



RIVERDALE MEDIATION

*IN THE MATTER OF THE ARBITRATION ACT S.O. 1991, c. 17, as amended,
and the FAMILY LAW ACT, R.S.O. 1990, c.F3, as amended*

B E T W E E N:

Party-1

(First Name)

- and -

Party-2

(First Name)

SECONDARY ARBITRATION AGREEMENT

(for Arbitration and Mediation-Arbitration)

1. SUBMISSION

- 1.1 This Agreement is a Family Arbitration Agreement made under the Arbitration Act and the Family Law Act. It is effective when:
 - (a) It has been signed by both parties and witnessed; and
 - (b) The Arbitrator has signed the Certificate of Arbitrator in the form attached.
- 1.2 The Arbitrator for this Arbitration is Ms. Hilary A. Linton.
- 1.3 The Certificate of Arbitrator appended to this Agreement is part of this Agreement.
- 1.4 This Agreement may be signed in counterparts.

2. WAIVER OF RIGHTS TO LITIGATE IN COURTS

- 2.1 The parties waive any right to further litigate the issues listed in paragraph 4.1 below in court, pursuant to the *Family Law Act*, the *Divorce Act*, or any other statute or law, subject to the right of appeal and rights under the *Arbitration Act* and the *Family Law Act* as set out below.
- 2.2 Nothing in this Agreement impairs any enforcement rights that a party may have through the courts or otherwise.
- 2.3 On application by either party and subject to the court's discretion, the operative terms of this Agreement may be incorporated into a consent court order.

3. DEFINITIONS

3.1 In this agreement:

- (a) "Party-1" means _____ who is one of the parties to this agreement;
- (b) "Party-2" means _____ who is one of the parties to this agreement;
- (c) "party" or "parties" means Party-1 or Party-2 or Party-1 and Party-2 collectively;
- (d) "property" has the same meaning as used in the *Family Law Act*;
- (e) "*Arbitration Act*" means the *Arbitration Act, 1991*, S.O., 1991, c.17, as am. S.O. 2006, c. 1, s.1; 2006, c. 19, Sched. C, s. 1(1);
- (f) "*Child and Family Services Act* " means *Child and Family Services Act* R.S.O. 1990, c. C.11
- (g) "*Children's Law Reform Act*" means the *Children's Law Reform Act*, R.S.O. 1990, c. C.12;
- (h) "*Divorce Act*" means the *Divorce Act*, R.S.C. 1985 (2nd Supp.), c. 3, as amended;
- (i) "*Family Law Act*" means the *Family Law Act*, R.S.O. 1990, c. F.3, as am. S.O. 2006, c. 1, s.5; 2006, c. 19, Sched. B, s. 9, Sched. C, s. 1(1), (2), (4);

3.2 To the extent permitted by law, an Act of the legislature or parliament referred to by name, whether or not it is defined in paragraph 3.1 above, will mean that Act in force as of the date of the signing of this Agreement. In the event that this provision invalidates the operation of any of the other provisions of this Agreement at the time they are sought to be enforced, then the Act referred to will be the one in force at the material time and will include any amendment or successor Act.

4. SUBSTANTIVE ISSUES

4.1 The issues submitted for determination are in accordance with the provisions of the parties' (check one):

- Separation Agreement dated _____
- Court Order dated _____
- Arbitration Award dated _____,

as attached to this agreement.

For further particularity, the relevant paragraphs of the Separation Agreement, Court Order or Arbitration Award are:

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-
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5. CONFIDENTIALITY

5.1 The proceedings under this Agreement and the record thereof shall be private and confidential, except as may be necessary to implement or to enforce the Arbitrator's award, and subject to their being produced in proceedings for judicial review, or appeal, or as required by law. The parties, their counsel and Ms. Linton shall not disclose any information about the parties, the arbitration or the screening for power imbalances or domestic violence to anyone, except as required by law.

5.2 In the case of mediation-arbitration, the parties consent to Ms. Linton meeting privately with each of them prior to the mediation for the purpose of conducting screening/intake meetings, notwithstanding that she may later act as their arbitrator. The parties specifically waive any claim that such intake/screening meetings violate their rights of fairness, equity or due process under the Arbitration Act.

5.3 The parties agree that the screening process, and the notes created by the person who conducted the screening (either Ms. Linton or by a third-party screener), ("the screening notes") shall remain confidential between each party and the person who conducted the screening, except required by law. The screening notes shall not be disclosed to anyone for any purpose without a court order. The parties may each, at

their option, authorize their respective lawyers to speak with the person who conducted the screening.

- 5.4 If the parties are to be screened by a third party screener, they shall sign the Consent to Third Party Screening attached to this Agreement and shall each meet separately and confidentially with a Third Party Screener designated by Ms. Linton.
- 5.5 Notwithstanding 5.1 above, the parties agree that Ms. Linton's notes, including her notes from any screening process, and file prepared before, during and after the Arbitration hearing remain the personal property of the arbitrator, whether or not they may be considered to be part of the "record" of the arbitration. Neither party shall request the arbitrator to produce her notes or file, whether or not there is a court reporter present at the hearing.
- 5.6 The parties acknowledge and agree that Ms. Linton's legal obligations to disclose may include:
- (a) Filing a report about the award with the Attorney General in accordance with the Regulation under the *Arbitration Act*, 1991;
 - (b) Reporting a child in need of protection in accordance with section 72 of the *Child and Family Services Act*;
 - (c) Where she believes upon reasonable grounds that there is an imminent risk to an identifiable person or group of death or serious bodily or psychological harm, disclosing such confidential information that is required in the circumstances to prevent such death or harm.

6. APPLICABLE LAW

- 6.1 The arbitration shall be conducted in accordance with: (*choose either (i) or (ii)*)
- (i) the law of Ontario, and the law of Canada as it applies in Ontario, or
 - (ii) the law of _____ (name other Canadian jurisdiction) and the law of Canada as it applies in that jurisdiction

7. MEDIATION

- 7.1 At the request of the parties, Ms. Linton may act as a Mediator in this matter. The parties agree that Ms. Linton is not disqualified from adjudicating any or all issues because she has acted as a Mediator in an attempt to resolve the issues before her. The parties specifically waive section 35 of the *Arbitration Act*.
- 7.2 The parties agree that any mediation decisions are settlement negotiations and that disclosures made during the mediation discussions are inadmissible in the arbitration and in any future litigation or arbitration. The parties agree not to subpoena or otherwise require Ms. Linton to testify regarding the mediation discussions or to

produce records or notes of the mediation discussions in any future proceedings. No transcripts shall be kept of the mediation discussions.

- 7.3 The parties agree that the mediation process will be governed by the Agreement to Mediate, which forms a part of this Agreement.

8. PROCEDURE FOR ARBITRATION

- 8.1 The arbitration shall take place at the dates and times to be set by Ms. Linton in consultation with the parties (and their counsel, if applicable).

- 8.2 The procedure for the arbitration shall be determined by Ms. Linton in consultation with the parties (and their counsel, if applicable). Ms. Linton will require the parties and counsel to comply with the Standard Arbitration Procedures set out at the end of this Agreement along with any other procedures she may deem appropriate.

- 8.3 If a hearing is conducted, it may be conducted in person, electronically, by telephone, by teleconference, by written submissions or by any other procedure which shall be determined by Ms. Linton in consultation with the parties (and their counsel, if applicable).

- 8.4 Ms. Linton may determine a timetable for the delivery of briefs, financial disclosure and other documents.

- 8.5 Ms. Linton may deliver notices, awards or other communications to the parties via ordinary mail, fax or e-mail.

- 8.6 If a hearing is held and unless the parties agree otherwise:

- (a) All witnesses shall be sworn under oath or affirmed and shall be subject to cross-examination and re-examination, except that Ms. Linton may direct that some or all of the evidence be given by affidavit in such manner as she may direct; and
- (b) All usual rules for the admissibility of evidence in court proceedings shall apply as amended by the *Arbitration Act*, the *Family Law Rules* and the *Rules of Civil Procedure*, where applicable.

- 8.7 The parties agree: (*Select one*)

- (a) There shall be a reporter, the cost of which shall be initially shared equally between the parties; or
- (b) There shall not be a reporter

PRE-ARBITRATION CONFERENCE

8.8 Ms. Linton may convene a pre-arbitration conference to determine:

- (a) The issues for arbitration;
- (b) The documents to be provided prior to the commencement of the arbitration;
- (c) The order of presentation of evidence;
- (d) The names, addresses and telephone numbers of witnesses to be called and a synopsis of their evidence;
- (e) A timetable for pre-arbitration events, including the exchange of expert reports, the delivery of opening statements, the exchange of document briefs and questioning, if required;
- (f) Estimates of the time required for the arbitration;
- (g) Any physical arrangements necessary for the attendance of parties or witnesses; and
- (h) Any issues arising out of the results of the screening.

9. EXPERT EVIDENCE FOR ARBITRATION HEARING

9.1 The parties specifically authorize Ms. Linton to determine the necessity of retaining professional(s) to provide expert opinion(s) respecting any outstanding issues(s) and to retain such professional(s) as he deems appropriate.

9.2 The parties agree to contribute to the fees of the expert(s) in the amounts or proportions determined by Ms. Linton and authorize Ms. Linton to include these fees as a disbursement on his account to the parties.

10. WITHDRAWAL FROM ARBITRATION

10.1 Neither party may unilaterally withdraw from this Agreement. However, the parties may jointly terminate this Agreement by their written agreement. Subject to paragraph 11.2, the Arbitrator shall proceed with an arbitration as provided for in this Agreement notwithstanding that one of the parties no longer wants to participate in the arbitration.

10.2 Ms. Linton may at any time resign from her appointment as arbitrator by providing written notice of her resignation to the parties.

10.3 In the event that Ms. Linton's appointment is terminated, and the parties are unable to agree on a replacement, a court of competent jurisdiction shall appoint a replacement arbitrator on either party's application to the court.

10.4 In the event that Ms. Linton's appointment is terminated, the parties agree that any interim or interlocutory award(s) made by Ms. Linton will continue to bind the parties and will continue in full force and effect as the basis for the continuation of the arbitration with the replacement arbitrator.

11. THE ARBITRATOR'S AWARD

11.1 After the evidence has been received and submissions on the law have been made, Ms. Linton shall deliver an award on all issues submitted for determination.

12. APPEAL

12.1 Any Award may be appealed as follows: *(choose either (a) or (b))*

- (a) A party may appeal the Award in accordance with subsection 45(1) of the *Arbitration Act, 1991*; or
- (b) A party may appeal the Award on: *(choose one or more of the following)*
 - A question of law,
 - A question of fact,
 - A question of mixed fact and law.

13. ENFORCEMENT

13.1 Subject to the appeal remedies and rights to apply to set aside Ms. Linton's Award under sections 45 and 46, respectively, of the *Arbitration Act* and subject to the other applicable provisions of the *Arbitration Act*, and the *Family Law Act*, all awards of the Arbitrator shall be binding upon the parties. Any temporary, interim or final award may be incorporated into a consent order of the Ontario Superior Court of Justice. Either party may apply for the enforcement of any award under section 59.8(5)(a) of the *Family Law Act*.

13.2 Upon the request of either party, Ms. Linton shall issue an arbitral award incorporating the terms of any agreement reached by the parties.

14. MS. LINTON'S FEES AND DISBURSEMENTS

14.1 Ms. Linton's fees shall be \$_____ per hour for the arbitration hearing, any pre-arbitration conference, interim arbitration, preliminary meetings, mediation, arrangements, preparation for the hearing, preparation of an award and any other services pursuant to this Agreement.

14.2 Each party shall provide Ms. Linton with a retainer of \$_____, with this retainer to be refreshed from time to time as she shall direct.

- 14.3 In the event that one of the parties fails or refuses to pay to Ms. Linton his/her share of Ms. Linton's fees, disbursement or retainer accounts, Ms. Linton may accept payment of the defaulting party's share from the other party and exercise her discretion regarding costs to require the defaulting party to reimburse the other party the amount of such payment.
- 14.4 Ms. Linton is empowered to order interim fees and disbursements of the arbitration, including her retainer, fees and/or disbursements, on notice to the parties following receipt of submissions if either party wishes.
- 14.5 Ms. Linton may withhold her award until all outstanding fees, disbursements, or retainers have been paid.

15. WAIVER OF LIABILITY

- 15.1 The parties hereby waive any claim or right of action against Ms. Linton arising out of these proceedings.

16. SEVERABILITY OF TERMS

- 16.1 Each of the terms of this agreement are severable from the others and will survive the invalidity or unenforceability of any other term of this agreement.

Dated this _____ of _____ 20__.

Witness

Party - 1

Witness

Party -2

STANDARD ARBITRATION PROCEDURES

The following process shall be applied to the conduct of all arbitration hearings:

1. Counsel shall be present for all arbitration hearings.
2. Neither party shall speak to the other party at the hearing, whether before the commencement of the hearing each day, during breaks or following the end of the hearing each day, except with the permission of the other party's lawyer.
3. Both parties will treat each other and opposing counsel with respect throughout the arbitration process and neither party will attempt, directly or indirectly, to intimidate the other party, whether by looks, words or physical proximity.
4. While either party may bring family, friends, new partners to the arbitration hearing, the only people who will be permitted in the hearing room will be the parties, their lawyers, the court reporter (if the parties elect to have the evidence transcribed), the arbitrator and whatever witness is testifying at that moment.
5. All witnesses, including the parties, will sit directly across from the arbitrator while testifying.
6. Neither party will speak out loud while a witness is testifying, whether to his/her lawyer, to the arbitrator, the witness or other party. If a party wishes to comment to his/her lawyer during the testimony of a witness, he/she shall do so by passing notes to his/her lawyer.
7. The arbitrator may require the parties and their counsel to comply with procedural requirements such as staggered arrival and departure times, the use of technology such as skype that would enable the arbitration to take place in separate rooms, the use of screens for the purpose of testifying, etc.

LAWYER’S CERTIFICATE OF INDEPENDENT LEGAL ADVICE

I, _____, have explained to my client _____ the meaning of the attached Agreement and have given to him/her independent legal advice prior to the signing of the Agreement. I have also explained to my client that the Agreement is a “domestic contract” within the meaning of the *Family Law Act*, and as such a court may set aside the Agreement under various circumstances about which I have informed him/her. In my opinion, my client is aware of the need for disclosure of significant income, assets, debts and liabilities existing when this Agreement is made and understands the nature and consequences of this Agreement. I am satisfied that my client is not signing this Agreement as a result of any duress or undue influence. I am satisfied that my client is fully able to participate in this arbitration and is doing so voluntarily.

Date

Signature of Lawyer

PARTY’S CERTIFICATE OF INDEPENDENT LEGAL ADVICE

I, _____, confirm that I have received independent legal advice and have attached to this Agreement a copy of the Certificate of Independent Legal Advice that was provided to me under subsection 59.6(2) of *the Family Law Act*.

Date

Signature of Party

LAWYER’S CERTIFICATE OF INDEPENDENT LEGAL ADVICE

I, _____, have explained to my client _____ the meaning of the attached Agreement and have given to him/her independent legal advice prior to the signing of the Agreement. I have also explained to my client that the Agreement is a “domestic contract” within the meaning of the *Family Law Act*, and as such a court may set aside the Agreement under various circumstances about which I have informed him/her. In my opinion, my client is aware of the need for disclosure of significant income, assets, debts and liabilities existing when this Agreement is made and understands the nature and consequences of this Agreement. I am satisfied that my client is not signing this Agreement as a result of any duress or undue influence. I am satisfied that my client is fully able to participate in this arbitration and is doing so voluntarily.

Date

Signature of Lawyer

PARTY’S CERTIFICATE OF INDEPENDENT LEGAL ADVICE

I, _____, confirm that I have received independent legal advice and have attached to this Agreement a copy of the Certificate of Independent Legal Advice that was provided to me under subsection 59.6(2) of the *Family Law Act*.

Date

Signature of Party

CERTIFICATE OF ARBITRATOR

I, Hilary A. Linton, confirm the following matters:

(a) I shall treat the parties equally and fairly in the Arbitration, as subsection 19(1) of the Act requires.

(b) I have received the appropriate training approved by the Attorney General.

Check either (c) or (d):

(c) The parties were separately screened by me for power imbalances and domestic violence and I have considered the results of the screening and shall do so throughout the Arbitration, if I conduct one.

(d) The parties were separately screened for power imbalances and domestic violence by someone other than me and I have considered his or her report on the results of the screening and shall do so throughout the Arbitration.

Date

Witness

Arbitrator