**MEDIATION AGREEMENT**

**THIS AGREEMENT** is made between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_­­\_\_\_\_\_\_\_\_\_\_the parties, and Boice Divorce Mediation. The mediation may begin once the parties have agreed to the following conditions:

**Conduct of the Mediator**

* Mediation will be conducted by a mediator in accordance with the code of conduct and practices set forth by the NYS Council on Divorce Mediation The mediator does not represent either party, does not give legal, financial, tax or therapy advice and does not file papers for separation or divorce.
* The mediator will remain neutral in relationship to both parties and will disclose to the parties any bias and financial or personal interest in the outcome of the mediation, or any prior relationship with the parties that may otherwise cause the mediator to be disqualified. The parties also agree to disclose any past or present relationships that may affect impartiality.
* The parties will not meet individually with the mediator concerning matters in mediation unless the parties and the mediator agree that such communication might facilitate the resolution of issues being mediated. The mediator will use best professional opinion to determine this course of action. These meetings will be referred to as Caucuses. Electronic communications to the mediator should include the other party as well. Any emails received without the inclusion of the other party may be replied to by the mediator with the other party included.

**Mediation Process**

* Mediations are best conducted with face-to-face sessions including all parties. All mediation sessions will take place in the private office of the mediator based on the schedule the parties agree to. Certain situations dictate that the face-to-face interaction is not feasible or productive and other modes of communication and meeting may be utilized to complete the mediation process. Distance issues and safety concerns can precipitate such instances.
* The parties understand that they are fully responsible for their own safety during the mediation process and are encouraged to disclose to the mediator any fear they may have about their safety during or outside of the process. Further, NO weapons/or dangerous instruments are allowed on the premises. The parties agree to this and herby acknowledge that they do not have in their possession now or in any future mediation sessions, weapons of any kind.

**Mediation Fees and Compensation**

Mediation fees are paid according to the following fee schedule:

 Combined income up to $65,000 $200 per hour/prorated parts of an hour

Combined income from $65,000 - $100,000 $225 per hour/prorated parts of an hour

Combined income over $100,000 $250 per hour/prorated parts of an hour

* These rates may apply to time spent by both or either parties with the mediator, and for hours or prorated parts of an hour, spent in mediation sessions, caucuses, telephone/email contacts, contacts with other professionals regarding the mediation, researching, preparing and drafting of written materials.
* If the parties fail to pay the amount due under this agreement, they will pay all charges and costs incurred in the collection of any sums due under this agreement, including bank fees, any necessary court costs and attorney’s fees uncured.
* Payment is due at time service is delivered. Visa, Mastercard, Discover, Amex, cash and checks (payable to Boice Divorce Mediation) are all acceptable.
* 48 hour notice is required for cancellation of an appointment. Otherwise, a one hour session fee may be charged. There are people waiting for an appointment and we want an efficient distribution.

**Memorandum of Understanding (MoU)**

* The Memorandum of Understanding (MOU) is the document prepared by the mediator that dictates the mutual agreements made by the parties throughout the mediation process. This document is what can be taken to an attorney for review and converted by an attorney into a legal document (of Separation or Divorce), if applicable. The MOU can be available to the attorneys in Word format.
* Preparation of the **Memorandum of Understanding will be billed at the actual hours** required to prepare the Memorandum, which is approximately three (3) to four (4) hours, at the hourly rate. In no case will the Memorandum be released to either of the parties until it has been reviewed with the mediator by both parties and has been deemed to be acceptable to BOTH parties. Clients will receive a pdf version of the document at the end of the process.
* Data collection and document retention. Every effort will be made by the mediator to provide an accurate summary of the information provided. The final verification and acceptance of the account balances and data summaries will be the responsibility of the client, with no liability extended to the mediator. The mediator will retain only a copy of the MOU as reviewed by the clients, the personal data sheets and the signed copy of the mediation agreement.

**Role of Attorney(s) and Other Professionals**

* Mediation is not a substitute for therapy, counseling, custody evaluation, arbitration, advocacy or valuations. The parties are encouraged to seek the services of attorneys and/or other helping professionals such as accountants, actuaries, therapists, financial planners at any time they believe it to be in their own best interest.
* Each party is encouraged and expected to consult with an individual attorney, if he/she has not already done so, to provide necessary legal services including but not limited to consultation, review, transcription, and filing of the mediated agreement. Further, the mediator, Renee LaPoint, expects and encourages each party to consult with an independent attorney for review of any Memorandum of Understanding that is written by said mediator and the parties agree to do so, or will be deemed to have voluntarily waived such review despite informed consent; and
* The parties understand that they cannot in good faith work both cooperatively and litigiously at the same time. The initiation of legal action by one party against the other at any time during the mediation process may be reason to suspend and/or terminate the mediation.
* Consultants may be required to handle specialized tasks within the mediation process (i.e. accountants, financial planners, business valuators, CPAs, attorneys). The charges of those consultants will be separate and in addition to fees charged by the mediator. These separate fees will be discussed with the parties beforehand and billed directly to the parties by the professionals. These parties may enter into the mediation session at the consent and agreement of both parties.
* The parties are aware and understand that they will have the same attorney fees for drafting and filing of documentation to file their settlement agreement at the conclusion of mediation as they would if they were litigating. Attorney fees vary for these services.

**Confidentiality**

* Mediation is a confidential process. The mediator will not disclose to any person other than those whose signature appear herein or other professional used/consulted in the process, any information or impressions gained in the course of the mediation, nor will the mediator release or cause to be released to any person other than those whose signatures appear herein or other professional used/consulted in the process, any documents or records made during the mediation process, without the consent of the parties. Under no circumstances may a mediation session be taped without the advance knowledge and permission of all parties.
* The parties understand, however, any incidence of abuse revealed in the mediation must be reported by the Mediator to the appropriate authorities. In addition, the Mediator may breach confidentiality if he or she feels a party may harm him or herself or others.
* The parties agree that neither will call the mediator or permit the mediator to be called as a witness and/or evaluator in any litigation, pre-trial, or other process relative to the mediated issues, nor will the parties request the production in any such litigation, pre-trial or other process of any documents or records or discussions made during the mediation process. This agreement will take precedence over any future agreements. In the event that either party attempts to call the mediator or permit the mediator to be called as a witness and/or evaluator or request the production of mediation documents and/or records, that party will be solely responsible for any and all legal fees incurred by the mediator as a direct result of such action. It the mediator ever should be compelled to testify in Court, the mediator’s and her attorney’s time will be billed to the parties at the mediator and attorney’s hourly rate.
* Upon the approval of each of the parties after the review session, a copy of the Memorandum of Understanding will be made available to each party (pdf format) and their respective attorney (Word format).
* The mediator may contact the parties individually during or subsequent to the mediation in order to ascertain the parties experience, progress made during mediation or since the mediation was completed.

**Full Disclosure and Transfer of Property and Debt**

* Each party will fully disclose any and all financial records or other documents as may be requested by the mediator or the other party if, in the judgment of the mediator, such documents are appropriate and necessary for the resolution of issues being mediated and are a requirement of NYS law. Further, the parties agree to cooperate in obtaining release of such information as may be necessary. If full disclosure is not provided or there is a suggestion of non-disclosure, the mediator and/or parties maintain the right to terminate the mediation.
* Neither party will transfer, encumber, conceal, sell or in any other way, dispose of any property during the mediation process, except in the usual course of business and with full knowledge and consent of the other party.

**Substantively Fair Agreements**

* Parties in mediation agree to make a good-faith effort to reach agreements that are fair to both parties. Occasionally parties reach agreements which to an outside observer may seem unfair. The parties agree that the mediator will question such agreements in an effort to ensure the parties have the information needed to make informed decisions. The mediator will, within the body of the Memorandum of Understanding include information regarding any resources provided to the parties by the mediator encouraging them to seek advice in the matter by the appropriate professional(s), as well as the parties’ stated reasons for agreeing to what may appear to be an unfair or inequitable agreement. The mediator reserves the right to not release any Memorandum the mediator feels gravely inequitable and cannot be sent in good conscience without the consult by the clients with an attorney. The parties agree they are able to advocate for themselves in the mediation process.

**Apprentice Observation**

* Because of professional obligations, there may be an apprentice as observer to the mediation who will sign a confidentiality agreement with the parties and the Mediator.

**Termination of Mediation**

* The parties understand that mediation is a voluntary process. Any party in mediation, including the mediator, may terminate the mediation at any time for any reason. The Mediator will assist the parties in finding an appropriate alternative professional.

**Therefore and in consideration of the above:**

**The parties acknowledge that they have read and have had full opportunity to have explained to them the above defined Agreement for the conduct of mediation.**

**The parties agree to pay an hourly rate/prorated parts of an hour of $\_\_\_\_\_\_\_\_\_\_\_\_\_**

**To be paid as follows :\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**The parties hereby agree to make good faith effort to resolve, through mediation, any and all issues.**

**Consented and agreed to by the parties on \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_.**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **Party Party**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Donald L. Boice, Boice Divorce Mediation Co-Mediator/Apprentice (if applicable)**