing will take place.
12. any physical arrangements or accommodations necessary for the attendance of parties or witnesses.

12.2 If we cannot agree on a process for the arbitration the Arbitrator shall determine the process after hearing submissions by both of us. A summary of the process decided on shall be provided to us and/or our legal counsel (if applicable) by the Arbitrator.

**13. EXPERT EVIDENCE FOR ARBITRATION HEARING**

13.1 We specifically authorize the Arbitrator to determine the necessity of retaining professional(s) to provide expert opinion(s) respecting any outstanding issue(s) and to retain such professional(s) as they deem appropriate in keeping with S. 28 of the *Act*.

13.2 We agree to contribute to the fees of the expert(s) in the amounts or proportions agreed to by us or if not agreed upon, then determined by the Arbitrator and authorize the Arbitrator to include these fees as a disbursement on our account[s].

**14. WITHDRAWAL FROM MED/ARB OR ARBITRATION**

14.1 We acknowledge that the *Act* provides that an arbitration agreement may only be cancelled by the court under the law of contract, which includes questions about incapacity, duress, undue influence, coercion, mistake, misrepresentation, and fraud.

14.2 **Neither of us may unilaterally withdraw from this Agreement at either the med/arb or arbitration stage.** However, we may jointly terminate this Agreement by our written agreement. If we both do not agree to withdraw, the Arbitrator shall proceed with the arbitration as provided for in this Agreement, notwithstanding that the med/arb has been unsuccessful or that one of us no longer wants to participate in the arbitration.

14.3 **The Arbitrator may, at any time, resign from her appointment as arbitrator by providing written notice of her resignation to us.**

14.4 In the event that the Arbitrator’s appointment is terminated, and we are unable to agree on a replacement, a court of competent jurisdiction shall appoint a replacement Arbitrator on either party’s application to the court.

14.5 In the event that the Arbitrator’s appointment is terminated, we agree that any interim or interlocutory award(s) made by the Arbitrator shall continue to bind the parties and shall continue in full force and effect as the basis for the continuation of the Arbitration with the replacement Arbitrator.

**15. A CONSENT ARBITRATION AWARD**

15.1 If we reach a consent on all or some of the issues during Med/arb the Arbitrator will:

(a) open the Arbitration, swear, or affirm us, put the matters agreed to on the record, and have us confirm our agreement to those matters,

or alternatively

1. have us sign or agree verbally to the med/arb notes, which will include the matters agree to and the request to produce a consent arbitration award.
2. issue a written Consent Arbitration Award on those issues agreed upon, which will include a summary of matter discussed in reaching agreements.

(d) set the unresolved matters over to Arbitration, as per the Med/Arb Agreement.

15.2 If we reach a consent on some of the issues during Arbitration and the Arbitrator decides on other issues then the Arbitrator will issue two Awards, one Consent Award reflecting our agreements and one Award with the Arbitrator’s decision[s].

15.3 Our legal counsel (if applicable) may provide suggestions on the wording of a consent award, and/or suggest any additions or updates agreed upon by us. The Arbitrator in her sole discretion may decide to include those suggested changes in the Consent Arbitration Award or not.

**16. ARBITRATION AWARD**

16.1 After the evidence has been received and submissions on the law have been made, the Arbitrator shall make an Award on all issues submitted to her for determination as soon as possible after the hearing has ended. The Award shall be in writing, unless we agree otherwise, and shall set forth the facts as found by the Arbitrator, apply the appropriate law, and state the Arbitrator’s determination of the issues in dispute.

**Abbreviated Reasons**

16.2 We mutually agree that the Arbitrator may, to save time and money produce abbreviated reasons. If we agree to abbreviated reasons, then before either of us may challenge the Arbitrator, the process, or appeal any award or direction that party must request that the Arbitrator produce their full reasons. Those full reasons will be produced at the cost of the party requesting them, unless we agree otherwise in advance or unless the Arbitrator determines the clarification request was reasonable and should be shared in some proportion between us.

 **Issuing of Award**

16.3 The Arbitrator shall release their Award within a reasonable period after the completion of the hearing[s]. Such award shall be executed and delivered to us and our lawyers (if applicable), simultaneously. The Arbitrator may delay the issuing her award until all outstanding fees and disbursements have been paid.

 **Clarifications or Corrections**

16.4 The Arbitrator, in her own discretion, may agree to hear either of us upon written application for the purpose of clarifying the award or correcting a mistake of fact. Any correction of an award or direction may be a shared cost between us, depending on the circumstances and the Arbitrator’s determination of same.

**Enforcement of Award**

16.5 The Award of the Arbitrator shall be final or interim according to its terms. The Arbitrator retains additional jurisdiction as agreed by us and set out herein related to implementation and enforcement.

**17. APPEAL**

17.1 An Arbitrator’s Award may be appealed:

1. in accordance with Section 44 of the *Arbitration Act*

or

1. a party may appeal the Award to the Court of King’s Bench of Alberta on
	1. an error of law alone [the appellate standard is correctness]

or

* 1. a question of law, [the appellate standard is correctness]

or

* 1. a question of fact, [the appellate standard is manifest or palpable error]

or

* 1. a question of mixed fact and law [the appellate standard is manifest or palpable error]

17.2 No appeal. The parties may agree to no right of appeal from the Arbitrator’s Award. This choice has not been tested by the courts in Alberta, but parties may use the laws of contract in addition to the *Act* to enforce their choice.

17.3 If the parties choose not to check any appeal option set out in this section then any party wanting to appeal an award would have to seek leave to do so. This is set out in Section 44 (2) and (2.1) of the *Act* where a party may, with the permission of the court, appeal an award on a question of law. The court shall grant the permission referred to in subsection 44 (2) only if it is satisfied that:

(a)  the importance to the parties of the matters at stake in the arbitration justifies an appeal, and

(b)  the determination of the question of law at issue will significantly affect the rights of the parties.

17.3 Notwithstanding subsections (1) and (2), a party may not appeal an award to the court on a question of law that the parties expressly referred to the arbitral tribunal for decision.

 **Advance Security for Costs**

17.5 Advance security for costs of any appeal in the amount of \_\_\_\_ $5,000.00, \_\_\_\_ $10,00.00, or \_\_\_\_$\_\_\_\_\_\_\_\_\_ will be paid by the party appealing the award to the other party within seven [7] days of filing the appeal.

**18. ENFORCEMENT THROUGH THE COURT**

18.1 Subject to the appeal remedies and rights to apply to set aside the Arbitrator’s Award under sections 44 and 45 respectively of the *Act*, and subject to the other applicable provisions of the *Act,* all Awards of the Arbitrator shall be binding upon us. Whether the Arbitrator retains additional implementation or enforcement jurisdiction in this Agreement, the Arbitrator’s Award[s] are enforceable in any court of competent jurisdiction and in the same manner as any other judgment of the court, subject to the rights of appeal as set out in this Agreement.

18.2 Any temporary, interim, or final Award may be incorporated into a Consent Order of the Court of King’s Bench of Alberta, or any other Court of competent jurisdiction. Either of us may request that the other party agree to enter a Consent Order with the Court of King’s Bench or another Court of competent jurisdiction incorporating the terms of the Award[s] so that an application to enforce the Award will not be necessary.

 **Enforcement in Courts Outside of Alberta**

18.3 We agree that , in addition to any award being enforceable as an Order of the Court of King’s Bench of Alberta, any award shall also be enforceable as an Order of any Court of any jurisdiction outside of Alberta in which either of us or our child[ren] may reside in or in which any real or personal property of either of us is located or an interest either of us has in any asset whatsoever is located including interest in businesses, partnerships, private corporations and trusts. We agree that we shall consent to any Order in any such jurisdiction that is necessary to make any awards granted by the Arbitrator effective in that jurisdiction whether or not that jurisdiction has arbitration legislation similar to Alberta’s. All of the terms of this Agreement that relate to setting the terms of any Order and the consequences if a party is not cooperating to put such an Order in place shall apply to the Order or if necessary, reciprocal Orders of Judgments in these other jurisdictions.

**19. COSTS OF ENFORCEMENT OF AWARD**

19.1 In the event that it is necessary for either of us to bring an Application to enter a Consent Order, the party applying shall be entitled to their solicitor and client costs of that Application.

**20 CANCELLATION POLICY**

20.1 If we need to reschedule or cancel scheduled med/arb session[s] or arbitration hearing[s] we agree to give the Arbitrator the following notice:

1. At least 2 business days’ notice for a half-day session or hearing.
2. At least 5 business days’ notice for one full day session or hearing.
3. At least 7 days business notice for two full consecutive day sessions or hearings.

20.2 If we fail to give the proper notice, we agree to pay $500.00 for a half day or $1,000.00 per day for each full day booked.

20.3 Unless otherwise agreed, we shall each be responsible for paying our portion of the cancellation fees set out above. The cancellation fee shall be charged to each of our accounts accordingly. If there is an issue, the question of ultimate responsibility for cancellation fees shall be the subject of further med/arb or arbitration.

**21. THE ARBITRATOR’S FEES, EXPENSES AND ACCOUNTS**

21.1 The Arbitrator’s fees are **$500.00** per hour plus GST for the med/arb session[s] or arbitration hearing[s], any pre-med/arb or pre-arbitration conferences, interim arbitration[s], preliminary meetings / arrangements, written or verbal communication with us or our legal counsel (if applicable), preparation for the session[s] or hearing[s], review of material submitted by the parties or their legal counsel (if applicable), preparation of any Award[s], and any other services required to complete the Med/Arb process.

 **Travel**

21.2 If the Arbitrator has to travel outside of Central Alberta and overnight accommodation is necessary, she will be reimbursed for her travel costs, including air fare, mileage or car rental, meals etc.

 **Legal Assistant / Paralegal Fees**

21.3 In addition to the Arbitrator’s fees, a fee of $100.00 per hour plus GST will be charged for any time expended by a legal assistant to deal with organizing disclosure, producing binders or any other specific tasks related to the med/arb.

21.4 The Arbitrator’s accounts shall be paid by each party as follows:

 **FIRSTNAMEPARTY** - 50%

 **FIRSTNAMEPARTY2** - 50%

 **OTHER** - \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

21.5 We agree to the following payment method:

(a) Initial Deposit in the amount of $\_\_\_\_\_\_\_\_\_\_\_\_

(b) Credit card authorization form for each party.

(c) Accounts will be rendered within 5 days of the med/arb session or hearing and the credit cards will be debited immediately for any amounts over and above the initial deposit.

 **Non-payment of Fees**

21.6 We understand that the deposit is not an estimate of the costs of the med/arb and arbitration and that further payments may be necessary to complete the process. The Arbitrator is not bound to continue if there is no security in place for her fees and accordingly services may be terminated or suspended until arrangement are in place to cover her fees.

21.7 In the event that one of us fails or refuses to pay to the Arbitrator his/her share of the Arbitrator’s fees, disbursements or deposit accounts, the Arbitrator may accept payment of the defaulting party’s share from the other party to ensure that the process continues. The Arbitrator shall then credit the party advancing those funds in any subsequent award or in an award of costs in the amount advanced to ensure that the advancing party receives credit or repayment for the funds advanced.

21.8 If neither of us is prepared to provide the necessary funding to the Arbitrator to continue the process, then either of us can apply in writing to the Arbitrator to have the Arbitration declared impossible. The other party will have 10 days to respond.

 **Interim Fees and Disbursements**

21.9 The Arbitrator is empowered to order interim fees and disbursements of the arbitration, including the Arbitrator’s deposit, fees and/or disbursements, on notice to us following receipt of submissions if either party wishes.

21.10 The Arbitrator may direct that one party pay 100% of certain correspondence received or for any other work necessitated by the actions of one party. The Arbitrator does not need to be copied on all communication between us and/or our legal counsel (if applicable) and accordingly may limit the amount of correspondence sent to her in the interests of cost, efficiency, and proportionality.

**22. BINDING**

22.1 This Agreement shall be binding upon us and our respective estates such that if one of us dies prior to the completion of the med/arb process the estate of that party shall step into that party’s shoes and be bound by the terms of this Agreement and by the Arbitrator’s jurisdiction.

**23. AMENDMENT**

23.1 We may amend or add to this Agreement by mutual agreement. Such agreement may be reflected in written minutes, or a direction produced by the Arbitrator reflecting that amendment without the need for an executed amending Agreement.

**24 WAIVER OF LIABILITY**

24.1 We hereby waive any claim or right of action against the Arbitrator arising out of these proceedings.

**25. SEVERABILITY OF TERMS**

25.1 Each of the terms of this agreement are severable from the others and will survive the invalidity or unenforceability of any other term of this Agreement.

**DATED** at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Alberta this \_\_\_\_ day of \_\_\_\_\_\_\_\_, 2023.

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**FULLNAMEPARTY1** WITNESS

 \_\_\_\_­­\_\_\_\_\_\_\_\_ ­­­­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**FULLNAMEPARTY2** WITNESS

\_\_\_\_\_\_ \_\_

**ARBITRATOR**

**AFFIDAVIT OF EXECUTION**

C A N A D A ) I, **PARTY1COUNSEL**,

PROVINCE OF ALBERTA ) of the \_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_, in the Province

TO WIT: ) of Alberta,

) Barrister and Solicitor,

 ) MAKE OATH AND SAY:

1. That I was personally present and did see **FULLNAMEPARTY1**, named in the within instrument who is personally known to me to be the person named herein sign and execute the same for the purpose named herein.

2. That the same was executed at the \_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_, in the Province of Alberta, and that I am the subscribing witness thereto.

3. That I know the said **FULLNAMEPARTY1**, and she is in my belief the full age of eighteen years.

SWORN BEFORE ME at the \_\_\_\_\_\_\_\_ )

of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, in the Province of )

Alberta, this \_\_\_\_\_day of \_\_\_\_\_ )

 202\_\_. )

)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ )

A Commissioner for Oaths in and PARTY1COUNSEL

for the Province of Alberta.

**CERTIFICATE OF INDEPENDENT LEGAL ADVICE**

LEGAL COUNSEL: **PARTY1COUNSEL**

CLIENT: **FULLNAMEPARTY1**

DOCUMENT: **MEDIATION/ARBITRATION AGREEMENT**

I was consulted in my professional capacity by **FULLNAMEPARTY1** named in the Mediation/Arbitration Agreement (hereinafter “document”). I certify that I have read and fully explained to **FULLNAMEPARTY1** that document.

The client and legal counsel acknowledge that the client has been fully advised of their rights and obligations arising from the document.

The client acknowledges that I acted solely for him/her and that he/she understand the contents, nature, and purpose of the document and that he/she is of his/her own volition executing same, without fear, duress, compulsion, intimidation, or inducement by **FULLNAME PARTY2** or any other person.

The client further acknowledges that he/she executed the document in the presence of legal counsel, separate and apart from **FULLNAMEPARTY2** to the document, and that the lawyer has been retained by the client for the purposes of independent legal advice on the document.

DATED at the of , in the Province of Alberta, this \_\_day of 202\_\_.

PARTY1COUNSEL

**AFFIDAVIT OF EXECUTION**

C A N A D A ) I, **PARTY2COUNSEL**,

PROVINCE OF ALBERTA ) of the \_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_, in the Province

TO WIT: ) of Alberta,

) Barrister and Solicitor,

 ) MAKE OATH AND SAY:

1. That I was personally present and did see **FULLNAMEPARTY2**, named in the within instrument who is personally known to me to be the person named herein sign and execute the same for the purpose named herein.

2. That the same was executed at the City of Calgary, in the Province of Alberta, and that I am the subscribing witness thereto.

3. That I know the said **FULLNAMEPARTY2**, and she is in my belief the full age of eighteen years.

SWORN BEFORE ME at the \_\_\_\_\_\_\_\_ )

of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, in the Province of )

Alberta, this \_\_\_\_\_day of \_\_\_\_\_ )

 202\_\_. )

)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ )

A Commissioner for Oaths in and PARTY1COUNSEL

for the Province of Alberta.

**CERTIFICATE OF INDEPENDENT LEGAL ADVICE**

LEGAL COUNSEL: **PARTY2COUNSEL**

CLIENT: **FULLNAMEPARTY2**

DOCUMENT: **MEDIATION/ARBITRATION AGREEMENT**

I was consulted in my professional capacity by **FULLNAMEPARTY2** named in the Mediation/Arbitration Agreement (hereinafter “document”). I certify that I have read and fully explained to **FULLNAMEPARTY2** the nature, meaning and consequences of this document.

The client and I acknowledge that I acted solely for him/her and that he/she understand the contents, nature, and purpose of the document and that the client has been fully advised of their rights and obligations arising from the document.

The client acknowledged to me that he/she is of his/her own volition executing same, without fear, duress, compulsion, intimidation, or inducement by **FULLNAME PARTY1** or any other person and I am satisfied with this acknowledgement. I am not aware of any legal disability that would impair my client’s capacity to enter into this agreement.

The client further acknowledges that he/she executed the document in the presence of legal counsel, separate and apart from **FULLNAMEPARTY1** to the document, and that the lawyer has been retained by the client for the purposes of independent legal advice on the document.

DATED at the of , in the Province of Alberta, this \_day of 202\_\_.

 PARTY2COUNSEL