

Family Law Mediation and Arbitration Proceedings

Between:

And:

And:

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

Mediation-Arbitration 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, the reconciliation of differences, and a settlement of the dispute.
- B. Arbitration is a confidential, private process in which an impartial person, an arbitrator, listens to the evidence and arguments of the people involved in a legal dispute and then makes a decision resolving the dispute.
- C. In mediation-arbitration proceedings, an impartial person serves as both mediator and arbitrator, and attempts to settle a legal dispute through mediation before turning to arbitration and making a decision resolving the dispute.
- D. The parties to this agreement, and the dispute resolution process it describes, have the primary responsibility for resolving their legal dispute in the mediation phase of the process. They are solely responsible for providing evidence and making arguments about how their dispute should be resolved during the arbitration phase of the process.
- E. The parties to this agreement, their lawyers and the mediator-arbitrator for the legal dispute that is the subject of this agreement intend to make a serious and sustained effort to settle the parties' dispute fairly, without turning to arbitration. If, despite their

best efforts, one or more of the issues in their dispute cannot be settled, those issues will be resolved through arbitration.

- F. The parties to this agreement, their lawyers and the mediator-arbitrator for the legal dispute that is the subject of this agreement intend to participate in these proceedings honestly, cooperatively and in good faith.

In consideration of John-Paul Boyd Arbitration Chambers providing mediation and arbitration services in this dispute, _____ and _____ agree to the following terms.

Agreement to mediate and arbitrate

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 an arbitration agreement under the *Arbitration Act* of Alberta, for mediation-arbitration proceedings sited in Alberta, or under the *Family Law Act* of British Columbia, for mediation-arbitration proceedings sited in British Columbia. It is effective when:
 - a) _____ and _____ have received independent legal advice about the meaning and consequences of this agreement, and they and the lawyers consulted by the parties have signed the Certificates of Independent Legal Advice attached to this agreement; and,
 - b) this agreement has been signed by all parties to the agreement and their lawyers.
3. The mediator and arbitrator for this mediation-arbitration is John-Paul E. Boyd, KC of John-Paul Boyd Arbitration Chambers, referred to in this agreement as the Mediator-Arbitrator. The Mediator-Arbitrator is an accredited family law arbitrator and family law mediator, and a qualified family law dispute resolution professional under sections 4(2) and 5(2) of the Family Law Act Regulation of British Columbia.
4. These mediation-arbitration proceedings are sited in:
 - ☐ a) Alberta, Canada;
 - ☐ b) British Columbia, Canada; or,
 - ☐ c) the jurisdiction identified in the page attached to this agreement as Appendix A.

5. _____ and _____ expect that this mediation-arbitration may be conducted partially or wholly by teleconference or videoconference. Accordingly, in this agreement, words like “conference,” “meeting” and “hearing” include conferences, meetings and hearings held by teleconference and by videoconference, and the parties agree that nothing in this agreement requires any of the Mediator-Arbitrator, the parties or their lawyers to be physically present in the same room at the same time.
6. In this agreement,
 - a) references to the law of British Columbia do not apply to mediation-arbitration proceedings sited in Alberta and references to the law of Alberta do not apply to mediation-arbitration proceedings sited in British Columbia; and,
 - b) where a term is preceded by a checkbox, the parties are bound by terms with checkboxes that are checked and are not bound by terms with checkboxes that are not checked.
7. The Certificates of Independent Legal Advice attached to this agreement are a part of this agreement.
8. This agreement may be executed in counterparts, meaning that it may be entered into by each party signing a separate copy of this agreement and sending their signed copy to the other party and to the Mediator-Arbitrator by email.

Waiver of right to litigate

9. _____ and _____ waive their right to litigate, or to further litigate, the legal issues identified below, at paragraph 15 of this agreement, subject to the rights of judicial review and appeal set out in the *Arbitration Act* of Alberta, to the extent that those rights have not been waived or limited by the provisions of paragraph 53 of this agreement, or in the *Family Law Act* of British Columbia.
10. No party may serve litigation documents on any person entering, attending or leaving the mediation-arbitration at or near the place of the mediation-arbitration.
11. Nothing in this agreement limits or prevents the exercise of any enforcement rights that the parties may have through the courts, maintenance enforcement programs or otherwise.

12. On application by a party, but subject to the court's discretion, the terms of this agreement may be incorporated into an order to be made with the agreement of the parties, called a "consent order."

Duties of Mediator-Arbitrator

13. The Mediator-Arbitrator will:
- a) remain independent, unbiased 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 another.
14. _____ and _____ understand and agree that while the Mediator-Arbitrator 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

15. _____ and _____ agree to submit the following legal issues to mediation and, failing settlement of some or all of those issues, for determination by the Mediator-Arbitrator 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, including payment of children's special expenses and extraordinary expenses, in the past, present or future;
 - ☐ e) the payment of spousal support, in the past, present or future;
 - ☐ f) the division of property, including real property, personal property and financial assets;

- ☐ g) occupation and use of the family home, and use of the personal property in the family home;
 - ☐ h) the division of pensions and other retirement funds and savings;
 - ☐ i) allocation of responsibility for debt;
 - ☐ j) costs before the date this agreement is signed;
 - ☐ k) costs after the date this agreement is signed; and,
 - ☐ l) other issues, identified in the page attached to this agreement as Appendix B.
16. If one of the issues in this mediation-arbitration concerns, or is likely to concern, the parenting arrangements for a child, _____ and _____ agree that neither will make any change to the residence, living arrangements or lifestyle of that child pending the resolution of the legal issues in this mediation-arbitration proceeding without first securing the written consent of the other party and advising the Mediator-Arbitrator of the details of the change.

Assessment

17. Before the start of the mediation-arbitration, the Mediator-Arbitrator may
- a) meet separately with either or both of _____ and _____, or
 - b) refer either or both of _____ and _____ to an independent service
- to assess 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 assessed for power imbalances and the risk or presence of family violence.
18. The information obtained during the assessment process, including any notes and records made by or for the Mediator-Arbitrator, is confidential and will not be disclosed to anyone for any purpose, except as may be required by law or by court order.
19. _____ and _____ consent to the assessment process and will not raise the assessment process as an objection or a procedural issue in any future court proceedings, including applications to cancel, stay

or set aside an agreement reached through mediation or to suspend, set aside, vary or appeal an award of the Mediator-Arbitrator.

Confidentiality

20. The mediation-arbitration governed by this agreement is confidential and private, except:
- a) to the extent necessary to implement or enforce any settlements reached by the parties and any awards made by the Mediator-Arbitrator;
 - b) for the terms of the interim and final awards of the Mediator-Arbitrator; and,
 - c) as may be necessary for the purposes of judicial review or appeal, subject to paragraphs 53 and 61 of this agreement.
21. _____ and _____ agree that they will not record, share or distribute any part of mediation meetings and the arbitration hearing and, when meetings or hearings are held by teleconference or by videoconference, that:
- a) they will not capture, record, mirror or otherwise save their computer's video output during the mediation meeting or arbitration hearing;
 - b) they will not capture, record or otherwise save their computer's audio output during the mediation meeting or arbitration hearing; and,
 - c) they will not stream, broadcast, retransmit, post or otherwise distribute any portion of the mediation meeting or arbitration hearing, including on social media.
22. _____, _____ and the Mediator-Arbitrator agree that they will not make any audio or visual recordings of their conversations and other interactions with each other outside of mediation meetings and the arbitration hearing, unless they have first:
- a) disclosed their intention to record a meeting, conversation or other interaction; and,
 - b) obtained the express consent of the other party or parties to the proposed recording of the meeting, conversation or other interaction
23. No one other than the parties and their lawyers may attend conferences, meetings and hearings in the mediation-arbitration except with the agreement of both parties or by order of the Mediator-Arbitrator.

24. 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:
- a) the mediation-arbitration, and the documents, information and evidence provided in the course of the mediation-arbitration; and,
 - b) the results of the assessment process and the nature of any accommodations or adaptations of the mediation-arbitration process made in consequence of those results.
25. _____ and _____
acknowledge that the Mediator-Arbitrator may be required to disclose information obtained during the mediation-arbitration where the Mediator-Arbitrator has reason to believe 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.

Disclosure and production of documents

26. _____ and _____
acknowledge and agree that they must provide complete and accurate documents and information to each other for the purpose of resolving the legal issues identified at paragraph 15 of this agreement.
27. _____ and _____ agree that
they will promptly provide each other with copies of the documents in their possession or control identified by the Mediator-Arbitrator, and as may additionally be ordered by the Mediator-Arbitrator from time to time.
28. The Mediator-Arbitrator may draw a negative conclusion, called an "adverse inference," against a party if it appears to him that the party has failed to disclose documents or information relevant to the legal issues in the mediation-arbitration.

Procedural orders and interim awards

29. The Mediator-Arbitrator may make orders and interim awards as necessary in the course of the mediation-arbitration, including during the mediation phase, to

- a) promote the speedy conclusion of the mediation-arbitration,
- b) resolve one or more of the legal issues on a temporary or interim basis,
- c) manage conflict between the parties, if their conflict is affecting the wellbeing of the children,
- d) promote the safety of the parties and the children, and
- e) preserve property,

before the conferences described in paragraphs 32 and 39 of this agreement have been convened and whether or not the conferences are convened.

The mediation phase

30. The Mediator-Arbitrator will attempt to identify points of agreement and disagreement, explore alternative solutions, and identify potential accommodations and areas of compromise in the mediation phase of this mediation-arbitration proceeding.
_____ and _____ agree that the Mediator-Arbitrator is not disqualified from making decisions about any of the legal issues as arbitrator because he has acted as a mediator with respect to those issues.
31. _____ and _____ agree that all discussions taking place during the mediation phase of this mediation-arbitration are settlement negotiations, and that any offers to settle or otherwise compromise a party's position on the legal issues made during the mediation phase of this mediation-arbitration will not be considered by the Mediator-Arbitrator in the arbitration phase.
32. The Mediator-Arbitrator may convene a conference with both parties or their lawyers, or separate conferences with each party or their lawyer, before the first meeting in the mediation-arbitration to:
- a) get 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) identify any documents to be exchanged between the parties and produced prior to the mediation meeting;
 - d) establish a timetable for any steps to be taken prior to the mediation meeting;

- e) determine whether the mediation meeting will be held in person, by teleconference, by videoconference or by other means, and set the date and place for the mediation meeting;
 - f) determine any physical arrangements necessary for the attendance of the parties at the mediation meeting; and,
 - g) address any concerns arising out of the assessment process.
33. Meetings in the mediation phase of this mediation-arbitration will involve the parties and their lawyers in joint session with the Mediator-Arbitrator, although separate conferences may be held between the Mediator-Arbitrator and a party and their lawyer, at the discretion of the Mediator-Arbitrator or the request of a party.
34. The Mediator-Arbitrator will not disclose any information provided by a party in a separate conference between that party and the Mediator-Arbitrator unless the party or the party's lawyer specifically instructs the Mediator-Arbitrator to disclose that information.
35. _____ and _____ understand and agree that the settlements they reach during the mediation phase of this mediation-arbitration are final and binding on them.

End of the mediation phase

36. The mediation phase will end when:
- a) all of the legal issues are settled by the agreement of the parties;
 - b) both of the parties decide or the Mediator-Arbitrator declares that all or some of the legal issues cannot or are not likely to be resolved by continued mediation; or,
 - c) a party has failed or refused to take a step necessary to continue mediation within a reasonable period of time and the other party notifies the Mediator-Arbitrator of their wish to start the arbitration phase.

The arbitration phase

37. The arbitration phase of this mediation-arbitration proceeding will begin when the mediation phase has ended under paragraph 36(b) or (c) of this agreement.
38. The Mediator-Arbitrator will determine the legal issues:

- ☐ a) by applying the law of
 - ☐ i. Alberta,
 - ☐ ii. British Columbia, or
 - ☐ iii. the jurisdiction identified in the page attached to this agreement as Appendix C;
 - ☐ b) on grounds of conscience, subject to the provisions of section 19.10(6) of the *Family Law Act* of British Columbia, for mediation-arbitration proceedings sited in British Columbia;
 - ☐ c) on grounds of equity and fairness, subject to the provisions of section 19.10(6) of the *Family Law Act* of British Columbia, for mediation-arbitration proceedings sited in British Columbia; or,
 - ☐ d) on the basis identified in the page attached to this agreement as Appendix D.
39. The Mediator-Arbitrator may convene a conference before the arbitration hearing in the mediation-arbitration to:
- a) identify or clarify the legal issues to be resolved through arbitration;
 - b) designate a party as the claimant for the arbitration phase;
 - c) identify any documents to be exchanged between the parties and produced prior to the arbitration hearing;
 - d) establish a timetable for any steps that must be taken prior to the arbitration hearing;
 - e) determine the processes, procedures and rules of evidence that will govern any interim applications and the arbitration hearing;
 - f) identify any witnesses to be called to present oral evidence at the arbitration hearing, get their contact information, and determine whether summaries of the evidence of each witness must be provided before the arbitration hearing;
 - g) determine whether the arbitration hearing will be held in person, by teleconference, by videoconference or by other means, and set the date and place for the arbitration hearing;

- h) determine any physical arrangements necessary for the attendance of the parties and witnesses at the arbitration hearing; and,
 - i) address any concerns arising out of the assessment process.
40. The parties agree that the Mediator-Arbitrator will decide whether expert evidence is required to resolve the legal issues that were not settled in the mediation phase, 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 in his account.
41. The parties agree that any documents produced in joint session in the mediation meeting may be considered by the Mediator-Arbitrator in determining the legal issues that were not settled in the mediation phase. The Mediator-Arbitrator will *not* consider any documents or information provided by a party in a separate conference between that party and the Mediator-Arbitrator during the mediation meeting.

End of arbitration hearing

42. The arbitration hearing will end when:
- a) all of the legal issues that were not settled by the agreement of the parties in the mediation phase are settled in the arbitration phase;
 - b) the parties advise the Mediator-Arbitrator that they have no further evidence to present or arguments to make, or any time limits for the presentation of the parties' evidence or arguments have expired; or,
 - c) the Mediator-Arbitrator determines that continuing the hearing is unnecessary or inappropriate.
43. The Mediator-Arbitrator may, in exceptional circumstances, reopen the arbitration hearing at any time before the final award is made.

Awards

44. The Mediator-Arbitrator will make a final, written award addressing all of the legal issues as soon as possible after the arbitration hearing has ended, and:

- a) the final award will provide only summary reasons for the decisions of the Mediator-Arbitrator unless a party requests that full reasons be provided before the start of the arbitration hearing;
 - b) if any of the legal issues are resolved by the agreement of the parties during the mediation or arbitration phases of this mediation-arbitration proceeding, the Mediator-Arbitrator will record the terms of settlement as a final award made with the agreement of the parties, called a “consent award;” and,
 - c) consent awards will be made without reasons.
45. Either party may apply to the Mediator-Arbitrator, or the Mediator-Arbitrator on his own initiative may decide, to change interim and final awards to correct:
- a) clerical or typographic errors;
 - b) accidental errors, slips or omissions; and,
 - c) arithmetical errors in calculations.
46. An application by a party to correct an interim award must be made before the arbitration hearing has ended.
47. An application by a party to correct a final award must be made within 30 days of delivery of the award.
48. Subject to and as required by the *Arbitration Act* of Alberta or the *Family Law Act* of British Columbia, _____ and _____ understand and agree that they are bound by the terms of the Mediator-Arbitrator’s interim and final awards, including consent awards.

Entry of terms of award as consent order

49. In the event the parties are involved in ongoing litigation, the parties will, subject to the court’s discretion and their agreement otherwise, incorporate the terms of the final award, including any consent awards, into a consent order and take such steps as may be necessary to obtain the entry of the consent order in court.

End of the arbitration phase and the mediation-arbitration proceeding

50. The arbitration phase and the mediation-arbitration proceeding will be deemed to have ended on the later of:

- a) the date which is 31 days after delivery of the final award, where neither party has applied to correct a final award; or,
 - b) where a party has applied to correct a final award, the date on which the Mediator-Arbitrator dismisses the application or issues an amended final award or a correction to a final award, if the Mediator-Arbitrator determines that an amendment or a correction is necessary.
51. The Mediator-Arbitrator may make an order ending the arbitration phase and the mediation-arbitration proceeding if:
- a) the parties withdraw all of the legal issues that were not settled in the mediation phase from mediation-arbitration;
 - b) the parties make a written agreement to terminate this agreement under paragraph 57 of this agreement; or,
 - c) the Mediator-Arbitrator concludes that the continuation of the arbitration phase has become impossible.
52. The Mediator-Arbitrator will cease to have authority to make determinations regarding the legal issues, called being “functus officio,” when the arbitration phase and the mediation-arbitration proceeding have ended.

Appeals

53. In the case of mediation-arbitrations sited in Alberta, the parties agree that an award may be appealed by a party on

- ☐ a) questions of law,
- ☐ b) questions of fact, and
- ☐ c) questions of mixed law and fact,

and the parties understand that if this agreement does not provide that they may appeal an award, appeals may only be made with permission of the court and only on questions of law not referred to the Arbitrator for determination under section 44(2), (2.1) and (3) of the *Arbitration Act*.

54. In the case of mediation-arbitrations sited in British Columbia, the parties understand that an award may be appealed by a party on a question of law or on a question of mixed law and fact under section 19.19 of the *Family Law Act*.

Enforcement

55. Subject to the rights of judicial review and appeal set out in the *Arbitration Act* of Alberta or the *Family Law Act* of British Columbia, interim and final awards may be enforced by either party under section 49 of the *Arbitration Act* of Alberta, for mediation-arbitration proceedings sited in Alberta, or under section 19.20 of the *Family Law Act* of British Columbia, for mediation-arbitration proceedings sited in British Columbia.

Termination of agreement and resignation of Mediator-Arbitrator

56. Neither _____ nor _____ may unilaterally terminate this agreement. The Mediator-Arbitrator will continue the mediation-arbitration even though a party no longer wishes to participate or has ceased to participate.
57. The parties may at any time agree in writing to terminate this agreement and end this mediation-arbitration.
58. The Mediator-Arbitrator may at any time resign his appointment as mediator-arbitrator by giving written notice of his resignation to the parties.
59. In the event that the Mediator-Arbitrator resigns and the parties are unable to agree on a substitute mediator-arbitrator, a party may apply to the court for an order appointing a substitute mediator-arbitrator.
60. In the event that the parties terminate this agreement or the Mediator-Arbitrator resigns, _____ and _____ understand and agree that any settlements, and any consent awards and any interim awards made by the Mediator-Arbitrator prior to the termination of this agreement or the Mediator-Arbitrator's resignation are binding on them and continue to be binding on them, including upon the continuation of the mediation-arbitration with a substitute mediator-arbitrator, unless varied or set aside by an award of the substitute mediator-arbitrator.

Evidence of Mediator-Arbitrator

61. Because mediation and arbitration are confidential, private processes aimed at resolving disputes outside of court, _____ and _____ agree that:
- a) all communications between the parties, the Mediator-Arbitrator 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 otherwise compromise a party's position;

- b) neither will ask or require the Mediator-Arbitrator to provide information, give evidence, or produce notes, documents, information or recordings in any litigation between the parties concerning the communications, discussions and evidence given in this mediation-arbitration; and,
- c) any notes, documents, information or recordings retained by the Mediator-Arbitrator or John-Paul Boyd Arbitration Chambers will not be subpoenaed by the parties or their lawyers.

62. The parties acknowledge that the Mediator-Arbitrator may, in certain circumstances, be compelled by a party to testify in litigation proceedings despite the other terms of this agreement. The parties acknowledge that calling the Mediator-Arbitrator as a witness in such circumstances is a breach of their obligations under this Mediation-Arbitration Agreement and that the party who calls the Mediator-Arbitrator as a witness will:

- a) immediately to pay the Mediator-Arbitrator the sum of \$3,000 as liquidated damages for breach of contract; and,
- b) pay to the Mediator-Arbitrator the sum of \$450 per hour, plus any applicable taxes, for all time spent by the Mediator-Arbitrator in consequence of being called as a witness, including time spent reviewing documents and preparing to give evidence, whether or not the Mediator-Arbitrator actually testifies in the legal proceeding.

Appointment, retainer and fees of Mediator-Arbitrator

63. _____ and _____ jointly appoint and retain the Mediator-Arbitrator.

64. _____ and _____ agree that the Mediator-Arbitrator will be paid \$450 per hour, plus GST, for all work performed by the Mediator-Arbitrator including conferences, meetings, hearings, telephone calls, correspondence, drafting documents, reviewing documents and other services.

65. _____ and _____ also agree that John-Paul Boyd Arbitration Chambers will be reimbursed for all necessary expenses incurred by the Mediator-Arbitrator in connection with the mediation-arbitration, including boardroom booking fees, photocopying when professional printing services are used, equipment rental, courier fees and similar expenses.

66. _____ and _____ agree that the Mediator-Arbitrator will be paid a per diem rate of \$400 when the Mediator-

Arbitrator is required to travel outside Calgary, Alberta and overnight accommodation is necessary. John-Paul Boyd Arbitration Chambers will not otherwise be reimbursed for travel time or for other expenses incurred when the Mediator-Arbitrator is required to travel, including hotel accommodation, mileage or car rental, airfare, meals and similar expenses.

67. Fees and expenses will be charged by the Mediator-Arbitrator when a conference, meeting or hearing is cancelled by one or both parties on following basis:
- a) if notice of the cancellation is received by the Mediator-Arbitrator between 7 days and 48 hours before the start of the conference, meeting or hearing, the party or parties cancelling the conference, meeting or hearing will be charged for the Mediator-Arbitrator's time spent preparing for the conference, meeting or hearing to the point when notice is received at the Mediator-Arbitrator's ordinary hourly rate plus GST, and will be required to pay any nonrefundable expenses incurred by the Mediator-Arbitrator or by John-Paul Boyd Arbitration Chambers for the purposes of the conference, meeting or hearing including boardroom booking fees, equipment rental, hotel accommodation, car rental, airfare and similar expenses; and,
 - b) if notice of the cancellation is received by the Mediator-Arbitrator less than 48 hours before the start of the conference, meeting or hearing, the party or parties cancelling the conference, meeting or hearing will be charged for one-half of the time reserved by the Mediator-Arbitrator for the conference, meeting or hearing at the Mediator-Arbitrator's hourly rate, plus GST, as well as for the Mediator-Arbitrator's time spent preparing for the conference, meeting or hearing to the point when notice is received, and will be required to pay any nonrefundable expenses incurred by the Mediator-Arbitrator or by John-Paul Boyd Arbitration Chambers for the purposes of the conference, meeting or hearing including boardroom booking fees, equipment rental, hotel accommodation, car rental, airfare and similar expenses.
68. Payment for the Mediator-Arbitrator's fees and any expenses incurred by the Mediator-Arbitrator or John-Paul Boyd Arbitration Chambers is due when:
- a) the parties have settled all of the legal issues, under paragraph 36(a) of this agreement;
 - b) this agreement is terminated, under paragraph 57 of this agreement;
 - c) the Mediator-Arbitrator has resigned, under paragraph 58 of this agreement; or,

d) the arbitration phase and the mediation-arbitration proceeding have ended, under paragraphs 50 or 51 of this agreement.

69. Subject to an award of costs to the contrary in the final award, _____ and _____ agree that their respective lawyers, and any lawyers they may later retain in place of their lawyers at the time this agreement is made, will each be responsible to pay one-half of the Mediator-Arbitrator's account. Interest will accrue at a compounding rate of 1% per month (12.68% per year) on all accounts that are not paid within 30 days of the date on which they are due.
70. In the event that a party fails or refuses to pay their share of the Mediator-Arbitrator's account, the Mediator-Arbitrator may accept payment of the defaulting party's share from another party and exercise his discretion regarding costs to require the defaulting party to reimburse the other party for the amount of any such share.
71. _____ and _____ agree that the Mediator-Arbitrator may withhold delivery of any final award until the Mediator-Arbitrator's account is paid in full.

Waiver of liability

72. _____ and _____ acknowledge that while the Mediator-Arbitrator will make his best efforts to preserve the confidentiality and privacy of conferences, meetings and hearings, he cannot make any promises or guarantees about the security of communications made through teleconferencing and videoconferencing technology. The parties and their lawyers are responsible for informing themselves of the risks and consequences of possible security breaches, and for ensuring the security of their individual access to the teleconferencing and videoconferencing technology, including the security of their computers, electronic devices, networks, and access to the internet.
73. _____ and _____ waive any claim or right of action they may have against John-Paul E. Boyd, KC and John-Paul Boyd Arbitration Chambers arising out of this mediation-arbitration.

Acknowledgments

74. In the case of mediation-arbitration proceedings sited in Alberta, the parties acknowledge, despite paragraph 38 of this agreement, that:

- a) decisions 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 under the law of contract, which includes legal questions about issues such as incapacity, duress, undue influence, coercion, mistake and misrepresentation; and,
- c) the *Arbitration Act* provides that an award may be cancelled by the court if a party signed an arbitration agreement while under a legal incapacity or the mediator-arbitrator's award was obtained by fraud.

75. In the case of mediation-arbitration proceedings sited in British Columbia, the parties acknowledge, despite paragraph 38 of this agreement, that:

- a) decisions 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 *Family Law Act* provides that an arbitration agreement and a mediator-arbitrator's 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 issues such as incapacity, duress, undue influence, coercion, mistake and misrepresentation;
- c) the *Family Law Act* provides that a mediator-arbitrator's 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*.

76. _____ and _____ further acknowledge that failure to disclose relevant documents and information may be grounds for cancelling, staying or setting aside a settlement reached through mediation

or for suspending, setting aside, varying or appealing an award of the Mediator-Arbitrator.

Effect of agreement on counsel

77. The lawyers for each party, as undersigned and including any lawyers who may be retained in their place, are bound by the terms of this agreement.

Signed by _____ on _____ 2023, at the City or
Town of _____, in the Province of _____.

Signature

Counsel for:

Signed by _____ on _____ 2023, at the City or
Town of _____, in the Province of _____.

Signature

Counsel for:

JOHN-PAUL BOYD ARBITRATION CHAMBERS

Per:

John-Paul E. Boyd, KC
Family Law Mediator and Arbitrator

Lawyer's Certificate of Independent Legal Advice

I have fully read over and explained to my client, _____, the nature, meaning and consequences of this Mediation-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-arbitration proceedings, and 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 these mediation-arbitration proceedings, including by teleconference or videoconference, and is doing so freely and voluntarily.

Date

Counsel for:

Name:

Address:

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.

Date

Signature

Lawyer's Certificate of Independent Legal Advice

I have fully read over and explained to my client, _____, the nature, meaning and consequences of this Mediation-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-arbitration proceedings, and 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 these mediation-arbitration proceedings, including by teleconference or videoconference, and is doing so freely and voluntarily.

Date

Counsel for:

Name:

Address:

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.

Date

Signature