

# mediate393

## AGREEMENT TO MEDIATE

### 1. AGREEMENT TO MEDIATE

- i) We, \_\_\_\_\_ and \_\_\_\_\_ agree to try to settle our dispute in family mediation with \_\_\_\_\_ (*name of mediator*).
- ii) We understand that the primary goal of mediation is to help us arrive at an agreement that considers the interests of other members of our family, particularly children.
- iii) We understand family mediation is voluntary.
- iv) We understand the mediator is not a judge, arbitrator or assessor. He/she is an impartial facilitator whose role is to help us communicate and negotiate in an attempt to resolve our issues. The responsibility for resolving our issues rests with us, not the mediator.

### 2. CONFIDENTIALITY & WITHOUT PREJUDICE

- i) We understand that mediation is private. We both need to consent before other persons (other than an intern and our lawyers) may be present.
- ii) We understand that we and the mediator/intern shall keep confidential all information prepared, or provided, disclosed or exchanged during or for the purpose of the mediation, including progress notes, MOUs, emails and other communications between the parties themselves, and the parties and the mediator, intern or the other third party. The parties will not divulge anything said or done during the mediation process to anyone who was not present, unless they agree otherwise. The parties will agree to reasonable sharing of information with all necessary third parties such as new partners, accountants, counsellors etc.
- iii) We acknowledge that our discussions in mediation are for the purpose of reaching settlement and are "without prejudice". We agree not to summons the mediator(s)/interns(s) and/or the mediation records for any court or arbitration hearings.
- iv) Notwithstanding paragraph (ii) & (iii), the mediator/intern may disclose information about the mediation
  - to communicate with us, counsel and third parties retained by us or counsel;
  - where ordered to do so by a judicial authority;
  - where required to do so by law, including obligations to report a child in need of protection;
  - where the information discloses an actual or potential threat to human life or safety, and
  - for research, education and program evaluation purposes, on a non-identifying basis; or
  - if either of us makes a claim against the mediator/intern or mediate393 inc.

### 3. INDEPENDENT LEGAL ADVICE AND REPRESENTATION

- i) We understand that the mediator will not offer legal advice to either of us.
- ii) We acknowledge that we have been advised to seek independent legal advice early in and throughout the process. We understand that legal advice will help us better appreciate our

respective rights and obligations, and better understand whether any agreement we wish to make is reasonable and fair.

iii) If any issues are resolved, the mediator will prepare a written report. We acknowledge that the mediator's report is **not** a final and binding agreement.

iv) If we wish to make the mediator's report into a legally binding agreement, we understand that we will need a lawyer's assistance.

#### **4. ISSUES TO BE MEDIATED**

- Custody;
- Care and parenting of the child/children;
- Child support;
- Spousal Support;
- Possession, ownership, equalization and/or division of property;
- Other \_\_\_\_\_; or
- Any other issues as we wish to resolve during the course of mediation.

#### **5. TYPE OF MEDIATION**

i) The mediator has explained the differences between open and closed mediation. With that information we have selected the following:

- Closed In closed mediation, any report will summarize only those issues resolved.
- Open In open mediation, any report will summarize those issues resolved and outline issues that remain outstanding. The mediator shall not include any recommendations, opinions or commentary on parenting behaviors or ability.

#### **6. INTAKE PROCEDURE**

- i) The mediator will first meet each of us separately (with or without counsel) to assess if the case is appropriate for mediation and to identify the issues, goals and concerns of each of us. This intake meeting, including all information and forms we provide before the intake meeting, is confidential between that party and the mediator, subject to the exceptions above.
- ii) The mediator may, in his or her discretion, share information obtained during the intake process with our own lawyers.

#### **7. MEDIATION SESSIONS**

- i) We feel we can negotiate with each other in an open and constructive manner. If either of us feels intimidated when speaking honestly and freely about relevant matters, we will immediately advise the mediator and may do so privately.
- ii) We acknowledge that, generally, the mediator will meet with us in joint sessions. We are aware that the mediator may, with our consent, meet with the child/children, or any other significant third parties such as a new partner, grandparents, other relatives, and legal counsel.
- iii) The mediator may meet or communicate with either of us or our lawyers separately at any time ("caucus"). The mediator may, in his or her discretion, disclose information or

documents provided in such caucuses to the other party, and/or to a party's lawyer, unless agreed otherwise during the caucus.

## **8. DISCLOSURE OF INFORMATION**

We agree to make full and complete disclosure of all information, whether written or verbal, that is relevant to the issues being mediated. We understand and agree that if the mediator has reason to believe that full financial disclosure has not occurred, he/she may terminate the mediation.

## **9. INTERVIEWING CHILDREN**

- i) We understand that, under the United Nations Convention on the Rights of the Child, to which Canada is a signatory, children have the legal right to be provided with an opportunity to express their views about decisions that affect their well-being, consistent with their age, capacity and desire to participate.
- ii) We acknowledge that the mediator may recommend that our children be interviewed as part of the mediation process to elicit our child's/children's views, experience and preferences as may be appropriate in their circumstances, and that our consent is required before such an interview may occur.
- iii) Should we consent, which may be done verbally or in writing, we understand that a mediator who is trained to interview children will meet with our child/children on the following basis:
  - (a) the interviewer will first meet with each of us to explain the process in more detail and to agree on the time and place of the meeting/s;
  - (b) the interviewer will then meet with the child/children;
  - (c) the specific content of the meeting shall remain confidential between the child/children and the interviewer;
  - (d) the interviewer will meet with both parties and the mediator to share the overall impressions and concerns of the children;
  - (e) the information shared during this meeting will be used to help the parents reach informed decisions that will be in the best interests of their children;
  - (f) the interviewer and/or the mediator is required to disclose to a Children's Aid Society any disclosures from the child/children that reasonably lead the interviewer/mediator in good faith to believe that a child is in need of protection, and to disclose to the police or other appropriate third party any information that reasonably leads the interviewer/mediator in good faith to believe that there is an actual or potential threat to human life or safety; and
  - (g) the interviewer/mediator is not a compellable witness in any legal proceeding unless so ordered by a court.

## **10. INTERNS AND OBSERVERS**

We understand that mediation may include interns. This program allows students to learn and observe mediation skills. We have the right to decline an intern. We understand that the intern or observer has the same duty of confidentiality as the mediator.

## **11. UNDERTAKINGS AND ACKNOWLEDGEMENTS**

- i) We agree that neither of us nor our lawyers will initiate, or take any new steps, in any legal proceedings while the mediation is in progress, except for:
  - a. Matters where we both consent prior to any action being taken; or
  - b. Matters warranting an emergency order without notice.

- ii) We agree that during these negotiations neither of us will, without the written consent of the other party:
  - a. Attempt to dispose of or mortgage any property;
  - b. Incur any significant debt or;
  - c. Change beneficiaries of life insurance plans, wills, death benefits or health insurance plans.

## **12. RISKS AND LIMITATIONS OF MEDIATION**

- i) We understand that there is no guarantee of settlement in mediation, nor that we will be fully satisfied with the outcome. We understand that mediation may lead to delay, expense and increased difficulty in any subsequent litigation. We understand that any applicable limitation periods may not be suspended during mediation and that we should obtain legal advice on these risks and limitations before we agree to mediate. We acknowledge that the mediator cannot guarantee physical safety during the mediation process.
- ii) We acknowledge that there is a risk of loss of confidentiality through the use of fax, email or other forms of communication. We authorize the mediator, intern, and assistant to communicate with us via email and/or fax notwithstanding such risk.
- iii) The parties acknowledge that the mediator cannot guarantee physical safety during the mediation process.
- iv) The mediator, intern and mediate393 inc. shall not be liable to any party for any act or omission in connection with a mediation conducted under this agreement, nor for any agreement arising out of this process, whether the parties have legal advice or not. In particular, the mediator, intern and mediate393 inc. will not be liable for the consequences of any report made, in good faith, to a Children's Aid Society, the police or the other third party in accordance with paragraphs 2(iv) and 9(iii)(f).

## **13. COST OF MEDIATION**

- i) It is our responsibility to pay mediation fees before starting mediation.
- ii) There is no cost for individual intake meetings. Thereafter, for the first (approximately) six hours of mediation, we shall pay the mediator's fee in accordance with the user fee schedule. \_\_\_\_\_ shall pay \$\_\_\_\_\_ per hour and \_\_\_\_\_ shall pay \$\_\_\_\_\_ per hour, plus HST.
- iii) After six hours of mediation, we may continue mediation with the mediator, but shall pay his or her private rate, which is \$\_\_\_\_\_ per hour (plus HST), plus his or her usual charges for disbursements, and retainer requirements if any.

## **14. TERMINATION OF MEDIATION**

We understand that either one of us, or the mediator, has the right to withdraw from the mediation at any time with notice given to all participants.

**15. CANCELLATION POLICY**

- **Notice of 48 hours or less:** all preparation time, expenses/disbursements plus a full day fee.
- **Notice of 48-120 hours:** all preparation time, expenses/disbursements plus a half-day fee.
- **Notice of five business days:** all preparation time, expenses and disbursements.

We acknowledge that we have read this contract. We would like to proceed with mediation in accordance with the terms set out above.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Mediator(s) Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Intern