KELLY D. JORDAN
FAMILY LAW FIRM

Kelly D. Jordan
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Mediator

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Between:

_____

-and-

_____

[Collectively "the parties"]

- and-

Kelly D. Jordan, Kelly D. Jordan Family Law Firm

MEDIATION AGREEMENT

1. GENERAL TERMS

1.1 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.

1.2 There is no solicitor-client privilege between the mediator and the parties.

1.3 The parties will agree on the issues to be mediated.

1.4 The mediator may have an intern or observer present.

1.5 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.

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

1.7 Kelly D. Jordan or her intern 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, Kelly D. Jordan or intern 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 paragraph 2.5 herein.

2. CONFIDENTIALITY AND EXCEPTIONS

2.1 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, MOUs, 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 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.

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

2.3 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.

2.4 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.

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

(a) to communicate and share documents with counsel and other third parties retained by one or both parties, in the mediator's discretion;
(b) for research, writing or educational purposes, provided all identifying information is changed;
(c) where ordered to do so by a judicial authority;
(d) where required to do so by law, including obligations to report a child in need of protection;
(e) where the information discloses an actual or potential threat to human life or safety, and
(f) Where either party makes a claim against Kelly D. Jordan or her intern.

3. WITHOUT PREJUDICE SETTLEMENT DISCUSSIONS

3.1 Mediation sessions are settlement negotiations. All 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 (or intern) to testify or produce records or notes in any proceeding. No transcripts or recordings shall be made of the mediation sessions.

3.2 In particular, the parties shall not introduce or seek to introduce as evidence in

any arbitral or judicial proceeding:

(a) views expressed or suggestions made by the mediator about possible settlements;
(b) admissions or apologies;
(c) information given by a party during the intake/screening meeting, and
(d) contents of the mediator's file.

4. INTAKE PROCEDURES

4.1 In most cases, 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.

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

5. THE MEDIATION

5.1 The parties and mediator/intern will meet in person, or by phone, Skype, email or other means, as agreed. Each party will pay for his or her share of each meeting after it is over, including any flat rates for drafting of progress notes or agreements following the meeting. The number of meetings, their duration and structure will be agreed upon by the parties and the mediator.

6. IF MEDIATION IS CONDUCTED BY VIDEO CONFERENCE, THE FOLLOWING PROVISIONS APPLY

6.1 If the parties and the mediator intend to mediate from different locations by teleconference, "Zoom" or other agreed upon technology, the following provisions of this paragraph apply.

6.2 The parties confirm that they are each capable of mediating online, that they are able to use the technology effectively and that the use of an online platform for this mediation will not affect their ability to advocate for their perspective.

Use of Technology

6.3 Kelly D. Jordan uses the secure platform by Zoom.us to conduct your online mediation sessions. We will send you a link; there is no need to download anything to your computer. If you want to learn more about zoom, you can review tutorials available at https://support.zoom.us.

6.4 Each person confirms that they are each participating from their own separate, private and secure computer, using secure and private internet connections (eg/ no use of public wifi). They confirm that they each have suitable devices with

microphones and cameras.

6.5 Please log into the meeting five minutes prior to the scheduled start time to test equipment.

6.6 The Zoom technology may not always work as intended. If you are having trouble, please email Maria Manno at maria@kellyjordanfamilylaw.com. If the online mediation session cannot start or continue it will be canceled and rescheduled at soon as possible.

Confidentiality and Privacy

6.7 The mediator and you agree that no person, other than the parties to the Agreement to Mediate will observe, overhear, or be within seeing or hearing distance, any part of this Mediation process.

6.8 In particular, each of you agree that none of your children will be present or within seeing or hearing distance, or have access of any kind to any part of the Mediation process unless that child will be participating in some way in the mediation, and this has been expressly agreed upon by all of us in advance and in writing.

6.9 As set out herein, the entire mediation process and each session is confidential and cannot be used in a subsequent court proceeding.

6.10 The mediator and you agree that there will be no audio or video record of any mediation session. In the event that you learn of an audio or video recording of any session, you will take immediate measures to destroy the recording and will not share the recording with any third parties. No photos nor screen shots may be taken at any time without the consent of all participants.

6.11 We will share any written documents arising from this process by email. We may also use document sharing platforms with mutual consent.

6.12 The mediator and you agree that sharing any information about this mediation process with children, on social media is prohibited, and will result in the termination of mediation services.

Mediation Process

6.13 All participants agree to take all reasonable measures to ensure that you are not interrupted during your entire online mediation sessions. This included arranging for appropriate childcare, notifying family and friends of your unavailability for social media, texting etc. All phones should be kept on silent.

6.14 Due to the nature of the online forum, it is especially important to allow each participant to finish their comment or statement before responding. Note that the camera does not always transmit hand gestures or non-verbal cues, so it is important to verbalize all communication during an online mediation session.

7. RULES OF CAUCUSING

7.1 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 his or her 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.

8. ROLE OF LAWYERS AND THIRD PARTIES

8.1 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. 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.

9. MEDIATOR NOT PROVIDING LEGAL SERVICES OR ADVICE

9.1 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.

9.2 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 Memoranda of Understanding, 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.

10. NO BINDING AGREEMENT CONCLUDED IN MEDIATION

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

11. FINANCIAL AND OTHER DISCLOSURE

11.1 The parties agree to make full and complete disclosure of all their financial circumstances and to provide relevant facts, reports and documentation regarding the issues to be mediated and to execute any releases necessary for the mediator to obtain relevant information.

11.2 The parties expressly acknowledge that such disclosure may be used against him or her, by the other party, if the issues between them later become the subject of litigation.

12. INTERVIEWING CHILDREN

12.1 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.

12.2 The mediator may recommend that the 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 the parent's consent is required before such an interview may occur.

12.3 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;
(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.

13. RISKS OF MEDIATION/ LIMITATION PERIODS NOT SUSPENDED

13.1 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.

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

13.3 The parties acknowledge that there is a risk of loss of confidentiality through the use of fax, email or other forms of communication. They authorize Kelly D. Jordan, intern, and assistant to communicate with them via email and/or fax notwithstanding such risk.

14. TERMINATION OF MEDIATION

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

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

15. CONCLUSION OF THE MEDIATION

15.1 Each of the parties may withdraw from the mediation at any time prior to the conclusion of the mediation, on notice to the mediator and the other party.

15.2 The mediator has the right to suspend or terminate the mediation at any time where in her opinion, continuation of the process would be fruitless or would result in harm or prejudice to one or more of the participants.

15.3 If the parties wish, the mediator will draft interim or final agreements to be reviewed with and executed in the presence of the lawyer of each party.

16. BEST PRACTICES AND PROCEDURES FOR FAMILY MEDIATIONS

16.1 The Mediator is a founding member of the Miverva Group, which has adopted Best Practices and Procedures for Family Mediations. The parties and their counsel confirm that they have reviewed the Mediator's Best Practices and Procedures for Family Mediations, which is attached as Schedule A to this Mediation Agreement.

17. FEES

17.1 The parties agree to honour the mediator's fee schedule, attached as Schedule "B".

DATE:

_____	_____
Witness	Party 1

DATE:

_____	_____
Witness	Party 2

SCHEDULE A

The Minerva Group, Family Solutions: Best Practices

As a member of The Minerva Group, we follow best practices and procedures about the conduct of mediations. These practices and procedures below must be tailored to every mediation file. Closed and open and mediation/arbitration files require different best practices and procedures. Those outlined below are designed to govern the expectations of counsel and parties to mediation.

Best Practices and Procedures for Family Mediations

In closed mediations, individual, private intake, with or without counsel, should be conducted prior to the mediation. At this attendance, the parties can highlight to the mediator any context that they think is necessary, their private perspectives on the issues and impediments to settlement, and anything else that is often discussed privately with the mediator at the start of a mediation. Doing this meeting in advance educates the mediator and allows everyone to start the actual day of the mediation at bargaining rather than information giving/gathering. Another option is a joint pre-meeting with counsel only, although that is often less desirable than one involving the parties. Depending on the complexity of the matter and the approach to mediation briefs being taken in the matter, the mediator may ask to review the briefs before the individual intake sessions. ("Private Intake")

- Mediation briefs: Formal mediation briefs are not required in every case particularly if the parties have already been negotiating or in litigation and have already prepared documents. If there are briefs to prepare, the briefs should not contain any reference to historical events unless directly relevant to a live issue on the mediation, with the mediator to make it clear that this guideline should be respected and is very serious if we are to sow the seeds of resolution. In general, the question should be what are the bare minimum documents and information that this mediator needs to get educated and assist the parties?
- In many cases, no briefs may be required but most recent offers, back up calculations to same and basic background documents such as previous separation agreements (sometimes a joint brief with the basic documents can be a useful approach);

- Counsel should advise that they have no outstanding disclosure requests or at least none that will be an impediment to negotiations on the mediation day. This should be confirmed at prior to the mediation.

- Although not required by statute, DV Screening should be done before all mediations wherever practicable. Ideally screening should be done of both parties by the mediator or by the same person.
- In cases involving allegations of intimate partner violence, staged commencement times should be arranged electronically just as would happen with an in-person meeting. Sensitivities and stress over seeing the other party, and staged plans and other protections can be canvassed and if necessary planned during Private Intake.

- Non-evaluative mediation is not a Best Practice. The Mediator should provide evaluative feedback to both sides. The mediator should commit to the parties that they will receive the same feedback about the merits and the issues regardless of which party is receiving that advice. Each party may receive different opinions about their risks, but those opinions should be consistent.

- The parties and/or counsel should make any timing deadlines and expectations known to the mediator. The mediator should include those in the Mediation Agreement and commit to meeting the parties' timing needs, if applicable.

- The Mediation Agreement should be signed at least 5 days before the date set for the mediation so that time is not wasted attending to housekeeping at the start of the mediation day.

- If the parties are represented, counsel should attend mediation with a draft Separation Agreement (not Minutes) such that if a deal is reached, the Separation Agreement may be signed that day.

- If the parties reach an agreement but do not sign a Separation Agreement that day, the mediator should endeavour to have them record their agreement by signed Minutes or by dictating a settlement outline. Every effort should be made to reduce an agreement to writing that is binding. A Separation Agreement should not be a condition precedent to a binding agreement through Minutes.

- If one side indicates that they are feeling tired or pressured at the end of a negotiation, or if the time of day that the agreement is reached is well outside business hours, the mediator may suggest a 24 hour cooling off period for each party to confirm that they agree to be bound by the terms agreed.

- Some matters take more than one mediation session. At times, towards the end of the day, one party may be reluctant to make an offer if that might result in the mediation ending. The mediator should assess this factor as the day proceeds and decide whether another half day, or a division of the present day into two half days is warranted.

- The mediator may agree, depending on the case, to be appointed to arbitrate in summary fashion any drafting disputes at the time of the Separation Agreement.

- If multiple calls are held during the mediation process, the mediator should send a brief reporting note after the call to both sides, summarizing what was agreed, what is to be done, by whom, and when.

- If parties wish to adopt a mediation/arbitration model, it may be wise to have different people act in the two roles since the dual role often hampers the mediator's ability to be evaluative. However, there will be exceptions in which the dual role model is both helpful and appropriate.

- Mediations may be conducted with one or both parties being self-represented, provided the mediator is aware and consents. The mediator may request ILA certificates for the mediation agreement, and in any case, will direct the parties to receive independent legal advice before any settlement is reached. DV screening should still occur as set out above.

FEE SCHEDULE "B"
FEE ARRANGEMENTS

Hourly Rate

Kelly D. Jordan's fees are charged at a rate of $550.00 per hour (or any portion of an hour) plus HST. This includes the mediator's time spent directly with the parties in the mediation sessions; telephone conversations with the parties or on their behalf; conferring with the parties' solicitors, advisers or other third parties; perusing financial disclosure or other documentation provided to the mediator; drafting correspondence and memoranda of understanding; drafting any interim or final separation agreement; and any other time spent in connection with the mediation.

If my law clerk, Maria Manno, does work on your behalf of a law clerk nature, you will be billed for her time at the rate of $200.00 per hour.

Administrative Fee

There is a considerable cost to setting up a mediation, opening the file, arranging conference calls with counsel and continuing scheduling issues. As such, the mediator charges a non-refundable Administrative Fee of $250.00 ($125.00 payable by each party) in accordance with the proportion that they have agreed to. The administration charge is simply added to the final mediation/arbitration account.

Retainer

A retainer of $3,250.00 from each party is required prior to the commencement of the mediation. Refreshers to the retainer will be required, if needed.

The parties are jointly responsible for the total time spent by the mediator. The costs of mediation will not be broken down or allocated, based upon the amount of individual time spent by the mediator with or on behalf of each individual party unless specifically agreed to in advance between the parties and the mediator.

Disbursements

In addition to the mediator's fees, the parties will pay the costs of all disbursements relating to the mediation, including the costs of long distance telephone calls, couriers, photocopies, neutral experts engaged in the mediation process (accountants, psychologists), travel expenses, parking and any other disbursements incurred by the mediator in relation to the mediation. Interim accounts will be rendered from time to time.

Outstanding Accounts

The parties will be jointly and severally liable for any unpaid mediation accounts. Interest will be charged on any overdue accounts at the current rate.

Initialed by

_____	_____
Party1	Party2