

# THE MEDIATION CENTRE

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## Off-Site Family Mediation – Agreement to Mediate

Mediation File No.: \_\_\_\_\_

Mediator's Name: \_\_\_\_\_

### 1. GENERAL TERMS

1.1. We, \_\_\_\_\_ and \_\_\_\_\_ (collectively, "we" or "the Parties"), have decided to attempt to settle the issues between us through the process of family mediation with the assistance of \_\_\_\_\_ (the "Mediator") who is providing Mediation Services on behalf of \_\_\_\_\_ (the "Mediation Service Provider").

1.2. This Agreement to Mediate sets out the terms and conditions under which the mediation will proceed and is effective on the date that it is signed.

1.3. This Agreement to Mediate shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

1.4. We understand that the primary goal of mediation is to help parties (or third parties where applicable), arrive at a suitable agreement taking into account the interests of other members of our family.

1.5. We understand the process of family mediation is voluntary.

1.6. We understand that the Mediator is not a judge, arbitrator, or assessor and does not represent or act on behalf of the Parties. We understand that the Mediator is an impartial facilitator whose role is to help us communicate and negotiate in an attempt to voluntarily resolve our issues on consent.

1.7. We understand that the responsibility for resolving our issues rests with us, not the Mediator.

1.8. We understand that we may participate in mediation at a distance and that technology will be used in distance mediation. We also understand that while we may participate in mediation in different locations from each other, it does not preclude one or more of us from being present with the Mediator for the purposes of the mediation.

## **2. ISSUES TO BE MEDIATED**

2.1 We agree to work with the Mediator to try to resolve those issues we identify, which can include:

- decision-making responsibility for the child(ren),
- care and parenting time with the child(ren),
- child support,
- spousal support, or
- possession, ownership, equalization and division of property.

## **3. INDEPENDENT LEGAL ADVICE & LEGAL REPRESENTATION**

3.1. We understand that the Mediator will not offer legal advice to any of us, and that the Mediator has no duty to assert or protect our legal rights.

3.2. We understand that it is in our best interest to seek independent legal advice before, throughout, and after the mediation process.

3.3. We acknowledge that we have been advised to seek independent legal advice, if we have not already done so. We understand that this legal advice will help us to better appreciate our respective rights and obligations in resolving our issues, and to better understand whether any agreement we make is reasonable and fair.

3.4. When issues are resolved, the Mediator will prepare a written report for us. We acknowledge that the Mediator's report is not a final or legally binding agreement, nor is it evidence of an agreement. We agree that we will not rely on the Mediator's report in a legal proceeding, nor will we use it as evidence of any settlement.

3.5. We understand that if we wish to make the Mediator's report into a legally binding agreement, that either party may enforce, it is in each of our best interest to seek an independent lawyer's advice and assistance for that purpose.

## **4. TYPE OF MEDIATION**

4.1. We understand that before we begin mediation, we must agree on whether it will be open or closed.

4.2. The Mediator has fully explained to us the difference between both types of mediation and the potential implications of open mediation. We understand that,

Closed: In closed mediation, the report will summarize only those issues resolved.

Open: In open mediation, the report will summarize those issues resolved as well as outline issues that remain outstanding. The Mediator will not include any recommendations, opinions, or commentary on parenting behaviours or ability.

4.3. Based on the information the Mediator has provided to us, we have selected \_\_\_\_\_ mediation.  
(Open/Closed)

## 5. MEDIATION SESSIONS

5.1. We feel we can negotiate with each other and freely discuss our issues in an equal, open, honest, and constructive manner. However, if any of us feels intimidated in any way during the mediation process, we will immediately advise the Mediator and may do so privately.

5.2. We acknowledge that, generally, the Mediator will meet with the Parties in joint sessions. However, occasionally the Mediator may wish to meet with one Party individually.

5.3. We are aware that the Mediator may also wish to meet with the child(ren), or any other significant third parties such as a new partner, grandparents, other relatives, lawyers, and legal representatives. However, the Mediator must obtain our consent before involving another person in the mediation process.

5.4. We also understand that if any Party wishes to have another person in the room, the Party must obtain the permission of the Mediator and the other Party(ies) prior to the mediation session beginning.

5.5. Where all Parties agree that another person will be privy to the mediation process, that person must also sign this agreement to mediate and is bound by the terms of the mediation.

## 6. MEDIATION AT A DISTANCE

6.1. Where mediation includes distance mediation, the Mediator will conduct the mediation using \_\_\_\_\_ technology or any other technology suitable to the Party(ies) participating in the distance mediation.

6.2. By signing this Agreement to Mediate, the Party(ies) who participate in distance mediation accept and agree to the terms and guidelines associated with distance mediation and the use of technology identified in this agreement.

## **7. CONFIDENTIALITY**

7.1. The Mediator and the Parties shall keep confidential all written and verbal information prepared, provided, disclosed, or exchanged during or for the purpose of the mediation.

7.2. Notwithstanding the aforementioned, the Mediator may, at their sole discretion, disclose information about the mediation:

- (a) To communicate with the Parties, their lawyers or other legal representatives, and third parties retained by a Party, their lawyer, or other legal representative;
- (b) Where ordered to do so by law;
- (c) Where required to do so by law, including but not limited to obligations to report a child in need of protection;
- (d) Where the information indicates an actual or potential threat to human life or safety'

7.3. We acknowledge that our discussions in mediation are only for the purpose of reaching an agreement regarding the issues between us. We agree not to summons or compel:

- (a) The Mediator, Mediation Service Provider, intern, or observer to testify or otherwise participate in any legal proceeding, including but not limited to any court or arbitration hearing; or
- (b) The disclosure of any mediation documents, including the Mediator's report. However, documents that are otherwise discoverable or admissible as evidence in a legal proceeding do not become inadmissible or non-discoverable merely because of their use during the mediation process.

## **8. DISCLOSURE OF INFORMATION BY THE MEDIATOR**

8.1. We understand that the Mediator will not voluntarily disclose to anyone who is not a party of the mediation, any verbal or written communication that has taken place during the mediation process. The only exceptions include disclosure of information:

- (a) To the Parties' lawyers or legal representatives;
- (b) Where ordered to do so by law;
- (c) Where required to do so by law (including, but not limited to, information about a potential child protection issue);
- (d) Where information suggests an actual or potential threat to human life or safety;
- (e) For research, education, or program reporting or evaluation purposes (non-identifying information);

- (f) On the written consent of all Parties;
- (g) Where any Party makes a claim against the Mediator, Mediation Service Provider, or intern or observer.

## **9. DISCLOSURE OF INFORMATION BY THE PARTIES**

- 9.1. We agree to make full and accurate disclosure of all written and verbal information that is relevant to the issues being mediated, including but not limited to the disclosure of financial information. We further agree to duly update our disclosed information if it materially changes during the mediation process.
- 9.2. We understand and agree that if the Mediator has reason to believe that full and accurate disclosure has not occurred, they may terminate the mediation process.

## **10. COST OF MEDIATION**

- 10.1. We understand that we will not be charged any fees for our individual intake meetings.
- 10.2. Prior to commencing mediation, we each agree to pay the Mediation Service Provider the fees determined in accordance with the Off-Site Family Mediation User Fee Schedule.

## **11. TERMINATION OF MEDIATION**

- 11.1. We understand that each Party has the right to withdraw from the mediation process at any time with prior notice to the Mediator and every other Party or their lawyer.
- 11.2. We understand that the Mediator has the right to terminate the mediation process at any time and for any reason with prior notice to all Parties or their lawyers.

## **12. CONSULTATION, INTERNS AND OBSERVERS**

- 12.1. We understand that this mediation process may include interns or observers from time to time with our consent. The purpose is to allow these students an avenue for obtaining practical experience under the supervision of the Mediation Service Provider. We do however have the right to decline this mediation process.
- 12.2. We understand that the intern or observer has the same duty of confidentiality as the Mediator.

### **13. UNDERTAKINGS AND ACKNOWLEDGMENTS**

13.1. We agree that neither one of us nor our lawyers will initiate any legal proceeding or take any further steps in an existing legal proceeding, during the mediation process. The only exceptions to this are as follows:

- (a) All Parties consent in writing prior to any action being taken, or
- (b) There are urgent circumstances warranting an order without notice.

13.2. We agree that neither one of us nor our lawyers will, without the other Parties' prior written consent, take any of the following actions during the mediation process:

- (a) Attempt to dispose of (including, but not limited to, destroy, sell, or transfer) or mortgage any property or asset or interest in a property or asset;
- (b) Incur any significant debt; or
- (c) Change beneficiaries of life insurance plans, death benefits, or health insurance plans.

### **14. LIMITATIONS**

14.1. We understand that there is no guarantee of resolution from mediation, and that we may not be fully satisfied with the outcome.

14.2. We understand that the Mediation Service is being provided to the public under an arrangement with His Majesty the King in right of Ontario as represented by the Attorney General (the "Ministry"). We acknowledge that the Mediation Service Provider and the Mediator are not agents, joint venturers, partners, or employees of the Ministry. We further acknowledge that the Ministry does not assume any responsibility for any service, action, and inaction provided with respect to the Mediation Service.

14.3. In no event shall we, either jointly or separately, hold the Ministry liable for any special, direct, indirect, consequential, or incidental damages or any damages whatsoever, whether in an action of contract, negligence, or other tort, arising out of or in connection with the use of the Mediation Service.

***[The remainder of this page is intentionally left blank; Signature page to follow.]***

We acknowledge that we have each read this Agreement to Mediate. We agree to proceed with off-site family mediation in accordance with the terms and conditions set out herein.

We also acknowledge that this agreement may be entered into by each Party signing a separate copy and delivering it to the Mediator and other Party(ies). Each signed copy of the agreement shall be deemed an original and all of which shall constitute one agreement.

Dated and signed by:

\_\_\_\_\_  
(Party)

\_\_\_\_\_  
(Address)

\_\_\_\_\_, 202\_ at \_\_\_\_\_  
(Location)

\_\_\_\_\_  
(Party)

\_\_\_\_\_  
(Address)

\_\_\_\_\_, 202\_ at \_\_\_\_\_  
(Location)

\_\_\_\_\_  
(Mediator)

\_\_\_\_\_  
(Address)

\_\_\_\_\_, 202\_ at \_\_\_\_\_  
(Location)

\_\_\_\_\_  
(Name of Intern or Observer)

\_\_\_\_\_  
(Address)

\_\_\_\_\_, 202\_ at \_\_\_\_\_  
(Location)

\_\_\_\_\_  
(Name of Participant)

\_\_\_\_\_  
(Address)

\_\_\_\_\_, 202\_ at \_\_\_\_\_  
(Location)