

**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**

B E T W E E N:

X

- and -

Y

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 takes effect 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 Arbitrator's Certificate in the form attached.

1.2 As provided in this Agreement the Arbitrator, Stephen Grant, may act as Mediator or Arbitrator.

1.3 This Agreement may be signed in counterparts.

2. WAIVER OF LITIGATION RIGHTS

2.1 The parties waive any right to litigate further in court the issues listed in paragraph 4.1 pursuant to the *Family Law Act*, the *Divorce Act*, or any other statute or law, subject to the right of appeal and rights under the *Arbitration Act* and the *Family Law Act* as set in this Agreement.

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

3. DEFINITIONS

3.1 In this agreement:

- (a) "*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);
 - (b) "*Child and Family Services Act* " means *Child and Family Services Act* R.S.O. 1990, c. C.11
 - (c) "*Children's Law Reform Act*" means the *Children's Law Reform Act*, R.S.O. 1990, c. C.12;
 - (d) "*Divorce Act*" means the *Divorce Act*, R.S.C. 1985 (2nd Supp.), c. 3, as amended;
 - (e) "*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); and
 - (f) "property" has the same meaning as in the *Family Law Act*.
- 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 means that Act in force as of the date of the signing of this Agreement. If this term invalidates the operation of any of the other terms 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 includes any amendment or successor Act.

4. SUBSTANTIVE ISSUES

4.1 The parties submit these issues for interim and/or final determination:

- | | |
|---|--|
| <input type="checkbox"/> Custody of child(ren) | <input type="checkbox"/> Child Support – table amount |
| <input type="checkbox"/> Access to child(ren) | <input type="checkbox"/> Child Support – other than table amount |
| <input type="checkbox"/> Spousal Support | |
| <input type="checkbox"/> Indexing spousal support | |

- | | |
|--|---|
| <input type="checkbox"/> Child Support – Section 7 expenses | <input type="checkbox"/> Interim Fees and Disbursements |
| <input type="checkbox"/> Equalization of Net Family Property (and related property issues including, but not limited to, possession, sale, etc.) | <input type="checkbox"/> Preservation/Non-Dissipation of Assets |
| <input type="checkbox"/> Unequal division of Net Family Property | <input type="checkbox"/> Non-harassment |
| | <input type="checkbox"/> Costs |
| | <input type="checkbox"/> Other (Attach Schedule) |

5. CONFIDENTIALITY

- 5.1 The proceedings under this Agreement and any record of them are private and confidential, except as may be necessary to implement or to enforce the Arbitrator's award, and subject to their being produced in proceedings for judicial review or appeal or as required by law. Mr. Grant 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. Grant's legal obligations to disclose may include:
- (a) Filing a report about the award with the Attorney General in accordance with the Regulations under the *Arbitration Act*, 1991;
 - (b) Reporting a child in need of protection in accordance with section 72 of the *Child and Family Services Act*; and
 - (c) Disclosing confidential information as may be required in the circumstances where Mr. Grant believes on reasonable grounds that there is an imminent risk to an identifiable person or group of death or serious bodily or psychological harm.

6. APPLICABLE LAW

- 6.1 The arbitrator will conduct the arbitration 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 Before arbitration, Mr. Grant will mediate the issues in dispute. He will determine the mediation process (including the date, time and place) in consultation with the parties, their counsel or both.
- 7.2 The parties specifically waive section 35 of the *Arbitration Act*. They agree that Mr. Grant may act as Mediator in this matter and 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 acknowledge that the mediation sessions are settlement negotiations and that disclosures made during the mediation sessions are inadmissible in any future litigation or arbitration. The parties agree not to summons or otherwise require Mr. Grant to testify about the mediation or to produce records or notes of the mediation in any future proceedings. Mr. Grant will neither record nor keep transcripts of the mediation proceeding.
- 7.4 Mr. Grant may meet with the parties together or separately with or without counsel present and with anyone else Mr. Grant deems relevant to a resolution of the issues between the parties, provided that any meetings with third parties will be held only with the parties' consent.
- 7.5 The parties acknowledge and agree that in assisting them in resolving the issues set out in paragraph 4.1, Mr. Grant is acting solely 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, Mr. Grant expresses an opinion or comments on a particular issue, the parties acknowledge that it is not to be construed as a statement of the law or legal advice in any respect.
- 7.6 The mediation will continue until Mr. Grant determines that it is unlikely to result in a settlement, at which point he may terminate the mediation and set a date for arbitration.

8. MEDIATION DOCUMENTS

- 8.1 Unless otherwise agreed between Mr. Grant and both of the parties, each party will submit to Mr. Grant 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) a statement of the issues that 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) any other documents Mr. Grant directs be submitted.

9. ARBITRATION PROCEDURE

- 9.1 The arbitration will take place at the dates and times to be set by Mr. Grant in consultation with the parties (and their counsel, if applicable).
- 9.2 Mr. Grant will determine the arbitration procedure in consultation with the parties (and their counsel, if applicable).
- 9.3 If a hearing is conducted, Mr. Grant may conduct it in person, electronically, by telephone, by teleconference, by written submissions or by any other procedure which Mr. Grant will determine in consultation with the parties (and their counsel, if applicable).
- 9.4 Mr. Grant may determine a timetable for the delivery of briefs, financial disclosure and other documents.
- 9.5 Mr. Grant may deliver notices, awards or other communications to the parties via ordinary mail, fax or e-mail.
- 9.6 Notwithstanding subsection 7.3, Mr. Grant may, with the parties' consent, admit into evidence documents or other information received by him during the mediation phase.
- 9.7 If a hearing is held and unless the parties agree otherwise:
 - (a) All witnesses will be sworn under oath or affirmed and will be subject to cross-examination and re-examination, except that Mr. Grant 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 will 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 will be a reporter, the cost of which will be initially shared equally between the parties; or
- (b) There will not be a reporter; or
- (c) There will be a reporter appointed as required for all or part of any arbitration as Mr. Grant determines in consultation with the parties (and counsel, if applicable).

10. PRE-ARBITRATION CONFERENCE

10.1 Mr. Grant may convene a pre-arbitration conference to determine:

- (a) The arbitration issues to be adjudicated;
- (b) The documents to be provided before 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. Grant to determine the necessity of retaining professional(s) to provide expert opinion(s) respecting any outstanding issues(s) and to retain any professional(s) he deems appropriate.

- 11.2 The parties agree to pay the expert(s)' fees in the amounts or proportions determined by Mr. Grant and authorize Mr. Grant 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 mediation or arbitration. However, the parties may jointly terminate this Agreement by their written agreement. Subject to subsection 12.2, Mr. Grant may proceed with an arbitration despite the fact that the mediation has been unsuccessful or that one of the parties no longer wants to participate in the arbitration.
- 12.2 Mr. Grant may at any time resign from his appointment as arbitrator by providing written notice of his resignation to the parties.
- 12.3 If Mr. Grant's appointment is terminated, and the parties are unable to agree on a replacement, a court of competent jurisdiction will appoint a replacement arbitrator on either party's application to the court.
- 12.4 If Mr. Grant's appointment is terminated, the parties agree that any interim or interlocutory award(s) made by Mr. Grant will continue to bind the parties and 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. Grant will deliver an award on all issues submitted for determination.

14. APPEAL

- 14.1 A party may appeal any Award as provided: *(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. Grant'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*, Mr. Grant's awards are binding on 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 either party's request, Mr. Grant will issue an arbitral award incorporating the terms of any agreement reached by the parties during the course of the mediation or arbitration.

16. MR. GRANT'S FEES AND DISBURSEMENTS

- 16.1 Mr. Grant's fees are \$750.00 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. These fees may rise from year to year but if they rise by more than 10% over the prior year, Mr. Grant will specifically advise the parties in writing.
- 16.2 No later than 20 business days before the scheduled date for mediation or arbitration, each party will provide Mr. Grant with a retainer of \$4,378.75 to be refreshed from time to time as Mr. Grant directs. The combined amount due from the parties of \$8,757.50 covers a \$7,500 retainer plus a \$250 one-time non-refundable administration fee plus HST.
- 16.3 The parties are individually and jointly responsible to pay Mr. Grant's fees and disbursements and by signing this Agreement, they accept this responsibility.
- 16.4 If one of the parties fails or refuses to pay to Mr. Grant his/her share of Mr. Grant's fees, disbursement or retainers, Mr. Grant may accept payment of the defaulting party's share from the other party and exercise his costs discretion to require the defaulting party to reimburse the other party the amount of his or her payment.
- 16.5 Mr. Grant is empowered to order interim fees and disbursements of the arbitration, including his retainer, fees and/or disbursements, on notice to the parties after hearing submissions if either party wishes to make them.
- 16.6 Mr. Grant may withhold his award until the parties have paid all outstanding fees, disbursements, or retainers.

16.7 If a scheduled mediation or arbitration is cancelled in whole or in part with fewer than seven (7) days' notice, Mr. Grant may charge a cancellation fee equal of \$1,500 for each day cancelled.

17. LIABILITY WAIVER

17.1 The parties waive any claim or right of action against Mr. Grant arising from 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.

Dated this _____ of _____ 2017.

Witness

Witness

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 mediation-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 mediation-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, **Stephen Grant**, confirm that:

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

STEPHEN GRANT PROFESSIONAL CORPORATION

By:

Stephen Grant
President

PARTY 1 – CONTACT INFORMATION

Full Name: _____

Address: _____

Telephone Numbers: Home: _____
 Business: _____
 Other: _____

Email address: _____

PARTY 2 – CONTACT INFORMATION

Full Name: _____

Address: _____

Telephone Numbers: Home: _____

Business: _____

Other: _____

Email address: _____

STEPHEN GRANT PROFESSIONAL CORPORATION

PAYMENT BY CREDIT CARD AGREEMENT

PARTY ONE

I authorize Stephen Grant Professional Corporation to draw upon my credit card as set forth below for payment of accounts rendered to me or deposit of trust funds.

Credit Card Number: _____

Print Expiry Date of Credit Card: _____

Card Security Code (CSC: 3-digit code): _____

Name: _____

Signature: _____

Client Number: _____

Details of Payment:

STEPHEN GRANT PROFESSIONAL CORPORATION

PAYMENT BY CREDIT CARD AGREEMENT

PARTY TWO

I authorize Stephen Grant Professional Corporation to draw upon my credit card as set forth below for payment of accounts rendered to me or deposit of trust funds.

Credit Card Number: _____

Print Expiry Date of Credit Card: _____

Card Security Code (CSC: 3-digit code): _____

Name: _____

Signature: _____

Client Number: _____

Details of Payment:

