

## **AGREEMENT TO MEDIATE**

BETWEEN:

**JOHN DOE**  
of 123 King Street,  
in Maple Ridge, British Columbia  
("John")

AND:

**JANE DOE**  
of 123 Queen Street,  
in Coquitlam, British Columbia  
("Jane")

AND:

**ROBERT SMITH**  
of 123 Main Street  
in Vancouver, British Columbia  
(The "Mediator")

**WHEREAS:**

- A. John and Jane were married on 1 January 1995 at Las Vegas, Nevada.
- B. John and Jane have two children, Peter Doe, born on 1 January 1996, and Sally Doe, born on 1 January 1997.
- C. John and Jane have decided to end their marriage and wish to resolve all issues arising from their separation without engaging in an adversarial contest.
- D. John and Jane wish to resolve all issues related to their separation by way of mediation and wish to retain the Mediator to assist them in finding a settlement of these issues.
- E. Family law mediation is a process whereby the parties attempt, with the assistance of a neutral and impartial third party, to reach a consensual settlement of all issues related to their separation.

**THIS DOCUMENT IS A SAMPLE DOCUMENT AND IS INTENDED ONLY AS A GENERAL GUIDE.  
IT MAY NOT CONTAIN INFORMATION RELEVANT TO YOUR SITUATION.  
IT SHOULD NOT BE USED AS A PRECEDENT FOR DRAFTING YOUR OWN DOCUMENT.**

**THEREFORE** the parties agree as follows:

1. John and Jane agree to retain the Mediator to act as their mediator with respect to the issues arising from their separation.
2. The goal of the mediation process will be to reach a final agreement on all outstanding issues. The agreement will be reduced to writing and executed by John and Jane, and both spouses will be able to abide by the agreement. No agreement will be binding between John and Jane until it is in writing and executed.
3. John and Jane understand and agree that mediation is a process of mutual compromise and accommodation which requires give and take from both spouses, and John and Jane agree to:
  - (a) to work together to identify and clarify the issues arising from their separation, identify areas of agreement and disagreement, and to explore and negotiate options to settlement those issues; and,
  - (b) to focus on developing solutions that recognize each other's interests and offer mutual gain.
4. Most mediation sessions will involve both John and Jane and the Mediator, but separate meetings may, if necessary, be called between the Mediator and John or Jane.
5. John and Jane understand that while the Mediator is a lawyer he is not acting as legal counsel for either spouse during the mediation process.
6. John and Jane understand that the Mediator must remain neutral in all contacts with John and Jane and that he will not advance the interests of one spouse over those of the other.

### FULL DISCLOSURE

7. John and Jane acknowledge and agree that complete and honest disclosure of all relevant and material information is essential to the mediation process. Accordingly, there will be full disclosure by each spouse to the other and to the Mediator of all relevant information and documents. John and Jane agree that the Mediator may disclose fully to each spouse all information provided to him by the other, and any other relevant information of which the Mediator may become aware.
8. John and Jane acknowledge and agree that any agreement entered into may be set aside by a court of law if complete and honest disclosure has not been made.

### CONFIDENTIALITY

9. John and Jane agree that because the mediation process is part of an attempt to settle the issues arising from their separation which may become the subject of litigation, all communications between John and Jane and between John and Jane and the Mediator are made without prejudice and are privileged, and that any information arising from the mediation process shall be treated by all parties as confidential.
10. John and Jane agree that the Mediator shall not be required by either of them to provide information gained during the mediation process or give evidence in any legal proceeding about communications between John and Jane and between John and Jane and the Mediator during the mediation process.
11. John and Jane agree that the Mediator may discuss any information disclosed during or arising out of the mediation process with counsel representing John and Jane on the basis that such discussions are made on a without prejudice basis and will not be disclosed by counsel in any legal proceeding.

12. John and Jane agree that the Mediator may contact third parties, such as medical doctors, psychologists, psychiatrists, counsellors, accountants, valuers, appraisers and real estate agents, at the request of both John and Jane with their mutual consent and instructions.
13. John and Jane understand that the confidentiality of the information exchanged and communications made during the mediation process could possibly be breached if:
  - (a) the Mediator is obliged by law to report to the Superintendent of Family and Child Services information suggesting that a child is in need of protection; or,
  - (b) regardless of the other terms of this Agreement, a court of law compels either spouse or the Mediator to give evidence in a legal proceeding.
14. John and Jane are aware that notwithstanding the terms of this Agreement, the Mediator could be compelled by a court of law to give evidence, and John and Jane acknowledge that calling the Mediator to give evidence constitutes a breach of their obligations under this Agreement.

#### PRESERVATION OF THE STATUS QUO

15. John and Jane agree that neither shall sell, transfer, mortgage or otherwise dispose of or encumber any asset or any interest in an asset pending the conclusion of the mediation process, without first securing the express written permission of the other spouse and without advising the Mediator prior to the disposition or encumbrance.
16. John and Jane each agree that they will not do any act which will operate to the prejudice or detriment of the interest of the other in an asset, whether the interest is actual or potential.
17. John and Jane agree that no changes will be made with respect to the residence, lifestyles, schooling or therapeutic treatment of any children pending the conclusion of the mediation process, without first securing the express written permission of the other spouse and without advising the Mediator prior to making such changes.

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18. John and Jane agree that, pending the conclusion of the mediation process, the children will remain resident in Coquitlam, British Columbia.

#### AUTHORITY TO SETTLE

19. John and Jane understand and agree that they will participate in the mediation process with the full authority to settle the matters at issue in mediation.

#### TERMINATION OF THE MEDIATION PROCESS

20. John and Jane agree that the mediation process shall continue until terminated by either John, Jane or the Mediator in one of the following ways:
- (a) John and Jane reduce an agreement to writing and execute the agreement; or,
  - (b) John, Jane and/or the Mediator decide that the issues are not likely to be resolved by mediation and when this decision is confirmed in writing by the Mediator.
21. While every effort will be made to reach a settlement of all issues, John and Jane understand that either of them may withdraw from the mediation process at any time prior to the execution of a final agreement.

#### FEES AND EXPENSES

22. The Mediator will be paid \$~~200.00~~ per hour plus the 7% federal Goods and Services Tax, plus reasonable and necessary expenses and disbursements, for all work done during the mediation process, including meetings, telephone calls, correspondence, drafting, document review and other services.
23. John and Jane agree that they will each be responsible for one-half of the fees, expenses and disbursements of the Mediator.

24. John and Jane will provide the Mediator with a retainer in the amount of \$*1,000.00* prior to the commencement of the mediation process, to be held in trust against the Mediator's future work and expenses. John and Jane also agree that they will pay to the Mediator such other sums as may be necessary from time to time to be held in trust against future accounts for services and expenses.
25. Accounts rendered by the Mediator will be payable within thirty days, and interest will accrue on unpaid accounts at a rate of *12%* until paid.

#### INDEPENDENT LEGAL ADVICE

26. John and Jane acknowledge and agree that they each have adverse legal interests. John and Jane are encouraged to retain independent counsel and to secure independent legal advice regarding their separate interests, rights and obligations on all issues arising from their separation.
27. In the event that a final agreement is reached through the mediation process, John and Jane are strongly urged to engage independent counsel and secure independent legal advice before executing the final agreement.

#### EXECUTION OF THIS AGREEMENT

28. The execution of this Agreement acknowledges the willingness of John and Jane to being the mediation process and to work towards a fair and equitable resolution of the matters at issue between them.
29. John and Jane confirm that the Mediator has given them no legal advice with respect to this Agreement and each is advised to engage independent counsel if either has any questions or concerns about the terms of this Agreement.

**THIS AGREEMENT** is entered into on this the *23<sup>rd</sup>* day of *February*, 2005 at *Vancouver*, British Columbia.

*John Doe*

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John Doe  
123 King Street  
Maple Ridge, British Columbia

*Jane Doe*

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Jane Doe  
123 Queen Street  
Coquitlam, British Columbia

*Bob Smith*

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BOB SMITH  
Family Law Mediator  
123 Main Street  
Vancouver, British Columbia