

**VICTORIA L. SMITH, LL.B., C.Med., Cert. CFM (FMC)**

**MEDIATION CONTRACT**

**B E T W E E N:**

**SALLY GREEN**

- and -

**DAVID BROWN**

- and -

Victoria L. Smith (The Mediator)

**1. Ms. Smith's Role**

The parties agree that Ms. Smith is a neutral intervenor whose role is to help them to resolve the dispute between them to their mutual satisfaction. She will not make decisions about "right or wrong" or tell the parties what to do. The parties understand that although Ms. Smith is a lawyer, she will not act as a lawyer for, or give legal advice to, any party in mediation. There is no solicitor-client privilege between the parties and Ms. Smith.

**2. Independent Legal Representation**

The parties are strongly encouraged to obtain independent legal advice regarding the dispute from the outset of the mediation. The parties understand that if one or all of them choose to mediate a settlement without independent legal advice, they risk making decisions without being fully informed of their legal rights and obligations. They understand that any agreement reached without the benefit of independent legal advice may not later be enforced by a court of law.

If any party chooses not to obtain independent legal advice, she/he agrees to indemnify and save Ms. Smith harmless from any and all liabilities arising out of the mediated agreement.

**3. Confidentiality - Closed Mediation**

Ms. Smith will not voluntarily disclose to anyone who is not a party to the mediation, anything said in the course of the mediation, or any materials submitted, without the written consent of all parties, **EXCEPT:**

- (a) To the lawyers for the parties, at such times as deemed necessary by Ms. Smith;
- (b) For research or educational purposes, on an anonymous basis;

- (c) Where ordered to do so by a judicial authority;
- (d) Where required to do so by law;
- (e) Where the information suggests an actual or potential danger to human life or safety.

The parties agree that Ms. Smith will not be called as a witness to give any evidence or make any report in any legal proceedings, whether already started, or which may be started in the future. The parties agree that evidence of anything said or done in the mediation, or any admission or communication made in the course of the mediation, including progress reports or letters from Ms. Smith to the parties, is inadmissible in any current or future litigation. Despite this, the parties agree that sworn Financial Statements and documents exchanged to support figures and values in the Financial Statement are admissible in any current or future litigation.

#### **4. Progress Reports**

Ms. Smith will prepare progress reports following mediation sessions.

#### **5. Contact with Lawyers**

Each party authorizes Ms. Smith to speak to his or her lawyer at any time.

#### **6. Involvement of Non-Parties**

It may be useful to involve non-parties in the mediation from time to time, in order to help to resolve the dispute. Ms. Smith will seek the consent of the parties to involving another person in the mediation where she feels it would be of assistance.

#### **7. Disclosure of Information**

The parties agree to make full and complete disclosure of all information, whether written or oral, relevant to the issues to be mediated. The parties understand that failure to make full disclosure may risk the agreement being set aside in the future.

#### **8. Mediation Sessions**

Ms. Smith will schedule the time and place of the mediation sessions with the parties.

Ms. Smith may meet with the parties jointly and/or individually. Where individual meetings are held, Ms. Smith may disclose the content of the individual session to the other party unless otherwise specifically agreed between the party and Ms. Smith.

### 9. Cancellation of Mediation Sessions

The parties will be billed for any sessions cancelled on less than 24 hours' notice at the normal hourly rate which would have been charged for the amount of time booked for the session, unless the cancellation is due to a medical emergency.

### 10. Cost of Mediation

Ms. Smith will charge for all services related to the mediation, including sessions, telephone conversations with the parties and counsel, review of materials, letter or report writing, correspondence to and from counsel, preparation of net family property statements and Divorcemate calculations, and preparation of memorandum of understanding, at the rate of \$\_\_\_\_\_ per hour plus G.S.T. plus disbursements, e.g. photocopies, fax and courier. Ms. Smith's fees are subject to change on notice to you.

The parties agree to share the cost of the mediation in the following proportion:

\_\_\_\_\_ % paid by Sally; and  
\_\_\_\_\_ % paid by David

The cost of mediation will be paid by the parties in either of the following ways:

\_\_\_\_\_ Each party providing an initial retainer in the amount of \$\_\_\_\_\_ (including G.S.T.) and replenish that retainer if required.

\_\_\_\_\_ Each party to pay an initial retainer of \$\_\_\_\_\_ plus G.S.T. for a total of \$\_\_\_\_\_ and to pay his or her share of Ms. Smith's fee at the end of each mediation session for the cost of the mediation session, any outstanding amounts from previous accounts and any estimated amounts for work to be done between mediation sessions.

### 11. Conclusion of Mediation

Either party has the right to withdraw from the mediation process at any time on notice to Ms. Smith and other party. Ms. Smith has the right to suspend or end the mediation process at any time where, in her opinion, continuing the process would result in harm or prejudice to one or more of the participants.

At the request of the parties, Ms. Smith will draft a Memorandum of Understanding which sets out the agreements reached by the parties in mediation. The Memorandum of Understanding is not a legally binding document until it is formalized by and signed in the presence of counsel.

**12. Disposing of Assets**

The parties agree that they will not, during the course of the mediation, gift, transfer, mortgage, encumber, or otherwise dissipate or dispose of any assets of any kind which are the subject of the mediation without the prior written consent of the other party.

**13. Legal Proceedings**

The parties agree that they will not start or take any fresh steps in any legal proceedings between them while the mediation is in progress.

**14. Privacy Policy**

Ms. Smith may collect, use, disclose and retain the parties' personal information in order to provide mediation services, to administer her time and billing data bases and to include the parties in any direct marketing activities.

Ms. Smith may collect the parties' personal information directly from the parties or from others.

By signing this contract the parties consent to the use, retention and disclosure as described of their personal information collected by Ms. Smith. The parties may withdraw their consent to the collection, use, retention and disclosure of their personal information as described above by giving her reasonable written notice. The parties' withdrawal of consent still allows Ms. Smith to use and disclose the parties' personal information to collect or enforce payment of amounts owing as a result of their prior or continuing use of Ms. Smith's services.

Each of the parties and Ms. Smith acknowledge that they have read this contract and agree to proceed with mediation on the terms set out above.

Dated:

\_\_\_\_\_  
**Victoria L. Smith, Mediator**

Dated:

\_\_\_\_\_  
**Sally Green**

Dated:

\_\_\_\_\_  
**David Brown**