

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:

(First Name)

— and —

(First Name)

FAMILY (MEDIATION) ARBITRATION AGREEMENT

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;
 - (b) Each party's Certificate of Independent Legal Advice and each lawyer's Certificate of Independent Legal Advice has been signed, in the forms attached; and
 - (c) The Arbitrator has signed the Certificate of Arbitrator, in the form attached.
- 1.2 The Arbitrator for this Arbitration is _____ of Riverdale Mediation Ltd.
- 1.3 The Certificates of Independent Legal Advice and the Certificate of Arbitrator appended to this Agreement are part of this Agreement.
- 1.4 This Agreement may be signed in counterparts.
- 1.5 The parties agree that, should this process proceed using online technology and

not in-person, they will comply with any Terms of Conditions for Online Family Dispute Resolution posted to the Riverdale Mediation website.

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) "property" has the same meaning as used in the *Family Law Act*;
 - (b) "*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);
 - (c) "*Child and Family Services Act*" means *Child and Family Services Act* R.S.O. 1990, c. C.11
 - (d) "*Children's Law Reform Act*" means the *Children's Law Reform Act*, R.S.O. 1990, c. C.12;
 - (e) "*Divorce Act*" means the *Divorce Act*, R.S.C. 1985 (2ND Supp.), c. 3, as amended;
 - (f) "*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 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 following issues are being submitted for the determination of temporary relief, if appropriate, and for final determination:

- | | |
|--|--|
| <input type="checkbox"/> Custody of child(ren), | <input type="checkbox"/> Exclusive Possession of Matrimonial Home, |
| <input type="checkbox"/> Access to child(ren), | <input type="checkbox"/> Exclusive Possession of Contents of Matrimonial Home, |
| <input type="checkbox"/> Spousal Support, | <input type="checkbox"/> Sale of Property |
| <input type="checkbox"/> Indexing spousal support, | <input type="checkbox"/> Interim Fees and Disbursements |
| <input type="checkbox"/> Child Support – table amount, | <input type="checkbox"/> Preservation/Non-Dissipation of Assets, |
| <input type="checkbox"/> Child Support – other than table amount | <input type="checkbox"/> Non-harassment |
| <input type="checkbox"/> Child Support – Section 7 expenses, | <input type="checkbox"/> Costs, |
| <input type="checkbox"/> Equalization of Net Family Property, | <input type="checkbox"/> Other (Attach Schedule) |
| <input type="checkbox"/> Unequal division of Net Family Property | |

5. CONFIDENTIALITY

5.1

- (i) 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 your arbitrator 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.
- (ii) The parties agree that the screening process, and the notes created by either the mediator or by an independent third-party screener, if the screening of the parties is conducted by such a person, (“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.
- (iii) If the parties are to be screened by a third-party screener, they shall sign the Consent to Screening attached to this Agreement and shall each meet separately

and confidentially with a Third-Party Screener designated by an Arbitrator.

- (iv) The parties agree that the arbitrator's personal notes and file prepared before, during and after the Arbitration hearing remain the personal property of the arbitrator, even though they may be considered to be part of the "record" of the arbitration. Neither party shall request the arbitrator to produce their notes or file, whether or not there is a court reporter present at the hearing.
- (v) Notwithstanding paragraph (ii) to (iv), the mediator/arbitrator or intern may disclose information about the mediation/arbitration
 - where ordered to do so by a judicial authority;
 - where required to do so by law, including obligations to report a child in need of protection;
 - where the information discloses an actual or potential threat to human life or safety, and
 - if either of us makes a claim against the mediator/arbitrator or intern or mediate393 inc.
 - for research, education and program evaluation purposes, on a non-identifying basis; and
 - for the purpose of intern candidate applications for professional certification, with all identifying information redacted or changed.

5.2 The parties acknowledge and agree that your arbitrator'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 the arbitrator 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, your arbitrator may act as a Mediator in this matter. The parties agree that your arbitrator is not disqualified from adjudicating any or all issues because they have acted as a Mediator in an attempt to resolve the issues before your arbitrator. 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 your arbitrator 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.

8. PROCEDURE FOR ARBITRATION

- 8.1 The arbitration shall take place at the dates and times to be set by your arbitrator in consultation with the parties (and their counsel, if applicable).
- 8.2 The procedure for the arbitration shall be determined by your arbitrator in consultation with the parties (and their counsel, if applicable).
- 8.3 The arbitrator may impose standard process protocols from time to time that will form part of this agreement. Standard Protocol “A” is attached hereto.
- 8.4 Your arbitrator may determine a timetable for the delivery of briefs, financial disclosure and other documents.
- 8.5 Your arbitrator 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 your arbitrator may direct that some or all of the evidence be given by affidavit in such manner as the arbitrator 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*)

- There shall be a reporter, the cost of which shall be initially shared equally between the parties; or
- There shall not be a reporter; or
- There shall be a reporter appointed as required for all or part of any arbitration as determined by your arbitrator in consultation with the parties (and counsel, if applicable).

9. PRE-ARBITRATION CONFERENCE

Your arbitrator 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.

10. EXPERT EVIDENCE FOR ARBITRATION HEARING

10.1 The parties specifically authorize your arbitrator 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 the arbitrator deems appropriate.

10.2 The parties agree to contribute to the fees of the expert(s) in the amounts or proportions determined by your arbitrator and authorize your arbitrator to include these fees as a disbursement on the arbitrator's account to the parties.

11. WITHDRAWAL FROM ARBITRATION

11.1 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.

- 11.2 Your arbitrator may at any time resign from their appointment as arbitrator by providing written notice of their resignation to the parties.
- 11.3 In the event that Your arbitrator'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.
- 11.4 In the event that Your arbitrator's appointment is terminated, the parties agree that any interim or interlocutory award(s) made by your arbitrator 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.

12. THE ARBITRATOR'S AWARD

- 12.1 After the evidence has been received and submissions on the law have been made, your arbitrator shall deliver an award on all issues submitted for determination.

13. APPEAL

- 13.1 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

14. ENFORCEMENT

- 14.1 Subject to the appeal remedies and rights to apply to set aside Your Arbitrator'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*.

- 14.2 Upon the request of either party, your arbitrator shall issue an arbitral award incorporating the terms of any agreement reached by the parties.

15. YOUR ARBITRATOR'S FEES AND DISBURSEMENTS

- 15.1 Your arbitrator's fees shall be charged on an hourly basis, in accordance with the Fee Schedule then in effect, 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.
- 15.2 Each party shall provide your arbitrator with a retainer of _____, with this retainer to be refreshed from time to time as the arbitrator may direct.
- 15.3 In the event that one of the parties fails or refuses to pay to your arbitrator their share of your arbitrator's fees, disbursement or retainer accounts, your arbitrator may accept payment of the defaulting party's share from the other party and exercise their discretion regarding costs to require the defaulting party to reimburse the other party the amount of such payment.
- 15.4 Your arbitrator 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.
- 15.5 Your arbitrator may withhold her award until all outstanding fees, disbursements, or retainers have been paid.

16. WAIVER OF LIABILITY

- 16.1 The parties hereby waive any claim or right of action against your arbitrator and/or Riverdale Mediation Ltd. arising out of these proceedings.

17. SEVERABILITY OF TERMS

17.1 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

Applicant

Witness

Respondent

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. My client has been separately screened for power imbalances and domestic violence and I am satisfied that my client is fully able to participate in this arbitration and is doing so voluntarily.

Date

Lawyer's signature

APPLICANT'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 Applicant

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. My client has been separately screened for power imbalances and domestic violence and I am satisfied that my client is fully able to participate in this arbitration and is doing so voluntarily.

Date

Signature of Lawyer

RESPONDENT'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 Respondent

CERTIFICATE OF ARBITRATOR

I, _____, 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 their report on the results of the screening and shall do so throughout the Arbitration.

Date

Witness

Riverdale Mediation Ltd., per
Arbitrator

2020 FEE SCHEDULE (HST EXTRA)*

	MEDIATION, SCREENING & ARBITRATION SERVICES				PARENTING COORDINATION SERVICES
	INTAKE/ SCREENING (1-1.5 hours)	HOURLY RATE	HALF DAY (4 hours)	FULL DAY (7 hours)	HOURLY RATE
Hilary Linton	\$550.00	\$500.00	\$2000.00	\$3500.00	\$500.00
Elizabeth Hyde	\$475.00	\$475.00	\$1900.00	\$3325.00	\$400.00
Cliff Nelson	\$600.00	\$600.00	\$2400.00	\$4200.00	

All fees are payable in advance on our website at the time appointments are scheduled.

Deposits for Parenting Coordination and Arbitration services will be determined at the Intake Meetings, once the matter has been assessed to be suitable for private adjudication.

Half and full day rates include brief phone calls and short emails.

Longer calls, detailed correspondence, any meetings and time spent preparing, reviewing and writing reports or awards are charged based on time spent at our hourly rates.

All clients share fees between them equally unless one has agreed to pay fully for all services. We reserve the right to request that one client pay the full share of outstanding fees not paid by the other party as a condition of continued service. We also may terminate a process for non-payment of fees.

Disbursements are charged at our cost, including printing, faxes, courier, etc.

Please note that if you need to cancel or postpone your appointment the following **cancellation policy will take effect:**

1. **Notice of 48 hours or less:** all preparation time, expenses/disbursements plus a full day cancellation fee.
2. **Notice of 48-120 hours:** all preparation time, expenses/disbursements plus a half-day cancellation fee.
3. **Notice of less than five business days:** all preparation time, expenses and disbursements.

