



## **AGREEMENT TO MEDIATE (FAMILY)**

***Between:***

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And

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("the parties")

**AND**

**Joe James** ("the mediator").

The parties retain the mediator on the following terms:

### **ROLE OF THE MEDIATOR**

1. The mediator is an impartial third party who provides a neutral and balanced dispute resolution process. The mediator will not make decisions, take sides, or provide legal advice.
2. Each party is responsible for seeking and obtaining all necessary advice, including legal advice.
3. There is no solicitor-client privilege between the mediator and the parties.

### **THE PROCESS**

4. Unless counsel are attending the mediation and wish to skip this step, the mediator will first meet each party separately, to identify issues, goals and concerns. Thereafter, the parties and the mediator will meet together, either with or without their counsel, as they may agree.

5. The mediator may meet or communicate with either party separately at any time. The mediator may, in her discretion, disclose information or documents provided in such private meetings (called a "caucus") to the other party, and/or to a party's lawyer, unless agreed otherwise during the caucus. All intake and screening information is confidential between the mediator and the party that completed the screening questionnaire, subject to the confidentiality provisions set out herein.
6. Either party may have his or her lawyer attend the mediation. Other professionals or other persons whose presence is required at the mediation may be present if all parties agree. Any third parties present must agree to be bound by the confidentiality terms of this agreement.
7. Mediation is a voluntary process. Any party or the mediator may terminate the process at any time.
8. The parties shall obtain, from independent legal and other advisors, all necessary legal, tax and other advice at the outset of the mediation process, and shall also obtain independent advice on the terms of any proposed settlement. They understand that an agreement reached without the benefit of legal and other necessary advice may be invalid or have unintended consequences.
9. The parties agree that they will not conclude a binding agreement in mediation. Any binding agreement shall be made by the parties either on their own following mediation or, preferably, with the advice of their lawyers. The parties indemnify the mediator from any claims arising out of any agreements entered into following this process whether they have obtained legal advice or not .
10. The parties authorize the mediator to discuss all aspects of the mediation with each other's lawyers and other advisors, excepting information that has been agreed to be confidential as per paragraph 5. The parties authorize the mediator to copy counsel with all memoranda of understanding and all documents provided to the mediator for the purpose of mediation or prepared during the mediation, unless those documents are subject to a specific confidentiality agreement between the party that provided the document and the mediator.

**WITHOUT PREJUDICE COMMUNICATIONS**

11. All information, documents, notes, memos, correspondence (including e-mail), memoranda of understanding, drafts, or other communications prepared or provided by any person for the purpose of the mediation shall, unless otherwise discoverable, be treated as without-prejudice settlement discussions, and shall be inadmissible for use by anyone in any proceeding for any purpose. The parties agree that they will not summons, subpoena, or seek access to any documents prepared or provided in connection with the mediation, including the file and notes of the mediator. The mediator shall not be called as a witness in any proceeding.
12. Closed mediation is a confidential, off-the-record process. Although the mediator cannot guarantee confidentiality, the purpose of a confidentiality rule is to help parties feel comfortable freely exchanging information, ideas, options, offers and concerns. The parties agree not to divulge communications made during the mediation process to anyone who was not present, including memoranda and e-

mails from or to the mediator or between themselves, unless they all consent. ***This rule does not prevent the parties from providing necessary information and documents to people whose advice they need in order to make informed decisions.***

13. The mediator agrees to be bound by these confidentiality provisions. However, the mediator may breach the rule of confidentiality in the following situations:
- (i) to communicate with the lawyers for the parties, and to third party advisors retained by a party or both parties;
  - (ii) for research, writing or educational purposes, on a non-identifying basis;
  - (iii) with the written consent of the parties;
  - (iv) where ordered to do so by a judicial authority;
  - (v) where required to do so by law, including obligations to report a child in need of protection; and
  - (vi) where the information discloses an actual or potential threat to human life or safety.
- The confidentiality provisions of this agreement apply to any assistant, intern, co-mediator or observer in the mediation.

#### **RISKS AND LIMITATIONS OF MEDIATION**

14. The parties acknowledge that there is no guarantee that they will resolve all issues in mediation, nor that they will be fully satisfied with the outcome. If no settlement is reached in mediation, any subsequent litigation may be more difficult than if the parties had not mediated. The mediator cannot guarantee physical safety during the mediation process. The mediator cannot guarantee against bad faith or abuse of process by either party.

#### **DOCUMENT DRAFTING**

15. The mediator may draft interim memoranda at the end of meetings and a final memorandum when the mediation concludes. All such memoranda are without prejudice settlement proposals; none are binding on a party until they have been finalized into legal agreements with the assistance of the lawyers for the parties.

#### **ADVERSARIAL PROCEDURES SUSPENDED**

16. The parties agree that they will not commence or advance any court proceedings, nor will they instruct their lawyers to correspond with each other, while they are engaged in a mediation process, without first advising the other parties and the mediator.

#### **MEDIATOR'S FEES**

17. The parties agree to abide by the mediator's fee schedule, attached as Schedule "A". They also agree to abide by the mediator's cancellation policy, which is as follows:

- Cancellation notice received between 24-48 business day hours before the scheduled date or less: the fee for all preparation completed by the time notice of cancellation is received, plus a full day cancellation fee ( 7 hours) plus actual expenses and disbursements incurred by the arbitrator to that date, plus GST.
- Cancellation notice received between 48-120 hours before the scheduled date: the fee for all preparation completed by the time the notice of cancellation is received, plus a half-day cancellation fee ( 4 hours) plus actual expenses and disbursements incurred by the arbitrator to that date, plus GST.
- Cancellation notice received more than five business days before the scheduled date: the fee for all preparation completed by the time the notice of cancellation is received, plus a \$500 cancellation fee plus actual expenses and disbursements incurred by the arbitrator to that date, plus GST

**The parties affirm that they have had full opportunity to read and understand this agreement, and sign it this**

\_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
(Participant)

\_\_\_\_\_  
(Participant)

\_\_\_\_\_  
(Participant)

\_\_\_\_\_  
(Participant)

\_\_\_\_\_  
(Mediator)



**SCHEDULE A - 2009 Mediation Fee Schedule (GST extra)**

1 hour consultation/intake:	\$150.00
4 hours (half day):	\$550.00
Full day ( 7 hours):	\$1100.00
Copies and faxes:	.25 per page
Drafting ( <i>memoranda, joint net family property statements, agreements, etc.</i> )	flat fee based on estimated time
Travel time/mileage:	flat negotiable fee
Courier, printing, long distance:	actual disbursement cost
Consulting,teaching,training,writing,coaching:	negotiable fee



### **SCHEDULE "B" - PRINCIPLES OF MEDIATION**

**Good faith.** The parties and the mediator undertake to deal with each other with good faith and integrity, and to honour all commitments made during mediation.

**Full disclosure.**

(i) The parties agree to provide each other with all relevant information and documentation reasonably requested by the other in order to make informed decisions.

(ii) The parties shall, if requested, provide the other with a sworn financial statement disclosing all their property and liabilities on the dates that are relevant to the issues in mediation.

**Trust.**

(i) The parties promise that they will not dissipate any property that is a subject of mediation during the time that they are in mediation, unless they have the written consent of the other party. In particular they undertake not to sell, gift, transfer, mortgage, lien, pledge as security or otherwise dissipate any such property, nor to change any life insurance, pension, will, or RRSP beneficiary designations.

(ii) Neither party will start legal proceedings, nor take any new steps in any existing legal proceeding while they are in mediation, unless they have the consent of the other party.

**Safety.** Mediation should be a safe place to have difficult conversations. The parties acknowledge that the mediator will "screen" for physical violence and emotional abuse in the parties' relationship. It often is necessary to make specific provisions to ensure that each party feels safe and empowered in mediation. The parties agree to honour and respect what the other needs in order to provide a safe mediation process and to keep any commitments made to ensure safety and equal empowerment during mediation.

**Fairness.** The parties understand that the chances of reaching an agreement are best if each of them believes that the process is a fair one. The parties undertake to take all steps to ensure a fair process, including allowing the other full opportunity to speak and respond, and full access to all support, advice and disclosure reasonably necessary to reach an informed and voluntary agreement. The parties agree that a fair process is free of fear, emotional abuse, intimidation, manipulation, accusations, blame, guilt, rage, violence, and deceit, and they agree to refrain from such conduct at all times during mediation.