

CIVIL AGREEMENT TO MEDIATE

BETWEEN:

OF THE FIRST PART

AND:

OF THE SECOND PART

AND:

MARK-JOHN O'NIONS
(the "Mediator")

OF THE THIRD PART

WHEREAS

- A. We agree to meet with the Mediator to attempt, in good faith to settle the dispute between us without engaging in an adversarial contest;
- B. By signing this Agreement, we want to show that we intend to conduct this process in good faith and in an honest manner and that we are going to make a serious attempt to resolve the issues in dispute fairly;
- C. We wish to employ the Mediator to assist us as an objective third party who will not promote or favour the interests of one person over the other.

THEREFORE the parties understand and agree as follows:

- 1. We appoint and retain Mark-John O'Nions to act as Mediator of the dispute between us.
- 2. We understand that mediation is a process whereby we attempt, with the assistance of an impartial third party, to reach a consensual settlement of issues relating to our dispute.
- 3. We acknowledge and agree that we each intend to make full disclosure of all relevant and pertinent information relevant to the issues being mediated. We each intend to make disclosure of all documents and information necessary so that each

- of us can make an informed decision on the issues being mediated. We also agree and understand that disclosure is an on-going obligation and as new information arises or old information changes, we intend to make on-going disclosure.
4. We understand and acknowledge that any agreement entered into as a consequence of mediation may be set aside if full, frank and updated disclosure has not been made.
 5. We understand and agree that while the Mediator is a lawyer, he is not, throughout the mediation process, acting as legal counsel for either party. We understand that the Mediator must remain neutral in all contacts with the parties and that he will not advance the interests of one party over the other.
 6. We agree that except for information that a child is in need of protection and a report must be made to the Ministry for Child and Family Development, all communications during the mediation are private and confidential. We each understand that the mediator may disclose to any party to the mediation information provided by the other party that the mediator believes to be helpful and relevant.
 7. We are aware that in the following circumstances, confidentiality could be breached:
 - a. Information that a child is in need of protection;
 - b. The Mediator has been made aware that a violent crime is being planned or has been committed;
 - c. The Mediator is subpoenaed to testify to a Court.
 8. We agree that mediation sessions are “off the record” settlement negotiation and matters discussed are inadmissible in any later arbitration or litigation of this dispute, to the extent allowed by law. We agree that we will not subpoena or require the Mediator to testify or produce records, notes or work product in any future proceedings should matters in dispute between us not be settled at mediation.
 9. We agree that if either of us, in breach of this Agreement, calls the Mediator as a witness in any legal proceeding, the party who calls the mediator as a witness will:
 - a. Immediately pay the mediator the sum of \$5,000 as liquidated damages for breach of contract; and
 - b. Pay the mediator the sum of \$495 per hour for the actual time spend by the mediator as a result of being called as a witness (including preparation, travel time, time spent testifying), regardless of whether or not the Mediator actually testifies in the legal proceeding;

- c. If the other party consents to the mediator testifying in such legal proceedings, we agree that we will be jointly and severally liable for payment of the money set out above.
10. The mediation process shall continue until terminated by any of the parties, and the mediation process may be terminated in one of the following ways;
 - a. The parties reach an agreement on the issues and this agreement is reduced to writing and signed;
 - b. When the parties and/or the Mediator decide that the issues cannot or are not likely to be resolved by mediation and when this decision is confirmed in writing by the Mediator.
11. We agree that the Mediator will be paid \$495 per hour, plus disbursements, for all work done including pre-mediation meetings, mediation sessions, meetings, telephone calls, correspondence, drafting and reviewing of documents and other services, including any necessary travel time. GST and PST may be charged on the mediator's fees and disbursements.
12. We agree that we each will be responsible for the fees of the Mediator, and that fees will be payable at the end of each session. Interest at the rate of 1.5% per month (18% per annum), will be charged on all overdue accounts.
13. We agree that cancellations made within two business days of the scheduled mediation will result in a cancellation fee of \$495 plus applicable taxes payable to Mark-John O'Nions. If one party fails to attend the mediation then the failing party will be responsible for the \$495 cancellation payment to the Mediator.
14. We confirm that the Mediator has not given legal advice with respect to this Agreement to participate in Family Law Mediation and each is encouraged, if he or she has any questions or concerns, to review this Agreement with independent legal counsel.
15. Although the Mediator may draft the settlement agreement or other documents to record the consensus reached by the parties, the Mediator will not advise the parties legally concerning the contents thereof. Since we may have adverse interests, we understand that we should separately seek independent legal advice prior to mediation and concerning any legal questions arising during mediation. Also, we should seek separate independent legal advice to review any document resulting from mediation before signing. Each party's lawyer is encouraged to contact the Mediator to discuss the consensus and each party gives the Mediator permission to discuss terms of any document resulting from mediation with his or her lawyer.
16. The Mediator shall not be liable to any party for any act or omission in connection with a mediation conducted under this agreement.

17. The parties release and indemnify the Mediator from any claims arising out of any agreements made under or as a consequence of the mediation.

This Agreement is entered into on the day of , 20__ at Vancouver, British Columbia

Name:

Signature:_____

Name:

Signature:_____

Name: Mark-John O’Nions Mediator

Signature:_____