

Agreement to Mediate

Re: _____

BETWEEN:

_____ (“the parties”)

AND

_____ (“the mediator(s)”)

It is hereby agreed that the parties retain the Mediator on the following terms:

1. It is acknowledged that the Mediator is an impartial third party whose role is to assist the parties negotiate an agreement. The Mediator does not make decisions, take sides or give legal advice.
2. In attempting to bring about an Agreement, the Mediator will meet with the parties for joint sessions and on occasion for individual sessions. Following consultation with the parties, the Mediator may include any other significant third party, such as the children, legal counsel or other significantly involved persons, in the mediation process.
3. Information shared with the Mediator during individual sessions may be shared with the other party, at the Mediator’s discretion, unless the individual interviewed requests that specific information be kept confidential. The Mediator may disclose any relevant information if there is a threat to anyone’s safety.

OR

Information shared with the Mediator during individual sessions will not be shared with the other party, unless the individual interviewed agrees that the information be shared. The Mediator may disclose any relevant information if there is a threat to anyone’s safety.

4. It is acknowledged that the Mediator will not be giving either party legal advice. The parties are strongly advised to obtain independent legal advice, preferably before mediation commences, but in any event, before a final Agreement is reached, to ensure that they are fully informed of their legal rights and obligations and the legal implications of such an Agreement. In the event that the parties do not have independent legal advice prior to signing an Agreement, it is recognized that:

- (i) the parties may not be making fully informed choices in light of their respective legal rights;
 - (ii) the Agreement they reach is less likely to be enforced by a court.
 5. It is the responsibility of the parties to make copies of any documents relevant to the dispute for the Mediator as well as the other party. The purpose is to ensure that both parties have an opportunity to review and respond to any information given to the Mediator. It is also to maintain the Mediator's impartiality. If, the correspondence raises concerns about a party's safety, the person providing the information should discuss this with the Mediator before submitting the information.
 6. The Mediator may obtain information from relevant sources and may consult such persons and read such reports, records or documents deemed necessary by the Mediator for arriving at an Agreement following consultation with the parties. It is agreed that the parties will:
 - (i) make full disclosure of all relevant information reasonably required for the Mediator to understand the issues being mediated; and
 - (ii) execute any Releases of Information necessary for the Mediator to obtain relevant information.
 7. If issues related to property or support are discussed during the mediation process, then the parties will:
 - (i) make full financial disclosure to each other, the Mediator, and both counsel;
 - (ii) undertake not to hide or dispose of any assets; or
 - (iii) not cancel or change any beneficiaries of life insurance policies and health care policies while the mediation is in process.
 8. The parties understand that interim agreements with respect to parenting arrangements, and child and/or spousal support will be factors to be considered by the courts, in the event that an agreement is not reached in mediation.
 9. In the event that information obtained during the mediation discloses an actual or potential threat to the safety of any of the participants or a breach of the *Child and Family Services Act* or *Criminal Code*, the Mediator is obligated to report such information.
 10. Neither party nor anyone acting on their behalf will take any fresh steps in the legal proceedings between the parties with respect to those issues that are being mediated, without prior notice to the Mediator and the other party. If a party chooses to litigate the mediation will likely end, particularly in a collaborative process.
 11. If the parties reach agreement on some or all of the issues, the Mediator will prepare a Memorandum of Understanding with respect to those issues. This Memorandum of Understanding will be sent to both counsel to review with the parties.
 12. If the parties fail to agree on one or more issues it is understood that:
 - (i) the Mediator will not prepare a report or make recommendations with respect to any issues that are not resolved in mediation;
 - (ii) in the case of financial issues, any documents prepared for the purpose of financial disclosure may be used by the parties in future proceedings, with their consent;
 - (iii) if the parties do not reach an agreement through mediation on any specified issue, that will be so reported by the Mediator;
 - (iv) anything said or any admission or communication in the course of the mediation is not admissible in any legal proceeding;
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- (v) anything said or any admission or communication made in the course of the mediation by the parties or the Mediator is confidential and may not be communicated to outside parties without the express permission of all parties and the Mediator. This does not apply to any circumstances or communication as outlined in paragraph 9 above;
- (vi) both parties agree not to subpoena the Mediator's notes or records; and
- (vii) the Mediator will not be called as a witness by or on behalf of either party in any legal proceeding.

13. The parties agree to adhere to the Mediator's fee schedule.

14. It is understood that either of the parties may terminate the mediation process at any time. If a party wishes to terminate, he or she will first discuss the concerns with Dr. Collaborate to see if they can be addressed satisfactorily. The Mediator may suspend or terminate mediation whenever:

- (i) the process is likely to harm or prejudice one or more of the participants; or
- (ii) the usefulness of the mediation process is exhausted; or
- (iii) the Agreement being reached is unreasonable.

The Mediator will first advise the parties of the reason why she believes the mediation should be terminated.

15. The parties recognize that the Mediator cannot guarantee

- (i) that the issues will be resolved in mediation;
- (ii) that the parties will be completely satisfied with the outcome of the mediation;
- (iii) the physical safety of the parties;
- (iv) against abuse of the mediation process by either party

Each of the undersigned acknowledges that they have read and fully understand this Agreement to Mediate and agrees to be bound by the terms herein.

DATED at _____, this _____ day of

_____, 200__.

WITNESS

NAME (PARTY)

WITNESS

NAME (PARTY)

WITNESS

NAME (PARTY)

WITNESS

NAME (MEDIATOR)

Adapted from Dr. Barbara Landau, 2005