

## Family Law Mediation and Arbitration Proceedings

Between:

\_\_\_\_\_

And:

\_\_\_\_\_

### Arbitration Agreement

#### Agreement to arbitrate

1. \_\_\_\_\_ and \_\_\_\_\_ wish to resolve certain legal issues arising from the breakdown of their relationship without resorting to or continuing any litigation.
2. This agreement is an arbitration agreement under the *Arbitration Act* of Alberta, for mediation and arbitration proceedings sited in Alberta, or under the *Arbitration Act* of British Columbia, for mediation and 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, and the mediator for any attempts to resolve the legal issues through mediation, is John-Paul Boyd of John-Paul Boyd Arbitration Chambers, referred to in this agreement as the Mediator/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.

**Waiver of right to litigate**

6. \_\_\_\_\_ and \_\_\_\_\_ waive all right to further litigate the legal issues identified below at paragraph 11 of this agreement, subject to the rights of judicial review and appeal set out in the *Arbitration Act* of Alberta or the *Arbitration Act* of British Columbia.
7. Neither party will serve the other with a notice of claim, a notice of application, a subpoena or any other legal process while entering, attending or leaving the mediation and arbitration proceedings.
8. Nothing in this agreement limits or prohibits any enforcement rights that the parties may have through the courts or otherwise.
9. On application by the parties, and subject to the court’s discretion, the terms of this agreement may be incorporated into an order to be made with the consent of the parties, called a consent order.

**Duties of Mediator/Arbitrator**

10. The Mediator/Arbitrator 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.

**Issues to be resolved**

11. \_\_\_\_\_ and \_\_\_\_\_ agree to submit the following legal issues for determination by the Mediator/Arbitrator in an arbitration proceeding on an interim basis, if necessary, and 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) the 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) the allocation of responsibility for debt;
- j) costs; and,
- k) other issues, identified in the schedule appended to this agreement.

### Screening

12. The Mediator/Arbitrator may meet separately with each of *name* and *name*, before the commencement of a mediation or an arbitration proceeding, to gather background information and information about each party's perspective on the legal issues, discuss procedural options, and screen for power imbalances and the risk or presence of family violence. In mediation and arbitration proceedings sited in British Columbia, the *Family Law Act* of British Columbia requires the Mediator/Arbitrator to assess whether family violence may be present and, if family violence is present, the extent to which family violence may adversely affect the safety of a party, or a family member of a party, and the ability of the party to negotiate a fair agreement or participate in mediation and arbitration proceedings. The Mediator/Arbitrator will apply this standard to mediation and arbitration proceedings sited in Alberta.
13. The information obtained during the screening process, including any notes and records made by or for the Mediator/Arbitrator, is confidential and will not be relied upon by the Mediator/Arbitrator during the arbitration proceeding. The information will not be disclosed to anyone for any purpose, except as may be required by law or by court order.
14. \_\_\_\_\_ and \_\_\_\_\_ consent to the screening process and will not raise the screening process as a procedural issue in any future court proceedings, including an appeal, an application for a stay of proceedings or an application for judicial review.

### Confidentiality

15. The mediation and arbitration proceedings governed by this agreement are private and confidential, except:
  - a) to the extent necessary to implement or enforce any settlements reached;

- b) for the interim and final awards of the Mediator/Arbitrator; and,
- c) as may be necessary for the purposes of appeal or judicial review.

Unless required by law or by court order, the parties, the parties' lawyers and the Mediator/Arbitrator will not disclose any documents or information about:

- d) \_\_\_\_\_ or \_\_\_\_\_;
  - e) the mediation and arbitration proceedings, and the information, documents and evidence provided in the course of those proceedings; and,
  - f) the results of the Mediator/Arbitrator's screening for power imbalances and family violence and the nature of any accommodations or adaptations of the mediation or the arbitration proceedings made in consequence of those results.
16. \_\_\_\_\_ and \_\_\_\_\_ acknowledge that the Mediator/Arbitrator may be required to disclose information obtained during the mediation or arbitration proceedings where the Mediator/Arbitrator believes:
- a) that 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.

**Disclosure and production of documents**

17. \_\_\_\_\_ and \_\_\_\_\_ acknowledge and agree that they must each provide complete and accurate information for the purpose of resolving the legal issues identified at paragraph 11 of this agreement.
18. \_\_\_\_\_ and \_\_\_\_\_ agree that they will promptly provide each other with copies of documents as required by the Family Law Arbitration Rules, and as may additionally be required by the Mediator/Arbitrator from time to time.
19. The Mediator/Arbitrator may draw a negative conclusion, called an adverse inference, against a party in an arbitration proceeding if it appears to him that the party has failed to disclose documents or information relevant to the legal issues.

## Mediation

20. At the request of the parties, the Mediator/Arbitrator may attempt to resolve some or all of the legal issues identified at paragraph 11 of this agreement on an interim and/or final basis through a mediation proceeding. \_\_\_\_\_ and \_\_\_\_\_ agree that the Mediator/Arbitrator is not disqualified from adjudicating any of these issues because he has acted as a mediator with respect to those issues.
21. The Mediator/Arbitrator may convene a conference before the first meeting in the mediation proceeding to:
- a) determine any documents to be exchanged between the parties and produced prior to the start of the mediation proceeding;
  - b) set the dates and places of meetings in the mediation proceeding, and determine whether the meetings will be held in person, by teleconference, by videoconference or by other means;
  - c) determine any physical arrangements necessary for the attendance of the parties at meetings in the mediation proceeding; and,
  - d) address any concerns arising out of the screening process.
22. Most meetings during the mediation proceeding will involve both parties and their lawyers. However, the parties understand and agree that the Mediator/Arbitrator may from time to time meet with a party and/or the party's lawyer alone as necessary to further the possibility of settlement.
23. Agreements reached between the parties during the mediation proceeding, whether interim or final, are binding only when the terms of those agreements have been reduced to writing and signed by the parties.
24. The mediation proceeding will end when:
- a) all of the of the legal issues have been resolved by the agreement of the parties; or,
  - b) some or none of the legal issues have been resolved and the Mediator/Arbitrator concludes that continuing the mediation proceeding is unlikely to result in an agreement on the unresolved issues.
25. \_\_\_\_\_ and \_\_\_\_\_ agree that the discussions taking place during mediation proceedings are settlement negotiations and that any offers to settle or compromise a party's position on the legal issues made during a mediation

proceeding are not admissible in the arbitration proceeding, or in any future arbitration or court proceedings. The parties agree to not subpoena or otherwise require the Mediator/Arbitrator to give evidence about the discussions taking place during the mediation proceedings, or to produce notes, records or other documents he may prepare in respect of the mediation proceeding in any future arbitration or litigation proceedings.

26. No recordings or transcripts will be made of the discussions taking place during any mediation proceeding.

### **Arbitration**

27. The arbitration proceeding will start:

- a) when this agreement is effective, in the event the parties do not attempt to resolve the legal issues identified at paragraph 11 of this agreement through a mediation proceeding; or,
- b) at the end of the mediation proceeding, in the event the mediation proceeding does not result in an agreement on all of the legal issues,

and the Mediator/Arbitrator will make a final, binding determination of all unresolved legal issues.

28. The Family Law Arbitration Rules will govern the conduct of the arbitration proceeding, as changed by the agreement of the parties or by the determination of the Mediator/Arbitrator in consultation with the parties and their lawyers, in the event agreement cannot be reached.

29. The law to be applied by the Mediator/Arbitrator in determining the unresolved legal issues is the law of:

- a) Alberta;
- b) British Columbia; or,
- c) the jurisdiction identified in the schedule appended to this agreement.

30. The Mediator/Arbitrator may deliver notices, awards and other communications to the parties by email to the email addresses for delivery maintained by the parties or their lawyers as required by the Family Law Arbitration Rules.

31. The Mediator/Arbitrator may convene a conference before the first hearing day in the arbitration proceeding to:

Arbitration Agreement

- a) determine or clarify the legal issues to be addressed in the arbitration proceeding and identify any legal issues that have been resolved;
  - b) determine the which of the procedural options provided in the Family Law Arbitration Rules will be applied in the arbitration proceeding and whether changes will be made to the Rules;
  - c) designate a party as the claimant for the purposes of the arbitration proceeding;
  - d) identify any documents to be exchanged between the parties and produced prior to the arbitration hearing, in addition to those identified in the Family Law Arbitration Rules;
  - e) establish a timetable for any steps to be taken prior to the arbitration hearing;
  - f) determine the names and contact information of any witnesses to be called to present oral evidence at the arbitration hearing, and whether synopses of each witness' evidence must be provided prior to the arbitration hearing;
  - g) canvass whether any changes to the usual rules for the admissibility of evidence in court proceedings will be adopted for the arbitration hearing;
  - h) estimate the time required for the arbitration hearing and the arbitration proceeding as a whole;
  - i) set the dates and places of hearings in the arbitration proceeding, and determine whether the hearing will be held in person, by teleconference, by videoconference or by other means;
  - j) determine any physical arrangements necessary for the attendance of the parties and witnesses at the arbitration hearing; and,
  - k) address any concerns arising out of the screening process.
32. The parties agree that the Mediator/Arbitrator will determine whether expert evidence is required to resolve the legal issues, the questions the expert or experts will be required to address and the timetable for the production of the report of the expert or experts. The parties agree to contribute to the fees and expenses of the expert or experts in the amounts or proportions determined by the Mediator/Arbitrator and authorize the Mediator/Arbitrator to include these fees and expenses as a disbursement on his account to the parties.
33. Hearings in the arbitration proceeding may be conducted through oral evidence and oral argument, through written evidence and written argument, or through a combination of

oral and written evidence and argument. Hearings including oral evidence or oral argument may be conducted in person, by teleconference, by videoconference or by any other means determined by the Mediator/Arbitrator in consultation with the parties and their lawyers.

34. If an oral hearing is held, and unless the parties agree otherwise:
- a) any narrative evidence provided in writing will be provided in written statements made on the promise of the person providing the written statement to tell the truth;
  - b) any narrative evidence provided orally, including oral evidence given under cross-examination only, will be provided under the witness' promise to tell the truth; and,
  - c) the usual rules for the admissibility of evidence in court proceedings will not apply, subject to the agreement of the parties.

If the arbitration hearing does not include oral evidence, any narrative evidence provided in writing will be provided in a written statement made on the promise of the person providing the written statement to tell the truth, unless the parties agree otherwise.

35. The Mediator/Arbitrator may rely on the documents and information exchanged in the course of the mediation proceeding in determining the unresolved issues.
36. Hearings conducted orally will be electronically recorded. A reporter will not be present 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.
37. Except as the Family Law Arbitration Rules otherwise provide and subject to paragraph 38 of this agreement, hearings in the arbitration proceeding will be closed when:
- a) all unresolved legal issues are resolved by the agreement of the parties during the arbitration proceeding;
  - b) the parties advise that they have no further evidence to present or arguments to make; or,
  - c) the Mediator/Arbitrator determines that further hearings are unnecessary or inappropriate.
38. The Mediator/Arbitrator may, in exceptional circumstances, reopen the hearings at any time before a final award is made.

### Awards and procedural orders

39. The Mediator/Arbitrator may make interim awards and procedural orders as necessary during the arbitration proceeding on the application of a party, or on his own initiative, and will make such awards as soon as possible after hearing the application.
40. The Mediator/Arbitrator will make one or more final awards on the legal issues submitted for determination that have not been resolved by the mediation proceeding as soon as reasonably possible after hearings in the arbitration proceeding have closed, subject to paragraph 64 of this agreement.
41. The Mediator/Arbitrator will deliver all final awards in writing, but will provide only summary reasons for his decisions unless either of the parties request full written reasons. Such a request must be made before hearings in the arbitration proceeding have been closed.
42. In the event that one or more of the legal issues are resolved by the agreement of the parties during the arbitration proceeding, the Mediator/Arbitrator will record the terms of the agreement in a final award without reasons made with the consent of the parties, called a consent award.
43. Either party may apply to the Mediator/Arbitrator to, or the Mediator/Arbitrator on his own initiative may, amend interim and final awards to correct:
  - a) clerical or typographic errors;
  - b) accidental errors, slips or omissions; and,
  - c) arithmetical errors in calculations.
44. An application by a party to amend an interim award must be made before the close of hearings in the arbitration proceeding.
45. An application by a party to amend a final award must be made within 14 days of delivery of the award.
46. 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 Mediator/Arbitrator's interim and final awards.
47. On application by the parties, and subject to the court's discretion, all or some of the terms of the final awards may be incorporated into a consent order.

## Appeal

48. An award may be appealed as follows:

- a) by a party in accordance with section 44 of the *Arbitration Act* of Alberta, for arbitration proceedings sited in Alberta, or in accordance with section 31 of the *Arbitration Act* of British Columbia, for arbitration proceedings sited in British Columbia; or,
- b) by a party on
  - i. a question of law,
  - ii. a question of fact, and/or
  - iii. a question of mixed law and fact.

## Enforcement

49. Subject to the rights of judicial review and appeal set out in the *Arbitration Act* of Alberta or of British Columbia, interim and final awards may be enforced by either party under section 49 of the *Arbitration Act* of Alberta, for arbitration proceedings sited in Alberta, or under section 29 of the *Arbitration Act* of British Columbia, for arbitration proceedings sited in British Columbia.

## Withdrawal from arbitration proceeding

50. Neither \_\_\_\_\_ nor \_\_\_\_\_ may unilaterally withdraw from this agreement. Subject to paragraphs 51 and 52 of this agreement, the Mediator/Arbitrator will continue an arbitration proceeding even though a party no longer wishes to participate.
51. The parties may agree to terminate this agreement by a further written agreement.
52. The Mediator/Arbitrator may at any time resign his appointment as arbitrator by providing written notice of his resignation to the parties.
53. In the event that the appointment of the Mediator/Arbitrator is terminated and the parties are unable to agree on a replacement, a court of competent jurisdiction will appoint a substitute arbitrator on the application of either party.
54. In the event that the appointment of the Mediator/Arbitrator is terminated, \_\_\_\_\_ and \_\_\_\_\_ understand and agree that any interim awards made by the Mediator/Arbitrator prior to his termination are binding on the

parties and continue in full force and effect, including upon the continuation of the arbitration proceeding with the substitute arbitrator unless varied by an award of the substitute arbitrator.

**Termination of arbitration proceeding**

55. Subject to paragraph 56 of this agreement, the arbitration proceeding is terminated when:
- a) the parties execute an agreement resolving all legal issues submitted for determination and the mediation proceeding ends under paragraph 24(a) of this agreement; or,
  - b) the Mediator/Arbitrator has made final awards that together address all of the legal issues submitted for determination at paragraph 11 of this agreement that have not been resolved through the mediation proceeding, and the time limit to apply to correct the final awards has expired.
56. The Mediator/Arbitrator may make an award terminating the arbitration proceeding if:
- a) the party commencing the mediation and arbitration proceedings unreasonably delays in taking a step required by this agreement or by the Family Law Arbitration Rules;
  - b) the parties withdraw all of the legal issues submitted for determination;
  - c) the parties agree to terminate this agreement under paragraph 50 of this agreement; or,
  - d) the Mediator/Arbitrator concludes that the continuation of the arbitration proceeding has become unnecessary or impossible.

**Appointment, retainer and fees of Mediator/Arbitrator**

57. \_\_\_\_\_ and \_\_\_\_\_ jointly appoint and retain the Mediator/Arbitrator.
58. \_\_\_\_\_ and \_\_\_\_\_ agree that the Mediator/Arbitrator will be paid \$400 per hour, plus federal taxes and any applicable provincial taxes, for all work performed by the Mediator/Arbitrator including meetings, telephone calls, correspondence, drafting, review of documents and other services. There will be a minimum charge of 2 hours for any day when a meeting, conference or hearing is held, whether the meeting, conference or hearing is held in person, by teleconference, by videoconference or by other means.

59. \_\_\_\_\_ and \_\_\_\_\_ also agree that the Mediator/Arbitrator will be reimbursed for his reasonable and necessary expenses incurred in connection with the mediation and arbitration proceedings, including airfare, seat fees and other travel expenses, hotel accommodation, boardroom booking fees, equipment rentals, photocopying and the like. When travelling by car outside the City of Calgary, the Mediator/Arbitrator will be reimbursed for mileage at a rate of \$0.45 per kilometer and be paid \$200 per hour for travel time.
60. Cancellation fees will be charged when a meeting in the mediation proceeding or a conference or hearing in the arbitration proceeding is cancelled by one or both parties:
- a) if notice of the cancellation is received by the Mediator/Arbitrator between 7 days and 24 hours before the start of the meeting, conference or hearing, the parties will be charged a fee of \$500, in addition to the Mediator/Arbitrator's time spent preparing for the meeting, conference or hearing as well as any nonrefundable expenses incurred by the Mediator/Arbitrator for the purposes of the meeting, conference or hearing, including travel expenses, boardroom booking fees, equipment rentals and the like; and,
  - b) if notice of the cancellation is received by the Mediator/Arbitrator less than 24 hours before the start of the meeting, conference or hearing, the parties will be charged a fee of \$1,000, in addition to the Mediator/Arbitrator's time spent preparing for the meeting, conference or hearing and any nonrefundable expenses incurred by the Mediator/Arbitrator for the purposes of the meeting, conference or hearing, including travel expenses, boardroom booking fees, equipment rentals and the like.
61. Payment for the Mediator/Arbitrator's fees and expenses, in the amount set out in the Mediator/Arbitrator's account, is due immediately upon the earlier of:
- a) the end of the mediation proceeding under paragraph 24(a) of this agreement;
  - b) the termination of this agreement under paragraph 51 of this agreement or the resignation of the Mediator/Arbitrator under paragraph 52; or,
  - c) the closure of hearings in the arbitration proceeding under paragraph 37 of this agreement.
62. Subject to an award of costs to the contrary in the final award, *name* and *name* agree that their respective lawyers will each be responsible to pay one-half of the Mediator's/Arbitrator's account. Accounts rendered are payable within thirty days and interest will accrue at the rate of 3% per month on unpaid accounts.
63. In the event that one of the parties fails or refuses to pay their share of the Mediator's/Arbitrator's account, the Mediator/Arbitrator may accept payment of the

defaulting party's share from the other party and exercise his discretion regarding costs to require the defaulting party to reimburse the other party for the amount of any such share.

64. \_\_\_\_\_ and \_\_\_\_\_ agree that the Mediator/Arbitrator may withhold the final award until all of any outstanding fees and expenses owed to the Mediator/Arbitrator have been paid.

**Waiver of liability**

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

**Acknowledgments**

66. In the case of mediation and 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 *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 an award may be set aside by the court if a party signed an arbitration agreement while under a legal incapacity or the award was obtained by fraud.
67. In the case of mediation and 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 *Arbitration Act* provides that an arbitration agreement and an award 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 an award may be set aside by the court if the award was improperly procured; and,
- d) an award for the payment of child support or spousal support is a “maintenance order” under the *Family Maintenance Enforcement Act*.
68. The parties also acknowledge that failure to disclose all relevant documents and information may be grounds for setting aside an agreement reached through a mediation proceeding or appealing an award of the Mediator/Arbitrator made following an arbitration proceeding.

**Effect of agreement on counsel**

69. 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.

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*