

## **MEDIATION RETAINER AGREEMENT**

**BETWEEN: ROBERT SHAWYER**

**(herein referred to as, “the mediator”)**

**-and- \_\_\_\_\_ (herein referred to as one of , “the parties”)**

**-and- \_\_\_\_\_ (herein referred to as one of , “the parties”)**

### **The Issues**

1. The parties acknowledge they have requested Mr. Robert Shawyer assist them as their mediator to resolve any disputes with respect to their child(ren), including but not limited to, developing a Parenting Plan or a Memorandum of Understanding regarding parenting arrangements. They have further agreed Mr. Robert Shawyer has the requisite professional qualifications and professional skills to do the work required.

## **The Role of the Mediator**

2. The parties agree the mediator is an impartial third party, who acts as a facilitator to assist the parties to arrive at their own solutions with respect to the outstanding issues. The mediator has no authority to impose a settlement on the parties. She is not a lawyer and will not provide legal advice.
3. The mediator will at all times promote a settlement believed to be in the best interests of the child(ren), and will assist the parties to examine the individual needs of their child(ren), as distinct from their own needs and desires.

## **Commitment To Settle**

4. The parties acknowledge they are willing participants in the mediation, are committed to making a sincere effort to reach a consensual resolution of all issues brought to mediation and will conduct themselves in good faith at all times during the mediation process.
5. The parties agree they will not start or take any fresh steps in any court proceedings related to the issues being mediated while the mediation is in progress. Nor will they instruct their lawyers to correspond with each other with respect to issues in mediation while they are engaged in this mediation process, without first advising the other party and the mediator.

6. The parties agree to:
- i) make full and complete disclosure of all relevant information reasonably required for the mediator to understand the issues being mediated; and
  - ii) execute any Release of Information forms necessary for the mediator to obtain relevant information from third parties. No such professionals or experts shall be contacted without the written consent of the parents.

### **Confidentiality**

7. The parties are screened individually for the suitability of mediation. The intake questionnaire and the screening meetings are confidential and will not be disclosed to anyone, unless otherwise by order of the court or as legally required to report a suspicion of child abuse or neglect.
8. Other than information obtained for or during the intake screening, the mediator may disclose, wholly or in part, any information provided by one of the parties to the mediator in caucus, which, in the mediator's sole judgment is relevant to resolution of the matters in issue.

9. The parties consent to the presence of the mediator's intern or assistant for the purpose of professional training and administrative support. Both the intern and assistant are bound by the same rules of confidentiality as the mediator.
10. The mediator may obtain consultation with respect to the mediation.
11. The mediator may meet or communicate with either party or their counsel separately at any time. The mediator may include, in the mediation process, any other significant third party, such as the child, a new partner, grandparents, other relatives, legal counsel or other significantly involved persons, following consultation beforehand with the parties. Clinical discretion will be employed in terms of how information from the child(ren) will be presented in a way to not place further stress on the child(ren).
12. The mediator will not voluntarily disclose to anyone who is not a party to the mediation, anything said in the course of the mediation, or any materials submitted, without the written consent of all parties, EXCEPT:
- i) to communicate with the parties, counsel and third parties retained by a party or counsel, as deemed necessary by the mediator;
  - ii) to any third party advisors or experts engaged by the parties during this mediation;
  - iii) for research or educational purposes, on an anonymous basis;

- iv) where the mediator is required to report to the appropriate child welfare authority or other relevant authorities if she has a reasonable suspicion the child(ren) may be in danger of harm or abuse;
  - v) where the mediator is obliged to notify the proper authorities if she has a reasonable suspicion a client may harm himself or herself, or another person;
  - vi) where ordered to do so by a judicial authority;
  - vii) where required by law to address a professional complaint;
  - viii) in the event the mediator is required to resort to small claims court or collection agency to retrieve payment (the client waives the right of confidentiality to the extent identifying information is required for the claim).
13. Mediation is a confidential, off-the-record process. The parties agree these communications will not be raised in any subsequent legal proceeding between them.
14. The parties agree the mediation sessions are settlement negotiations and any disclosures, including the mediator's file, are inadmissible in any litigation, arbitration or other proceeding to the extent permitted by law. The parties agree they will not subpoena or otherwise require the mediator or the intern to testify or produce records, notes, or email communications in any proceedings. No transcripts or recordings shall be made of the mediation sessions. In the event either party contravenes the above provision, the mediator will move to quash the subpoena or summons and the party in breach will pay all of the mediator's fees and expenses for so doing.

15. In particular, the parties agree they shall not rely on or introduce as evidence in any arbitration or judicial proceedings:
- i) Any views expressed or suggestions made by the other party in respect of the possible settlement of the matter, whether orally or in writing;
  - ii) Any admissions or apologies made by the other party in the course of the mediation, whether orally or in writing;
  - iii) The fact the other party indicated a willingness to accept a proposal or recommendation for settlement made by the mediator;
  - iv) Any views or proposals expressed by the mediator, or
  - v) Any information provided or intake form completed by a party and provided to the mediator in the course of the intake/screening meetings, and
  - vi) Any contents of the mediator's file including her notes.

### **Conclusion of Mediation**

16. If the parties reach an agreement on some or all of the issues, the mediator will prepare a Final Draft Parenting Plan (full or partial) or Memorandum of Understanding with respect to any issues agreed upon. These documents are not legally binding and are a statement of intention by the parents. The Memorandum of Understanding or Draft Parenting Plan can be finalized into an Agreement subject to the parties' counsel's review (see ILA section of this Contract).

Any Draft Parenting Plan or Memorandum of Understanding will not be released until all outstanding fees and disbursements have been paid.

### **Risks and Limitations of Mediation**

17. The parties acknowledge there is no guarantee they will resolve all issues in mediation and they may not be fully satisfied with the outcome. The parties further acknowledge if a settlement is not reached in mediation, any subsequent litigation may be more difficult than if the parties had not mediated.
18. The mediator cannot guarantee physical safety during the mediation process. The mediator cannot guarantee against bad faith or abuse of process by either party.

### **Electronic Provision Of Services**

19. Scheduling may be done telephone and frequently by email, unless you indicate you do not consent. Unless you do not consent, email may be used to in between sessions to provide services, including updates, memorandum, summaries, draft parenting plans, exchange information or provide educational resources. Because of the nature of the service provided, parenting plan mediation, these communications may include information not only about you but the other parent or the children.

With your informed consent, electronic provision of services may be provided by video contact (e.g., VSee, Skype) or telephone. The risks of providing services by telephone or electronically may include insufficiency, misunderstandings due to lack of visual clues and technology failure. The benefits may include appropriateness, avoids the need to travel a distance, taking less time off work, services continuing while Dr. Fidler is away, convenience and comfort. Alternatives to the provision of electronic or telephone services include in-person services only or local services from an available mediation provider of the same or different discipline.

While efforts are made to protect privacy when providing services by telephone or electronically, the same degree of confidentiality provided during in-person office sessions is not possible. The limitations include the possibility of interceptions of communications while these are occurring. In addition, other individuals (your former spouse, new partner or spouse, child, adolescent, others living in your home) may be able to access information, sensitive or otherwise, communicated electronically or by telephone between you and Dr. Fidler in your own home or work place.

By signing this Agreement you are confirming to Dr. Fidler you have taken reasonable steps to secure your own electronic devices you choose to use to communicate with Dr. Fidler (mobile phones, iPads, computers, etc.). This would include having a confidential password and adequate firewalls. Any communications sent by Dr. Fidler are likely to include information about the other parent. These communications are intended for you and not for



others, unless agreed to otherwise. By signing this agreement you agree not to allow your children of any age or your new partner or spouse to access to any communications sent to you from Dr. Fidler, unless an agreement is reached in advance that the particular communication is appropriate to share with others.

### **Independent Legal Representation**

20. The parties are responsible for seeking and obtaining all necessary advice, and are encouraged to obtain legal advice throughout the mediation process. If during the course of the mediation, the mediator expresses an opinion or comments on an issue, the parties agree this will not be interpreted as legal advice.
21. Agreements, other than the Agreement to Mediate, are not signed in the mediator's office.
22. The mediator strongly encourages each party to obtain legal advice throughout the mediation process and before any Agreement is signed to ensure they are fully informed of their legal rights and obligations and the legal implications of such an agreement. The parties understand and acknowledge an Agreement reached without the benefit of legal and other necessary advice may be invalid, may later be set aside, or may have unintended consequences.

23. If any party chooses not to obtain independent legal advice, he/she agrees to indemnify and save the mediator harmless from any and all liabilities arising out of the mediated agreement.

### **Termination of Mediation**

24. It is understood that mediation is a voluntary process. Any party or the mediator may terminate the process at any time on notice to the mediator and other parties. The mediator may suspend or terminate the mediation process whenever:

- i) in her opinion, the process is likely to prejudice one or more of the participants;
- ii) the usefulness of the mediation process is exhausted;
- iii) the agreement being reached is unreasonable.

25. The mediation shall be terminated:

- i) By a written statement by one or more of the parties that the mediation is terminated;
- ii) By a written statement by the mediator the mediation is terminated.

### **Costs of Mediation**

26. It is agreed:

- i) The mediator's fee will be charged at the rate of \$400.00 per hour, plus H.S.T. Fees are applied to all time expended in any/all professional activities by the mediator, including

administrative matters, associated with the mediation process or arising from the mediation process. This includes fees charged retroactively from the time the services are initially requested and the file is opened. This also includes disbursements paid to collateral sources for verbal or written reports and agency/hospital reports. This includes all services related to the mediation, including but not limited to, telephone calls, e-mail, review of materials, letter or report writing, and sessions.

- ii) The parties will divide the cost of the mediation in the following way: \_\_\_\_\_.
  - iii) A retainer is required in the amount of \$\_\_\_\_\_ prior to the commencement of the mediation.
  - iv) The mediator agrees she will notify the parties before the retainer is depleted and ask for further retainer. The mediator reserves the right to cancel or suspend the mediation process if accounts are not paid.
  - v) Interest will be charged on all accounts outstanding after 30 days at a time the account is rendered.
27. The parties shall be billed for an appointment in which there is less than 24 (twenty-four) business hours' notice prior to cancellation. A 48-business hour notice is required for appointments scheduled at 8 a.m. or after 4:00 p.m. The parties shall each be responsible for bills arising from his/her own cancellation.
28. Payment is not dependent on a parties' perception of the success or failure of the service.

## **Waiver of Liability**

29. In consideration for the third party neutral services provided by the mediator, the parties hereby agree they will not make any claim against the mediator, in respect of such services, whether in contract or in tort (e.g. for negligence). The parties further agree they will indemnify and save harmless the mediator from all costs, claims, causes of action or proceedings, which they have or may have in future, arising out of the mediation.

Both parties:

- (a) understand their rights and obligations under this Agreement and the nature and consequences of this Agreement;
- (b) acknowledge they are not under any undue influence or duress; and
- (c) acknowledge they are both signing this Agreement voluntarily.

Each of the parties and the mediator acknowledge they have read this Agreement and agree to proceed with mediation on the terms set out above.

DATED at Toronto, this \_\_\_\_\_ day of \_\_\_\_\_, 20...

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WITNESS

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Party 1,

\_\_\_\_\_

WITNESS

\_\_\_\_\_

Party 2,

\_\_\_\_\_

WITNESS

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Mr. Robert Shawyer

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WITNESS

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