

MEDIATION RETAINER

B E T W E E N:

<*husband's name>

(<*Husband>)

- and -

<*Wife's name>

(<*Wife>)

- and -

Joseph P Hamon B.A. LL.B. FMC Cert. CFM CFL, Mediator

WHEREAS the parties have separated from each other;

AND WHEREAS the parties have agreed to discuss certain issues arising out of their separation with each other to mediation;

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. **CLOSED MEDIATION**

Everything discussed is private and not to be used further in any dispute resolution forum.

2. **SUBSTANTIVE ISSUES**

a. It is hereby agreed that, Joseph P Hamon, certified Mediator is retained to act as the Mediator for the parties with respect to the following issues:

(i) parenting arrangements for the child(ren);

(ii) child support and spousal support;

(iii) possession of the matrimonial home;

(iv) division of financial assets; and

(v) other financial issues.

b. It is acknowledged that the Mediator is an impartial third party whose role is to assist the parties negotiate an agreement with respect to the outstanding issues.

c. In attempting to bring about an Agreement, the Mediator will meet with the parties for joint sessions and on location for individual sessions. The Mediator may include in the mediation process any other significant third party such as the child(ren), legal counsellor or other significantly involved persons, following consultation with the parties.

d. Information shared with the Mediator during individual sessions may be shared with the other party, at the Mediator's discretion unless the individual interviewed requests that specific information be kept confidential. The Mediator may disclose any relevant information if there is a threat to anyone's safety.

e. With the exception of the Client Questionnaire (which is confidential), Mediator will make copies of all correspondence received from the parties including legal documents, faxes, e-mails, or tapes for the other party prior to reviewing such correspondence. The purpose is to ensure that both parties have an opportunity to review and respond to any information given to the Mediator. It is also to maintain the Mediator's impartiality. If, the correspondence raises concerns about a party's safety, the person providing the information should discuss this with the Mediator before submitting the information.

f. It is acknowledged that Mediator is a mediator and will not be giving either party legal advice. The Mediator will solely be giving legal information without any direction to the parties, leaving the law to speak for itself and the parties to make their own decision. The parties are strongly advised to obtain independent legal advice, preferably before mediation commences but in any event before a final Agreement is reached, to ensure that they are fully informed of their legal rights and obligations and the legal implications of such an Agreement. In the event that the parties do not have independent legal advice prior to signing an agreement, it is recognized that:

- i. The parties may not be making fully informed choices in light of the respective legal rights;
- ii. unless they submit something in writing, they acknowledge that they fully understand the process, any development or any part or full agreement; and
- iii. The Agreement they reach is less likely to be enforced by a court.

g. The Mediator may obtain information from relevant sources and may consult such persons and read such reports, records or documents as he deems necessary for arriving at an Agreement following consultation with the parties. It is agreed that the parties will:

- i. make full disclosure of all relevant information reasonably required for the Mediator to understand the issues being mediated; and
- ii. execute any Releases of Information necessary for the Mediator to obtain relevant information.

h. If the issues related to proper support are discussed during the mediation process, then the parties will:

- i. make full financial disclosure to each other, the Mediator, and both counsel;
- ii. undertake not to hide or dispose of any assets; or
- iii. not cancel or change any beneficiaries of his or her will, *intervivos* trusts, life insurance policies and health care policies while mediation is in process.

i. The parties understand that interim agreements with respect to parenting arrangements, and the child and/or spousal support will be factors to be considered by the courts, the event that an agreement is not reached mediation.

j. In the event that information obtained through the mediation discloses an actual or potential threat to the safety of any of the participants or breach of the Child and Family Services Act or Criminal Code, the Mediator is obliged to report such information.

k. Neither party nor anyone acting on their behalf shall take any fresh steps in the legal proceedings between the parties with respect to those issues that are being mediated, without prior notice to the Mediator and the other party.

l. If the parties reach agreement on some or all of the issues, the Mediator will prepare a Memorandum of Understanding or a draft separation agreement with respect to those issues which will be sent to both counsel to review with the parties.

m. If the parties fail to agree on one or more issues it is understood that:

- i. The Mediator will not make recommendations with respect to any issues that are not resolved mediation;

ii. In the case of financial issues, any documents prepared for the purpose of financial disclosure may be used by the parties in future proceedings, only with both parties's consent;

iii. If the parties do not reach an agreement through mediation on any specified issue, that will be so reported by the Mediator;

iv. anything said or any admission or communication made in the course the mediation by the parties, is not admissible in any legal proceeding without the express permission of all parties and the Mediator.

v. anything said or any admission or communication made in the course the mediation by the parties, the Mediator and/or the Mediation Intern is confidential and may not be communicated to outside parties without the express permission of all parties and the Mediator. This does not apply to any circumstances or communication as outlined in paragraph [2.j](#) above.

vi. Both parties agree not to subpoena the Mediator or the Mediation Interns notes or records; and

vii. Neither the Mediator nor the Mediation Intern will be called as a witness by or on behalf of either party in any legal proceeding.

k. It is understood that under the parties may terminate the mediation process at any time. A party wishes to terminate, he or she will first discuss concerns with the Mediator to see if they can be addressed satisfactorily. The Mediator may suspend or terminate mediation whenever:

i. The process is likely to harbor prejudice one or more the participant; or

ii. the usefulness of the mediation process is exhausted in the opinion of the Mediator; or

iii. The Agreement being reached is unreasonable in the eyes of the Mediator.

The Mediator will first advise the parties of the reason why he believes the mediation should be terminated.

3. **THE FAMILY LAW ACT, 1986**

The issues of property, support, custody and access shall be determined in accordance with the provisions of the Children's Law Reform Act, R.S.O. 1980, c. 68 as amended and the *Family Law Act, 1986* S.O. 1986, c. 4; R.S.O. 1990, C. F.3.

4. **NO WAIVER OF RIGHTS TO LITIGATE IN COURTS**

By submitting to mediation those issues designated in paragraph 2 above, the parties continue to reserve right to further litigate those issues in court, whether pursuant to the Family Law Act, 1986, the Children's Law Reform Act or the Divorce Act, 1985, S.C. 1986, c.4 as amended, or any other statute subject to any appeal rights.

5. **PROCEDURAL ISSUES**

- a. Time and Place: at HAMON LAW OFFICE 535 Perrier Road, Combermere Ontario Canada.
- b. Mediator: The Mediator shall be Joseph P. Hamon.
- c. Record: There shall be no court reporter or stenographer and there shall be no formal record of the mediation.
- d. Procedure on Mediation: informal.
 - i. Up to date Financial Statements, Net Family Property Statements the reports of any experts may be relied upon.
 - ii. (others may be specified)

6. **REPORT OF THE MEDIATOR**

Notwithstanding anything in this Agreement, and even if either party terminates the mediation, at the mediator's option, he may prepare a report to the progress to the date of the termination together with his comments and procedural recommendations. Both parties agree that they will continue to be financially liable for this report even after one or both of them may have terminated the mediation.

7. MEDIATOR'S FEES AND DISBURSEMENTS

- a. The Mediator's fees shall be THREE HUNDRED DOLLARS (\$300.00) per hour for each hour of hearing including time spent for any preliminary meetings, arrangements, preparation for the meetings, preparation of a report, any follow-up or any part-day hearing, plus disbursements. The costs of mediation will not be broken down or allocated, based upon the amount of individual time spent by the Mediator with or on behalf of each individual party. From time to time, the Mediator may request an additional retainer to cover anticipated future steps the mediation. Mediation will not continue until the retainer is paid. At this time, the parties will pay a retainer in the amount of *\$2,000 and the signature of the Mediator on this retainer is receipt for this amount.
- b. The Mediator's fees shall be subject to H.S.T.
- c. The Mediator's disbursements are extra and shall include the costs of using premises other than the office of Joseph P. Hamon if required, the cost of all disbursements relating to the mediation clinic cost, long distance telephone calls, courier, photocopies, neutral experts engaged in the mediation process (e.g. accountants, psychologists) travel expenses, parking and any other disbursements incurred by the Mediator in relation to the mediation. Interim accounts shall be sent out to the parties and payment shall be due when rendered.
- d. Between themselves, *each will each pay a retainer of \$* (\$* in total) and share the cost of mediation equally/proportionable to income. The parties are jointly and severally liable to the Mediator for all the fees and disbursements of the Mediator regardless of partial payment by a particular party and may not claim the default of the other to excuse full payment due to the Mediator.

- e. If the issue of costs is submitted to the Mediator pursuant to paragraph [2](#) hereof, the Mediator's discretion regarding costs shall include the power to require one party to pay more than one half, or all of the Mediator's fees and disbursements.
- f. Any report or Memorandum of Understanding or draft separation agreement will not be released until all outstanding professional fees and disbursements related to the mediation have been paid in full.
- g. Interest on any unpaid accounts will be charged at 1% per month.

Each of the undersigned acknowledges that he/she has read this Retainer in its entirety, fully understands it and agrees to be bound by its terms herein.

DATED:

Signature of the <*Husband>

Signature of the <*Wife>

Signature of the Mediator, Joseph P Hamon