

**Carol Hirshfield, Ph.D.**

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**CUSTODY MEDIATION AGREEMENT**

This agreement is made between \_\_\_\_\_ and \_\_\_\_\_ hereinafter referred to as "the parties;" and the mediator, \_\_\_\_\_.

1. Purpose: The purpose of this agreement is to lay out the ground rules under which this mediation will be conducted. The parties will review this agreement and sign it before any discussion of issues in the case. This agreement is made because the parties want to reach a settlement of an existing dispute between them through mediation. The aim is to make an agreement in principle, which shall form the basis of a binding agreement between the parties. The parties acknowledge that the Mediator has discussed the advantages and disadvantages of the Mediation process and compared that process with being represented by separate attorneys or having the issues resolved through negotiation between lawyers or by a judge of the Court. Therefore, the parties further contract and agree as follows:

2. Mediator Role: The mediator is a psychologist licensed to practice in the State of California. However, the psychologist is acting as a mediator rather than a psychotherapist. The parties acknowledge that the mediator is not acting as a therapist for either of them. The mediator is not an arbitrator or an evaluator.

3. Confidentiality: The mediator will keep confidential all communication with and all documents submitted by the parties. The parties agree that all oral and written communications, work analysis, agreements by, with, or through the mediators, are part of and shall be deemed to be settlement negotiations and shall be inadmissible in any court of law, without the written consent of both the mediators and the parties. Any temporary agreements are confidential. Only mediation agreements signed by both parties are public and not part of the confidential communication and documents in the mediation. California Evidence Code section 1152.5, revised January 1997, defines the law for mediation.

4. Recording or Videotaping Sessions: The parties understand that no session may be electronically recorded by audiotaping, videotaping, or any other means by Dr. Hirshfield or any parties in the room for the session without their explicit agreement to do so.

5. Voluntary Agreement: The parties agree that any decisions reached by them will be voluntary and that the mediators shall not be liable in any way for the parties' final agreement. Any information or opinions stated by the mediator are for the purpose of facilitating agreement and are not custody recommendations.

6. Attorney Consultation: The parties should have retained attorneys of their own choosing to advise them with regard to all or part of any settlement agreement, or other agreement, which the mediator assisted them to reach through mediation, prior to signing such agreement. The parties are advised and encouraged to consult with private counsel. The parties agree that the mediator may disclose and obtain any information to attorneys retained by the parties.

7. Mediator Fees: The parties hereto agree to pay each mediator a fee of \$250 per hour for mediation sessions, document preparation, and telephone calls, payable by deposit or at each scheduled session, and before receipt of written agreements. Sessions cancelled with less than 48 hours' or less than 2 business days' notice will be charged at full fee. The share of fees borne by each party may be decided in mediation. The mediator makes no representation, promise, or warranty that they will successfully mediate any or all of the above controversies, and make no representation, promise or warranty other than those contained in this Agreement. The Parties agree that, in addition to the payment of any agreed upon fees, each of the Parties shall be liable for any costs of collecting the total amount of the fee, including reasonable attorney fees for collecting said fees.

8. Impartiality of Mediator: The Parties acknowledge that, although the Mediator will be impartial and that the Mediator does not favor either party, there may be issues in which one party may be reasonable and the other may not be reasonable. The Parties acknowledge that the Mediator has disclosed that she or he has a duty to inform the Parties if, in the Mediator's judgment, one party's position is not reasonable. Further, the Mediator has a duty to pose alternatives, make suggestions, and provide expert information which will ensure that final decisions are reasonable. In exercising this duty, the Parties acknowledge that the Mediator may appear to be favoring the party with the reasonable position against the other party with the unreasonable position. The Parties acknowledge that the Mediator has no duty to assure a balanced dialogue and to diffuse any manipulative or intimidating tactics.

9. Right of Mediator to Withdraw: The Mediator will attempt to resolve any outstanding disputes as long as both parties make a good faith effort to reach an agreement based on fairness to both Parties. Both Parties must be willing and able to participate in the process. The mediated agreement requires compromise, and both Parties agree to attempt to be flexible and open to new possibilities for a resolution of the dispute. If the Mediator, in his or her

professional judgment, concludes that agreement is not possible or that continuation of the mediation process would harm or prejudice one or both of the Parties, the Mediator shall withdraw and the mediation shall conclude.

10. Termination of Mediation Without Cause: The Mediation may be terminated without cause by either party at any time. No reason must be given, either to the other party or to the Mediator. A decision to terminate Mediation must be made in writing. Mediation may not resume following said notification, unless expressly authorized by both Parties. Upon termination of mediation for any reason, the Mediator agrees not to counsel either party or represent either party against the other, in any Court proceeding, adversary negotiation, or for any other reason involving a dispute between the Parties.

11. Full Disclosure Assumed: The Parties agree that, while Mediation is in progress, full disclosure of all information is essential to a successful resolution of the issues. Since the Court process is not being used to compel information, any agreement made through Mediation may be rescinded in whole or in part if one party fails to disclose relevant information during the Mediation process. Since the voluntary disclosure of this information may give one party an advantage that may not have been obtained through the traditional adversarial process, the Parties agree to release and hold harmless the Mediator from any liability or damages caused by voluntary disclosure of prejudicial information in the Mediation process that may be used in subsequent negotiations or Court proceedings. The Mediator has no power to bind third Parties not to disclose information furnished during Mediation.

12. Security Issues: The parties agree that they are responsible for disclosing to the mediator in advance of the first joint mediation session any concerns about safety or security. If there has been any physical aggression or threats of physical aggression, each party should disclose that information to the mediator prior to the first joint session in a telephone message or in writing, so that a decision can be made about the appropriateness of mediation and/or planning for the security of both parties during the sessions.

13. Meetings with Children: If both parents request and agree to it, the mediator may meet with the child or children in the family and/or collect information from collateral sources for the purpose of assessing the children's needs regarding the custody arrangements.

14. The Mediator Shall Not Testify: The Parties agree not to call or subpoena the Mediator to testify at any Court proceeding, nor to produce any document obtained or prepared from any Mediation session without the prior written authorization of both Parties. If either party issues a subpoena regarding the Mediator or his or her documents, that party shall pay the Mediator his or her current hourly rate for all hours expended and shall pay all reasonable attorney fees of the other party in respect to the response, compliance, or resistance of

said subpoena.

15. Observation: With prior consent, mediation sessions may be observed by professional consultants or training mediators.

16. Referrals to other professionals and paraprofessionals: The mediator may suggest persons or groups for parent education, legal information, visitation monitoring, consultation or psychotherapy. The decision to retain such help is the responsibility of the parties. The mediator does not assume any responsibility for the work of those referrals.

17. Mediation: Any dispute arising under the Agreement shall be referred to mediation before a mutually acceptable neutral mediator.

18. Responsibility of the Mediator: The clients waive any claims against Carol Hirshfield, Ph.D., or other professionals who share office space and expenses in our suite.

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Party Name (Print)

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Signature

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Date

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Party Name (Print)

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Signature

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Mediator Name (Print)

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Mediator Name (Print)

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