



AGREEMENT TO MEDIATE

Between:

_____ and
_____ (“the parties”)

AND _____ (“the mediator”).

The parties named-above wish to retain the mediator on the following terms and conditions:

DEFINITIONS

THE MEDIATOR

The mediator is an impartial third party who provides a neutral dispute resolution process that is entered voluntarily by the parties.

CLOSED MEDIATION

Closed mediation is a “without prejudice”, confidential and off-the-record process. This means that all information shared during the mediation is not disclosed to anyone who is not present or involved unless there is consent to do so, or as it relates to the exceptions to confidentiality as described in this agreement.

Closed mediation does not prevent the parties or the mediator from seeking advice from those who can help the parties make informed decisions. In cases where the mediator is seeking such information, this would require the parties’ written consent.

In Closed mediation, neither party nor the mediator may give evidence, either verbal or written, in any legal proceeding, whether already started or which may be commenced in the future; only the terms of any agreement may be disclosed.

OPEN MEDIATION

Open mediation is a process that offers an “on-the-record” process. This means that information may be disclosed in legal processes that might follow. In Open mediation, it is understood that the mediator may give evidence and/or prepare a report which may be used in subsequent court proceedings.

The Open mediation report does not contemplate making recommendations, but rather would provide information about the process, and the issues that were discussed and agreed upon. The mediator would include the outstanding issues, and make suggestions about what might be done to assist the parties in resolving these issues.

The parties agree to this being _____Mediation.

PROCESS

1. The mediator may meet separately with the parties and/or in joint sessions as the situation requires.
2. Where the child or children is/are a vital part of the process, they may be interviewed together and/or separately.
3. It may be useful to involve other significant individuals (such as other family members, new partners, legal counsel, etc.) in order to help resolve the issues.
4. It may be useful to obtain information from relevant professional/collateral sources, through telephone or face-to-face meetings, or to receive written information. Any collateral contact will be done only with the written consent of the parties.

DISCLOSURE

1. The parties agree that they will make available any relevant information deemed by the mediator to help understand the issues.
2. The parties agree to execute any Releases of Information necessary for the mediator to obtain such information.

CONFIDENTIALITY

The parties agree that mediation is confidential with the following exceptions:

1. When the terms of the mediation is OPEN mediation;
2. In CLOSED mediation where the parties agree to have the mediator participate through correspondence, verbal report, or in person, at a case conference or any pre-trial conference;



3. Where ordered to do so by a judicial authority;
4. Where required to do so by law, including obligations to report a child in need of protection;
5. Where the information suggests an actual or potential danger to human life or safety;
6. To communicate with the lawyers for the parties, and to third party advisors retained by a party or both parties; and
7. For research and educational purposes on an anonymous basis.

TESTIFYING

In the case of CLOSED mediation, the parties agree that neither Marathon Mediation, nor its mediators, will be called as a witness to give evidence or make a report in any legal proceedings. Anything said or done in the mediation is inadmissible in any current or future litigation.

INDEPENDENT LEGAL ADVICE

1. The parties understand that the mediator does not represent any of the parties, and is not acting as a lawyer or providing legal advice.
2. The parties are strongly advised to obtain independent legal advice, preferably before the mediation commences, but in any event, before a final agreement is reached, to ensure that they are fully informed of their legal rights and obligations and of the legal implications of entering such an agreement.
3. The parties understand that a mediated agreement is not binding. A Memorandum of Understanding may be completed by the mediator, and may form the basis of a legally-binding document completed by the parties and their respective lawyers.

MEDIATOR'S FEES

1. The parties agree to pay the costs of the mediation based on an hourly fee of \$300.00.
2. A retainer for the first ten hours is required prior to commencing the mediation.
3. The fee includes all interview time, telephone contact and the retrieval of voicemail and emails, review of materials, correspondence and the writing of memorandums and reports. Consultation time and preparation time is also included.



4. Disbursements incurred, including fees required for the assistance of third parties, will be billed to the parties.
5. Cancellation fees will not be charged if notice is within three days of the scheduled appointment.

TERMINATION

It is understood that any party can withdraw from the mediation at any time, and that the mediator can suspend or end the mediation process at any time where, in her/his opinion, continuing the process would result in harm or prejudice to one or more of the participants.

The parties agree that they have read and understood this agreement, and agree to proceed on the terms set out above.

_____ day of _____, 2010.

(Signature)

(Signature)

(Signature)

(Mediator)

