Family Law Mediation and Arbitration Proceedings

Between:

_____________________

And:

_____________________

And:

John-Paul E. Boyd Q.C.,
John-Paul Boyd Arbitration Chambers

Mediation-Arbitration Agreement

Introduction

A. Mediation is a confidential, private process in which an impartial person, a mediator, facilitates communication between the people involved in a legal dispute and attempts to promote mutual understanding, reconciliation and/or a settlement of the dispute.

B. Arbitration is a confidential, private process in which an impartial person, an arbitrator, listens to the evidence and arguments of the people involved in a dispute and then makes a decision resolving the dispute.

C. In mediation-arbitration proceedings, an impartial person serves as both mediator and arbitrator, and tries to settle a dispute through mediation before turning to arbitration and making a decision resolving the dispute.

D. The parties to this agreement, and the dispute resolution process it describes, have the primary responsibility for resolving their dispute during the mediation phase of the process. They are solely responsible for providing evidence and making arguments about how their dispute should be resolved during the arbitration phase of the process.

E. The parties to this agreement, their lawyers and the mediator-arbitrator for the dispute that is the subject of this agreement intend to make a serious and sincere effort to settle this dispute fairly, without turning to arbitration. If, despite their best efforts, one or more of the issues in this dispute cannot be settled, they will resolve those issues through arbitration.
F. The parties to this agreement, their lawyers and the mediator-arbitrator for the dispute that is the subject of this agreement intent to participate in these proceedings honestly, cooperatively and in good faith.

In consideration of John-Paul Boyd Arbitration Chambers providing mediation and arbitration services in this dispute, ____________________________ and ____________________________ understand, acknowledge and agree to the following terms.

Agreement to mediate and arbitrate

1. ____________________________ and ____________________________ wish to resolve certain legal issues arising from the change in their relationship without resorting to or continuing any litigation.

2. This agreement is an arbitration agreement under the Arbitration Act of Alberta, for mediation-arbitration proceedings sited in Alberta, or under the Arbitration Act of British Columbia, for mediation-arbitration proceedings sited in British Columbia. It is effective when:

   a) ____________________________ and ____________________________ have received independent legal advice about the meaning and consequences of the agreement, and the lawyers consulted by the parties have signed Certificates of Independent Legal Advice in the form attached to this agreement; and,

   b) this agreement has been signed by all parties to the agreement and their lawyers.

3. The mediator and arbitrator for this mediation-arbitration is John-Paul Boyd of John-Paul Boyd Arbitration Chambers, referred to in this agreement as the Mediator-Arbitrator.

4. ____________________________ and ____________________________ expect that this mediation-arbitration will be conducted by teleconference and by videoconference. Accordingly, in this agreement, words like “conference,” “meeting” and “hearing” include conferences, meetings and hearings held by teleconference and by videoconference, and the parties agree that nothing in this agreement requires any of the Mediator-Arbitrator, the parties or their lawyers to be physically present in the same room at the same time.

5. The Certificates of Independent Legal Advice attached to this agreement are a part of this agreement.

6. This agreement may be signed in counterparts.
Waiver of right to litigate

7. ___________________ and ___________________ waive their right to litigate, or to further litigate, the legal issues identified below, at paragraph 13 of this agreement, subject to the rights of judicial review and appeal set out in the Arbitration Act of Alberta or the Arbitration Act of British Columbia, to the extent that they have not been waived or limited by the provisions of paragraph 45 of this agreement.

8. No party may serve court documents on any person entering, attending or leaving the mediation-arbitration at or near the place of the mediation-arbitration.

9. Nothing in this agreement limits or prohibits the exercise of any enforcement rights that the parties may have through the courts or otherwise.

10. On application by the parties, and subject to the court’s discretion, the terms of this agreement may be incorporated into an order to be made with the consent of the parties, called a consent order.

Duties of Mediator-Arbitrator

11. The Mediator-Arbitrator will:

   a) remain independent and impartial in all contacts with ___________________, ___________________ and their lawyers;

   b) treat ___________________ and ___________________ fairly and equally; and,

   c) not advance the interests of one party over those of the other.

12. ___________________ and ___________________ understand and agree that while the Mediator-Arbitrator is a lawyer, he is not acting as legal counsel for either party and is not providing legal advice to either party.

Issues to be resolved

13. ___________________ and ___________________ agree to submit the following legal issues to mediation and, failing settlement of those issues, then for determination by the Mediator-Arbitrator on an interim basis, if necessary, and on a final basis:

   □ a) guardianship of children;

   □ b) decision-making in respect of children;
☐ c) parenting time or contact with children;

☐ d) the payment of child support, including payment of children’s special or extraordinary expenses, in the past, present or future;

☐ e) the payment of spousal support, in the past, present or future;

☐ f) division of property, including real property and personal property;

☐ g) occupation and use of the family home, and use of the personal property in the family home;

☐ h) allocation of responsibility for debt;

☐ i) costs; and,

☐ j) other issues, identified in the list attached to this agreement.

14. If one of the issues in this mediation-arbitration concerns, or is likely to concern, the guardianship of and parenting arrangements for a child, _______________________ and _______________________ agree that neither will make any change to the residence, living arrangements or lifestyle of that child pending the outcome of the mediation-arbitration without first securing the written consent of the other party and advising the Mediator-Arbitrator of the details of the change.

Assessment

15. The Mediator-Arbitrator may meet separately with either or both of _______________________ and _______________________ before the commencement of the mediation-arbitration to assess for power imbalances and the risk or presence of family violence if either party is not represented by a lawyer, or if the parties’ lawyers have not assessed for power imbalances and the risk or presence of family violence.

16. The information obtained during the assessment process, including any notes and records made by or for the Mediator-Arbitrator, is confidential and will not be disclosed to anyone for any purpose, except as may be required by law or by court order.

17. _______________________ and _______________________ consent to the assessment process and will not raise the assessment process as a procedural issue in any future court proceedings, including an application to cancel, stay or set aside any settlement made as a result of this mediation-arbitration.
Disclosure and production of documents

18. _________________ and _________________ acknowledge and agree that they must each provide complete and accurate documents and information to each other for the purpose of resolving the legal issues identified at paragraph 13 of this agreement.

19. _________________ and _________________ agree that they will promptly provide each other with copies of the documents in their possession or control identified by the Mediator-Arbitrator, and as may additionally be ordered by the Mediator-Arbitrator from time to time.

20. The Mediator-Arbitrator may draw a negative conclusion, called an adverse inference, against a party to a mediation-arbitration if it appears to him that the party has failed to disclose documents or information relevant to the legal issues in the mediation-arbitration.

The mediation phase

21. In order to attempt to resolve the legal issues between the parties to this dispute, the Mediator-Arbitrator will, in the mediation phase of this mediation-arbitration proceeding, attempt to isolate points of agreement and disagreement, explore alternative solutions and identify potential accommodations and areas of compromise. _________________ and _________________ agree that the Mediator-Arbitrator is not disqualified from adjudicating any of the legal issues as arbitrator because he has acted as a mediator with respect to those issues.

22. _________________ and _________________ agree that all of the discussions taking place during the mediation phase of this mediation-arbitration proceeding are settlement negotiations and that any offers to settle or compromise a party’s position on the legal issues made during mediation will not be considered by the Mediator-Arbitrator in the arbitration phase of this mediation-arbitration proceeding.

23. The Mediator-Arbitrator may convene separate conferences with each party before the first meeting in the mediation-arbitration to:

   a) obtain background information about the parties, the parties’ relationship, the parties’ children and events since the change in the parties’ relationship;

   b) identify or clarify the legal issues to be resolved through mediation;

   c) establish a timetable for any steps to be taken prior to the meeting;
d) determine any physical arrangements necessary for the attendance of the parties at the meeting;

e) confirm that each party has access to a computer with the capabilities and accessories necessary to effectively participate in a teleconference or videoconference; and,

f) address any concerns arising out of the assessment process.

24. The first meeting in the mediation phase of this mediation-arbitration proceeding will involve the parties in joint session with the Mediator-Arbitrator, although separate meetings may be held between the Mediator-Arbitrator and a party, at the discretion of the Mediator-Arbitrator or a party.

25. The Mediator-Arbitrator will not disclose any information provided by a party in a separate meeting between that party and the Mediator-Arbitrator, including at the conferences held before the first meeting, unless the party or the party’s lawyer specifically instructs the Mediator-Arbitrator to disclose that information.

26. The parties agree that the Mediator-Arbitrator may communicate with their lawyers throughout the mediation phase of this mediation-arbitration proceeding and after a settlement has been reached.

27. Agreements reached between the parties during the mediation phase of this mediation-arbitration proceeding are binding only when the terms of those agreements have been reduced to a memorandum of agreement and signed by the parties.

End of the mediation phase

28. Mediation will end when:

a) the parties have settled all of the legal issues and the parties and their lawyers sign a memorandum of agreement, prepared by the Mediator-Arbitrator, summarizing the key terms of the settlement; or,

b) the parties have settled some or none of the legal issues and one or both of the parties or the Mediator-Arbitrator declares that the outstanding legal issues cannot or are not likely to be resolved by continued mediation.

The arbitration phase

29. The arbitration phase of this mediation-arbitration proceeding will begin when mediation has ended under paragraph 28(b) of this agreement, and the Mediator-
Arbitrator will make a decision resolving the legal issues that were not settled in the mediation phase.

30. The Mediator-Arbitrator will determine the legal issues:

☐ a) by applying the law of
   ☐ i. Alberta,
   ☐ ii. British Columbia, or
   ☐ iii. the jurisdiction identified in the page attached to this agreement;

☐ b) on grounds of conscience, subject to the provisions of sections 2(2.1) and 23(2) of the *Arbitration Act* of British Columbia, for proceedings sited in British Columbia;

☐ c) on grounds of equity and fairness, subject to the provisions of sections 2(2.1) and 23(2) of the *Arbitration Act* of British Columbia, for proceedings sited in British Columbia; or,

☐ d) on the basis identified in the page attached to this agreement.

31. The Mediator-Arbitrator may convene a conference before the arbitration hearing in the mediation-arbitration to:

a) identify or clarify the legal issues to be resolved through arbitration;

b) designate a party as the claimant for the purposes of the arbitration phase;

c) identify any documents to be exchanged between the parties and produced prior to the arbitration hearing;

d) establish a timetable for any steps to be taken prior to the arbitration hearing;

e) determine the rules of procedure and the rules for the admission of evidence that will govern interim applications and the arbitration hearing; and,

f) determine the names and contact information of any witnesses to be called to present oral evidence at the arbitration hearings, and whether summaries of each witness’ evidence must be provided prior to the first hearing.
32. The parties agree that the Mediator-Arbitrator will decide whether expert evidence is required to resolve the legal issues that were not settled in the mediation phase, the questions the expert or experts will be required to address and the timetable for the production of the report of the expert or experts. The parties agree to contribute to the fees and expenses of the expert or experts in the amounts or proportions determined by the Mediator-Arbitrator and authorize the Mediator-Arbitrator to include these fees and expenses as a disbursement in his statement of account.

33. The parties agree that Mediator/Arbitrator may rely on the documents and information exchanged during mediation in determining the unresolved legal issues.

**End of arbitration hearing**

34. The arbitration hearing in the arbitration phase of this mediation-arbitration proceeding will end when:

   a) all of the legal issues that were not settled in the mediation phase are settled by the agreement of the parties during the arbitration phase;

   b) the parties advise the Mediator-Arbitrator that they have no further evidence to present or arguments to make; or,

   c) the Mediator-Arbitrator determines that continuing the hearing is unnecessary or inappropriate.

35. The Mediator-Arbitrator may, in exceptional circumstances, reopen the arbitration hearing at any time before the final award is made.

**Arbitration awards**

36. The Mediator-Arbitrator will make a final, written award addressing all of the legal issues as soon as possible after the arbitration hearing has ended, and:

   a) the final award will provide only summary reasons for the decision of the Mediator-Arbitrator unless either of the parties request full written reasons before the arbitration hearing has ended;

   b) if any of the legal issues are settled by the agreement of the parties during the mediation phase or the arbitration phase of this mediation-arbitration proceeding, the Mediator-Arbitrator will record the terms of settlement as a final award made with the consent of the parties, called a consent award; and,

   c) consent awards will be made without reasons.
37. Either party may apply to the Mediator-Arbitrator, or the Mediator-Arbitrator on his own initiative may decide, to change interim and final awards to correct:

a) clerical or typographic errors;

b) accidental errors, slips or omissions; and,

c) arithmetical errors in calculations.

38. An application by a party to correct an interim award must be made before the arbitration hearing has ended.

39. An application by a party to correct a final award must be made within 14 days of delivery of the award.

40. Subject to and as required by the Arbitration Act of Alberta or the Arbitration Act of British Columbia, _________________ and _________________ agree that they are bound by the terms of the Mediator-Arbitrator’s interim and final awards.

**Entry of terms of award as consent order**

41. In the event the parties are involved in ongoing litigation, the parties will, subject to the court’s discretion, incorporate the terms of the final award and any consent awards into an order to be made with the consent of the parties, called a consent order, and take such steps as may be necessary to obtain the entry of the consent order.

**Confidentiality of mediation-arbitration**

42. The mediation-arbitration proceeding governed by this agreement is confidential and private, except:

a) to the extent necessary to implement or enforce any settlements reached by the parties or awards made by the Mediator-Arbitrator;

b) for the terms of the interim and final awards of the Mediator-Arbitrator; and,

c) as may be necessary for the purposes of appeal or judicial review, subject to paragraph 49 of this agreement.

43. _________________ and _________________ agree that they will not record or share any part of the mediation meeting or the arbitration hearing and, specifically, that:
a) they will not capture, mirror or otherwise save their computer screens during the mediation meeting and the arbitration hearing;

b) they will not capture, tape or otherwise save their computer’s audio output during the mediation meeting and the arbitration hearing; and,

c) they will not stream, broadcast, retransmit, post or otherwise distribute any portion of the mediation meeting and the arbitration hearing, including on social media.

44. _____________________________, _____________________________ and the Mediator-Arbitrator agree that they will not make any audio or visual recordings of their conversations and other interactions with each other outside the arbitration hearing, unless they have first:

a) disclosed their intention to record a meeting, conversation or other interaction; and,

b) obtained the express consent of the other party or parties to the recording of the meeting, conversation or other interaction.

45. No one except the parties and their lawyers may attend the hearings and meetings in this mediation-arbitration proceeding without the agreement of both parties and the order of the Mediator-Arbitrator.

46. The Mediator-Arbitrator, the parties and the lawyers for the parties will take such steps as may be necessary to ensure that, except by order of the Mediator-Arbitrator, no other person is:

a) physically present in the same room as themselves during the mediation meeting or the arbitration hearing; or,

b) able to see, hear or otherwise observe any part of the mediation meeting or the arbitration hearing by any means, including electronic means.

47. Unless required by law or by court order, the parties, the parties’ lawyers and the Mediator-Arbitrator will not disclose any documents or information about:

a) the mediation-arbitration, and the documents, information and evidence provided in the course of the mediation-arbitration proceeding; and,

b) the results of the Mediator-Arbitrator’s screening for power imbalances and family violence and the nature of any accommodations or adaptations of the mediation-arbitration process made in consequence of those results.
48. _______________________ and _______________________ acknowledge that the Mediator-Arbitrator may be required to disclose information obtained during the mediation-arbitration where the Mediator-Arbitrator believes that:

a) a child is suffering or at risk of harm, under the Child, Youth and Family Enhancement Act of Alberta or under the Child, Family and Community Service Act of British Columbia; or,

b) there is an imminent risk of death or serious physical or psychological harm to an identifiable person or group and the disclosure is necessary to prevent such death or harm.

Appeals

49. An arbitration award may be appealed as follows:

☐ a) by a party in accordance with section 44 of the Arbitration Act of Alberta, for mediation-arbitration proceedings sited in Alberta, or in accordance with section 31 of the Arbitration Act of British Columbia, for mediation-arbitration proceedings sited in British Columbia; or,

☐ b) by a party on

☐ i. a question of law,

☐ ii. a question of fact, and/or

☐ iii. a question of mixed law and fact.

Enforcement

50. Subject to the rights of judicial review and appeal set out in the Arbitration Act of Alberta or of British Columbia, interim and final awards may be enforced by either party under section 49 of the Arbitration Act of Alberta, for mediation-arbitration proceedings sited in Alberta, or under section 29 of the Arbitration Act of British Columbia, for mediation-arbitration proceedings sited in British Columbia.

Termination of agreement and resignation of Mediator-Arbitrator

51. Neither _______________________ nor _______________________ may unilaterally terminate this agreement. The Mediator-Arbitrator will continue the mediation-arbitration even though a party no longer wishes to participate or has ceased to participate.
52. The parties may agree to terminate this agreement and end the mediation-arbitration by a further written agreement.

53. The Mediator-Arbitrator may at any time resign his appointment as mediator-arbitrator by providing written notice of his resignation to the parties.

54. In the event that the parties terminate this agreement or the Mediator-Arbitrator resigns and the parties are unable to agree on a substitute arbitrator, a party may apply to the court for an order appointing a substitute arbitrator.

55. In the event that the parties terminate this agreement or the Mediator-Arbitrator resigns, ______________________ and ______________________ understand and agree that any interim awards made by the Mediator-Arbitrator prior to the termination of this agreement or the Mediator-Arbitrator’s resignation or are binding upon them and continue in full force and effect, including upon the continuation of the mediation-arbitration with a substitute arbitrator, unless varied by an award of the substitute arbitrator.

End of the arbitration phase

56. The arbitration phase of this mediation-arbitration proceeding will end when:
   a) the parties reach a settlement resolving all of the legal issues; or,
   b) the Mediator-Arbitrator has made a final award addressing all of the legal issues.

57. The Mediator-Arbitrator may make an order ending the arbitration phase if:
   a) the parties withdraw all of the legal issues that were not settled in the mediation phase from mediation-arbitration;
   b) the parties execute a written agreement to terminate this agreement; or,
   c) the Mediator-Arbitrator concludes that the continuation of the arbitration phase has become unnecessary or impossible.

Evidence of Mediator-Arbitrator

58. Because mediation and arbitration are confidential, private processes aimed at resolving disputes outside of court, ______________________ and ______________________ agree that:
a) all communications between the parties, the Mediator-Arbitrator and John-Paul Boyd Arbitration Chambers are made on a without prejudice basis, are privileged and may not be disclosed whether or not the communication contains an offer to settle or compromise a party’s position;

b) neither will ask or require the Mediator-Arbitrator to provide information, give evidence, or produce documents in any litigation between the parties concerning the communications, discussions, evidence and content of this mediation-arbitration; and,

c) any documents or information retained by the Mediator-Arbitrator or John-Paul Boyd Arbitration Chambers will not be subpoenaed by the parties or their lawyers.

59. The parties acknowledge that the Mediator-Arbitrator may, in certain circumstances, be compelled by a party to testify in litigation proceedings despite the other terms of this agreement. The parties acknowledge that calling the Mediator-Arbitrator as a witness in such circumstances is a breach of their obligations under this Mediation-Arbitration Agreement and that the party who calls the Mediator-Arbitrator as a witness will:

a) immediately to pay the Mediator-Arbitrator the sum of $2,500 as liquidated damages for breach of contract; and,

b) pay to the Mediator-Arbitrator the sum of $425 per hour, plus any applicable taxes, for all time spent by the Mediator-Arbitrator in consequence of being called as a witness, including time spent reviewing his file and preparing to give evidence, whether or not the Mediator-Arbitrator actually testifies in the legal proceeding.

Appointment, retainer and fees of Mediator-Arbitrator

60. ______________________ and ______________________ jointly appoint and retain the Mediator-Arbitrator.

61. ______________________ and ______________________ agree that the Mediator-Arbitrator will be paid $425 per hour, plus GST, for all work performed by the Mediator-Arbitrator including conferences, meetings, hearings, telephone calls, correspondence, drafting documents, reviewing documents and other services. There will be a minimum charge of one hour for any day when a conference, meeting or hearing is held, whether the conference, meeting or hearing is held in person, by teleconference, by videoconference or by other means.

62. ______________________ and ______________________ also agree that John-Paul Boyd Arbitration Chambers will be reimbursed for all necessary expenses incurred by the Mediator-Arbitrator or John-Paul Boyd Arbitration Chambers in connection with the mediation-arbitration, including boardroom booking fees, equipment rentals,
photocopying when professional printing services are used and the like, as well as the cost of any hotel accommodations incurred when the Mediator-Arbitrator is required to travel outside Calgary, Alberta and overnight accommodation is necessary. John-Paul Boyd Arbitration Chambers will not be reimbursed for other expenses incurred when the Mediator-Arbitrator is required to travel, including for travel time, mileage, airfare and similar expenses.

63. Cancellation fees will be charged when a conference, meeting or hearing is cancelled by one or both parties.

a) If notice of the cancellation is received by the Mediator-Arbitrator between 7 days and 48 hours before the start of the conference, meeting or hearing, the parties will be charged a fee of $425, plus GST, in addition to the Mediator-Arbitrator’s time spent preparing for the conference, meeting or hearing and any nonrefundable expenses incurred by the Mediator-Arbitrator or John-Paul Boyd Arbitration Chambers for the purposes of the conference, meeting or hearing including boardroom booking fees, equipment rentals and the like; and,

b) if notice of the cancellation is received by the Mediator-Arbitrator less than 48 hours before the start of the conference, meeting or hearing, the parties will be charged a fee of $850, plus GST, in addition to the Mediator-Arbitrator’s time spent preparing for the conference, meeting or hearing and any nonrefundable expenses incurred by the Mediator-Arbitrator or John-Paul Boyd Arbitration Chambers for the purposes of the conference, meeting or meeting, including boardroom booking fees, equipment rentals and the like.

64. Fees will also be charged by the Mediator-Arbitrator when a mediation meeting or arbitration hearing concludes earlier than the number of days reserved by the Mediator-Arbitrator for the meeting or hearing at the request of the parties at a rate of $1,275, plus GST, per whole unused reserved day.

65. Payment for the Mediator-Arbitrator’s fees and any expenses incurred by the Mediator-Arbitrator or John-Paul Boyd Arbitration Chambers is due when:

a) the parties have settled the legal issues and the parties and their lawyers signed a memorandum of agreement, prepared by the Mediator-Arbitrator, summarizing the key terms of the settlement, under paragraph 28(a) of this agreement;

b) this agreement is terminated, under paragraph 52 of this agreement;

c) the Mediator-Arbitrator has resigned, under paragraph 53 of this agreement; or,

d) arbitration has ended, under paragraphs 56 or 57 of this agreement.
66. Subject to an award of costs to the contrary in the final award, 
____________________ and __________________ agree that their respective 
lawyers will each be responsible to pay one-half of the Mediator-Arbitrator’s account. 
Interest will accrue at a compounding rate of 1% per month (12.68% per year) on all 
accounts that are not paid within 30 days of the date on which they are due.

67. In the event that one of the parties fails or refuses to pay their share of the Mediator-
Arbitrator’s account, the Mediator-Arbitrator may accept payment of the defaulting 
party’s share from the other party and exercise his discretion regarding costs to require 
the defaulting party to reimburse the other party for the amount of any such share.

68. __________________________ and __________________________ agree that the Mediator-
Arbitrator may withhold delivery of any final award until the Mediator-Arbitrator’s 
account is paid in full.

Waiver of liability

69. __________________________ and __________________________ acknowledge that while the 
Mediator-Arbitrator will make his best efforts to preserve the confidentiality and privacy 
of the mediation meeting and the arbitration hearing, he cannot make any promises or 
guarantees about the security of communications held through teleconferencing and 
videoconferencing software. The parties are responsible for informing themselves of the 
risks and consequences of possible security breaches, and for ensuring the security of 
their individual access to the teleconferencing and videoconferencing software, 
including the security of their computer and their access to the internet.

70. __________________________ and __________________________ waive any claim or right of 
action they may have against John-Paul Boyd arising out of the mediation-arbitration.

Acknowledgments

71. In the case of mediation-arbitration proceedings sited in Alberta, the parties 
acknowledge that, despite paragraph 30 of this agreement:

a) decisions about the guardianship of children, decision-making in respect of children 
and parenting time or contact with children will be made taking into consideration 
only the best interests of the child;

b) the Arbitration Act provides that an arbitration agreement may be only cancelled by 
the court under the law of contract, which includes legal questions about issues such 
as incapacity, duress, undue influence, coercion, mistake and misrepresentation; 
and,
c) the *Arbitration Act* provides that an award may be cancelled by the court if a party signed an arbitration agreement while under a legal incapacity or the mediator-arbitrator’s award was obtained by fraud.

72. In the case of mediation-arbitration proceedings sited in British Columbia, the parties acknowledge that, despite paragraph 30 of this agreement:

a) decisions about the guardianship of children, decision-making in respect of children and parenting time or contact with children will be made taking into consideration only the best interests of the child; and,

b) the *Arbitration Act* provides that an arbitration agreement and a mediator-arbitrator’s award may be cancelled by the court if

i. a party has taken improper advantage of the other party’s vulnerability, including the other party’s ignorance, need or distress,

ii. a party did not understand the nature and consequences of the arbitration agreement, or

iii. other circumstances exist that would cause all or part of a contract to be cancelled under the law of contract, which includes legal questions about issues such as incapacity, duress, undue influence, coercion, mistake and misrepresentation;

c) the *Arbitration Act* provides that a mediator-arbitrator’s award may be set aside by the court if the award was improperly procured; and,

d) an award for the payment of child support or spousal support is a “maintenance order” under the *Family Maintenance Enforcement Act*.

73. ___________________________ and ___________________________ further acknowledge that failure to disclose all relevant documents and information may be grounds for cancelling, staying or setting aside an agreement reached through mediation or appealing an award of the Mediator-Arbitrator.
Effect of agreement on counsel

74. The lawyers for each party, as undersigned, are bound by the terms of this agreement.

Signed by ______________________ on ____________________ 2020, at _____________________, in the Province of _________________________________.

______________________________  
Counsel for _______________________

Signed by ______________________ on ____________________ 2020, at _____________________, in the Province of _________________________________.

______________________________  
Counsel for _______________________

JOHN-PAUL BOYD ARBITRATION CHAMBERS

Per:

______________________________
John-Paul E. Boyd Q.C.,  
Family Law Mediator and Arbitrator
Lawyer’s Certificate of Independent Legal Advice

I have fully read over and explained to my client the nature, meaning and consequences of this Mediation-Arbitration Agreement and have given independent legal advice to my client before signing the agreement. I have also explained to my client the circumstances in which the court may cancel this agreement.

In my opinion, my client is aware of the need to disclose all significant income, assets, debts and liabilities existing when this agreement is made and as may come to exist during the mediation-arbitration proceedings, and fully understands the nature, meaning and consequences of this agreement.

I am satisfied that my client is not signing this agreement as a result of deception by the other party or as a result of any duress, coercion or undue influence exerted by the other party, and that my client is not under any legal disability that would impair my client’s capacity to enter into this agreement.

I am also satisfied that my client is fully able to participate in these mediation-arbitration proceedings, including by teleconference or videoconference, and is doing so freely and voluntarily.

____________________________  ______________________________
Date                         Counsel for __________________________

Name:

Address:

Party’s Acknowledgment of Independent Legal Advice

I, ________________________, confirm that I have received independent legal advice as described in the above Certificate of Independent Legal Advice signed by my lawyer.

____________________________  ______________________________
Date
Lawyer’s Certificate of Independent Legal Advice

I have fully read over and explained to my client the nature, meaning and consequences of this Mediation-Arbitration Agreement and have given independent legal advice to my client before signing the agreement. I have also explained to my client the circumstances in which the court may cancel this agreement.

In my opinion, my client is aware of the need to disclose all significant income, assets, debts and liabilities existing when this agreement is made and as may come to exist during the mediation-arbitration proceedings, and fully understands the nature, meaning and consequences of this agreement.

I am satisfied that my client is not signing this agreement as a result of deception by the other party or as a result of any duress, coercion or undue influence exerted by the other party, and that my client is not under any legal disability that would impair my client’s capacity to enter into this agreement.

I am also satisfied that my client is fully able to participate in these mediation-arbitration proceedings, including by teleconference or videoconference, and is doing so freely and voluntarily.

____________________________  ______________________________
Date  Counsel for _______________________

Name:

Address:

Party’s Acknowledgment of Independent Legal Advice

I, ______________________, confirm that I have received independent legal advice as described in the above Certificate of Independent Legal Advice signed by my lawyer.

____________________________  ______________________________
Date  _________________________