

## Abridged Family Law Arbitration Proceedings

Between:

\_\_\_\_\_

And:

\_\_\_\_\_

### Arbitration Agreement

#### Agreement to arbitrate

1. \_\_\_\_\_ and \_\_\_\_\_ wish to resolve certain legal issues arising from the breakdown of their relationship in a speedy, cost-effective manner, without resolving those issues through litigation.
2. This agreement is an arbitration agreement under the *Arbitration Act* of Alberta, for arbitration proceedings sited in Alberta, or under the *Arbitration Act* of British Columbia, for arbitration proceedings sited in British Columbia. It is effective when:
  - a) \_\_\_\_\_ and \_\_\_\_\_ have received independent legal advice about the meaning and consequences of the agreement, and the lawyers consulted by the parties have signed Certificates of Independent Legal Advice in the form attached; and,
  - b) the agreement has been signed by all parties to the agreement and their lawyers.
3. The arbitrator for this arbitration proceeding is John-Paul Boyd of John-Paul Boyd Arbitration Chambers, referred to in this agreement as the Arbitrator.
4. The Certificates of Independent Legal Advice appended to this agreement are a part of this agreement.
5. This agreement may be signed in counterparts.

#### Duties of Arbitrator

6. The Arbitrator will:

## Arbitration Agreement

- 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.

### Issues to be resolved

7. \_\_\_\_\_ and \_\_\_\_\_ agree to submit the following legal issues for determination by the Arbitrator in an arbitration proceeding on a final basis:
- a) guardianship of children;
  - b) decision-making in respect of children;
  - c) parenting time or contact with children;
  - d) the payment of child support, in the past, present or future;
  - e) the payment of children's special or extraordinary expenses;
  - f) the payment of spousal support, in the past, present or future;
  - g) division of property, including real property and personal property;
  - h) occupation and use of the family home, and use of the personal property in the family home;
  - i) allocation of responsibility for debt; and,
  - j) other issues, identified in the schedule appended to this agreement.

### Confidentiality

8. The arbitration proceedings governed by this agreement are private and confidential.
9. \_\_\_\_\_ and \_\_\_\_\_ acknowledge that the Arbitrator may be required to disclose information obtained during the arbitration proceeding where the Arbitrator 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.

**Arbitration**

- 10. The arbitration proceeding will begin when this agreement is effective.
- 11. The Family Law Arbitration Rules will not govern the conduct of the arbitration proceeding.
- 12. The law to be applied by the Arbitrator in determining the legal issues is the law of:
  - a) Alberta;
  - b) British Columbia; or,
  - c) the jurisdiction identified in the schedule appended to this agreement.
- 13. The Arbitrator may convene a conference before the arbitration hearing to:
  - a) determine or clarify the legal issues to be addressed in the arbitration proceeding;
  - b) designate a party as the claimant for the purposes of the arbitration proceeding;
  - c) identify any documents to be exchanged between the parties and produced prior to the arbitration hearing;
  - d) establish a timetable for any steps to be taken prior to the arbitration hearing;
  - e) estimate the time required for the arbitration hearing and the arbitration proceeding as a whole; and,
  - f) set the date and place of the arbitration hearing, and determine whether the hearing will be held in person, by teleconference, by videoconference or by other means.
- 14. The arbitration hearing will be an oral hearing. Unless the parties agree otherwise, and subject to the discretion of the Arbitrator, the order of the hearing will be as follows:
  - a) the party designated as claimant will present oral argument;
  - b) the party designated as respondent will then present oral argument; and,

- c) the claimant will then present any oral argument in reply to the respondent's argument.

The Arbitrator will then state his determination of the legal issues.

- 15. Unless the parties agree otherwise,
  - a) any narrative evidence will be provided in written statements made on the promise of the person providing the written statement to tell the truth; and,
  - b) the usual rules for the admissibility of evidence in court proceedings will not apply.
- 16. The arbitration hearing will not be recorded. A reporter will not be present during the hearing except at the request of a party, and the party requesting the reporter will be responsible for hiring and paying the cost of the reporter.
- 17. \_\_\_\_\_ and \_\_\_\_\_ agree, pursuant to s. 3 of the *Alberta Arbitration Act*, for arbitrations sited in Alberta, or pursuant to s. 44 of the *British Columbia Arbitration Act*, for arbitrations sited in British Columbia, that:
  - a) the Arbitrator will deliver his determination orally and will not provide reasons for his determination or a written award; and,
  - b) neither party may apply to the Arbitrator to correct or clarify his determination.
- 18. The arbitration proceeding will be terminated when the arbitration hearing has ended and the Arbitrator has stated his determination.
- 19. Subject to the terms of the *Arbitration Act* of Alberta or the *Arbitration Act* of British Columbia, \_\_\_\_\_ and \_\_\_\_\_ are bound by the terms of the Arbitrator's determination.
- 20. On application by the parties, and subject to the court's discretion, all or some of the terms of the Arbitrator's determination may be incorporated into a consent order.

**Appointment, retainer and fees of Arbitrator**

- 21. \_\_\_\_\_ and \_\_\_\_\_ jointly appoint and retain the Arbitrator.
- 22. \_\_\_\_\_ and \_\_\_\_\_ agree that the Arbitrator will be paid a flat fee of \$3,000, plus federal taxes and any applicable provincial taxes, for all work performed by the Arbitrator in the course of the arbitration proceeding, including

meetings, telephone calls, correspondence, drafting, review of documents and other services.

23. Cancellation fees will be charged in the event the arbitration hearing is cancelled by one or both parties:
- a) if notice of the cancellation is received by the Arbitrator between 7 days and 24 hours before the start of the hearing, the parties will be charged a fee of \$500; and,
  - b) if notice of the cancellation is received by the Arbitrator less than 24 hours before the start of the meeting, conference or hearing, the parties will be charged a fee of \$1,500.
24. Payment for the Arbitrator's fees is due immediately upon the termination of the arbitration proceeding.
25. \_\_\_\_\_ and \_\_\_\_\_ agree that their respective lawyers will each be responsible to pay one-half of the Arbitrator's account. Accounts rendered are payable within thirty days and compounding interest will accrue at the rate of 3% per month on unpaid accounts.

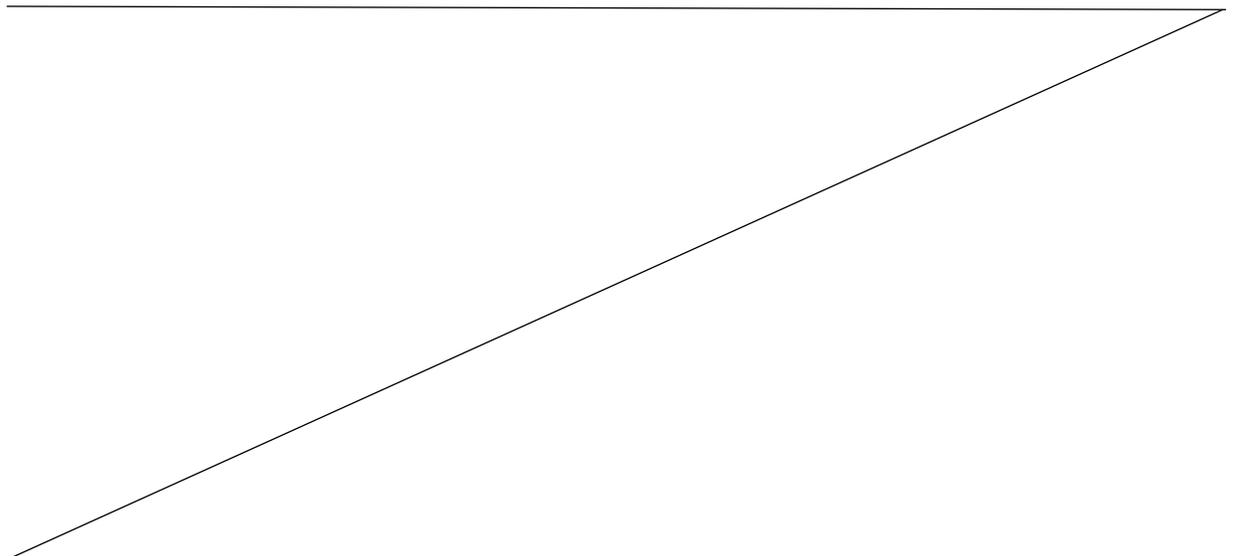
**Waiver of liability**

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

**Acknowledgments**

27. In the case of arbitration proceedings sited in Alberta, the parties acknowledge that:
- a) determinations about the guardianship of children, decision-making in respect of children and parenting time or contact with children will be made taking into consideration only the best interests of the child;
  - b) the Alberta *Arbitration Act* provides that an arbitration agreement may be only cancelled by the court in accordance with the law of contract, which includes legal questions about matters such as incapacity, duress, undue influence, coercion, mistake and misrepresentation; and,
  - c) the *Arbitration Act* provides that a determination may be set aside by the court if a party signed an arbitration agreement while under a legal incapacity or the determination was obtained by fraud.

28. In the case of arbitration proceedings sited in British Columbia, the parties acknowledge that:
- a) determinations about the guardianship of children, decision-making in respect of children and parenting time or contact with children will be made taking into consideration only the best interests of the child; and,
  - b) the British Columbia *Arbitration Act* provides that an arbitration agreement and a determination may be cancelled by the court if
    - i. a party has taken improper advantage of the other party's vulnerability, including the other party's ignorance, need or distress,
    - ii. a party did not understand the nature and consequences of the arbitration agreement, or
    - iii. other circumstances exist that would cause all or part of a contract to be cancelled under the law of contract, which includes legal questions about matters such as incapacity, duress, undue influence, coercion, mistake and misrepresentation;
  - c) the *Arbitration Act* provides that a determination may be set aside by the court if the determination was improperly procured.
29. The parties further acknowledge that arbitrators' determinations are appealed on the record and that the absence of reasons for the Arbitrator's determination and a written award will frustrate any appeal or application for judicial review of the Arbitrator's determination.



**Effect of agreement on the parties' lawyers**

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

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

\_\_\_\_\_  
*name*

\_\_\_\_\_  
Counsel for *name*

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

\_\_\_\_\_  
*name*

\_\_\_\_\_  
Counsel for *name*

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

I, *name of counsel*, have fully read over and explained to my client, *name*, the nature, meaning and consequences of this arbitration 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 is aware of the need to disclose all significant income, assets, debts and liabilities existing when this agreement is made and as may come to exist during the mediation and arbitration proceedings, and 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 these mediation and arbitration proceedings and is doing so freely and voluntarily.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Counsel for *name*

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

I, *name*, 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

\_\_\_\_\_  
*name*

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

I, *name of counsel*, have fully read over and explained to my client, *name*, the nature, meaning and consequences of this arbitration 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 is aware of the need to disclose all significant income, assets, debts and liabilities existing when this agreement is made and as may come to exist during the mediation and arbitration proceedings, and understands the nature, meaning and consequences of this agreement.

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Counsel for *name*

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

I, *name*, 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

\_\_\_\_\_  
*name*