

**Family Law Mediation Proceedings**

Between:

\_\_\_\_\_

And:

\_\_\_\_\_

And:

**John-Paul E. Boyd,**  
John-Paul Boyd Arbitration Chambers

**Mediation Agreement**

**Introduction**

- A. Mediation is a confidential, private process in which an impartial person, a mediator, facilitates communication between the people involved in a legal dispute and attempts to promote mutual understanding, reconciliation and/or a settlement of the dispute.
- B. The parties to this agreement, and the mediation process it describes, have the primary responsibility for resolving their dispute.
- C. Mediators, including the mediator for the dispute that is the subject of this agreement, cannot guarantee that mediation will result in the resolution of a dispute.
- D. The parties to this agreement, their lawyers and the mediator for the dispute that is the subject of this agreement intend to participate in this mediation honestly, cooperatively and in good faith, and to make serious efforts to resolve this dispute fairly.

In consideration of John-Paul Boyd Arbitration Chambers providing mediation services in this dispute, \_\_\_\_\_ and \_\_\_\_\_ understand, acknowledge and agree to the following terms.

**Agreement to mediate**

- 1. \_\_\_\_\_ and \_\_\_\_\_ wish to resolve certain legal issues arising from the change in their relationship without resorting to or continuing

any litigation.

2. This agreement is a mediation agreement. It is effective when:
  - a) \_\_\_\_\_ and \_\_\_\_\_ have received independent legal advice about the meaning and consequences of this agreement, and the lawyers consulted by the parties have signed Certificates of Independent Legal Advice in the form attached to this agreement; and,
  - b) this agreement has been signed by all parties to the agreement and their lawyers.
3. The mediator for this mediation is John-Paul E. Boyd of John-Paul Boyd Arbitration Chambers, referred to in this agreement as the Mediator.
4. The Certificates of Independent Legal Advice attached to this agreement are a part of this agreement.
5. This agreement may be signed in counterparts.

#### **Duties of Mediator**

6. The Mediator will:
  - a) remain independent and impartial in all contacts with \_\_\_\_\_ , \_\_\_\_\_ and their lawyers;
  - b) treat \_\_\_\_\_ and \_\_\_\_\_ fairly and equally; and,
  - c) not advance the interests of one party over those of the other.
7. \_\_\_\_\_ and \_\_\_\_\_ understand and agree that while the Mediator is a lawyer, he is not acting as legal counsel for either party and is not providing legal advice to either party.

#### **Issues to be resolved**

8. \_\_\_\_\_ and \_\_\_\_\_ agree to submit the following legal issues to mediation:
  - a) guardianship of children;
  - b) decision-making in respect of children;

- c) parenting time or contact with children;
  - d) the payment of child support, including the payment of children's special or extraordinary expenses, in the past, present or future;
  - e) the payment of spousal support, in the past, present or future;
  - f) division of property, including real property and personal property;
  - g) occupation and use of the family home, and use of the personal property in the family home;
  - h) allocation of responsibility for debt;
  - i) costs; and,
  - j) other issues, identified in the list attached to this agreement.
9. If one of the issues in the mediation concerns, or is likely to concern, the guardianship of and parenting arrangements for a child, \_\_\_\_\_ and \_\_\_\_\_ agree that neither will make any change to the residence, living arrangements or the lifestyle of that child pending the outcome of the mediation without first securing the written consent of the other party and advising the Mediator of the details of the change

### Screening

10. The Mediator may meet separately with either or both of \_\_\_\_\_ and \_\_\_\_\_ before the commencement of the mediation to screen for power imbalances and the risk or presence of family violence if either party is not represented by a lawyer, or if the parties' lawyers have not screened for power imbalances and the risk or presence of family violence.
11. The information obtained during the screening process, including any notes and records made by or for the Mediator, is confidential and will not be disclosed to anyone for any purpose, except as may be required by law or by court order.
12. \_\_\_\_\_ and \_\_\_\_\_ consent to the screening process and will not raise the screening process as a procedural issue in any future court proceedings, including an application to cancel, stay or set aside any agreement made as a result of this mediation.

### **No service of court documents**

13. No party may serve court documents on any person entering, attending or leaving the mediation at or near the place of the mediation.

### **Confidentiality**

14. The mediation proceeding governed by this agreement is confidential and private, except to the extent necessary to implement or enforce any agreement made as a result of this mediation.
15. No one other than the parties and their lawyers may attend the mediation meeting except with the agreement of both parties and the consent of the Mediator.
16. Unless required by law or by court order, the parties, the parties' lawyers and the Mediator will not disclose any documents or information about:
- a) the mediation and the information, documents and other material provided in the course of the mediation; or,
  - b) the results of the Mediator's screening for power imbalances and family violence and the nature of any accommodations or adaptations of the mediation process made in consequence of those results.
17. \_\_\_\_\_ and \_\_\_\_\_ acknowledge that the Mediator may be required to disclose information obtained during the mediation where the Mediator believes that:
- a) a child is suffering or at risk of harm, under the *Child, Youth and Family Enhancement Act* of Alberta or under the *Child, Family and Community Service Act* of British Columbia; or,
  - b) there is an imminent risk of death or serious physical or psychological harm to an identifiable person or group and the disclosure is necessary to prevent such death or harm.

### **Mediation process**

18. In order to attempt to resolve the legal issues between the parties to this dispute, the Mediator will attempt to isolate points of agreement and disagreement, explore alternative solutions and identify potential accommodations and areas of compromise.

19. The Mediator may convene separate conferences with each party before the mediation meeting to:
  - a) obtain background information about the parties, the parties' relationship, the parties' children and events since the change in the parties' relationship;
  - b) identify or clarify the legal issues to be resolved through mediation;
  - c) establish a timetable for any steps to be taken prior to the mediation meeting;
  - d) determine whether the mediation meeting will be held in person, by teleconference, by videoconference or by other means;
  - e) determine any physical arrangements necessary for the attendance of the parties at the mediation meeting; and,
  - f) address any concerns arising out of the screening process.
20. The mediation meeting will involve the parties in joint session with the Mediator, although separate meetings may be held between the Mediator and a party, at the discretion of the Mediator or a party.
21. The Mediator will not disclose any information provided by a party in a separate meeting between that party and the Mediator, including at the conferences held before the mediation meeting, unless the party or the party's lawyer specifically instructs the Mediator to disclose that information.
22. The parties agree that the Mediator may communicate with their lawyers throughout the mediation process and after a settlement has been reached.

**End of mediation meeting**

23. The mediation meeting will end when:
  - a) the parties have settled the legal issues and the parties and their lawyers sign a memorandum of agreement, prepared by the Mediator, summarizing the key terms of the settlement; or,
  - b) when one or both of the parties or the Mediator declares that the legal issues cannot or are not likely to be resolved by continued mediation.
24. The Mediator may reopen the mediation meeting with the consent of all parties.

### **Evidence of Mediator**

25. Because mediation is a confidential, private process aimed at resolving disputes outside of court, \_\_\_\_\_ and \_\_\_\_\_ agree that:
- a) all communications between the parties, the Mediator and John-Paul Boyd Arbitration Chambers are made on a without prejudice basis, are privileged and may not be disclosed whether or not the communication contains an offer to settle or compromise a party's position;
  - b) neither will ask or require the Mediator to provide information, give evidence, or produce documents in any arbitration or litigation between the parties on the communications, discussions and content of this mediation; and,
  - c) any documents or information retained by the Mediator or John-Paul Boyd Arbitration Chambers will not be subpoenaed by the parties or their lawyers.
26. The parties acknowledge that the Mediator may, in certain circumstances, be compelled by a party to testify in arbitration or litigation proceedings despite the other terms of this agreement. The parties acknowledge that calling the Mediator as a witness in such circumstances is a breach of their obligations under this Mediation Agreement and that a party who calls the Mediator as a witness will:
- a) immediately to pay the Mediator the sum of \$2,500 as liquidated damages for breach of contract; and,
  - b) pay to the Mediator the sum of \$425 per hour, plus any applicable taxes, for all time spent by the Mediator in consequence of being called as a witness, including time spent review his file and preparing to give evidence, whether or not the Mediator actually testifies in the arbitration or litigation proceeding.

### **Appointment, retainer and fees of Mediator**

27. \_\_\_\_\_ and \_\_\_\_\_ jointly appoint and retain the Mediator.
28. \_\_\_\_\_ and \_\_\_\_\_ agree that the Mediator will be paid \$425 per hour, plus GST, for all work performed by the Mediator including conferences, meetings, telephone calls, correspondence, drafting documents, reviewing documents and other services. There will be a minimum charge of one hour for any day when a conference or meeting is held, whether the conference or meeting is held in person, by teleconference, by videoconference or by other means.

29. \_\_\_\_\_ and \_\_\_\_\_ also agree that John-Paul Boyd Arbitration Chambers will be reimbursed for all necessary expenses incurred by the Mediator or John-Paul Boyd Arbitration Chambers in connection with the mediation, including boardroom booking fees, equipment rentals, photocopying when professional printing services are used and the like, as well as the cost of any hotel accommodations incurred when the Mediator is required to travel outside Calgary, Alberta and overnight accommodation is necessary. John-Paul Boyd Arbitration Chambers will not be reimbursed for other expenses incurred when the Mediator is required to travel, including for travel time, mileage, airfare and similar expenses.
30. Cancellation fees will be charged when a conference or meeting is cancelled by one or both parties.
- a) If notice of the cancellation is received by the Mediator between 7 days and 48 hours before the start of the conference or meeting, the parties will be charged a fee of \$425, in addition to the Mediator's time spent preparing for the conference or meeting and any nonrefundable expenses incurred by the Mediator or John-Paul Boyd Arbitration Chambers for the purposes of the conference or meeting including boardroom booking fees, equipment rentals and the like; and,
- b) if notice of the cancellation is received by the Mediator less than 48 hours before the start of the conference or meeting, the parties will be charged a fee of \$950, in addition to the Mediator's time spent preparing for the conference or meeting and any nonrefundable expenses incurred by the Mediator or John-Paul Boyd Arbitration Chambers for the purposes of the conference or meeting including boardroom booking fees, equipment rentals and the like.
31. Payment for the Mediator's fees and any expenses incurred by the Mediator or John-Paul Boyd Arbitration Chambers is due when the mediation proceeding ended, under paragraph 23 of this agreement, whether or not a settlement has been reached on all or some of the legal issues in the dispute.
32. \_\_\_\_\_ and \_\_\_\_\_ agree that their respective lawyers will each be responsible for paying one-half of the Mediator's account. Interest will accrue at a compounding rate of 1% per month, 12.68% per annum, on all accounts that are not paid within 30 days of the date on which they are due.
33. In the event that one of the parties fails or refuses to pay their share of the Mediator's account, the Mediator may accept payment of the defaulting party's share from the other party and that party may take such steps as may be necessary to be compensated for the payment by the defaulting party, including seeking orders for costs and pre- and post-judgment interest.

**Waiver of liability**

34. \_\_\_\_\_ and \_\_\_\_\_ waive any claim or right of action they may have against John-Paul Boyd arising out of the mediation.

**Effect of agreement on counsel**

35. The lawyers for each party, as undersigned, are bound by the terms of this agreement.

Signed by \_\_\_\_\_ on \_\_\_\_\_ 2018 at \_\_\_\_\_, in the Province of \_\_\_\_\_.

\_\_\_\_\_

\_\_\_\_\_ Counsel for \_\_\_\_\_

Signed by \_\_\_\_\_ on \_\_\_\_\_ 2018 at \_\_\_\_\_, in the Province of \_\_\_\_\_.

\_\_\_\_\_

\_\_\_\_\_ Counsel for \_\_\_\_\_

**JOHN-PAUL BOYD ARBITRATION CHAMBERS**

Per:

\_\_\_\_\_  
John-Paul E. Boyd,  
Family Law Mediator



### **Lawyer's Certificate of Independent Legal Advice**

I, *name of counsel*, have fully read over and explained to my client, \_\_\_\_\_, the nature, meaning and consequences of this Mediation Agreement and have given independent legal advice to my client before signing the agreement. I have also explained to my client the circumstances in which the court may cancel this agreement.

In my opinion, my client fully understands the nature, meaning and consequences of this agreement.

I am satisfied that my client is not signing this agreement as a result of deception by the other party or as a result of any duress, coercion or undue influence exerted by the other party, and that my client is not under any legal disability that would impair my client's capacity to enter into this agreement.

I am also satisfied that my client is fully able to participate in this mediation and is doing so freely and voluntarily.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Counsel for \_\_\_\_\_

### **Party's Acknowledgment of Independent Legal Advice**

I, \_\_\_\_\_, confirm that I have received independent legal advice as described in the above Certificate of Independent Legal Advice signed by my lawyer, *name of counsel*.

\_\_\_\_\_  
Date

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

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I, *name of counsel*, have fully read over and explained to my client, \_\_\_\_\_, the nature, meaning and consequences of this Mediation Agreement and have given independent legal advice to my client before signing the agreement. I have also explained to my client the circumstances in which the court may cancel this agreement.

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\_\_\_\_\_  
Date

\_\_\_\_\_  
Counsel for \_\_\_\_\_

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\_\_\_\_\_  
Date

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