

**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:

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 Ms. Susan Cook. As set out in this Agreement the Arbitrator may act as Mediator or Arbitrator, but throughout she shall be termed Ms. Cook.
- 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 waive any right to further litigate the issues listed in paragraph 4.1 below in court, 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 out below.
- 2.2 Nothing in this Agreement impairs 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 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 and Family Services Act*" means *Child and Family Services Act R.S.O. 1990, c. C.11*
 - (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 the determination of temporary relief, if appropriate, and for final determination:

- | | |
|--|---|
| <input type="checkbox"/> Custody of child(ren) | <input type="checkbox"/> Exclusive Possession of Matrimonial Home |
| <input type="checkbox"/> Access to child(ren) | <input type="checkbox"/> Exclusive Possession of Contents of Matrimonial Home |
| <input type="checkbox"/> Spousal Support | <input type="checkbox"/> Sale of Property |
| <input type="checkbox"/> Indexing spousal support | <input type="checkbox"/> Interim Fees and Disbursements |
| <input 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 type="checkbox"/> Child Support – Section 7 expenses | <input type="checkbox"/> Costs |
| <input 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, and subject to their being produced in proceedings for judicial review or appeal or as required by law. The parties, their counsel and Ms. Coe 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 Ms. Cook'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 72 of the *Child and Family Services Act*;
- (c) Where he/she 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 The arbitration 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 Ms. Cook 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 Ms. Cook in consultation with the parties, their counsel or both.
- 7.2 The parties specifically waive section 35 of the *Arbitration Act*. They agree that Ms. Cook may act as Mediator in this matter and that Ms. Cook is not disqualified from adjudicating any or all issues because he/she has acted as Mediator in an attempt to resolve any of those issues.
- 7.3 The parties agree that the mediation sessions are settlement negotiations and that disclosures made during the mediation sessions are inadmissible in the arbitration phase of this mediation-arbitration and in any future litigation or arbitration. The parties agree not to subpoena or otherwise require Ms. Cook 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.
- 7.5 Ms. Cook may meet with the parties together or separately with or without counsel present and with whomever Ms. Cook deems relevant to a resolution of the issues between the parties. Any meeting between Ms. Cook and any person who is not a party shall be held only with the consent of the parties.

- 7.6 The parties acknowledge and agree that in assisting them in resolving the issues set out in paragraph 4.1 above, Ms. Cook will be acting in his/her capacity as a mediator and that he/she 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.
- 7.7 The mediation shall continue until Ms. Cook determines that continued mediation is unlikely to result in a settlement, at which point he/she may terminate the mediation and set a date for an arbitration.

8. DOCUMENTS FOR MEDIATION

- 8.1 Unless otherwise agreed between Ms. Cook and both of the parties, each party shall submit to Ms. Cook 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 Ms. Cook directs.

9. PROCEDURE FOR ARBITRATION

- 9.1 The arbitration shall take place at the dates and times to be set by Ms. Cook in consultation with the parties (and their counsel, if applicable).
- 9.2 The procedure for the arbitration shall be determined by Ms. Cook 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 Ms. Cook in consultation with the parties (and their counsel, if applicable).
- 9.4 Ms. Cook may determine a timetable for the delivery of briefs, financial disclosure and other documents.
- 9.5 Ms. Cook may deliver notices, awards or other communications to the parties via ordinary mail, fax or e-mail.
- 9.6 Notwithstanding paragraph 7.3, Ms. Cook may, with the consent of the parties, admit into evidence documents or other information received by him/her during the mediation phase.
- 9.7 If a 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 Ms. Cook may direct that some or all of the evidence be given by affidavit in such manner as he/she 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 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 determined by Ms. Cook in consultation with the parties (and counsel, if applicable).

10. PRE-ARBITRATION CONFERENCE

- 10.1 Ms. Cook may convene a pre-arbitration conference to determine:
- (c) The issues for arbitration;
 - (d) The documents to be provided prior to the commencement of the arbitration;
 - (e) The order of presentation of evidence;

- (f) The names, addresses and telephone numbers of witnesses to be called and a synopsis of their evidence;
- (g) 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;
- (h) Estimates of the time required for the arbitration;
- (i) Any physical arrangements necessary for the attendance of parties or witnesses; and
- (j) Any issues arising out of the results of the screening.

11. EXPERT EVIDENCE FOR ARBITRATION HEARING

- 11.1 The parties specifically authorize Ms. Cook 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/she deems appropriate.
- 11.2 The parties agree to contribute to the fees of the expert(s) in the amounts or proportions determined by Ms. Cook and authorize Ms. Cook to include these fees as a disbursement on his/her 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 Ms. Cook may at any time resign from his/her appointment as mediator/arbitrator by providing written notice of his/her resignation to the parties.
- 12.3 In the event that Ms. Cook'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 Ms. Cook's appointment is terminated, the parties agree that any interim or interlocutory award(s) made by Ms. Cook 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, Ms. Cook 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)*
 - (i) A question of law,
 - (ii) A question of fact, or
 - (iii) A question of mixed fact and law.

15. ENFORCEMENT

15.1 Subject to the appeal remedies and rights to apply to set aside Ms. Cook'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 of the *Family Law Act*.

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

16. Ms. Cook'S FEES AND DISBURSEMENTS

16.1 Ms. Cook's fees shall be \$125.00 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 Ms. Cook with a retainer of \$1,500.00, with this retainer to be refreshed from time to time as he/she shall direct.

16.3 In the event that one of the parties fails or refuses to pay to Ms. Cook his/her share of Ms. Cook's fees, disbursement or retainer accounts, Ms. Cook may accept payment of the defaulting party's share from the other party and exercise his/her discretion re costs to require the defaulting party to reimburse the other party the amount of such payment.

16.4 Ms. Cook is empowered to order interim fees and disbursements of the arbitration, including his/her retainer, fees and/or disbursements, on notice to the parties following receipt of submissions if either party wishes.

16.5 Ms. Cook may withhold his/her 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 Ms. Cook 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.

Dated this _____ of _____ 2010.

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 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, _____, 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 conducted one.

DATED: _____

Signature of Arbitrator