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### **MEDIATION AGREEMENT**

This is an agreement between **PARTY 1** and **PARTY 2** and Bradley R. Mustard as mediator. The parties have entered into mediation with Bradley R. Mustard with the intention of reaching a consensual settlement of their dispute.

The provisions of this agreement are as follows:

#### **The Role of the Mediator**

1. The mediator is the neutral facilitator who will assist the parties to reach their own settlement. He will not make any decisions about “right” or “wrong” or tell the parties what to do.
2. The mediator does not offer legal advice, nor does he provide legal counsel. Each party is advised to retain his or her own counsel in order to be properly counselled about his/her legal interests, rights and obligations. Each party is strongly advised to retain counsel during or after the mediation process and prior to executing an agreement.
3. The Mediator does not represent either party. Both parties are encouraged to meet with a lawyer to obtain independent legal advice as referred to in paragraph 2 above.

#### **The Mediation is Without Prejudice**

4. The communications made by me and my spouse/partner during the negotiation process are without prejudice and will not be raised or disclosed by me in any subsequent legal action. It is understood that in order for mediation to work, open and honest communication is essential. Accordingly, all written and oral communications, negotiations, and statements made in the course of mediation will be treated as without prejudice settlement discussions and are absolutely confidential. Therefore:
  - a. The mediator will not reveal anything discussed in mediation without the permission of both parties. It is understood that he is not required to maintain confidentiality if he has a reason to believe that a child is in need of protection or if either party is in danger of bodily harm;

- b. The parties agree that they will not at any time before, during, or after mediation call the mediator as a witness in any legal or administrative proceedings concerning this dispute. To the extent that they may have a right to call the mediator, that right is hereby waived;
- c. The parties agree not to subpoena or demand the production of any records, notes, work product, interim mediator's reports produced or prepared in the mediation in any legal or administrative proceedings. To the extent that they may have a right to demand these documents, that right is hereby waived;
- d. If, at a later time, either party decides to subpoena the mediator, the mediator will move to quash the subpoena. That party agrees to reimburse the mediator for whatever expense he incurs in such an action (including legal fees) plus \$500.00.00 per hour for all time that is taken by this matter;
- e. The exception to the above is this Agreement and any final agreement resulting from the mediation which is reviewed by the parties with independent legal advice and incorporated into a settlement agreement is signed by the parties in the presence of their lawyer, may be used in any relevant proceedings, unless the parties agree in writing not to do so.

### **Disclosure**

- 5. It is understood that full disclosure of all relevant and pertinent information is essential to the mediation process. Accordingly, there will be a complete and honest disclosure by each of the parties of all relevant information and documents. This includes providing each other and the mediator with all information and documentation that usually would be available through the discovery process in a legal proceeding. If either party fails to make such full disclosure, then the agreement reached in mediation may be set aside. Disclosure is necessary to ensure that both parties are able to make informed decisions.

### **Withdrawal From Mediation**

- 6. While both parties intend to continue with mediation until a settlement is reached, it is understood that either party or both parties may withdraw from mediation at any time. It is agreed that if one or both parties decide to withdraw from mediation, best efforts will be made to discuss this decision in the presence of both parties and the mediator.

## **Termination of Mediation**

7. If the mediator determines that it is not possible to resolve the issues through mediation, the process can be terminated once this has been conveyed to the parties and confirmed in writing.
8. The Mediator will suspend or terminate the mediation when:
  - a. the process is likely to harm or prejudice either party;
  - b. the usefulness of the process is exhausted;
  - c. an agreement being reached is blatantly unfair;
  - d. the parties fail to pay the Mediator's fees; or
  - e. either or both parties no longer wish to proceed.

## **Completion of Mediation/Preparation of Final Report**

9. When an agreement is reached, the mediator will prepare a Draft Mediation Agreement. Each party is advised to review this with his/her own lawyer before the Agreement is placed in final form and signed. The drafting of the final Agreement will be done by the lawyers and not by the mediator.

## **Fees for Mediation**

10. Before mediation begins, the parties will make arrangements regarding payment of the cost of the mediator's fees. A retainer must be provided at least 24 hours' in advance of the mediation session, or at the request from the mediator and/or his assistant.
11. The parties agree to pay Bradley R. Mustard a fee of \$525.00 per hour plus GST for mediation services. The parties understand that this fee applies to all time spent by the mediator as follows:
  - a. time spent in and preparation for mediation sessions;
  - b. written or verbal correspondence with me and my spouse/partner;
  - c. preparation of draft agreement/memorandum of understanding;
  - d. correspondence with the legal counsel;
  - e. review of relevant documents; and
  - f. other work required to complete the mediation process.
12. The Mediator's hourly rate may increase throughout the duration of this Mediation process due to yearly rate increases. If the Mediator's fees are to increase, the Mediator shall provide the parties with 30 days written notice of such increase in fees.

### **Other Information**

13. The parties acknowledge that the mediator cannot be called to be a witness in any future legal action related to this mediation process and neither party will communicate privately with the mediator without the other's express consent.
14. If the parties need to change a scheduled appointment time, they agree to give the mediator at least 24 hours' notice. If they fail to do so, they agree to pay for the scheduled time, not to exceed two hours. The parties understand that all fees will be billed and paid at the end of each session unless special arrangements have been made in advance.
15. The parties may be asked to fill out some pre-mediation screening questions. The mediator arbitrator may conduct a short triaging meeting and screen with the parties to identify issues and identify and accommodations required in the process. The parties' consent to the screening process and will not raise the screening process as a procedural issue in any future Court proceedings, including an application to cancel, stay, or set aside any settlement made. The mediator is not required to compel or produce the pre-screening documentation or discussion with any other party or Court.

### **Mediation by Video Conferencing (if applicable)**

16. The parties can use online dispute resolution technology known as Zoom Video Platform ("Zoom") or Teams Video Platform ("Teams") in the mediation.
17. The Mediator shall host the mediation using his Zoom Pro Account, or Teams Account, without additional cost to the parties. The following terms are agreed to with respect to the conduct of the mediation via Zoom or Teams:
  - a. SESSIONS SHALL NOT BE RECORDED WITHOUT CONSENT FROM ALL PARTIES;
  - b. Space at home is to be private and confidential and the parties will advise the mediator if this changes.
18. The parties acknowledge that they have made their own inquiries as to the suitability and adequacy of Zoom or Teams for its proposed use in the mediation and of any risks in using Zoom or Teams, including any risk in relation to its security, privacy, or confidentiality, and request the mediator to proceed with the use of Zoom or Teams.

### **Cancellation Policy – Mediation**

19.If the parties need to change or cancel scheduled session(s), they agree to give the Mediator the following notice:

- a. At least 2 business days’ notice for a half-day session;
- b. 5 business days’ notice for one full day session;
- c. 7 business days’ notice for a two to five full consecutive day sessions;
- d. 14 business days’ notice for more than five-day sessions.

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

21.Unless otherwise agreed, the parties shall each be responsible for paying their portion of the cancellation fees set out above. The cancellation fee shall be charged to each of their accounts accordingly. If there is an issue, the question of ultimate responsibility shall be the subject of further mediation.

**Payment of Mediation and Accounts**

22.In this mediation, fees shall be paid by each party as follows:

PARTY 1 50%

PARTY 2 50%

23.We agree to the following payment method:

- a. Retainer in the amount of \$\_\_\_\_\_ by each party due on or before \_\_\_\_\_; **and a**
- b. Credit Card Authorization form for each party.

24.The retainer funds are used for any case conference calls, preparation time, review of documents, emails, correspondence, etc., attendance at mediation, to dictation and review and revise of any mediation reports. Should an agreement be reached and the funds in trust are in excess, we will return and refund the remainder to each party in the method of payment. Should the funds in trust be exhausted, this provides Moe Hannah LLP the authorization to use the credit card authorization on file.

25. Accounts will be rendered within 5 days of the mediation and the credit card accounts will be debited immediately.

**Execution of Agreement**

26. We have read, understood, and agree to each of the provisions of this Agreement.

27. This Agreement can be signed in Counterpart.

\_\_\_\_\_  
**PARTY 1**

Date: \_\_\_\_\_

\_\_\_\_\_  
**PARTY 2**

Date: \_\_\_\_\_

\_\_\_\_\_  
BRADLEY R. MUSTARD  
Mediator

Date: \_\_\_\_\_