

# MEDIATION PARTICIPATION AGREEMENT

**BETWEEN:**

Name \_\_\_\_\_

Address \_\_\_\_\_

Occupation \_\_\_\_\_

(hereinafter referred to as \_\_\_\_\_)

**AND:**

Name \_\_\_\_\_

Address \_\_\_\_\_

Occupation \_\_\_\_\_

(hereinafter referred to as \_\_\_\_\_)

**AND:**

ULF K. OTTHO, professional mediator  
5040 10A Avenue, Delta, British Columbia V4M 1X8

(hereinafter referred to as “the Mediator”)

**WHEREAS:**

A. \_\_\_\_\_ AND \_\_\_\_\_, collectively referred to herein as “the Spouses” have separated or have decided to separate and want to resolve all issues arising out of their relationship relating to the parenting of their child(ren) aged \_\_\_\_\_ (if applicable), payment of child support (if applicable), the division of family property, and the payment of spousal support (if applicable) through mediation with the assistance of the Mediator;

B. Family law mediation is a process of negotiation whereby the above named spouses attempt, in good faith, to voluntarily make a serious effort to resolve the above issues in dispute, fairly and equitably in accordance with applicable law, with the assistance of a neutral and impartial third party,

in order to reach a consensual settlement of issues relating to their cohabitation, marriage (if applicable), separation or divorce;

C. The Family Law Act SBC 2011, Chapter 25 is designed to encourage people to resolve their differences and any disputes arising out of their spousal relationships without court intervention;

**THEREFORE IN CONSIDERATION OF THE MUTUAL TERMS CONTAINED HEREIN, THE PARTIES HERETO COVENANT AND AGREE AS FOLLOWS:**

**RETAINING MEDIATOR, SERVICES PROVIDED, AND PROCEDURE:**

1. The Spouses agree to retain the Mediator to act as mediator to assist the spouses to resolve issues arising out of their cohabitation and separation.
2. The Mediator confirms that he meets the professional requirements set out in subsection 4(2) of the Family Law Act Regulations, is qualified to act as a family law mediator, and has suitable private office facilities available to conduct mediation sessions.
3. The Mediator will first meet each spouse separately (by telephone or in person) to assess if the case is appropriate for mediation and to identify the issues, goals and concerns of each party. This intake/screening meeting, including all information and forms provided by each party prior to the intake/screening meeting, is confidential between that spouse and the Mediator, subject to the confidentiality exceptions set out herein. The Mediator may, in his discretion, share information learned or provided by a spouse as part of the intake/screening process with that spouse's lawyer.
4. During the time set for the mediation session, there will be an effort to identify the issues, clarify points of agreement and disagreement, and to explore and negotiate alternative solutions and options for settlement. Both Spouses shall be present at mediation sessions unless otherwise mutually agreed. No persons other than the Spouses and their legal counsel, where applicable, will be present except by mutual agreement. Although mediation sessions will involve the Spouses meeting jointly with the Mediator, separate meetings may also be held between the Mediator and either of the Spouses, at the Mediator's discretion, during the mediation session. Where the Spouses are accompanied by legal counsel, each spouse may meet privately with his or her respective counsel at any time.
5. It is understood that the Mediator is a neutral third party with no personal interest in the outcome of the dispute, is not acting as legal counsel for either of the spouses and will not be giving the Spouses or either one of them any legal advice. Although the Mediator's services include the drafting of a family law agreement or separation agreement as referred to in Part 6 of the Family Law Act, the Spouses shall rely on their own respective legal counsel, independently retained, and not the Mediator, for any legal advice, before signing such agreement and the obtaining of such separate

independent legal advice is encouraged. The legal counsel of each spouse is encouraged to contact the Mediator to discuss any consensus reached and each spouse gives the Mediator permission to discuss the terms of any document resulting from mediation, with his or her legal counsel. The Spouses agree that the Mediator has no liability for any negligent act or omission in connection with the mediation.

6. The Spouses shall pay the Mediator at an introductory rate of \$200 per hour for all work performed by the Mediator including pre-mediation orientation and screening, joint meetings, telephone calls correspondence, emails, drafting, review of documents, communications with the spouse's lawyers, plus all direct and necessary out of pocket disbursements and other charges, as well as GST and PST, where applicable. The participants acknowledge a joint and several obligation for payment of the Mediator's total fees and costs associated with the mediation session, which payment will be shared proportionately by them, unless otherwise agreed to in writing by the participants at or prior to the mediation session. Prior to commencement of the first joint mediation session, the spouses will provide the Mediator with a retainer in the amount of \_\_\_\_\_ Dollars to be held in trust against future work disbursements and other charges. The spouses also agree that they will pay to the Mediator such sums as may be necessary from time to time to be held in trust against future accounts for services, disbursements and other charges. Invoices rendered will be payable forthwith and interest will accrue at the rate of 1.5% per month on unpaid accounts.

#### **FULL DISCLOSURE**

7. It is intended that each party will disclose fully and honestly all the information and any copies of relevant documents, relevant to the issues being mediated, in the possession or under the control of any one spouse, to the other spouse upon request. It is understood that any agreement entered into as a result of mediation may be set aside if disclosure of matters material to the issues being mediated has not been made. It is further agreed that the Mediator may disclose fully to each party all information provided to him by the other party, or any other relevant information of which he becomes aware.

#### **CONFIDENTIALITY**

8. The Spouses acknowledge and agree that all communication, whether verbal or written, including documents disclosed pursuant to the previous paragraph, made by the parties during the mediation procedure, including the screening process, are privileged and part of settlement discussions making such communications private and without prejudice, and same shall be kept confidential. Provided further that each spouse shall be at liberty to share such communication with his or her respective lawyer engaged by him or her for the purpose of resolving family issues involved in the mediation process, with each spouse instructing his or her counsel, as the case may be, to keep such communications confidential. It is further acknowledged that such communications are not covered by solicitor and client privilege as between the Mediator and either of the Spouses. It is understood

that the Mediator may disclose to either spouse or his or her counsel information provided by the other spouse, or any information of which the Mediator becomes aware, which the Mediator believes to be relevant, unless the Mediator has been specifically asked to keep certain information confidential. In that event, the Mediator shall not disclose that information. The confidentiality requirements set out in this paragraph shall not apply to a situation where a party to this agreement, on reasonable grounds, concludes that a child is in need of protection requiring that the appropriate authorities be notified, or where a party hereto needs to establish that a written separation or family law agreement resulting from the mediation process was voluntarily entered into by the parties following disclosure as herein set out. .

**9.** The parties acknowledge that all information exchanged during the mediation process is done so on a without prejudice basis, and the Mediator shall not be compelled to disclose or testify in any proceeding as to any records, notes, work product, or other documents received or prepared by the Mediator, unless a court of competent jurisdiction orders the mediator to testify. In the event that a court orders the mediator to testify in any legal proceedings, the party calling the mediator as a witness in any legal proceedings shall pay the mediator for his time for the preparation and the giving of such testimony. The overall intent of this agreement is that information disclosed or representations made in the course of the mediation will not be relied upon or introduced as evidence in any judicial or other proceeding in order to preserve the without prejudice nature, in the mediation proceedings, of the information and communications exchanged.

### **STATUS QUO**

**10.** The spouses agree that neither spouse will sell, mortgage, or otherwise dispose of or alter any family asset or interest in a family asset, nor alter the status quo of any pattern of primary residence or access to any minor children of the spouses, pending the conclusion of mediation without the prior written consent of the other spouse and without fully advising the mediator prior to such disposition.

### **TERMINATION OF MEDIATION**

**11.** The parties hereto shall make every reasonable effort to reach a settlement of all matters in issue, however, either spouse may withdraw from the mediation process at any time prior to signing a final agreement.

**SIGNING**

**12.** The Mediator confirms, and the Spouses acknowledge, that the spouses were screened by him for power imbalances and family violence, and the signing of this agreement is a statement of intention to begin the mediation process and to work toward a fair and appropriate resolution of the matters in issue. This agreement may be executed by the parties in counterparts, each of which, when so executed, shall be deemed to be an original and all of which shall constitute one and the same document.

Signed this \_\_\_\_ day of \_\_\_\_, 20\_\_ \_\_\_\_\_

Mediator

\_\_\_\_\_

\_\_\_\_\_

Spouse

Spouse