

AGREEMENT TO MEDIATE
(for mediation)

BETWEEN:

*

and

*

Sue Paterson (“the mediator”)

The parties retain the mediator in accordance with the following process:

1. The mediator is an impartial third party who is not acting as the solicitor for either party, and is not in a solicitor and client relationship with either of them.
2. The issues to be addressed in mediation shall be jointly presented to the mediator by the parties and may include legal matters that are before a court.
3. The mediation will be held in private. Other professionals or persons may be in attendance with the consent of all parties and the mediator. All third parties must agree to be bound by paragraphs 12 and 15 herein.
4. Mediation is a voluntary process. Any party or the mediator may terminate the process at any time.

5. The mediator shall not be liable to any party for any act or omission in connection with a mediation conducted under this agreement.
6. The mediator will attempt to help the parties reach a mutually satisfactory resolution of all matters before the mediator, but she has no authority to impose a settlement on the parties. The mediator is authorized to conduct a joint and separate meeting with the parties, in her discretion, and to make recommendations for settlement.

INTAKE PROCEDURE

7. The mediator will first meet each party separately, with or without counsel, to assess if the case is appropriate for mediation and to identify the issues, goals and concerns of each party. This “screening/intake” meeting is confidential between each party and the mediator subject to paragraph 13. Thereafter, the parties and the mediator will meet together, either with or without counsel, as they may agree.
8. The mediator may meet or communicate with either party or their counsel separately at any time. The mediator may, in her discretion, disclose information or documents provided in such private meetings (the “caucus”) to the other party, and /or to a party’s lawyer, unless agreed otherwise during the caucus.

MEDIATOR NOT PROVIDING LEGAL SERVICES OR ADVICE

9. The parties shall obtain, from their legal and other advisors, appropriate legal, tax and other advice throughout the mediation process. The mediator will not provide legal advice to them individually or collectively. If during the course of the mediation she expresses an opinion or comments on an issue, the parties acknowledge that the opinion or comment is not to be construed as constituting a statement of the law or legal advice in any respect. Any documents prepared by the mediator, including Memorandum of Understanding, support calculations, property division calculations and draft separation agreements, shall be prepared strictly on the basis of the parties’ undertaking that they will each obtain

independent legal advice on such draft documents. The parties agree that they will each obtain independent legal advice on the terms of any proposed settlement.

NO BINDING AGREEMENT CONCLUDED IN MEDIATION

10. The parties understand that they will not conclude a binding agreement in mediation. Any binding agreement shall only be made by the parties following mediation and with the advice of their lawyers.

FINANCIAL AND OTHER DISCLOSURE

11. The parties shall provide all information and documentation requested by the mediator. If requested by the other party, counsel or the mediator, each party shall complete and exchange a sworn financial statement.

CONFIDENTIALITY

12. The mediator and the parties shall keep confidential all information prepared for the mediation, or provided, disclosed or exchanged during or for the purpose of mediation. This includes all written or other form of documentary material provided to or prepared by the mediator, the parties or third parties, unless otherwise discoverable. This rule does not prevent the parties from providing necessary information and documents to people whose advice they need in order to make informed decisions in mediation.
13. Notwithstanding paragraph 12, the mediator may disclose information about the mediation in the following circumstances:
 - (i) to communicate with the lawyers for the parties, and to third party advisors retained by a party or both parties;
 - (ii) where ordered to do so by a judicial authority;
 - (iii) where required to do so by law, including obligations to report a child in need of protection; and

- (iv) where the information discloses an actual or potential threat to human life or safety.

WITHOUT PREJUDICE SETTLEMENT DISCUSSIONS

- 14. The parties agree that the mediation sessions are settlement negotiations and that any disclosures, including the mediator's file, are inadmissible in any litigation, arbitration or other proceeding to the extent permitted by law. The parties agree to not summons or otherwise require the mediator to testify or provide records or notes in any proceedings. No transcripts or recordings shall be made of the mediation sessions.

- 15. In particular, the parties agree that they shall not rely on or introduce as evidence in any arbitral or judicial proceedings:
 - (a) any views expressed or suggestions made by the other party in respect of the possible settlement of the matter, whether orally or in writing;
 - (b) any admissions or apologies made by the other party in the course of the mediation, whether orally or in writing;
 - (c) the fact that the other party indicated a willingness to accept a proposal or recommendation for settlement made by the mediator;
 - (d) any views or proposals expressed by the mediator, or
 - (e) any information provided or intake form completed by a party and provided to the mediator in the course of the intake/screening meetings.

- 16. Paragraphs 12-15 shall apply to any third party present at the request of either party or the mediator.

TERMINATION OF MEDIATION

- 17. The mediation shall be terminated:
 - (a) by a written statement by one or more of the parties that the mediation is terminated;

(b) by a written statement by the mediator that further efforts at mediation would not be helpful.

18. The parties consent to the destruction of all notes and documents in the file at the end of the mediation process.

19. The parties shall pay the mediator's fees at the rate of \$250.00 per hour plus HST. The following cancellation policy applies to all cancelled (but not postponed) mediations:

- **Notice of 48 hours or less:** all preparation time, expenses/disbursements plus a full day cancellation fee.
- **Notice of 48-120 hours:** all preparation time, expenses/disbursements plus a full day cancellation fee.
- **Notice of five business days:** all preparation time, expenses and disbursements

Dated at Newmarket _____

(party)

(party)

(Third Party (counsel) as to Paragraph 12 - 15)

(Third Party (counsel) as to Paragraph 12 - 15)

(Mediator)