Joy HRC Inc.

Alternative Dispute Resolution Services

Suite 1136

343 Preston Street,

Ottawa, Ontario

K1S 1N4

**AGREEMENT TO MEDIATE**

**AGREEMENT TO MEDIATE**

1. We and agree to participate in mediation with Kevin Sawyer (“the Mediator”) in order to try to settle our dispute(s).

**ROLE OF THE MEDIATOR**

2. We acknowledge that the role of the mediator is to assist us with negotiating a resolution of the issue(s) which are in dispute between us.

3. We acknowledge that the mediator will not make decisions about how the matter(s) in dispute between us should or must be resolved.

4. We acknowledge that although the mediator will provide us with information about the law and how the law may apply to our individual circumstances, she will not provide either one of us

with any legal advice at any time.

**THE PROCESS**

5. We understand that we will have individual and confidential meetings with the

mediator prior to our first joint mediation session if applicable.

6. We will meet with the mediator either individually or jointly to try settling our dispute(s).

7. We recognize that, from time to time during our joint mediation session it may be beneficial to us, and it is a normal part of the mediation process, for the mediator to meet separately with either or both of us. We also recognize that the mediator may meet with one of us for a longer or shorter period-of-time than the other. This process is known as “caucusing”.

8. We both acknowledge that from time to time, the mediator may need to communicate with our lawyer and other experts by telephone, email or letter. We give the mediator permission to do so.

9. We acknowledge that it is our responsibility to raise all issues which we feel need to be addressed in any final Agreement prepared for our consideration and that it is not the mediator’s responsibility to raise issues on behalf of either one or both of us.

10. Once we have reached a settlement of the issue(s) in dispute, the mediator will prepare a report which we will then each review with our lawyer. We have the option of using the report to draft an agreement or having the mediator draft an agreement for us at an additional cost. The mediator has strongly encouraged each one of us to receive independent legal advice before signing any Agreement that is negotiated during the mediation process.

**COURT PROCEEDINGS**

11. We agree that to maximize our opportunities for settlement during the mediation process, we will not start any court proceedings. We also agree that if court proceedings are ongoing at the time that we begin mediation, the court proceedings will be suspended while mediation is ongoing.

**FINANCIAL DISCLOSURE**

12. We understand the importance of negotiating with one another in good faith during the mediation process. We also understand that to have a valid and binding Agreement between us, we are required to make complete and full financial disclosure in a form acceptable to both of us, the mediator and our lawyers. We acknowledge that we will, from time to time,

be asked to produce documentation relating to various financial issues. We agree to produce whatever documentation is reasonably necessary to allow both of us to make informed decisions about the financial issues we are negotiating and to allow both of us the opportunity to receive independent legal advice relating to those issues.

13. We understand that from time to time, it may be necessary for us to consult with various experts in relation to income tax issues, valuation issues and other issues which may require expert opinions. We understand that the mediator will not retain any expert without our consent and that if an expert is retained, we will be responsible for paying the expert’s fees and disbursements.

**PARTY AND MEDIATOR CONFIDENTIALITY**

14. We agree that the mediation process in which we agree to participate in is a closed mediationmeaning that it will be without prejudice and confidential. Without prejudice means that everything said during the mediation, subject to certain limited exceptions, is legally treated as a without prejudice settlement discussion. Neither party nor the mediator may give evidence in a legal proceeding about what was said during mediation; only the terms of any settlement may be disclosed**.** Similarly, the mediation will be confidential.

15. Neither one of us, nor our lawyers, if any, will disclose to anyone outside the mediation process information and / or documentation received during the mediation process. All communications made by one of us to the other during the mediation process are confidential communications. We understand this means that if we do not reach an agreement about any issue(s) in dispute, neither one of us or our lawyers, may disclose any information and / or documentation

disclosed during the mediation process or any offer made during the course of the mediation process to the court or to an arbitrator in writing or verbally. In other words, if no agreement is reached during mediation, the only information which may be communicated to the court or to an arbitrator is the fact that we participated in mediation and were not successful in negotiating an Agreement.

16. We understand that the mediator will not disclose to anyone who is not a party to the

mediation process anything said during the mediation sessions whether during a joint session or during a caucus session. Similarly, we acknowledge that the mediator will not produce to

anyone who is not a party to the mediation process any materials or documents produced during the mediation process, except:

a. To the lawyers or other professionals retained on behalf of either or both of us to or to non‐parties, provided that we consent in advance, to the information and/or documentation being disclosed to any such person as deemed necessary by the mediator; **or**

b. To any other individual, provided that we consent in advance, in writing; **or**

c. For research or educational purposes on an anonymous basis; **or**

d. Where ordered to do so by a judicial authority or where required to do so by law; **or**

e. Where the information suggests that there will be actual or potential threat to human life or safety, or the commission of a crime and the information must be disclosed by law.

17. We acknowledge that at no time will either one of us or our lawyers call the mediator as a witness to testify about any verbal or written communications made at any stage during the course of mediation. Neither one of us will summons, subpoena or seek access to any documents prepared for or in connection with the mediation, including, but not limited to any records, notes or work product of the mediator other than this Agreement to Mediate. Either one of us or the mediator may produce and rely upon the Agreement to Mediate as proof of the terms and conditions by which the mediation was governed.

**LEGAL REPRESENTATION**

18. We both acknowledge that either or both of us may seek legal representation or legal advice prior to, during or after the mediation process. In addition, provided that we both agree and it is arranged in advance, we may have our lawyers present during mediation.

19. We acknowledge that we have been advised by the mediator to obtain independent legal advice about our respective rights and obligations under the current law as it relates to the issue(s) in dispute so that we can independently determine whether any proposed Agreement is fair in

law. In addition, we acknowledge that the mediator has advised us to obtain independent legal

advice before signing any Agreement prepared by him.

20. There may be occasions on which either one of both of us do not wish to review the draft Agreement with a lawyer before we sign it. In these circumstances, the Agreement will reflect the fact that we have both been asked to review the Agreement with a lawyer before signing it and that either one or both of us prefer not to do so.

21. We acknowledge that if we choose not to obtain independent legal advice before signing the

Agreement prepared by the mediator, we personally assume the risk of not doing so.

**PARTY’S RIGHT TO WITHDRAW FROM MEDIATION**

22. We acknowledge that our participation in mediation is voluntary. While each one of us intends to participate in the mediation process in an attempt to reach an agreement of the issue(s) in dispute, either one of us may withdraw from mediation at any time.

**MEDIATOR’S RIGHT TO TERMINATE MEDIATION**

23. We acknowledge that the mediator may, in his absolute discretion, terminate the mediation process if he deems the process to be frustrated, unreasonable or unsafe.

**MEDIATOR’S FEES**

24. We agree to pay to the mediator’s basic feein accordance with the Payment Policy which we signed separately. We acknowledge that the mediator fees include time spent working on our file, preparing for mediation sessions, participating in mediation sessions with us jointly or separately, communicating with either or both of us, our lawyers or other

professionals who we agree to consult from time to time by telephone or in writing, including by email and for drafting temporary, partial and / or final Agreements. However, extra costs may be incurred and will be communicated with the clients in a timely manner.

25. In addition, we agree to pay disbursements incurred by the mediator including professional fees paid by Kevin Sawyer or Joy Health & Research Centre Inc [*JOYHRC*] that are incurred on our behalf (for example obtaining a pension valuation).

26. We agree to pay the mediator before the mediation process begins.

27. We acknowledge that payments can be made by Visa, MasterCard, cheque, bank-draft, money order or exact cash.

**RELEASE OF LIABILITY ON THE PART OF THE MEDIATOR**

28. We acknowledge that our mediator will act only as a mediator for us and not as a lawyer as we negotiate a resolution of issues outstanding between us.

29. We release the mediator from all liability in relation to the terms of any Agreement which we negotiate during the mediation process.

**CONSENT TO MEDIATE**

30. Each of us has read this Agreement to Mediate and agrees to proceed with the mediation on the terms set out in this Agreement.

**Client** Dated

**Client** Dated

**Mediator** Dated