

THIS IS AN **AGREEMENT TO MEDIATE** dated _____, 2025,

BETWEEN:

("Party 1")

- and -

("Party 2")

-and-

MICHAEL B. KLEINMAN

("Mediator")

Party 1 and Party 2 (the "parties") retain the mediator on the following terms and conditions:

1. The Mediator is an impartial third party who provides a neutral and balanced dispute resolution process. The issues to be resolved in mediation shall be jointly presented to the mediator by the parties.
2. The parties acknowledge that in the resolution of family law disputes, it is common practice to select a mediator from a small, specialized group of individuals. The parties agree that, if the Mediator was previously or is currently retained by one or both of their counsel to mediate or arbitrate other matters, or if the Mediator is retained by one or both of their counsel to mediate or arbitrate one or more new matters while this matter is ongoing (collectively, "Other Retainers"), any such Other Retainers:
 - a. Do not give rise to a reasonable apprehension of bias; and
 - b. Do not raise any doubt as to the Mediator's impartiality or independence.
3. Nothing in this Agreement relieves the Mediator from his obligation to disclose to the parties and their counsel any circumstances which, in his view, may give rise to justifiable doubts as to his impartiality or independence.

THE PROCESS

4. The Mediator may, in his discretion:
 - a. meet or communicate with either party separately at any time (a "caucus");
 - b. disclose information or documents provided in caucus to the other party, and/or to a party's lawyer, unless agreed otherwise during the caucus.

5. Lawyers, other professionals or other persons (“third parties”), whose participation is required in the mediation, may participate if all parties agree. All third parties must agree to be bound by paragraphs 11 - 17 herein.
6. Mediation is a voluntary process. A party or the mediator may terminate the process at any time.
7. The parties agree:
 - a. to obtain, from independent legal and other advisors, all necessary legal, tax and other advice at the outset and throughout the mediation process.
 - b. that the Mediator is acting in his capacity as mediator and will not provide legal advice to them individually or collectively. If the Mediator expresses an opinion or comments on an issue, the opinion or comment is not to be construed as constituting a statement of the law or legal advice in any respect.
 - c. to obtain independent legal advice on the terms of any proposed settlement. They understand that an agreement reached without the benefit of legal and other necessary advice may be invalid or have unintended consequences.
8. The parties indemnify the Mediator from any claims arising out of the mediation including any agreements or settlements entered into following this process whether they have obtained independent legal advice or not.
9. The parties consent to the presence of the Mediator's clerk, student or associate. All such observers are present strictly for the purpose of professional training and are bound by paragraphs 11 - 17 herein.
10. The parties shall, if requested by either the mediator or the other party, provide the other with a sworn financial statement (Form 13 or Form 13.1) and such other disclosure as may be necessary to conduct an effective mediation.

WITHOUT PREJUDICE & CONFIDENTIALITY

11. The Mediator's file, including all digital/electronic or paper information, documents, notes, correspondence, calculations, memoranda of understanding, drafts, and any other communications prepared or provided by any person for the purpose of the mediation, shall, unless otherwise discoverable, be treated as

without-prejudice settlement discussions, and shall be inadmissible for use by anyone in any proceeding for any purpose.

12. The parties shall not summons or otherwise require the Mediator to testify or produce records or notes in any current or future proceedings.
13. Without limiting the generality of paragraphs 11 and 12 above, the common law exception to settlement privilege which permits the production or disclosure of without prejudice communications to prove a settlement is renounced. 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, save for a written agreement containing the settlement terms signed by the parties and witnessed.
14. The parties consent to the destruction of all notes and documents in the Mediator's file, (digital/electronic or paper) at the end of the mediation process, unless they arrange to pick up their original documents.
15. Closed mediation is a confidential, off-the-record process. Although the Mediator cannot guarantee absolute confidentiality, the purpose of a confidentiality rule is to help parties to feel comfortable freely exchanging information, ideas, options, settlement offers and concerns. The parties agree not to disclose any communications made during the mediation process to anyone who was not present, including memoranda and e-mails from or to the mediator or between themselves, unless they all consent. *This rule does not prevent the parties from providing necessary information and documents to people whose advice they need to make informed decisions.*
16. The Mediator may disclose information about the mediation in the following circumstances:
 - (i) to communicate with the lawyers for the parties, and to third party advisors retained by a party or both parties;
 - (ii) where ordered to do so by a judicial authority;
 - (iii) where required to do so by law, including obligations to report a child in need of protection; and
 - (iv) where the information discloses an actual or potential threat to human life or safety.

17. Paragraphs 11 to 17 shall apply to any observer and to any third party present at the request of either party or the mediator.

MEDIATOR'S FEES

18. The parties agree to honour the Mediator's fee schedule attached as Schedule "A".
19. This Agreement may be signed in counterparts, with the parties' physical or electronic signatures witnessed by telephone or videoconferencing. Electronic signatures shall not be a basis for challenging the validity or enforceability of this Agreement or for not complying with the terms of this Agreement. Any electronic signature shall have the same effect as an original signature. Emailed and scanned fully executed versions of this Agreement will be deemed to be the equivalent of originals. The effective date of this Agreement is the date on which the latter party signs it electronically (regardless of whether it later re-signed in ink).

The parties affirm that they have had full opportunity to read and understand this Agreement.

Witness:
Date: _____, 2024

Party 1:

Witness:
Date: _____, 2024

Party 2:

Michael B. Kleinman, Mediator

PARTY'S CONTACT INFORMATION

Full Name: _____

Address: _____

Telephone:

Home: (____) _____

Business: (____) _____

Cell: (____) _____

Email Address: _____

SCHEDULE “A”

Hourly Rate:

Michael B. Kleinman’s fees are \$800.00 per hour (or any portion of an hour) plus HST. This includes time spent directly with the parties in the mediation sessions; telephone conversations with the parties or on their behalf; conferring with the parties’ lawyers, advisers or other third parties; reviewing 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. Interim accounts will be rendered from time to time. Mr. Kleinman’s hourly rate may increase from year to year.

Administrative Fee:

The mediator charges a non-refundable Administration Fee of \$500.00 plus HST. The administration fee will be added to the initial account and the administrative assistant’s time in setting up the mediation and making the arrangements will not be charged additionally.

Retainer:

The mediation date is secured by delivering the signed mediation agreement and retainer deposit at least twenty-one (21) days in advance. Refreshers to the retainer will be requested, if needed.

- For a full day mediation, the retainer is \$8,500 (\$4,250 payable by each party, unless otherwise agreed).
- For a half day mediation, the retainer is \$5,500 (\$2,750 payable by each party, unless otherwise agreed).

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 time spent by the mediator with or on behalf of each individual party.

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.

Cancellation:

If a scheduled mediation is cancelled on notice of less than seven (7) days, the mediator may charge a cancellation fee of up to \$2,500 (for a full day) or up to \$1,500 (for a half day).

Outstanding Accounts:

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

Initialed by:	Party 1	Party 2

CERTIFICATE OF INDEPENDENT LEGAL ADVICE

I, _____, Barrister and Solicitor, have reviewed the attached Agreement to Mediate (the "Agreement"). I have provided independent legal advice and fully explained to my client, _____, the meaning and intent of the Agreement. I have explained to my client that the Agreement is a "domestic contract" within the meaning of the *Family Law Act* and, as such, may be set aside by a court under certain circumstances. I certify that my client understands the need to make financial disclosure; understands the nature and consequences of this Agreement; is signing this Agreement voluntarily; and, is not signing this Agreement as a result of duress or undue influence by any person. I have screened my client for power imbalances and domestic violence. I certify that my client is fully able and willing to participate and instruct counsel in this mediation.

Date:

ACKNOWLEDGEMENT OF CLIENT

I, _____, confirm that I have received independent legal advice. I have read the above Certificate, and I understand and agree with the statements set out in it.

Date:

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Date:

MICHAEL B. KLEINMAN

PAYMENT BY CREDIT CARD

I authorize Michael B. Kleinman to draw upon my credit card as set forth below for payment of accounts rendered to me or deposit of trust funds.

**** Please note we do not accept American Express Credit Cards ****

Credit Card Number (<i>Visa or Mastercard</i>)	
Expiry Date	
CVD (3 digits on reverse)	
Name	
Signature	

Details of Payment:

MICHAEL B. KLEINMAN
ONLINE DISPUTE RESOLUTION
CLIENT INFORMATION AND CONSENT

Note

*This form is addressed to the parties and should be reviewed with counsel. **Both parties and counsel are required to confirm by email their acceptance of the following terms.***

1. Mediation sessions will be conducted over a secure online platform provided by **Zoom.us**.
2. Within your email invitation will be a link to download and install the “personal” version of the software, which is free. Clicking on the link will take you directly to the meeting after you have downloaded the Zoom software.
3. Although Zoom can be used on any smart phone, tablet, computer, etc. equipped with both a camera and a microphone, connectivity is best with a secure Ethernet (hard-wired) connection. You should NOT use a public access WiFi connection, such as those available in public spaces and businesses as they are not secure and your information may be at risk.
4. If you have not already done so, please read, sign and return the Agreement to Mediate; counsel should complete the Certificate of Independent Legal Advice. All of this may be done digitally, by email/pdf, and in counterpart. This document is an addendum to, and treated as part of, the Agreement to Mediate.
5. The retainer deposit is payable by credit card (Visa or Mastercard; there is an authorization form in the Agreement to Mediate) or e-transfer to michael@kleinman.ca. The usual requirement is for the executed Agreement to Mediate and retainer deposit to be in hand at least 14 days in advance of the scheduled mediation.

Confidentiality and Privacy

6. Only persons who have signed/agreed to the terms of the Agreement to Mediate may be present during any online mediation session unless arrangements are made in advance. You will be asked to confirm that you are alone in the room and that you and your device cannot be overheard or observed. Children should not be present or able to overhear or observe you and your device.

7. As set out in the Agreement to Mediate, the entire mediation process and each session is confidential and cannot be used in a subsequent court proceeding.
8. Absolute Prohibition on Recording: You, or anyone on your behalf, may NOT audio or video record any mediation session or portion thereof. If 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 to or with any third parties. You further agree that you will not transmit a live or deferred video or audio replay of the online mediation sessions to third parties including any social media.
9. Given the use of information and communication technology, it is not possible to guarantee that confidentiality of online mediation, or to completely control where or how some personal information may be collected, stored or accessed. You understand and accept the risks of any such breach of confidentiality.

Best Practices and Troubleshooting

10. Interruption Free Zone - In order to ensure that your mediation session is uninterrupted, please take all reasonable measures to ensure that you have arranged for appropriate child care, notified family and friends that you are unavailable during your session, and turned off or silenced any phones or devices not being used for the purpose of facilitating your mediation session.
11. Early Log On - You should log on to the Zoom link no less than 5 minutes before the scheduled start time so that any technology issues can be resolved, and the mediation can start on time.
12. Waiting Room - In order to preserve the neutrality of the mediator, each time you log on to the Zoom meeting you will enter into a “virtual waiting room” until all parties have arrived. Once all parties are logged on and in the waiting room, you will be admitted into the meeting by the mediator. The mediator may first check in with each party privately. The session will then proceed, either with you in these separate “rooms” or together, as the mediator deems best.
13. Technology Failure Protocol - Despite all best efforts, at times technology may not operate properly such that a scheduled online mediation session may not commence on time or may be interrupted. If you are unable to join a scheduled mediation session, please immediately email Mr. Kleinman (michael@kleinman.ca) or call Mr. Kleinman at **416-924-6996** for assistance.

14. Respectful Online Communication - Due to the nature of the online forum, it is especially important to allow each participant to finish their comment or statement before responding. In addition, the online format can amplify and exaggerate sound so maintaining a regular speaking voice is important. Finally, please remember that the camera does not always transmit hand gestures or nonverbal cues, so it is important to verbalize all communication during an online mediation session.
15. Any documents arising from or used in this process will be shared by email, understanding that this may not be a private and secure transmission.
16. By agreeing to proceed with online mediation, you agree to all the above cautions and processes and release the Mediator from any liability in the event of any inadvertent disclosure.