

## Mediation Agreement

This is an agreement between:

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and

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(the 'parties') and Jim McCartney (the 'mediator') to enter mediation with the intent of resolving matters in dispute between them. The parties and the mediator agree as follows:

### **1. Nature of Mediation**

The parties appoint the mediator to mediate their negotiations. Mediation is a voluntary agreement-reaching process in which the mediator assists parties to reach agreement in a collaborative, consensual and informed manner. The mediator has no power to decide disputed issues for the parties. The parties should have independent legal advice throughout the mediation process and obtain legal advice regarding any mediated agreement before signing that agreement. The mediator's objective is to facilitate the parties themselves reaching their most constructive agreement. The mediator will work on behalf of each party equally and the mediator cannot render legal advice to any party. Any mediator recommendations or statements do not constitute legal advice.

### **2. Scope of Mediation**

It is for the parties, with the mediator's concurrence, to determine the scope of the mediation and this will be done early in the mediation process.

### **3. Mediation Is Voluntary**

All parties here state their good faith intention to resolve the matters in dispute by agreement. However, any party may withdraw from or suspend the mediation at any time, for any reason.

The mediator may suspend or stop the mediation if he feels that an impasse has been reached, or if he concludes that he can no longer effectively perform his role.

### **4. Confidentiality and Security**

The mediation will be strictly confidential. Mediation discussions, written and oral communications, draft resolutions, and any unsigned mediated agreements shall not be admissible in any court or arbitration proceeding. Only an agreement signed by the parties or their counsel may be so admissible. The parties agree to not call the mediator to testify concerning the mediation or to provide any materials from the mediation in any court, arbitration, or other proceeding between them. The parties and the mediator consider the mediation to be settlement negotiations. The law of Alberta applies to this agreement.

No one will record or permit the recording of any part of the mediation without the consent of the parties and the mediator.

If any part of the mediation is conducted using technology which permits a participant to do so not in the physical presence of other participants, the parties acknowledge that they have made their own inquiries

about the suitability of the technology and about any risks associated with the use of the technology including, without limitation, security, privacy, and confidentiality.

**5. Limitation of Liability**

The mediator shall not be liable to any party for any act or omission concerning the mediation.

**6. Full Disclosure**

Each party will fully disclose all relevant non-privileged information and documents as requested by the mediator or any other mediating party if the mediator determines that the disclosure is relevant to the mediation discussions. The mediator may destroy hard copy and delete electronic documents after 60 days following completion of the last mediation session.

**7. Mediator Impartiality**

The mediator will remain impartial during the mediation process. The mediator may discuss the mediation process and the substance of the dispute with counsel for any party. The mediator may communicate separately with an individual mediating party or their counsel and may in his discretion disclose such communication to other mediating parties unless otherwise agreed or instructed.

**8. Litigation**

The parties will refrain from pre-emptive manoeuvres and adversarial legal proceedings (except in the case of an emergency necessitating such action), while actively engaged in the mediation process.

**9. Mediator Fees**

The mediator’s fee shall be \$800.00 per hour for time spent with the parties, for time required to study documents, research issues, correspond, telephone call, prepare draft and final memoranda, and do such other things as may be reasonably necessary to assist the parties to reach full agreement. The mediator’s fee shall be for not less than three hours for the mediation session regardless of the time spent. Mediation fees and related expenses shall be borne equally by the parties unless otherwise agreed.

The parties shall be responsible for the mediator’s actual preparation time plus four hours per day if any mediation session is cancelled, postponed, or adjourned without at least 28 days prior notice.

**10. Binding on Representatives.**

This agreement shall benefit and be binding on the parties and their respective representatives or other persons they have caused to be present during the mediation proceedings.

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Jim McCartney

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