

CHRISTINE KIM MEDIATION

Family Agreement to Mediate

Date: _____

Between:

_____ & _____ (the parties)

- and -

Christine Kim (Christine Kim Mediation)

GENERAL TERMS

1. The mediator is an impartial and neutral third party who provides a balanced negotiation process. The mediator will not make decisions, take sides or provide counselling or legal advice.
2. There is no solicitor-client privilege between the mediator and the parties.
3. The parties will agree on the issues to be mediated.
4. The mediator may have an intern or observer present.
5. The mediation will be private. Other persons may attend with the consent of all parties, provided they agree to be bound by the confidentiality provisions herein.
6. Mediation is a voluntary process. Any party or the mediator may terminate it at any time.
7. Christine Kim or intern shall not be liable to any party for any act or omission in connection with a mediation conducted under this agreement, nor for any agreement arising out of this process, whether the parties have legal advice or not. In particular, Christine Kim or intern will not be liable for the consequences of any report made, in good faith, to a Children's Aid Society, the police or the other third party in accordance with paragraphs 8-11 herein.

CONFIDENTIALITY AND EXCEPTIONS

8. The mediator and the parties shall keep confidential all information prepared, or provided, disclosed or exchanged during or for the purpose of the mediation, including progress notes, MOUs, emails and other communications between the parties themselves, and the parties and the mediator, intern or the other third party. The parties will not divulge anything said or done during the mediation process to anyone who was not present, unless they agree otherwise. The parties will agree to reasonable sharing of information with all necessary third parties such as new partners, accountants, counsellors etc.

9. These confidentiality provisions apply to interns, co-mediators, observers and any third-party participants.
10. Either or both parties may have their lawyers attend the mediation. Other professionals or persons whose attendance is required by one or both parties may attend with the consent of all parties and the mediator and shall agree to be bound by the confidentiality provisions of this agreement.
11. The parties acknowledge that the fact that mediation has been held or that they entered into an Agreement to Mediate may not be confidential in relation to the court process. They authorize the mediator to disclose to the court, where appropriate, that a mediation has occurred, and whether or not an agreement was reached.
12. We do not guarantee that mediation will be confidential; the mediator may disclose information about the mediation:
 - to communicate and share documents with counsel and other third parties retained by one or both parties, in the mediator's discretion;
 - for research, writing or educational purposes, provided all identifying information is changed;
 - where ordered to do so by a judicial authority;
 - where required to do so by law, including obligations to report a child in need of protection;
 - where the information discloses an actual or potential threat to human life or safety, and
 - Where either party makes a claim against Christine Kim or intern.

WITHOUT PREJUDICE SETTLEMENT DISCUSSIONS

13. Mediation sessions are settlement negotiations. All disclosures, including the mediator's file, are inadmissible in any litigation, arbitration or other proceeding to the extent permitted by law. The parties agree to not summons or otherwise require the mediator (or intern) to testify or produce records or notes in any proceeding. No transcripts or recordings shall be made of the mediation sessions.
14. In particular, the parties shall not introduce or seek to introduce as evidence in any arbitral or judicial proceeding:
 - (a) views expressed or suggestions made by the mediator about possible settlements;
 - (b) admissions or apologies;
 - (c) information given by a party during the intake/screening meeting, and
 - (d) contents of the mediator's file.

INTAKE PROCEDURES

15. The mediator will first meet each party separately (with or without counsel) to assess if the case is appropriate for mediation and to identify the issues, goals and concerns of each party. This intake meeting, including all information and forms provided by each party prior to the intake meeting, is confidential between that party and the mediator, subject to the confidentiality exceptions set out herein.
16. The mediator may, in his or her discretion, share information learned or provided as part of the intake process throughout mediation with that party's lawyer.

THE MEDIATION

17. The parties and mediator/intern will meet in person, or by phone, Skype, email or other means, as agreed. Each party will pay for his or her share of each meeting after it is over, including any flat rates for drafting of progress notes or agreements following the meeting. The number of meetings, their duration and structure will be agreed upon by the parties and the mediator.

RULES OF CAUCUSING

18. The mediator may meet or communicate with either party or their counsel separately at any time in a "caucus" (private meeting). The mediator may, in his or her discretion, disclose information or documents provided in such caucuses to the other party, and/or to a party's lawyer, unless agreed otherwise during the caucus.

ROLE OF LAWYERS AND THIRD PARTIES

19. The parties authorize the mediator to discuss the mediation with their own and each other's lawyers and advisers in the mediator's discretion, unless that information is subject to a confidentiality agreement. The mediator may provide all lawyers with copies of all documents provided to and prepared by the mediator unless they are subject to a confidentiality agreement.

MEDIATOR NOT PROVIDING LEGAL SERVICES OR ADVICE

20. The parties are advised to obtain, from their legal and other advisors, all appropriate legal, tax and other advice before the mediation, during the mediation and on the terms of any proposed agreements. **They acknowledge that any agreement reached without the benefit of legal advice may be invalid, may be later set aside and/or may have unintended consequences.**
21. Any views expressed by the mediator shall not be considered as a statement of the law or legal advice. Any documents prepared by the mediator, including Memoranda of Understanding, draft agreements, support calculations or property division calculations, shall be prepared strictly on the basis of the parties' undertaking that they will each obtain independent legal and financial advice on such draft documents before relying on them.

NO BINDING AGREEMENT CONCLUDED IN MEDIATION

22. The mediator may, at the parties' joint request, prepare a Memorandum of Understanding or draft agreement for legal advice following the mediation. However, the parties will not conclude a binding agreement in mediation unless they both have counsel present and settlement documents are signed.

FINANCIAL AND OTHER DISCLOSURE

23. The parties shall make full and frank disclosure of their financial and other relevant circumstances and shall provide all information and documentation requested by the other party. As a rule, sworn financial statements are mandatory if any of the issues to be mediated are financial in nature

INTERVIEWING CHILDREN

24. The parties understand that, under the United Nations Convention on the Rights of the Child, to which Canada is a signatory, children have the legal right to be provided with an opportunity to express their views about decisions that affect their well-being, consistent with their age, capacity and desire to participate.
25. The mediator may recommend that our children be interviewed as part of the mediation process to elicit the child's/children's views, experience and preferences as may be appropriate in their circumstances parent's consent is required before such an interview may occur.
26. Should the parties consent, which may be done verbally or in writing, a mediator who is trained to interview children, or someone the mediator designates, will meet with the child/children on the following basis:
 - (a) the interviewer will first meet with each parent to explain the process in more detail and to agree on the time and place of the meeting/s;
 - (b) the interviewer will then meet with the child/children;
 - (c) the specific content of the meeting shall remain confidential between the child/children and the interviewer;
 - (d) the interviewer will meet with both parties and the mediator to share the overall impressions and concerns of the children;
 - (e) the information shared during this meeting will be used to help the parents reach informed decisions that will be in the best interests of their children;
 - (f) the interviewer and/or the mediator is required to disclose to a Children's Aid Society any disclosures from the child/children that reasonably lead the interviewer/mediator in good faith to believe that a child is in need of protection, and to disclose to the police or other appropriate third party any information that reasonably leads the interviewer/mediator in good faith to believe that there is an actual or potential threat to human life or safety; and
 - (g) the interviewer is not a compellable witness in any legal proceeding unless so ordered by a court.

RISKS OF MEDIATION/ LIMITATION PERIODS NOT SUSPENDED

27. The parties understand that there is no guarantee of settlement in mediation, nor that they will be fully satisfied with the outcome. They understand that mediation may lead to delay, expense and increased difficulty in any subsequent litigation. They understand that any applicable limitation periods may not be suspended during mediation and that they should obtain legal advice on these risks and limitations before they agree to mediate.
28. The parties acknowledge that the mediator cannot guarantee physical safety during the mediation process.
29. The parties acknowledge that there is a risk of loss of confidentiality through the use of fax, email or other forms of communication. They authorize Christine Kim, intern, and assistant to communicate with them via email and/or fax notwithstanding such risk.

