

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

BETWEEN:

— and —

collectively referred to as “the parties”

— and —

Riverdale Mediation Ltd.

FAMILY 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 _____
- 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 and may be signed electronically.
- 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.
- 1.6. In consideration of the mutual covenants contained in this Agreement, the following is agreed to.

2. SCREENING

- 2.1 The Parties confirm that they were previously screened separately by a neutral professional other than the Arbitrator, who is qualified to screen parties for arbitration, for family violence, power imbalance, addiction, substance abuse, mental health, and other matters that may affect the appropriateness of family arbitration for their matter. The Parties confirm that they have entered into the appropriate Agreement with that neutral professional, and have each met separately and confidentially with that professional who will provide to the Arbitrator a confidential Report on the screening.
- 2.2 The neutral professional who conducted the screening informed each of the Parties of the purpose of the screening meetings and assured them that the information, notes, records, communications, reports, and other documents made or provided would be confidential, in particular, that they would not be revealed to the other party, and the limits of confidentiality as hereafter set forth.

3. WAIVER OF RIGHTS TO LITIGATE IN COURTS

- 3.1. The parties waive any right to further litigate the issues listed in paragraph 5.1 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.
- 3.2. Nothing in this Agreement impairs any enforcement rights that a party may have

through the courts or otherwise.

- 3.3. 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.

4. DEFINITIONS

4.1. 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, Youth 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);

4.2. To the extent permitted by law, an Act of the legislature or parliament referred to by name, whether it is defined in paragraph 4.1 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.

5. SUBSTANTIVE ISSUES

5.1. The following issues are being submitted for the determination of temporary relief, if appropriate, and for final determination:

- Decision-making responsibility of children

- Parenting time with children
- Income determination
- Child support
- S. 7 expenses
- Relocation of children's residence
- Spousal support/indexing
- Child or spousal support arrears
- Property valuation
- Property division claims
- Exclusive possession claims
- Preservation, non-dissipation or sale of assets
- Interim fees/disbursements
- Costs from date of signed Arbitration Agreement
- Other: _____

6. CONFIDENTIALITY

- 6.1 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 the 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.
- 6.2 The parties and the Arbitrator agree that all aspects of the intake and screening process, including the Report from the neutral professional screener, shall be confidential and shall not be disclosed to anyone for any purpose without a court order.
- 6.3 The parties agree that all contents of the Arbitrator's file, including their notes, prepared before, during and after the hearing, are the personal property of the

Arbitrator, even if they may be considered to be part of the Record of the Arbitration.

- 6.4 No party will call the Arbitrator as a witness for any purpose whatsoever. If a party decides to subpoena the Arbitrator or any part of their file contrary to the provisions above, the Arbitrator will move to quash the subpoena. That party agrees to reimburse the Arbitrator for whatever expense they incur in such an action, including counsel fees, plus the hourly rate of the Arbitrator for time that is taken by this matter.
- 6.5 Notwithstanding the foregoing, the Arbitrator or an intern observing the process may disclose information about the Arbitration:
- (a) where ordered to do so by a judicial authority,
 - (b) where required to do so by law, including the obligation to report a child in need of protection pursuant to s. 125 of the Child, Youth 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,
 - (d) where either party makes a claim, complaint or fees dispute against the Arbitrator or Riverdale Mediation Ltd., to the extent necessary to respond to such claim, complaint or fees dispute,
 - (e) for research and educational purposes on an anonymous basis, and
 - (f) to any person designated or retained by a party as deemed appropriate and necessary by the Arbitrator.

7. APPLICABLE LAW

7.1. 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 of other Canadian jurisdiction) and the law of Canada as it applies in that jurisdiction.

8. PROCEDURE FOR ARBITRATION

- 8.1. The arbitration shall take place at the dates and times to be set by the Arbitrator in consultation with the parties (and their counsel, if applicable).
- 8.2. The procedure for the arbitration shall be determined by the 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. The Arbitrator may determine a timetable for the delivery of briefs, financial disclosure and other documents.
- 8.5. Notwithstanding the provisions of s. 53 of the Arbitration Act, the Arbitrator may deliver Notices, Directions, Awards, and other communications by 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 the Arbitrator may direct that some or all of the evidence be given by affidavit in such manner as the Arbitrator may direct; and

(b) The parties choose the following rules for admissibility of evidence:

s. 15 of the Statutory Powers Procedure Act R.S. O., 1990, c.
22 or

All usual rules for admissibility of evidence in court proceedings 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 the Arbitrator in consultation with the parties (and counsel, if applicable).

9. PRE-ARBITRATION CONFERENCE

The 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 arrangements necessary for the attendance of parties or witnesses; and
- (h) Any issues arising out of the results of the screening, and
- (i) Such other issues as the parties or Arbitrator may determine.

10. EXPERT EVIDENCE FOR ARBITRATION HEARING

- 10.1. The parties specifically authorize the 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 the Arbitrator and authorize the 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. The 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 the 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 the Arbitrator's appointment is terminated, the parties agree that any interim or interlocutory award(s) made by the 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, the 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

13.2. Appeals from interim (temporary) awards are permitted.

14. ENFORCEMENT

14.1. Subject to the appeal remedies and rights to apply to set aside the 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, the Arbitrator shall issue an arbitral award incorporating the terms of any agreement reached by the parties.

15. ARBITRATOR'S FEES AND DISBURSEMENTS

15.1. The Arbitrator's fees shall be charged on an hourly basis, in accordance with the Fee Schedule then in effect, for all matters associated with their role as Arbitrator, including the arbitration hearing, any pre-arbitration conferences, interim arbitration hearings or motions, preliminary meetings, planning, scheduling and other administrative arrangements, preparation for the hearing, preparation of an award and all other services rendered pursuant to this Agreement.

15.2. Each party shall provide the Arbitrator with deposits against fees in the amount requested by the Arbitrator from time to time.

15.3. In the event that one of the parties fails or refuses to pay to the Arbitrator their share of the Arbitrator's fees, disbursements or deposits, the 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. The Arbitrator is empowered to order interim fees and disbursements of the arbitration, including their requested deposits, fees and/or disbursements, on notice to the parties following receipt of submissions if either party wishes to make them.

15.5. The Arbitrator may withhold their award until all outstanding or requested fees, disbursements, or deposits have been paid.

16. WAIVER OF LIABILITY

16.1. The parties hereby waive any claim or right of action against the Arbitrator 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.

18. This Agreement may be executed by the Parties and the Arbitrator in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Counterparts may be signed electronically and exchanged by email or fax. This Agreement shall ensure to the benefit of and be binding upon the Parties and the Arbitrator, their heirs, executors, administrators, successors and assigns.

19. The parties consent to a Mediator-In-Training (MIT) being present for this process, understanding that the MIT is bound by all professional obligations set out in this contract.

Dated this _____ of _____ 20____.

Witness

Applicant

Witness

Respondent

Witness

Arbitrator



SCHEDULE TO PARAGRAPH 4

of the Family Arbitration Agreement between _____ and _____ and

The parties agree that the Arbitrator's jurisdiction to award costs is limited to the costs incurred by the parties from the date of this Agreement.

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 if counsel are retained.
2. Neither party shall communicate with the other party once the hearing has commenced except with the permission of the other party or their counsel. If the hearing is online, parties shall not send chat or other messages to each other during the hearing.
3. Both parties will treat each other, the arbitrator and opposing counsel with respect throughout the arbitration process. Neither party will attempt, directly or indirectly, to influence or intimidate the other party, whether by looks, words, physical proximity or other means.
4. If the hearing is conducted online, parties and counsel will follow the Terms of Online Dispute Resolution.
5. Parties and counsel will respect the Arbitrator's procedural requirements with respect to their obligation to conduct ongoing screening for power imbalances including family violence.
6. While either party may bring third party supports to the arbitration hearing, the only people permitted in the hearing room will be the parties, their lawyers, the court reporter (if any) the arbitrator, the intern (if any) and whatever witness is testifying at that moment.
7. All witnesses, including the parties, will sit directly across from the arbitrator while testifying. In the event of an online hearing, the party not testifying will, at the arbitrator's request, turn off their camera. All parties will keep their microphones turned off at all times unless they are giving evidence.
8. Neither party will speak out loud while a witness is testifying. If a party wishes to comment to their lawyer during the testimony of a witness, they shall do so by passing notes to their lawyer, or using email, text or other confidential platform if the hearing is remote.

LAWYER'S CERTIFICATE OF INDEPENDENT LEGAL ADVICE

I, _____, have explained to my client _____ the meaning of the attached Agreement and have given to them 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 them. 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.

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 them 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 them. 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.

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*