



## AGREEMENT TO MEDIATE

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1. We \_\_\_\_\_ and \_\_\_\_\_ agree to participate in mediation with Heidi Ruppert ("the Mediator") 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 decide how the disputed matter(s) should be resolved.
4. We acknowledge that although the mediator will provide us with information about the law and how the law may apply to our individual circumstances, she will not provide either one of us with any legal advice at any time.

### THE PROCESS

5. Where the pre-mediations and mediations take place virtually, we understand that these virtual meetings will be conducted using the ZOOM platform. By accepting the ZOOM link(s) we agree to the terms set out in the Consent to Online Mediation.
6. We understand that we will have individual and confidential pre-mediation meetings with Terry McCarthy (the intake mediator) prior to our first joint session with our mediator, Heidi Ruppert.
7. We will meet jointly with the mediator, Heidi Ruppert, to try to settle our dispute(s).
8. We recognize that, from time to time during our joint mediation session or sessions it may be beneficial to us, and it is a normal part of the mediation process, for the mediator to meet separately with either or both of us. We also recognize that the mediator may meet with one of us for a longer or shorter period than the other. This process is known as "caucusing."
9. We both acknowledge that from time to time, the mediator may need to communicate with our lawyer and other experts by telephone, email, or letter.
10. We acknowledge that it is our responsibility to raise issues requiring resolution and that it is not the mediator's responsibility to raise issues on behalf of either one or both of us.
11. 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 lawyer. The mediator has strongly encouraged each one of us to receive independent legal advice before signing any Agreement negotiated during the mediation process.

### COURT PROCEEDINGS



12. We agree that to maximize our opportunities for settlement during the mediation process, we will not start any court proceedings. We agree to suspend court proceedings during the mediation process.

#### FINANCIAL DISCLOSURE

13. We understand the importance of negotiating in good faith during the mediation process. We agree to exchange financial documents as required by the mediator and our lawyers. 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.
14. We understand that 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 Heidi Ruppert will not retain any expert without our consent. We are responsible to pay expert's fees and disbursements.

#### PARTY AND MEDIATOR CONFIDENTIALITY

15. We agree that the mediation process in which we agree to participate is "closed mediation."
16. Neither one of us, nor 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. We understand this means that if we do not reach an agreement about any issue(s) in dispute, neither one of us, our lawyers, nor the mediator, may disclose to the Court or an arbitrator or any decision maker, any information and/or documentation disclosed during the mediation process, or any offer made during the mediation process to the court or to an arbitrator in writing or verbally. If there is no agreement, the only information that may be communicated to the Court, an arbitrator, or to any decision maker, is the fact that we participated in mediation and were not successful in negotiating an Agreement.
17. 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 pre-mediation, joint session or during a caucus session. Similarly, we acknowledge that the mediator will not produce any materials or documents to anyone who is not a party to 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 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, if 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.



18. 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 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 of the mediation.

#### **LEGAL ADVICE**

19. We both acknowledge that either or both of us may seek legal representation or legal advice prior to, during or after the mediation process. Our lawyers may attend the mediation on mutual consent and arranged in advance.
20. We acknowledge that our mediator advised us 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 law. In addition, we acknowledge that the mediator has advised us to obtain independent legal advice before signing any Agreement prepared by her.
21. There may be occasions on which either one of 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 that the mediator advised to obtain independent legal advice and either or both of us waived the right to do so.
22. 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**

23. We acknowledge that our participation in mediation is entirely voluntary. While each one of us intends to participate in the mediation process 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**

24. 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**

- 25. We agree to pay to the mediator's fee in accordance with the Payment Policy which we signed separately. We acknowledge that the mediator will charge fees for time spent working on our file, including: 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.
- 26. In addition, we agree to pay disbursements incurred by the mediator including professional fees paid by Ruppert McCarthy that incurred on our behalf with our consent (for example obtaining a pension valuation).
- 27. 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 required by the mediator prior to an Agreement being prepared.

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

- 28. We acknowledge that Heidi Ruppert will act only as a mediator for us and not as a lawyer as we negotiate a resolution of issues outstanding between us.
- 29. 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**

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

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**Client** Dated

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**Client** Dated

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**Heidi Ruppert** Dated

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