

# MEDIATION AGREEMENT

This Agreement is made between the undersigned participants of mediation, hereinafter referred to together as the “Parties”, and the mediation office of Christine Hickey, hereinafter referred to as the “Mediator”:

## Premises

That the parties are now living separately or have reached a decision to live separately as a result of unresolved differences which make their continuing to live together extremely difficult until or unless such differences are resolved; and/or

That either one or both of the parties have reached a decision to dissolve the relationship or marriage or they are seriously considering this alternative; and

That in connection with living separately and the possible dissolution of the relationship or marriage, they are desirous of reaching settlement through mediation of one or more of the following matters: parenting arrangements (custody and access); child support; spousal maintenance; division of assets and debts; costs for separation or divorce including mediation; attorneys’ fees and court costs; and all other issues relative to the dissolution of their relationship or their separation and divorce;

That this Agreement is made in consideration of the parties’ desire to reach settlement of existing issues between them, under this Agreement and the Mediation Guidelines, which might otherwise be subject to litigation; and

That the signing of this Agreement shall be evidence of each party’s sincere intention to avoid for themselves, and for their children, if any, the anxiety, frustration, and bitterness that often arises between parties in connection with the above issues.

Therefore, it is agreed:

## MEDIATOR REPRESENTS NEITHER PARTY

The parties understand and affirm that the mediator is providing a forum for discussion and mediation and is not acting as an attorney during the mediation. The parties understand that she is not providing legal advice or representation to either or both parties or any other participant to the mediation. The parties further understand that the mediator works for both parties equally as an impartial third party, and in that capacity, does not and will not assist one participant against the other. The parties understand that the mediator does not determine what is in the best interest of either or

both parties regarding any of the issues mediated and will instead assist the parties in evaluating the pros and cons of the various options available for resolving their differences. If the parties desire such advice or counseling, the parties have been advised to retain legal and/or financial counsel.

### RIGHT TO INDEPENDENT LEGAL COUNSEL

The parties are each encouraged to consult with independent legal counsel before and during the mediation process. In particular, the parties are strongly urged to consult with legal counsel prior to signing any Agreement drafted by the mediator. The parties may decide to enlist the mediator to draft the legal Agreement (Please see the Retainer Agreement to Draft Agreements Following Mediation). The parties agree to provide the mediator with the names and addresses of their attorneys and authorize the mediator to send the Agreement and supporting documents to their attorneys.

### DRAFTING THE AGREEMENT

When you have made all of the decisions that need to be included in your Agreement, the mediator could draft either the legal Agreement or a Memorandum of Understanding (MOU). The MOU is simply a list of your decisions, it is not a contract that will be signed by you and notarized. If the mediator drafts an MOU, it must later be converted into a legally binding contract or Agreement. Because your mediator is a lawyer, she can draft the legal Agreement as long as you have agreed to the terms of the Retainer Agreement to Draft the Agreement following Mediation. A copy of that Agreement will be provided to you by the mediator.

### FILING FOR A DIVORCE

Neither Christine Hickey nor CNY Mediation Services, Inc. represent parties in court. To obtain a divorce in New York State, an action for divorce must be commenced. This is a lawsuit wherein you request that the judge grant the divorce and other relief that is relevant to your circumstances. These divorce papers can either be prepared by you, or you can hire legal assistance to prepare and file the uncontested divorce papers for you.

### CONFIDENTIALITY AND PRIVILEGE

The parties understand that mediation is a settlement process and that the mediator will remain impartial. The parties understand and agree that the absence of confidentiality threatens neutrality because the mediator could be called to testify

against one party and in favor of the other. The parties wish to enhance the chances of success in mediation by promoting honest and candor during mediation sessions and recognize that the existence of confidentiality will promote openness and foster an atmosphere of trust.

**Mediator's Obligations:** The mediator agrees not to disclose any information from the mediation with the following exceptions:

- Information that is otherwise discoverable;
- Information that is released with the permission of both parties and the mediator;
- Court or statute requires otherwise;
- Allegations of child abuse (as defined by New York State Law);
- Threats of harm or actual harm to another person; and
- Release to attorneys, accountants and related persons as provided above.

With the signing of this Agreement, the parties are giving the mediator permission to send the Agreement, in both draft and final form, to attorneys of their selection for review, along with the Financial Statements, Pay stubs, Income tax returns of both parties, and other supporting documentation.

With the signing of this Agreement, the parties are giving the mediator permission to release information to consultants, accountants, appraisers and/or experts as may be necessary to enable that person or organization to perform an appraisal, evaluation or related service.

The parties further understand that the mediator has no power to bind third parties not to disclose information furnished during mediation.

The mediator's obligation to confidentiality applies to all communication including but not limited to communication prior to the initial session and after the mediation is complete.

**Your Obligations Regarding Confidentiality:**

The parties agree not to seek the production of notes, records, documents, diskettes, and the like through subpoena, deposition or other discovery mechanisms of anything related to the mediation that is in the possession of Christine Hickey or her office. The parties further agree not to call upon Christine Hickey or anyone associated with her

office to act as a witness in any court or legal proceeding to testify to events having taken place in mediation or to any facts or conversations relating to any issue, events, wrongful or otherwise, relating to the participants, the mediator and any mediation associates of the mediation.

If, at a later time, either party seeks to call Christine Hickey or anyone associated with her office as a witness in any legal proceeding or seeks to discover records in her possession, that party shall pay the mediator her current hourly rate for all hours expended, and shall pay all reasonable attorneys' fees for legal counsel she will hire, to respond and resist (quash) any subpoena and/or discover device.

The parties hereby give their permission to release this Mediation Agreement to establish the existence of confidentiality in the mediation, and such release shall not be considered a breach of the mediator's obligation to maintain confidentiality.

The parties further bind their heirs, executors, administrators, assigns, and representatives to this provision providing for confidentiality.

### FEES AND SERVICES

If you seek the services of this mediation office in connection with the mediation of your Agreement, you will be asked to enter into a Mediation Agreement that includes the following terms regarding fees and services.

**Mediation Session:** You will be charged on an hourly basis according to the sliding scale below for the mediation sessions. Payments for the mediation sessions are made at the end of each session.

<b>Sliding Scale:</b>	Combined Gross Income	Hourly Rate
	Under \$50,000.00	\$150.00 or less
	\$50,000.00 - \$80,000.00	\$200.00
	\$80,000.00 - \$125,000.00	\$250.00
	\$125,000 - \$250,000.00	\$300.00
	Above \$250,000.00	\$350.00

### **Mediator's Work between Mediation Sessions:**

You will also be charged at your hourly rate for services performed by the mediator between meetings that may include, but are not limited to the following:

- Telephone calls, emails, conference calls between the mediator and the clients that are placed by or placed to the clients. Please note that the mediator will have contact with both clients;
- Telephone calls, emails and conference calls made or had on the clients' behalf or related to the matter with third parties such as accountants, therapists and attorneys after permission is given by the clients;
- Preparation of all correspondents (letters to clients and others);
- Preparation of financial analysis in relation to child support and spousal maintenance as may be necessary;
- Preparation of financial analysis in relation to the division of assets and debts;
- Review of all documents including but not limited to pension plan documents;
- Conferences with other professionals such as accountants, evaluators, actuaries, appraisers and attorneys; and
- Any other time expended on behalf of, or incurred in connection with your matter.

### Drafting Deposit:

After you have made the decisions for your Agreement, you will be asked to make a drafting deposit before the first draft of the Agreement is written. The drafting deposit pays toward the cost of drafting the Agreement. If other legal documents such as court orders to divide retirement assets or deeds are required, an additional deposit may be required if the drafting deposit for the Agreement is not likely to be sufficient to cover the time required to draft these additional documents. The specific amounts and arrangements for the drafting deposit can be found in the "Retainer Agreement to Draft the Agreement and Other Legal Documents Following Mediation". You will also be asked to sign the Retainer Agreement.

### Mediator's Work Following the Mediation:

When all the decisions necessary for the Agreement have been made by you, upon your request, Christine Hickey will draft a legal Separation Agreement and other associated documents such as Domestic Relations Orders (to transfer retirement assets) as long as you have agreed to the terms of the Retainer Agreement to Draft Separation Agreement Following Mediation.

### Cancellations:

You will be charged for scheduled sessions that you do not attend unless you give this office a 48 hour advance notice of your cancellation unless it is due to an emergency. Please call the office (315-422-9756) and leave a voice message about your

cancellation.

### Miscellaneous:

- No charge will be incurred to schedule or change an appointment or to discuss an invoice;
- It is your responsibility to negotiate with your reviewing/advising attorney about his or her fee;
- Expenses incurred for expert advice (legal, accounting, appraisal, evaluator, etc.) will be your responsibility. This office may have a list of persons and organizations for your use as a resource for such expert information;
- If a summary of decisions or a partial agreement is requested by you, the charge for such a document will be based on your hourly rate and the time needed for drafting unless the mediator and the parties agree upon a different cost arrangement;
- Any unpaid balances due for a period of thirty (30) days or more will incur an accumulative monthly charge of 2% of the balance due; and
- Both clients will be held jointly and severally liable for all charges due associated with the mediation services including but not limited to the mediation sessions and the drafting services provided by this office.

### MEDIATION IS VOLUNTARY

The parties' decision to mediate is voluntary and they may withdraw from mediation at any time and for any reason.

### RIGHT OF MEDIATOR TO WITHDRAW

The mediator will attempt to help you resolve issues as long as both parties make a good faith effort to reach agreement based on fairness to both parties as they collectively define fairness. Both parties must be willing and able to participate in mediation. The mediated agreement requires compromise and both parties agree to attempt to be flexible and open to new ideas for resolution. If the mediator, in her judgment, concludes that agreement is not possible with her assistance, or that continuation of the mediation would harm or prejudice one or both participants, the mediator will withdraw and the mediation will end.

### RESOLVING DISPUTES BETWEEN PARTIES AND MEDIATOR

Should any disagreement arise between the parties and the mediator or anyone

associated with her office, we will first mediate the dispute, and if mediation fails, we will arbitrate the dispute. Both mediation and arbitration, should they be required, will be carried out in accordance with the code of ethics published by the Association for Conflict Resolution and the rules pertaining to the nature of the dispute as published by the American Arbitration Association.

### MEDIATION GUIDELINES

The parties acknowledge that they have read and had full opportunity to have explained to them the Mediation Guidelines, a copy of which has been furnished to each party and is made a part of this Agreement. The parties further contract and agree that they will faithfully abide by all the guidelines during the mediation process. Before signing this Agreement, you have the right to consult an independent attorney about the legal consequences to you of signing this Agreement.