

**AGREEMENT TO MEDIATE AND TERMS OF MEDIATION**  
**(the “Agreement”)**

The Parties, the Solicitors and Professional advisors (defined below herein as Signatories) have entered into Mediation with Brian J. Wilson and Kimberly A. Whaley (the “Mediators”) with the intention of reaching a settlement of their dispute.

The terms and provisions of the within Mediation Agreement are as follows:

**THE MEDIATION AGREEMENT:**

1. The Mediators are neutral facilitators who will assist the Parties to reach their own settlement. The Mediators are neither advocates, nor advisors to any of the Parties. The role of the Mediators is to assist the Parties in their negotiations and in settling their dispute.
2. The Mediators do not offer legal advice, nor do they provide legal counsel to any Party or their lawyers. In the event there are unrepresented Parties, the Mediators will not provide or offer legal advice to such unrepresented Party or Parties. Each Party is responsible to, if he/she chooses, retain his/her own lawyer in order to be properly counselled about his/her legal interests, rights and obligations, and the implications of settlement.

**THE TERMS AND THE PROCESS OF THE MEDIATION:**

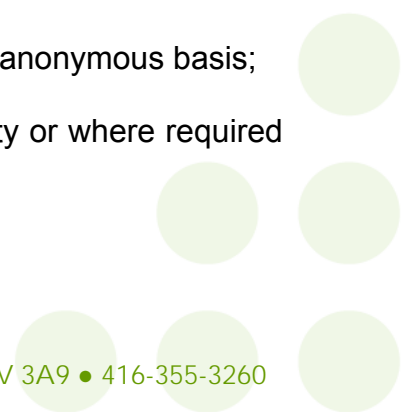
3. It is understood that in order for Mediation to succeed, open and honest communication is essential. Accordingly, all written and oral communications, negotiations and documents exchanged during the course of the Mediation shall be treated by all Parties as privileged, absolutely confidential and without prejudice; and therefore:
  - (a) The Parties agree to work towards settlement of the issues raised in their Matter, Application, Motion, or Action and set out in their Mediation Brief, (hereinafter referred to as the “Dispute”) through the mediation process on the terms contained in the within Agreement.
  - (b) The Parties and their solicitors and advisors agree that all communications and documents shared, which are not otherwise

discoverable, or otherwise producible outside of the mediation process, shall be held without prejudice, privileged, and shall be kept confidential as against the outside world, or any other person, entity or individual, and shall not be used in discovery, cross-examination, a trial or in any other way, in this or any other proceeding.

- (c) The Mediators shall not reveal the names of the Parties or anything discussed at Mediation unless expressly requested or authorized to do so by all Parties.
- (d) The Parties and their solicitors and professional advisors agree not to subpoena or seek any Court Order or use any other legal process in an attempt to demand the production of any records, notes, charts or other, of or from the Mediators in any legal or administrative proceedings concerning the Dispute. To the extent that they may have the right to demand these documents, that right is now and forever hereby waived.
- (e) The Parties understand that the Mediators will shred and destroy all documents they have been provided with immediately following the Mediation, and will keep no documentation or file relating to the Mediation, except this Agreement.

**MEDIATORS' CONFIDENTIALITY:**

- 4. Neither the Mediators, nor the Parties will disclose to anyone who is not a Party or acting on behalf of a Party, any materials submitted to the Mediators except:
  - (a) to the lawyers or other professionals retained on behalf of the Parties or to non-parties and consented to in writing by the Parties, as deemed appropriate or necessary by the Mediators;
  - (b) to any other individual, providing the Parties have provided written consent;
  - (c) for research or educational purposes, on an anonymous basis;
  - (d) where ordered to do so by a judicial authority or where required to do so by law; and,



- (e) where the information suggests actual or potential threat to human life, safety, or the commission of a crime in the future.

**RIGHT TO WITHDRAW:**

- 5. While the Parties intend to continue with Mediation until a settlement agreement is reached, it is understood that any of the Parties may withdraw from Mediation at any time.
- 6. If the Mediators determine that it is not possible to resolve the issues through Mediation, they may terminate the process after conveying their unilateral decision to the Parties to do so.

**NO SUMMONS TO WITNESS:**

- 7. At no time will any Party or its solicitor or professional advisors call the Mediators as witnesses or as witnesses to testify as to the fact of the mediation or as to any oral or written communication made at any stage of the mediation. Subject to the provisions herein, the Mediators shall be deemed to be prohibited from giving evidence in any context. No Party or its solicitors or professional advisors shall summons, subpoena, or seek access to any documents prepared for or in connection with the mediation, including but not limited to, any records, notes, charts, or other of the Mediators other than this Agreement to mediate. Any Party or the Mediators may produce and rely upon this Agreement to mediate as proof of the terms and conditions by which the mediation was governed.

**MEDIATION FORMAT:**

- 8. The Mediators may meet, either together or separately, with each of the Parties and counsel and may meet in caucus or otherwise as the Mediators choose. The Mediators may recommend a pre-mediation session with a subsequent full Mediation. The format should be discussed with the Mediators prior to the mediation date.

**AUTHORITY TO SETTLE:**

- 9. The Parties or those representing them at the Mediation shall have full, unqualified authority to settle the Dispute at the Mediation as a condition of their participation and the within Agreement.

**LEGAL OR ACCOUNTING REPRESENTATION:**

10. The Parties agree that they may seek legal representation or advice prior to, or during the Mediation. They will have lawyers present at the Mediation if they so desire. Although the Mediators are qualified lawyers, and one is also a qualified Chartered Accountant, they will not provide legal representation or legal or accounting advice to any Party at any time and any statements made by them shall not be deemed to be characterized in any way as legal, or accounting, advice or representation. The Mediators have no duty to assert or protect the legal rights and responsibilities of any Party, to raise any issue not raised by the Parties themselves, or their Counsel, or to determine who should, or should not participate in the Mediation.

**MEDIATION SESSION(S):**

11. If the Parties require a further mediation session or sessions, they will attend on a mutually agreeable date or dates, and the terms of the within executed Mediation Agreement shall continue and apply, *mutatis mutandis*, to each further session or sessions.

**COSTS OF THE MEDIATORS AND MEDIATION:**

12. The Mediators shall charge and shall be paid by the Parties for their time spent in preparing for and conducting the Mediation at their combined hourly rate of \$600.00 plus expenses, disbursement and HST. The Mediators' combined hourly fee of \$675.00 per hour shall be charged beyond 5:00 p.m., on the date of Mediation.

The Parties will immediately submit a retainer fee of \$8,000.00 to cover the venue, and to compensate the Mediators for a preliminary review of the mediation materials. Any additional fees will be billed and are due and payable upon receipt of the invoice.

The non-refundable \$8,000.00 retainer will be acknowledged as soon it is received from the Parties.

The Mediators are entitled to compensation for all time spent on the Mediation, including preparation time, telephone time and attendance at Mediation sessions. Travel time is charged at the full hourly rate.

The costs remitted will also include a flat fee of \$500.00 plus HST, for time spent on case administration, including initial intake calls,

scheduling, postage, fax and file administration. If the case settles during administration or is withdrawn after the Agreement to Mediate has been signed, or is cancelled less than two days prior to the Mediation, the Mediators will retain a further non-refundable administration fee of \$500.00 plus HST, and will bill the Parties for any Mediation services already performed.

Cancellation of the mediation seven business days or less before the scheduled mediation date bears the following charges: \$2,500 for preparation and material review; plus the administration flat fee charges; plus any out-of-pocket expenses incurred by the mediators, plus HST.

The Mediators will render their account to the Parties who may agree among themselves and for their own purposes that it shall be charged to the assets of the Estate and/or paid by the Parties equitably or as otherwise agreed. The Parties agree to take all steps required to ensure that the Mediators' account is promptly paid within no later than fifteen (15) days following the completion date or dates of the Mediation Session. The costs and disbursements of the venue and associated costs shall be borne by the Parties.

#### **DOCUMENTING SETTLEMENT:**

12. Where an agreement as to the settlement is reached, the Parties or their Counsel will draft any settlement documentation / Minutes of Settlement and any releases deemed necessary or required by them as Parties.

#### **LIMITED LIABILITY AND INDEMNIFICATION:**

13. The Parties hereby agree to release the Mediators from any and all claims arising out of their failure to reach agreement or their decision to enter into any agreement or any other aspect of the mediation process. Further, the Mediators make no representation that the Parties or Participants will reach an agreement on any of the issues, disputes or controversies discussed in the mediation. Any Party who brings any claim, action or proceeding of any nature against the Mediators or who seeks to have the Mediators testify, shall be responsible to indemnify the Mediators for any expenses, loss or damage incurred, including without limitation, legal fees and expenses incurred in connection with such claim, action, or proceeding brought by such Party or Participant.



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