

**IN THE MATTER OF THE *ARBITRATION ACT S.O. 1991, c. 17, as amended, and
the *FAMILY LAW ACT, R.S.O. 1990, c.F3, as amended****

BETWEEN:

Party-1

(“Party -1 First Name”)

- and -

Party -2

(“Party -2 First Name”)

MEDIATION-ARBITRATION AGREEMENT

1. SUBMISSION

1.1 This Agreement is a Family Arbitration Agreement made under the *Arbitration Act* and the *Family Law Act*. It is effective when:

- (a) It has been signed by both parties and witnessed;
- (b) Each Party's Certificate of Independent Legal Advice and each Lawyer's Certificate of Independent Legal Advice has been signed, in the forms attached; and,
- (c) The Arbitrator has signed the Certificate of Arbitrator, in the form attached.

1.2 The Arbitrator for this Arbitration is Mr. Clayton Spencer. As set out in this Agreement the Arbitrator may act as Mediator or Arbitrator, but throughout he shall be termed Mr. Spencer.

1.3 The Certificates of Independent Legal Advice and the Certificate of Arbitrator appended to this Agreement are part of this Agreement.

1.4 This Agreement may be signed in counterparts.

2. WAIVER OF RIGHTS TO LITIGATE IN COURTS

2.1 The parties have committed to the mediation process. The parties are contemplating entering into the arbitration process, but have not committed to that process yet. In the event that the parties commit to the arbitration process, the following terms shall apply:

- (a) The parties waive any right to further litigate the issues listed in paragraph 4.1,

subject to the right of appeal and rights under the *Arbitration Act* and the *Family Law Act* as set out below.

- (b) Nothing in this Agreement impairs any enforcement rights that a party may have through the courts or otherwise.
- (c) On application by either party and subject to the court's discretion, the operative terms of this Agreement may be incorporated into a consent court order.

3. DEFINITIONS

3.1 In this agreement:

- (a) "Party-1" means Party-1 who is one of the parties to this agreement;
- (b) "Party-2" means Party-2 who is one of the parties to this agreement;
- (c) "party" or "parties" means Party-1 or Party-2 or Party-1 and Party-2 collectively;
- (d) "property" has the same meaning as used in the *Family Law Act*,
- (e) "*Arbitration Act*" means the *Arbitration Act, 1991, S.O., 1991, c.17*, as am. S.O. 2006, c. 1, s.1; 2006, c. 19, Sched. C, s. 1(1);
- (f) "*Child, Youth and Family Services Act*" means *Child, Youth and Family Services Act S.O. 2017, c. C.14, s. 1*;
- (g) "*Children's Law Reform Act*" means the *Children's Law Reform Act, R.S.O. 1990, c. C.12*;
- (h) "*Divorce Act*" means the *Divorce Act, R.S.C. 1985 (2nd Supp.), c. 3*, as amended;
- (i) "Family Law Act" means the *Family Law Act, R.S.O. 1990, c. F.3*, as am. S.O. 2006, c. 1, s.5; 2006, c. 19, Sched. B, s. 9, Sched. C, s. 1(1), (2), (4);

3.2 To the extent permitted by law, an Act of the legislature or parliament referred to by name, whether or not it is defined in paragraph 3.1 above, will mean that Act in force as of the date of the signing of this Agreement. In the event that this provision invalidates the operation of any of the other provisions of this Agreement at the time they are sought to be enforced, then the Act referred to will be the one in force at the material time and will include any amendment or successor Act.

4. SUBSTANTIVE ISSUES

4.1 The following issues are being submitted for mediation:

- | | |
|---|---|
| <input type="checkbox"/> Custody of child(ren) | <input type="checkbox"/> Exclusive Possession of Matrimonial Home |
| <input checked="" type="checkbox"/> Access to child(ren) | <input type="checkbox"/> Exclusive Possession of Contents of Matrimonial Home |
| <input checked="" type="checkbox"/> Spousal Support | <input type="checkbox"/> Sale of property |
| <input type="checkbox"/> Indexing spousal support | <input type="checkbox"/> Interim Fees and Disbursements |
| <input checked="" type="checkbox"/> Child Support - table amount | <input type="checkbox"/> Preservation/Non-Dissipation of Assets |
| <input type="checkbox"/> Child Support - other than table amount | <input type="checkbox"/> Non-harassment |
| <input checked="" type="checkbox"/> Child Support - Section 7 expenses | <input type="checkbox"/> Costs |
| <input checked="" type="checkbox"/> Equalization of Net Family Property | <input type="checkbox"/> Other (Attach Schedule) |
| <input type="checkbox"/> Unequal division of Net Family Property | |

5. CONFIDENTIALITY

5.1 The proceedings under this Agreement and the record thereof shall be private and confidential, except as may be necessary to implement or to enforce the Arbitrator's award (should such be issued), and subject to their being produced in proceedings for judicial review or appeal or as required by law. The parties, their counsel and Mr. Spencer shall not disclose any information about the parties, the mediation, the arbitration or the screening for power imbalances or domestic violence to anyone, except as required by law.

5.2 The parties acknowledge and agree that Mr. Spencer's legal obligations to disclose may include:

- (a) Filing a report about the award with the Attorney General in accordance with the Regulation under the *Arbitration Act*, 1991;
- (b) Reporting a child in need of protection in accordance with section 125 of the *Child, Youth and Family Services Act*;

- (c) Where he believes upon reasonable grounds that there is an imminent risk to an identifiable person or group of death or serious bodily or psychological harm, disclosing such confidential information that is required in the circumstances to prevent such death or harm.

6. APPLICABLE LAW

6.1 Any arbitration conducted under this Agreement shall be conducted in accordance with: (*choose either (i) or (ii)*)

- (i) the law of Ontario, and the law of Canada as it applies in Ontario, or
- (ii) the law of _____ (name other Canadian jurisdiction) and the law of Canada as it applies in that jurisdiction.

7. MEDIATION

7.1 Mr. Spencer shall conduct a mediation in respect of the issues in dispute. The procedure for the mediation (including the date, time and place) shall be determined by Mr. Spencer in consultation with the parties, their counsel or both.

7.2 Should the parties' matter to proceed to arbitration as set out in this Agreement, the parties specifically waive section 35 of the *Arbitration Act*. They agree that Mr. Spencer may act as Mediator in this matter and that Mr. Spencer is not disqualified from adjudicating any or all issues because he has acted as Mediator in an attempt to resolve the issues before him.

7.3 The parties agree that the mediation sessions are settlement negotiations and that disclosures made during the mediation sessions are inadmissible in any arbitration phase of this mediation-arbitration and in any future litigation or arbitration. The parties agree not to subpoena or otherwise require Mr. Spencer to testify regarding the mediation or to produce records or notes of the mediation in any future proceedings. No transcripts shall be kept of the mediation proceeding.

7.4 Mr. Spencer may meet with the parties together or separately with or without counsel present and with whomever Mr. Spencer deems relevant to a resolution of the issues between the parties. Any meeting between Mr. Spencer and any person who is not a party, shall be held only with the consent of the parties.

7.5 The parties acknowledge and agree that in assisting them in resolving the issues set out in paragraph 4.1 above, Mr. Spencer will be acting in his capacity as a mediator and that he will not provide legal advice to the parties individually or collectively. If, during the course of the mediation, the mediator expresses an

opinion or comments on an issue, the parties acknowledge that the opinion or comment is not to be construed as constituting a statement of the law or legal advice in any respect.

- 7.6 The mediation shall continue until Mr. Spencer determines that continued mediation is unlikely to result in a settlement. At that time, either party may elect to terminate the process before it proceeds to arbitration. If both parties agree in writing to proceed to arbitration, they will thereafter be bound to continue with that process. Mr. Spencer will set a date for an arbitration.

8. DOCUMENTS FOR MEDIATION

- 8.1 Unless otherwise agreed between Mr. Spencer and both of the parties, each party shall submit to Mr. Spencer and the other party at least seven clear days prior to the commencement of the Mediation: *(Delete the items that are not applicable)*
- (a) a brief written statement indicating the facts supporting his/her position in reference to the issues and to the relief sought;
 - (b) any relevant factual information about the relationship between the parties;
 - (c) what issues have been resolved, and the terms of any agreement;
 - (d) copies of any relevant reports, assessments or appraisals and any other documents upon which he/she wishes to rely;
 - (e) the party's current sworn Financial Statement;
 - (f) a comparative Net Family Property Statement;
 - (g) copies of any relevant court orders or agreements;
 - (h) any other information or documentation that he/she considers is important for the resolution of the issues; and
 - (i) such other documents that Mr. Spencer directs.

9. PROCEDURE FOR ARBITRATION

- 9.1 The arbitration shall take place at the dates and times to be set by Mr. Spencer in consultation with the parties (and their counsel, if applicable).
- 9.2 The procedure for the arbitration shall be determined by Mr. Spencer in consultation with

the parties (and their counsel, if applicable).

- 9.3 If a hearing is conducted, it may be conducted in person, electronically, by telephone, by teleconference, by written submissions or by any other procedure which shall be determined by Mr. Spencer in consultation with the parties (and their counsel, if applicable).
- 9.4 Mr. Spencer may determine a timetable for the delivery of briefs, financial disclosure and other documents.
- 9.5 Mr. Spencer may deliver notices, awards or other communications to the parties via ordinary mail, fax or e-mail.
- 9.6 Notwithstanding paragraph 7.3, Mr. Spencer may, with the consent of the parties, admit into evidence documents or other information received by him during the mediation phase.
- 9.7 If an oral hearing is held and unless the parties agree otherwise:
- (a) All witnesses shall be sworn under oath or affirmed and shall be subject to cross-examination and re-examination, except that Mr. Spencer may direct that some or all of the evidence be given by affidavit in such manner as he may direct; and
 - (b) All usual rules for the admissibility of evidence in court proceedings shall apply as amended by the *Arbitration Act*, the *Family Law Rules* and the *Rules of Civil Procedure*, where applicable.
- 9.8 The parties agree: *(Select one)*
- (a) There shall be a reporter, the cost of which shall be initially shared equally between the parties; or
 - (b) There shall not be a reporter; or
 - (c) There shall be a reporter appointed as required for all or part of any arbitration as determined by Mr. Spencer in consultation with the parties (and counsel, if applicable).

10. PRE-ARBITRATION CONFERENCE

- 10.1 Mr. Spencer may convene a pre-arbitration conference to determine:
- (a) The issues for arbitration;

- (b) The documents to be provided prior to the commencement of the arbitration;
- (c) The order of presentation of evidence;
- (d) The names, addresses and telephone numbers of witnesses to be called and a synopsis of their evidence;
- (e) A timetable for pre-arbitration events including the exchange of expert reports, the delivery of opening statements, the exchange of document briefs and questioning, if required;
- (f) estimates of the time required for the arbitration;
- (g) Any physical arrangements necessary for the attendance of parties' or witnesses; and
- (h) Any issues arising out of the results of the screening.

11. EXPERT EVIDENCE FOR ARBITRATION HEARING

- 11.1 The parties specifically authorize Mr. Spencer to determine the necessity of retaining professional(s) to provide expert opinion(s) respecting any outstanding issues(s) and to retain such professional(s) as he deems appropriate.
- 11.2 The parties agree to contribute to the fees of the expert(s) in the amounts or proportions determined by Mr. Spencer and authorize Mr. Spencer to include these fees as a disbursement on his account to the parties.

12. WITHDRAWAL FROM MEDIATION OR ARBITRATION

- 12.1 Neither party may unilaterally withdraw from this Agreement at either the mediation or arbitration stage. However, the parties may jointly terminate this Agreement by their written agreement. Subject to paragraph 12.2, the Arbitrator shall proceed with an arbitration as provided for in this Agreement notwithstanding that the mediation has been unsuccessful or that one of the parties no longer wants to participate in the arbitration.
- 12.2 Mr. Spencer may at any time resign from his appointment as arbitrator by providing written notice of his resignation to the parties.
- 12.3 In the event that Mr. Spencer's appointment is terminated, and the parties are unable to agree on a replacement, a court of competent jurisdiction shall appoint a replacement arbitrator on either party's application to the court.

12.4 In the event that Mr. Spencer's appointment is terminated, the parties agree that any interim or interlocutory award(s) made by Mr. Spencer will continue to bind the parties and will continue in full force and effect as the basis for the continuation of the arbitration with the replacement arbitrator.

13. THE ARBITRATOR'S AWARD

13.1 After the evidence has been received and submissions on the law have been made, Mr. Spencer shall deliver an award on all issues submitted for determination.

14. APPEAL

14.1 Any Award may be appealed as follows: *(choose either (a) or (b))*

- (a) A party may appeal the Award in accordance with subsection 45(1) of the *Arbitration Act, 1991*; or
- (b) A party may appeal the Award on: (choose one or more of the following)
 - A question of law,
 - A question of fact,
 - A question of mixed fact and law.

15. ENFORCEMENT

15.1 Subject to the appeal remedies and rights to apply to set aside Mr. Spencer's Award under sections 45 and 46, respectively, of the *Arbitration Act* and subject to the other applicable provisions of the *Arbitration Act*, and the *Family Law Act*, all awards of the Arbitrator shall be binding upon the parties. Any temporary, interim or final award may be incorporated into a consent order of the Ontario Superior Court of Justice. Either party may apply for the enforcement of any award under section 59.8(5)(a) of the *Family Law Act*.

15.2 Upon the request of either party, Mr. Spencer shall issue an arbitral award incorporating the terms of any agreement reached by the parties during the course of the mediation or arbitration.

16. MR. SPENCER'S FEES AND DISBURSEMENTS

16.1 Mr. Spencer's fees shall be \$350.00 per hour for the arbitration hearing, any pre-arbitration conference, interim arbitration, preliminary meetings, mediation, arrangements, preparation for the hearing, preparation of an award and any other services pursuant to this Agreement.

- 16.2 Each party shall provide Mr. Spencer with a retainer of \$2,500.00, with this retainer to be refreshed from time to time as he shall direct.
- 16.3 In the event that one of the parties fails or refuses to pay to Mr. Spencer his/her share of Mr. Spencer's fees, disbursement or retainer accounts, Mr. Spencer may accept payment of the defaulting party's share from the other party and exercise his discretion re costs to require the defaulting party to reimburse the other party the amount of such payment.
- 16.4 Mr. Spencer is empowered to order interim fees and disbursements of the arbitration, including his retainer, fees and/or disbursements, on notice to the parties following receipt of submissions if either party wishes.
- 16.5 Mr. Spencer may charge cancellation fees of up to four hours at his hourly rate, should either party cancel or adjourn a hearing date with less than two business days notice.
- 16.6 Mr. Spencer may withhold his award until all outstanding fees, disbursements, or retainers have been paid.

17. WAIVER OF LIABILITY

- 17.1 The parties hereby waive any claim or right of action against Mr. Spencer arising out of these proceedings.

18. SEVERABILITY OF TERMS

- 18.1 Each of the terms of this agreement are severable from the others and will survive the invalidity or unenforceability of any other term of this agreement.

- 19.1 This Agreement may be signed in counterparts.

Dated this _____ of _____ 2018.

Witness

Party-1

Witness

Party-2

LAWYER’S CERTIFICATE OF INDEPENDENT LEGAL ADVICE

I, _____, have explained to my client, _____, the meaning of the attached Agreement and have given to him/her independent legal advice prior to the signing of the Agreement. I have also explained to my client that the Agreement is a “domestic contract” within the meaning of the *Family Law Act*, and as such a court may set aside the Agreement under various circumstances about which I have informed him/her. In my opinion, my client is aware of the need for disclosure of significant income, assets, debts and liabilities existing when this Agreement is made and understands the nature and consequences of this Agreement. I am satisfied that my client is not signing this Agreement as a result of any duress or undue influence. My client has been separately screened for power imbalances and domestic violence and I am satisfied that my client is fully able to participate in this medication-arbitration and is doing so voluntarily.

Date

Signature of Lawyer

PARTY’S CERTIFICATE OF INDEPENDENT LEGAL ADVICE

I, _____, confirm that I have received independent legal advice and have attached to this Agreement a copy of the Certificate of Independent Legal Advice that was provided to me under subsection 59.6(2) of the *Family Law Act*.

Date

Signature of Party

LAWYER’S CERTIFICATE OF INDEPENDENT LEGAL ADVICE

I, _____, have explained to my client, _____, the meaning of the attached Agreement and have given to him/her independent legal advice prior to the signing of the Agreement. I have also explained to my client that the Agreement is a “domestic contract” within the meaning of the *Family Law Act*, and as such a court may set aside the Agreement under various circumstances about which I have informed him/her. In my opinion, my client is aware of the need for disclosure of significant income, assets, debts and liabilities existing when this Agreement is made and understands the nature and consequences of this Agreement. I am satisfied that my client is not signing this Agreement as a result of any duress or undue influence. My client has been separately screened for power imbalances and domestic violence and I am satisfied that my client is fully able to participate in this medication-arbitration and is doing so voluntarily.

Date

Signature of Lawyer

PARTY’S CERTIFICATE OF INDEPENDENT LEGAL ADVICE

I, _____, confirm that I have received independent legal advice and have attached to this Agreement a copy of the Certificate of Independent Legal Advice that was provided to me under subsection 59.6(2) of the *Family Law Act*.

Date

Signature of Party

CERTIFICATE OF ARBITRATOR

I, **Clayton R. Spencer**, confirm the following matters:

1. I will treat the parties equally and fairly in the arbitration, as subsection 19 (1) of the *Arbitration Act*, 1991 requires.
2. I have received the appropriate training approved by the Attorney General.
3. The parties were separately screened for power imbalances and domestic violence and I have considered the results of the screening and will do so throughout the arbitration, if I conduct one.

Date

Signature of Arbitrator