***MEDIATION CONTRACT***

**BETWEEN:**

**Name of Client**

**AND:**

**Name of Client**

**AND:**

**Barbara S. Cohen**

**(the "Mediator")**

**Because:**

The parties wish to settle matters in dispute between them without resorting to the adversarial process.

The parties, their lawyers and the Mediator will make a serious attempt to resolve all issues fairly in mediation.

**The Parties Agree:**

**1. Process**

Barbara S. Cohen will be the Mediator. The Mediator will act as an impartial facilitator to assist the parties in a negotiation aimed at the resolution of issues that have not been resolved between them. All parties will work with the Mediator to isolate points of agreement and disagreement, to identify their interests, to explore alternative solutions and to consider compromises or accommodations. The parties acknowledge that the Mediator is an impartial third party who does not act as a lawyer during the process and does not represent either the husband or the wife.

The spouses agree that the Mediator shall have the right to interrupt the mediation to refer the spouses to other professionals (social workers, psychologists, lawyers, accountants, etc.) as, in the opinion of the Mediator, the situation demands.

**2. Disclosure**

There will be full and timely disclosure by each of the parties to the other, and to the Mediator, of all information and documents relevant to the matters under discussion. The parties agree that the Mediator may provide any disclosure provided by them to the Mediator to the solicitors for both parties.

**3. Communication – General**

In the interests of efficiency and courtesy, the parties agree to the following rules governing their communication:

(a) They will not interrupt the other when speaking

(b) They shall not speak negatively about the other party in the mediation or elsewhere, whether or not the child/children (if any) is/are present

(c) A copy of all communications and documents sent to the Mediator shall also be sent at the same time to the other spouse.

**4. Without Prejudice Communications and Inadmissibility**

All communications between the parties, either with one another or with the Mediator privately, are settlement negotiations conducted on a without prejudice basis. All communications occurring in the context of the mediation are confidential, and are inadmissible in any legal proceeding. No party will subpoena the Mediator to testify or to produce records or notes. No party will disclose or attempt to compel disclosure of:

a) any views expressed or suggestions made by another party in respect of the possible settlement of the dispute;

b) any admissions made by a party in the course of the mediation;

c) the fact that another party had indicated a willingness to accept a proposal made by any party to the mediation.

Despite the above, the parties agree that all documentary disclosure produced during the mediation may be provided to the other party and to the lawyers representing both parties.

**5. Effecting a Settlement**

Where a settlement is reached in the dispute, the parties with the assistance of the Mediator and their lawyers will formalize the terms of the settlement agreement as soon as possible, either in a written agreement or in a court order.

**6. Independent Legal Advice**

The Mediator does not act as legal counsel for any party during the mediation. Each party is strongly advised to secure independent legal advice to ensure that legal rights and obligations, and the consequences of any potential settlement are fully understood. The parties understand that if a party does not seek independent legal advice, the agreement, or portions of the agreement, may be found to be unenforceable if challenged by either party in the future.

**7. Children**

The Mediator will at all times promote a settlement which is in the best interests of the child/children and will assist the husband and the wife to examine the separate and individual needs of the child/children, as distinct from their own needs and desires.

In cases where custody is or may become an issue, the spouses acknowledge that any spouse who resides apart from the child/children of the marriage may impact any legal claim he or she may have to custody of the child/children vis-à-vis the spouse who continues to reside with the child/children.

**8. Other**

You should not arrange to transfer any registered retirement or pension funds to your spouse without a written Separation Agreement or Court Order. If you do, there will be significant tax implications.

You should not purchase a home or disburse proceeds from the sale of a home without a written binding Separation Agreement.

CPP credits that you and your partner earned during the time you lived together can be combined and split equally when the relationship ends. As a result, the person with fewer credits – the lower earner – gets some of the credits earned by the other person – the higher earner. For more information visit:

[**http://www.servicecanada.gc.ca/eng/services/pensions/cpp/credit-split.shtml**](http://www.servicecanada.gc.ca/eng/services/pensions/cpp/credit-split.shtml)

Clients must be aware that there are limitation periods that apply to potential property claims against a spouse (married or unmarried) as follows:

A claim for an equalization of net family properties under the Family Law Act (Married Couples Only)

The earliest of:

6 years from the date of separation including living separate and apart under the same roof; or

2 years from the date of your Divorce

A trust claim (including constructive trust, resulting trust and unjust enrichment) against real estate holdings of your married or unmarried spouse:

10 years from the date of separation

A trust claim (including constructive trust, resulting trust and unjust enrichment) against any property other than real estate holdings of your married or unmarried spouse

2 years from the date of separation

**9. Ending the Mediation**

Participation in mediation is voluntary. A party or the Mediator may end the mediation at any time.

**10. Mediation Fees**

Mediation costs will be $330.00 per hour plus HST and will include time spent in sessions and outside sessions for work performed including communications, correspondence (including emails) and drafting of the Agreement where applicable. Payment will be required after each session for time spent in the session and a retainer for estimated work required by the Mediator prior to the next session. The estimated work is truly an estimate and doesn’t reflect any unforeseen time spent on the file, which is common. This contract will also authorize payment for all necessary disbursements which may include such items as courier charges, photocopies (if applicable, at 7.5¢ per copy) and long distance telephone calls. Disbursements may also include the costs to retain experts such as accountants, appraisers, actuaries or others on your behalf. I will not retain any experts without your prior approval.

If my associate Stephanie Szczesniak works on your file she will charge her hourly rate of $200.00.

There are also many services, such as gathering information and preparing routine documents, that my law clerks are well qualified to perform and at a lower cost. The law clerks work under my supervision, but may not give legal advice. My law clerks are Sandra Garvey, B. Comm. and Amanda Dickerson, B.A.; their hourly rate is $125.00 plus HST. Their time will not be charged for “routine” administrative work – only work requiring some expertise such as drafting Disclosure Briefs, Net Family Property Statements, etc.

The parties will share the fees and expenses equally unless otherwise agreed:

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**11. Apprentice Program**

The Mediator is part of a mentoring program to family mediators who are working towards their mediation accreditation (Acc FM). The accreditation process requires apprentices to observe family mediations conducted by an accredited mediator. In addition, Ottawa Law Students are required to observe mediations as part of their ADR curricula. Are you agreeable to having apprentices or law students sit in on one or more mediation sessions?

**YES NO**

**DATED** this \_\_\_\_\_\_\_\_\_\_\_\_\_\_day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2017

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HUSBAND -

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

WIFE –

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

MEDIATOR – BARBARA S. COHEN