

Summerhill Family Mediation

AGREEMENT TO MEDIATE

Date:

Between:

&

-and-

Summerhill Family Mediation (“Summerhill”)

GENERAL TERMS

1. The mediator is an impartial and neutral third party who provides a balanced negotiation process. The mediator will not make decisions, take sides or provide counselling or legal advice.
2. There is no solicitor-client privilege between the mediator and the parties.
3. The parties will agree on the issues to be mediated.
4. The mediator may have an intern or observer present.

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5. The mediation will be private. Other persons may attend with the consent of all parties, provided they agree to be bound by the

confidentiality provisions herein.

6. Mediation is a voluntary process. Any party or the mediator may terminate it at any time.

7. The mediator and Summerhill shall not be liable to any party for any act or omission in connection with a mediation conducted under this agreement, nor for any agreement arising out of this process, whether the parties have legal advice or not. In particular, the mediator and Summerhill will not be liable for the consequences of any report made, in good faith, to a Children's Aid Society, the police or the other third party in accordance with paragraphs 9-13 herein.

MEDIATION AT A DISTANCE

8.1 Where mediation includes distance mediation, the Mediator will conduct the mediation using Zoom technology or any other technology suitable to the Party(ies) participating in the distance mediation.

8.2 By signing this Agreement to Mediate, the Party(ies) who participate in distance mediation accept and agree to the terms and guidelines associated with distance mediation and the use of technology identified in this agreement.

CONFIDENTIALITY AND EXCEPTIONS

9. The mediator and the parties shall keep confidential all information prepared, or provided, disclosed or exchanged during or for the purpose of the mediation, including progress notes, Mediation Summary Reports (MSRs), emails and other communications between the parties themselves, and the parties and the mediator, intern or the other third party. The parties will not divulge anything said or done during the mediation process to anyone who was

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not present, unless they agree otherwise. The parties will agree to reasonable sharing of information with all necessary third parties such as new partners, accountants, counsellors etc. The parties shall not take photographs of any part of this mediation, nor shall they post any information about it on any social media, in emails to third parties or in any other way.

10. These confidentiality provisions apply to interns, co-mediators, observers and any third party participants.

11. Either or both parties may have their lawyers attend the mediation. Other professionals or persons whose attendance is required by one or both parties may attend with the consent of all parties and the mediator, and shall agree to be bound by the confidentiality provisions of this agreement.

12. The parties acknowledge that the fact that mediation has been held or that they entered into an Agreement to Mediate may not be confidential in relation to the court process. They authorize the mediator to disclose to the court, where appropriate, that a mediation has occurred, and whether or not an agreement was reached.

13. We do not guarantee that mediation will be confidential; the mediator may disclose information about the mediation:

- to communicate and share documents with counsel and other third parties retained by one or both parties, in the mediator's discretion;
- 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;
- where either party makes a claim or complaint against the mediator, intern or Riverdale, or disputes fees;
- 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.

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WITHOUT PREJUDICE SETTLEMENT DISCUSSIONS

14. Mediation sessions are settlement negotiations. All communications that occur in furtherance of the mediation process are inadmissible in any part of any litigation, arbitration or other process for any purpose to the fullest extent allowed by law. The parties shall not summons or require the mediator, intern or any staff member to give or provide evidence in any proceeding. No transcripts, recordings, or photographs may be taken or made at any time.

15.1 Without limiting the generality of the foregoing, the parties shall not include nor seek to include, for any purpose, in any part of any court or arbitral process:

- a) Communications of any kind made in furtherance of the mediation process
- b) Mediation Summary Reports or progress notes
- c) Documents attached to Mediation Summary Reports or progress notes
- d) Any aspect of the intake and screening process including intake forms, notes from the intake and screening process, or screening reports
- e) Views or suggestions made by the mediator about possible outcomes
- f) Admissions or apologies
- g) Mediation briefs filed by the parties
- h) Any part of the mediator's file.

15.2 For further clarity, the common law exception to settlement privilege which permits the production or disclosure of without prejudice communications to prove a settlement is renounced to the extent that no evidence of any mediation communications shall be produced or disclosed in any legal proceedings relating to a settlement reached at or after the mediation,

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save for a written agreement containing the settlement terms.

INTAKE PROCEDURES

16. The mediator will first meet each party separately (with or without counsel) to assess if the case is appropriate for mediation and to identify the issues, goals and concerns of each party. This intake meeting, including all information and forms provided by each party prior to the intake meeting, is confidential between that party and the mediator, subject to the confidentiality exceptions set out herein.

17. The mediator may, in their discretion, share information learned or provided as part of the intake process throughout mediation with that party's lawyer.

THE MEDIATION

18. The parties and mediator will meet in person, or by phone, Skype, Zoom, email, or other means, as agreed. The number of meetings, their duration and structure will be agreed upon by the parties and the mediator. Each party will pay for their share of each meeting after it is over, including any flat rates for drafting of progress notes or Mediation Summary Reports (MSRs) following the meeting.

RULES OF CAUCUSING

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

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ROLE OF LAWYERS AND THIRD PARTIES

20. The parties authorize the mediator to discuss the mediation with their own and each other's lawyers and advisers in the mediator's discretion, unless that information is subject to a confidentiality agreement which is known to the mediator. The mediator may provide all lawyers with copies of all documents provided to and prepared by the mediator unless they are subject to a confidentiality agreement which is known to the mediator.

MEDIATOR NOT PROVIDING LEGAL SERVICES OR ADVICE

21. The parties are advised to obtain, from their legal and other advisors, all appropriate legal, tax and other advice before the mediation, during the mediation and on the terms of any proposed agreements. They acknowledge that any agreement reached without the benefit of legal advice may be invalid, may be later set aside and/or may have unintended consequences.

22. Any views expressed by the mediator shall not be considered as a statement of the law or legal advice. Any documents prepared by the mediator, including Mediation Summary Reports, draft agreements, support calculations or property division calculations, shall be prepared strictly on the basis of the parties' undertaking that they will each obtain independent legal and financial advice on such draft documents before relying on them.

NO BINDING AGREEMENT CONCLUDED IN MEDIATION

23. The mediator may, at the parties' joint request, prepare a Memorandum of Understanding or draft agreement for legal advice following the mediation. However, the parties will not conclude a binding agreement in mediation

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unless they both have counsel present and settlement documents are signed.

FINANCIAL AND OTHER DISCLOSURE

24. The parties shall make full and frank disclosure of their financial and other relevant circumstances, and shall provide all information and documentation requested by the other party. As a rule, sworn financial statements are mandatory if any of the issues to be mediated are financial in nature.

INTERVIEWING CHILDREN

25. The parties understand that, under the United Nations Convention on the Rights of the Child, to which Canada is a signatory, children have the legal right to be provided with an opportunity to express their views about decisions that affect their well-being, consistent with their age, capacity and desire to participate.

26. The mediator may recommend that our children be interviewed as part of the mediation process to elicit the child's/children's views, experience and preferences as may be appropriate in their circumstances parent's consent is required before such an interview may occur.

27. Should the parties consent, which may be done verbally or in writing, a mediator who is trained to interview children, or someone the mediator designates, will meet with the child/children on the following basis:

(a) the interviewer will first meet with each parent to explain the process in more detail and to agree on the time and place of the meeting/s;

(b) the interviewer will then meet with the child/children;

(c) the specific content of the meeting shall remain confidential between the child/children and the interviewer;

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(d) the interviewer will meet with both parties and the mediator to share the overall impressions and concerns of the children;

(e) the information shared during this meeting will be used to help the parents reach informed decisions that will be in the best interests of their children;

(f) the interviewer and/or the mediator is required to disclose to a Children's Aid Society any disclosures from the child/children that reasonably lead the interviewer/mediator in good faith to believe that a child is in need of protection, and to disclose to the police or other appropriate third party any information that reasonably leads the interviewer/mediator in good faith to believe that there is an actual or potential threat to human life or safety; and

(g) the interviewer is not a compellable witness in any legal proceeding unless so ordered by a court.

RISKS OF MEDIATION/ LIMITATION PERIODS NOT SUSPENDED

28. The parties understand that there is no guarantee of settlement in mediation, nor that they will be fully satisfied with the outcome. They understand that mediation may lead to delay, expense and increased difficulty in any subsequent litigation. They understand that any applicable limitation periods may not be suspended during mediation and that they should obtain legal advice on these risks and limitations before they agree to mediate.

29. The parties acknowledge that the mediator cannot guarantee physical safety during the mediation process.

30. The parties acknowledge that there is a risk of loss of confidentiality through the use of email, fax, Zoom or other online platform, document sharing technology, and other technologies as they may evolve. The parties authorize the mediator to communicate with them using all appropriate or available means notwithstanding any such risks.

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TERMINATION OF MEDIATION

31. The mediation is terminated when either party or the mediator confirms in writing that mediation has come to an end.

32. The parties consent to the destruction of all notes and documents in the file at the end of the mediation process.

FEES

33. The parties shall pay the mediator's fees as follows:

- \$400 each for intake meeting.

- \$350 per hour, shared equally between the two parties for mediation, preparation and drafting.

Party Name	Signature	Date
_____	_____	_____

Party Name	Signature	Date
_____	_____	_____

Third Party Name	Signature	Date
_____	_____	_____

Mediator Name	Signature	Date
_____	_____	_____

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Your legal name:

Your email address: