



## RIVERDALE MEDIATION

### **Family Agreement to Mediate**

*(for Mediation and Mediation-Arbitration)*

***Between:***

\_\_\_\_\_ and

\_\_\_\_\_ (“the parties”)

**AND**

**Hilary Linton / Susan Jack/ Christine Kim/ Elizabeth Hyde** (“the mediator”).

The parties retain the mediator in accordance with the following process:

1. The mediator is an impartial third party who is not acting as the solicitor for either party, and is not in a solicitor and client relationship with either of them.
2. The issues to be addressed in mediation shall be jointly presented to the mediator by the parties and may include legal matters that are before a court.
3. The parties consent to the presence of the mediator’s intern or assistant for the purpose of professional training.
4. The mediation will be held in private. Other professionals or persons may be in attendance with the consent of all parties and the mediator. All third parties must agree to be bound by paragraphs 13-16 herein.
5. Mediation is a voluntary process. Any party or the mediator may terminate the process at any time.





## RIVERDALE MEDIATION

6. The mediator shall not be liable to any party for any act or omission in connection with a mediation conducted under this agreement.
7. The mediator will attempt to help the parties reach a mutually satisfactory resolution of all matters before the mediator, but she has no authority to impose a settlement on the parties. The mediator is authorized to conduct joint and separate meetings with the parties, in her discretion, and to make recommendations for settlement.

### INTAKE PROCEDURE

8. The mediator will first meet each party separately, with or without counsel, to assess if the case is appropriate for mediation (or mediation-arbitration) and to identify the issues, goals and concerns of each party. This “screening/intake” meeting is confidential between each party and the mediator subject to paragraph 14. Thereafter, the parties and the mediator will meet together, either with or without counsel, as they may agree.

### RULES OF CAUCUSING

9. The mediator may meet or communicate with either party or their counsel separately at any time. The mediator may, in her discretion, disclose information or documents provided in such private meetings (the “caucus”) to the other party, and/or to a party’s lawyer, unless agreed otherwise during the caucus.

### MEDIATOR NOT PROVIDING LEGAL SERVICES OR ADVICE

10. The parties shall obtain, from their legal and other advisors, appropriate legal, tax and other advice throughout the mediation process. The mediator will not provide legal advice to them individually or collectively. If during the course of the mediation she expresses an opinion or comments on an issue, the parties acknowledge that the opinion or comment is not to be construed as constituting a statement of the law or legal advice in any respect. Any documents prepared by the mediator, including Memoranda of Understanding, support calculations, property division calculations and draft separation agreements, shall be prepared strictly on the basis of the parties’ undertaking that they will each obtain independent legal advice on such draft documents. The parties agree that they will each obtain independent legal advice on the terms of any proposed settlement.





## RIVERDALE MEDIATION

### NO BINDING AGREEMENT CONCLUDED IN MEDIATION

11. The parties understand that they will not conclude a binding agreement in mediation. Any binding agreement shall only be made by the parties following mediation and with the advice of their lawyers.

### FINANCIAL AND OTHER DISCLOSURE

12. The parties shall provide all information and documentation requested by the other party. If requested, each party shall complete and exchange a sworn financial statement.

### CONFIDENTIALITY

13. The mediator and the parties shall keep confidential all information prepared for the mediation, or provided, disclosed or exchanged during or for the purpose of the mediation, unless otherwise disclosed.. This includes all written or other form of documentary material provided to or prepared by the mediator, the parties or third parties.

14. Notwithstanding paragraph 13, the mediator may disclose information about the mediation in the following circumstances:

- (i) to communicate with the lawyers for the parties, and to third party advisors retained by a party or both parties;
- (ii) where ordered to do so by a judicial authority;
- (iii) where required to do so by law, including obligations to report a child in need of protection; and
- (iv) where the information discloses an actual or potential threat to human life or safety.

### WITHOUT PREJUDICE SETTLEMENT DISCUSSIONS

15. The parties agree that the mediation sessions are settlement negotiations and that any disclosures, including the mediator's file, are inadmissible in any litigation, arbitration or other proceeding to the extent permitted by law. The parties agree to not summons or otherwise require the mediator to testify or produce records or notes in any proceedings. No transcripts or recordings shall be made of the mediation sessions.





## RIVERDALE MEDIATION

16. In particular, the parties agree that they shall not rely on or introduce as evidence in any arbitral or judicial proceedings:
- (a) any views expressed or suggestions made by the other party in respect of the possible settlement of the matter, whether orally or in writing;
  - (b) any admissions or apologies made by the other party in the course of the mediation, whether orally or in writing;
  - (c) the fact that the other party indicated a willingness to accept a proposal or recommendation for settlement made by the mediator;
  - (d) any views or proposals expressed by the mediator, or
  - (e) any information provided or intake form completed by a party and provided to the mediator in the course of the intake/screening meetings, and
  - (f) any contents of the mediators file including her notes
17. Paragraphs 13-16 shall apply to any assistant, intern, co-mediator or observer, and to any third party present at the request of either party or the mediator.

### TERMINATION OF MEDIATION

18. The mediation shall be terminated:
- (a) by a written statement by one or more of the parties that the mediation is terminated;
  - (b) by a written statement by the mediator that further efforts at mediation would not be helpful.
19. Unless this is a mediation-arbitration process, the parties consent to the destruction of all notes and documents in the file at the end of the mediation process.
20. The parties shall pay the mediator's fees in accordance with the attached Fee Schedule. The following cancellation policy applies to all cancelled (but not postponed) mediations:
- **Notice of 48 hours or less:** all preparation time, expenses/disbursements plus a full day cancellation fee.
  - **Notice of 48-120 hours:** all preparation time, expenses/disbursements plus a half-day cancellation fee.
  - **Notice of five business days:** all preparation time, expenses and disbursements.





## RIVERDALE MEDIATION

Dated at Toronto this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Name : \_\_\_\_\_

\_\_\_\_\_  
Name : \_\_\_\_\_

\_\_\_\_\_  
Name : \_\_\_\_\_

\_\_\_\_\_  
(Third Party as to paragraphs 13-16) Name : \_\_\_\_\_

\_\_\_\_\_  
(Intern / Assistant as to paragraphs 13-16) Name : \_\_\_\_\_

\_\_\_\_\_  
(Mediator) Name : \_\_\_\_\_





## RIVERDALE MEDIATION

### Principles of Mediation

#### **Good Faith.**

The parties and the mediator undertake to deal with each other with good faith and integrity. They will provide the other will all information needed to make informed decisions, including all assets and liabilities and their values, and all information necessary to accurately determine income.

#### **Trust.**

(i) The parties promise that they will not dissipate any property that is a subject of mediation during the time that they are in mediation, unless they have the written consent of the other party. In particular they undertake not to sell, gift, transfer, mortgage, lien, pledge as security or otherwise dissipate any such property, nor to change any life insurance, pension, will, or RRSP beneficiary designations.

(ii) Absent an emergency, neither party will start legal proceedings, nor take any new steps in any existing legal proceeding without notifying the other party first.

#### **Safety.**

Mediation should be a safe place to have difficult conversations. The parties acknowledge that the mediator will confidentially “screen” for physical violence and emotional abuse in the parties’ relationship. It often is necessary to make specific provisions to ensure that each party feels safe and empowered in mediation. The parties agree to honour and respect what the other needs in order to provide a safe mediation process and to keep any commitments made to ensure safety and equal empowerment during mediation.

#### **Fairness.**

The parties understand that the chances of reaching an agreement are best if each of them believes that the process is a fair one. The parties undertake to take all steps to ensure a fair process, including allowing the other full opportunity to speak and respond, and full access to all support, advice and disclosure reasonably necessary to reach an informed and voluntary agreement. The parties agree that a fair process is free of fear, emotional abuse, intimidation, manipulation, accusations, blame, guilt, violence, and deceit, and they agree to refrain from such conduct at all times during mediation.

