

COHABITATION

**AGREEMENT TO MEDIATE**

BETWEEN:

\*  
("Party 1")

AND:

\*  
("Party 2")  
(Collectively, the "Parties")

AND:

**CHURCHILL LAW CORPORATION**

**WHEREAS**

- A. Party 1 and Party 2 have decided to cohabit or are cohabitating and wish to resolve all issues arising out of their cohabitation without engaging in an adversarial contest;
- B. Party 1 and Party 2 wish to resolve all issues related to their cohabitation by way of mediation and will retain the Mediator to assist them;
- C. Family Law mediation is a process of negotiation whereby the parties attempt, with the assistance of a neutral and impartial third party, to reach a consensual settlement of issues relating to their cohabitation or arising out of their impending cohabitation;
- D. The *Family Law Act* of British Columbia is designed to encourage people to resolve their differences and any dispute without court intervention;
- E. The signing of this Agreement shows the intention of the parties to this dispute, and their respective legal counsel, if applicable, and the Mediator that they wish

to conduct this mediation in good faith, and to make a serious attempt to resolve this matter fairly and equitably and in compliance with the *Family Law Act*.

THEREFORE, the parties agree as follows:

## **THE MEDIATION PROCESS**

1.1 The Parties agree to retain Churchill Law Corporation to provide the services of Bev Churchill, KC (the “Mediator”) to act as mediator to assist the parties to resolve matters respecting issues arising out of their cohabitation.

1.2 The Mediator confirms that she meets the professional requirements set out in subsection 4(2) of the *Family Law Act Regulations*, and is qualified under the Rules of the Law Society of B.C. to act as a family law mediator.

1.3 It is understood that, although the Mediator is a lawyer, she is not acting as legal counsel for either of the parties and will not be giving legal advice. It is further understood that the Mediator is a neutral third party with no personal interest in the outcome of the dispute and who will remain impartial in all contacts with the Parties and will not promote the interests of one of the Parties over the other.

1.4 The Mediator will first meet with each party separately (by telephone or in person) to assess if the case is appropriate for mediation and to identify the issues, goals and concerns of each party. This intake/screening meeting, including all information and forms provided by each party prior to the intake/screening meeting, is confidential between each party and the mediator, subject to the confidentiality exceptions set out herein.

1.5 The Mediator may, in her discretion, share information learned or provided as part of the intake/screening process with that party’s lawyer.

1.6 During the time set for the mediation session, there will be an effort to clarify the issues, to isolate points of agreement and disagreement, and to explore and negotiate alternative solutions and options for settlement.

1.7 Each of the parties will be present at the session unless otherwise mutually agreed. No persons other than the parties and their legal counsel, where applicable, will be present except by mutual agreement.

1.8 It is understood that the mediation session will involve the parties meeting jointly with the Mediator, however, separate meetings may also be held between the Mediator and either of the parties. Where the parties are accompanied by legal counsel, they may meet privately with their counsel at any time and may meet with their counsel and the Mediator.

1.9 The goal of mediation is to reach a fair and durable agreement.

1.10 The agreement will be reduced to writing either by the Mediator or by counsel for one of the Parties, and signed, and each party will abide by the agreement. No agreement will be binding until it is in writing and is signed.

## **FULL DISCLOSURE**

2.1 It is intended that each party will disclose fully and honestly all the information and documents relevant to the issues being mediated. It is understood that any agreement entered into as a consequence of mediation may be set aside if disclosure of matters material to the issues being mediated has not been made.

2.2 It is agreed that the Mediator may disclose fully to each party all information provided to her by the other party, or any other relevant information of which she becomes aware.

## **CONFIDENTIALITY**

3.1 It is agreed by each of us that all *mediation communications* are private, without prejudice and will be kept confidential, except to the extent as described below. "Mediation communication" means statements, whether oral or in a written record or verbal or nonverbal, that occur during a mediation or are made for purposes of considering, conducting, participating in, initiating, continuing or reconvening a mediation or retaining the Mediator, including the intake/screening process that occurred before this Agreement was signed, and the record thereof.

3.2 It is further acknowledged and agreed by each of us that *mediation communications* are not covered by solicitor-client privilege as between the Mediator and either of the parties.

3.3 It is understood that the Mediator may disclose to either party or his/her counsel information provided by the other party, or any information of which she becomes aware, which the Mediator believes to be relevant, unless the Mediator has been specifically asked to keep certain information confidential. In that event, the Mediator will not disclose that information.

3.4 Despite section 3.3, the parties, their counsel and the Mediator shall not disclose any information about the intake/screening process to anyone, except as required by law.

3.5 During the course of this mediation, one or more of the parties may be disclosing sensitive information. At such time of disclosure, the parties will deal with issues of confidentiality related to such information in order to facilitate the mediation process, including the means by which the disclosure of any such sensitive information will be protected.

3.6 The Parties acknowledge and agree that the confidentiality referred to in this Agreement will not apply where the Mediator or one of the parties is obliged by law to report to a third party or to the Director of Family and Child Services any instance arising from the family law mediation in which there are reasonable grounds to believe that a child is in need of protection or where a court of law compels any person to give evidence.

## **INADMISSIBILITY**

4.1 All statements made during the course of the mediation are privileged settlement discussions, are made without prejudice to any party's legal position and without waiving any rights, and are non-discoverable and inadmissible for any purpose in any legal proceeding absent the prior written consent of both parties and the Mediator.

4.2 The privileged character of any information is not altered by disclosure to the Mediator. Disclosure of any records, reports, including presentations made by third parties, or other documents received or prepared by the Mediator cannot be compelled, The Mediator will not be compelled to disclose or testify in any proceeding as to any

records, notes, work product, or other documents received or prepared by the Mediator. Information disclosed or representations made in the course of the mediation will not be relied upon or introduced as evidence in any arbitral, judicial or other proceeding, including but not limited to:

- a) Views expressed or suggestions made by the Mediator or by a party with respect to a possible settlement of the dispute;
- b) Admissions or apologies made in the course of the mediation proceedings;
- c) Information provided by party during the intake/screening meeting, and
- d) Contents of the Mediator's file.

4.3 Notwithstanding this Agreement, the parties acknowledge that the Mediator could be compelled to testify in a legal proceeding, if both parties expressly consent to the Mediator doing so, or if one party calls the Mediator and the other party is deemed to have waived privilege. The parties further acknowledge and agree that in such case, the calling of the Mediator as a witness would be a breach of their contractual obligations under this Agreement to Mediate and the further terms will be provided to the parties in relation to the payment of fees and costs relating to such attendance.

## **LIABILITY**

5.1 It is understood and agreed that the Mediator will assist the parties to negotiate a settlement of the matters in issue. The Mediator will not provide legal advice, nor will she make decisions. The parties agree that the Mediator has no liability for any act or omission in connection with the mediation. The parties further agree to indemnify and hold the Mediator harmless from any claim for damages that may arise from the mediation.

5.2 Any party breaching this Agreement will be liable for and will indemnify the non-breaching parties and the Mediator for all costs, expenses, liabilities, and fees, including lawyer's fees, which may incur as a result of such breach.

## **STATUS QUO**

6.1 The Parties agree that neither will sell, transfer, mortgage, or otherwise dispose of or alter any family property or interest in family property pending the conclusion of

mediation without prior written consent of the other party and without fully advising the Mediator prior to such disposition.

6.2 The Parties agree that no changes will be made with respect to the residence of, or lifestyles of, any children of the marriage or relationship pending the outcome of mediation, without first securing the written consent of the other party and without fully advising the Mediator prior to making such changes.

## **TERMINATION OF MEDIATION**

7.1 The mediation process shall continue until terminated in one of the following ways:

- a) the Parties reach a consensual settlement of the matters in issue;
- b) when the Parties and/or the Mediator decide that the issues are not likely to be resolved by mediation and when this decision is confirmed in writing by the Mediator.

7.2 While every effort will be made to reach a settlement of all issues, it is understood that either of the Parties may withdraw from the mediation process at any time prior to signing a final agreement.

## **FEES AND COSTS**

8.1 The Mediator will be paid \$500.00 per hour for all work performed, including pre-mediation orientation and screening, joint meetings, telephone call, correspondence, emails, drafting, review of documents, and other related services; plus all direct and necessary out of pocket disbursements, including room rentals, as well as GST and PST, where applicable. The parties acknowledge a joint and several obligation for payment of the Mediator's total fees and costs associated with the mediation session, which payment will be shared equally by them, unless otherwise agreed to in writing by the parties at or prior to the mediation session. Any travel will be at the rate of \$200.00 per hour.

8.2 Disbursements are out of pocket expenses, including postage, courier, travel expenses and the like. Other charges include photocopies, long distance telephone charges, fax and scan transmissions, child and spousal support guideline calculations, an initial administration and supply fee of \$40 and a one - time computer support cost of \$10.

8.3 The Parties will each provide the Mediator with a retainer in the amount of \$3,500.00, for a total of \$7,000.00, to be held in trust against future work, disbursements and other charges. The Parties also agree that they will pay to the Mediator such sums as are necessary from time to time to be held in trust against future accounts for services, disbursements and other charges. Accounts rendered will be payable forthwith and interest will accrue at the rate of 1.5% per month on unpaid accounts.

8.4 The Parties agree that if the mediation session is cancelled within 48 hours of the date of the said mediation session they will pay to the Mediator a cancellation fee of \$400.00 plus applicable taxes.

#### **INDEPENDENT LEGAL ADVICE**

9.1 The Parties understand that they have adverse legal interests and are encouraged to retain individual lawyers to secure independent legal advice regarding their separate interests, rights and obligations on all matters arising out of their cohabitation or impending cohabitation.

9.2 In the event that consensus is reached by the parties, the Mediator may draft a document to record the consensus but will not advise the parties legally concerning the contents thereof. Each party is strongly urged to continue to retain separate legal counsel to obtain independent legal advice concerning any legal questions arising during mediation and to review any document resulting from mediation before signing it.

9.3 Each party's legal counsel is encouraged to contact the Mediator to discuss the consensus and each party gives the Mediator permission to discuss the terms of any document resulting from mediation with his or her counsel.

## **SUSPENSION OF LIMITATION PERIOD**

10.1 The parties acknowledge that:

- A. The *Family Law Act* requires that a party must start a proceeding for an order to divide family property, debt or a pension, or for an order for spousal support, no later than 2 years after a divorce order (or an order declaring the marriage to be a nullity) is granted or 2 years after the date of separation (for parties living in a marriage-like relationship).
- B. Under s. 198(5) of the *Family Law Act*, the limitation period set out in paragraph A is suspended from the beginning of the Mediation Process through to the end of the Mediation Process. When the Mediation Process ends, the running of the limitation period recommences.

## **SIGNING**

11.1 The signing of this Agreement shall be a statement of your willingness to begin the mediation process, and to work toward a fair and appropriate resolution of the matters in issue.

11.2 The Mediator confirms that the parties were screened by her for power imbalances and family violence and that she has considered the results of the screening and shall do so throughout the mediation.

11.3 This Agreement may be executed by the parties in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which together shall constitute one and the same document.

THIS AGREEMENT entered into on the      day of      , 20, at Kelowna, British Columbia.

Signed: \_\_\_\_\_  
**Party 1**

Signed: \_\_\_\_\_  
**Party 2**

**CHURCHILL LAW CORPORATION**  
Per:

Signed: \_\_\_\_\_  
**Bev Churchill, KC**  
210 - 347 Leon Avenue  
Kelowna, B.C. V1Y 8C7  
The Mediator