CAUSE NO. _____

IN THE INTEREST OF:	§	IN THE DISTRICT COURT
	§	
_____	§	_____ JUDICIAL DISTRICT
	§	
CHILD / CHILDREN	§	_____ COUNTY, TEXAS

ORDER FOR PREPARATION OF CHILD CUSTODY EVALUATION AT TEXAS PREMIER COUNSELING SERVICES

On _____, the court considered the Motion for Child Custody Evaluation brought by

_____. The court finds that the Motion should be granted as

follows:

1. IT IS ORDERED for the parties involved that **Monika Logan**, PsyD, LPC, LSOTP (Texas Premier Counseling Services, PLLC), (972) 895-2502, 2770 Main St., Suite 159, Frisco, Texas 75033, is appointed as Child Custody Evaluator (the "Evaluator") to conduct a Child Custody Evaluation and prepare a written report containing opinions and recommendations to the Court regarding the parties and the child(ren) in question and, without limitation, on the issues set forth below. The Court finds that the Evaluator is qualified to conduct a Child Custody Evaluation pursuant to Texas Family Code §107.104.

   The parties and all counsel are ORDERED to email a copy of this Order to Monika Logan, PsyD, LPC, LSOTP, mlogan@TexasPCS.org within **three** (**3**) **business days** of the signing of this Order.

   The parties are each ORDERED to provide their completed Intake Documents (Advisement Form, Personal History Questionnaire, Notice of Privacy Acknowledgement, and Evaluation Fees Form, *available at www.texaspcs.org*) along with a COLOR Copy of their Driver's License / ID, Employment Verification, and Daycare / School Report Cards, as well as the initial retainer(s) to the Evaluator within **seven (7) business days** of the signing of this Order.

   After receipt of the required documents and initial retainer(s) for and/or from both parties, the Evaluator shall select a date for each party's initial appointment, and each party is ORDERED to appear at the initial appointment and any appointment(s) thereafter, as directed and/or required by the Evaluator.

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2. IS ORDERED that the Evaluator shall make and prepare a Child Custody Evaluation into the circumstances and condition of the backgrounds and homes/residences of each person who is seeking managing conservatorship of, or possession, or access to, the child(ren) in question, specifically:

Petitioner Name:	Respondent Name:	Intervenor (*if any*):
Child(ren)'s Names and Dates of Birth:		

The Court finds that the primary language of the parties:

❑ is English.

❑ is not English, and the Evaluator shall select a licensed or certified Interpreter to assist, with any and all cost(s) associated with the utilization of the interpreter is to be paid by the:

❑ Petitioner ❑ Respondent ❑ Other: _____.

3. IT IS ORDERED that the cost associated of preparing the Child Custody Evaluation shall be divided between the parties as follows: _____. The parties are ORDERED to pay their respective portions of these costs at such times and in such amounts as the Evaluator may direct. The costs of preparing the Child Custody Evaluation do not include the costs of the Evaluator testifying at trial, the payment of which is discussed herein below.

4. IT IS ORDERED that the welfare and best interests of the child(ren) shall be the principal criteria governing the Child Custody Evaluation. To assess those interests the Evaluator shall identify and evaluate each parent's skills and abilities as they relate to the child(ren)'s social, emotional, and physical development, the family's interaction, each parent's strengths and weaknesses, and how these factors impact the child(ren). In addition, the Evaluator shall render opinions to aid the Court in determining answers to the following specific questions:

   a. Should Petitioner and Respondent be appointed Joint Managing Conservators of the child(ren)?

   b. Which parent should have the exclusive right to designate the primary residence of the child(ren)?

   c. What periods of parenting time (*possession and access*) should be ordered for the child(ren) with each parent?

   d. How do each of the parents meet the emotional needs of the child and is one parent better able to do so than the other?

   e. How do each of the parents meet the physical needs of the child and is one parent

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better able to do so than the other?

f. Should either parent's possession be supervised?

g. Does either parent present a physical or emotional danger to the child?

5. IT IS ORDERED that the court-appointed Evaluator may make any and all other recommendations and/or referrals regarding what the Evaluator believes will aid the Court in determining the best interest of the child(ren).

6. IT IS ORDERED that the Evaluator shall comply with each of the provisions in Texas Family Code §107, Subchapter D, regarding Child Custody Evaluations.

7. IT IS ORDERED that the Evaluator shall comply with each of the provisions in Family Code §107, Subchapter D, regarding Child Custody Evaluations:

   a. In this Child Custody Evaluation, the term "child interview" as referenced in Family Code Section 107.112(b-1), shall refer to any individual interview of a minor child and shall not be construed as applying to other elements of the evaluation in which the minor child is a participant, such as but not limited to the parent-child interview(s) or any observation(s) of the children or parent(s) that are part of this Child Custody Evaluation.

   b. The parties to this action agree that interview(s) with any child subject to this suit shall and must not be audio-visually recorded, as it is not in the best interests of any child subject to this suit.

   c. The parties to this action agree to waive any future objection(s) as to their agreement to not require the evaluator to make audio-visual recordings.

8. IT IS ORDERED that pursuant to Texas Family Code §107.109 the Evaluator shall complete each of the following "basic elements" of a Child Custody Evaluation or else refrain from offering opinions regarding conservatorship, possession, or access:

   a. A personal interview with each party to the suit seeking conservatorship of, possession of, or access to the child(ren);

   b. Interviews, conducted in a developmentally appropriate manner, with each child who is the subject of the suit who is at least **four** (**4**) **years** of age during a period of possession of each party to the suit but outside the presence of the party;

   c. Observation of each child at issue in the suit, in the presence of each party to the suit, regardless of the age of the child, including, as appropriate, during supervised visitation, unless contact between a party and a child is prohibited by court order or the Evaluator has good cause for not conducting the observation, and states the good cause in writing

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provided to the parties to the suit before the completion of the evaluation;

d. An observation, and if the child is at least **four** (**4**) **years** of age, an interview of any child who is not a subject of the suit who lives on a full-time basis in a residence that is the subject of the evaluation, including with other children or parties who are subjects of the evaluation, where appropriate;

e. Obtaining information from relevant collateral sources, including review of: relevant school records; relevant physical and mental health records of each party to the suit and each child who is subject to the suit; relevant records of the Department of Family and Protective Services; criminal history information relating to each child who is subject of the suit, each party to the suit, and each person who lives with a party to the suit; and any other collateral source that may have relevant information;

f. For each individual residing in a residence subject to the Child Custody Evaluation, consideration of any criminal history information and any contact with the Department of Family and Protective Services or a law enforcement agency regarding abuse or neglect;

g. Assessment of the relationship between each child at issue in the suit and each party seeking possession of or access to the child.

9. IT IS ORDERED that the Evaluator shall complete and discuss in the report the following "additional elements" set forth in Texas Family Code §107.109 or explain in the report the reason that any element listed therein was not completed:

   a. Balanced interviews and observations of each child who is the subject of the suit so that a child who is interviewed or observed while in the care of one party to the suit is also interviewed or observed while in the care of each other party to the suit;

   b. An interview of each individual, including a child who is at least **four** (**4**) **years** of age, residing on a full-time or part-time time basis in a residence subject to the Child Custody Evaluation;

   c. Evaluation of the residence of each party seeking conservatorship of a child who is the subject of the suit or seeking possession of or access to the child;

   d. Observation of a child who is the subject of the suit with each adult who lives in a residence that is the subject of the evaluation;

   e. An interview, if the child is at least **four** (**4**) **years** of age, and observation of a child who is not the subject of the suit but who lives on a full-time or part-time basis in a residence that is the subject of the evaluation;

   f. Psychometric testing, if necessary, consistent with Texas Family Code §107.110.

10. IT IS ORDERED that the Evaluator have the following access and authority during the

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preparation of the Child Custody Evaluation and report:

a. With the exception of mediation records or records protected by the attorney-client privilege, the parties are ORDERED to make available to the Evaluator, in a prompt and timely manner, all records, public or private, that bear upon the physical health, mental health, criminal history, or any other collateral sources of information the Evaluator requests, related to any of the parties and other individuals residing in a residence subject to the Child Custody Evaluation. This includes, but is not limited to medical and dental records, school records, daycare provider records, and Child Protective Services records.

b. Each party is ORDERED to execute any and all authorizations and releases necessary, including but not limited to HIPAA-compliant releases, to allow the appointed Evaluator to obtain information about the child(ren), the parties, or other caretakers in order to make a complete and thorough evaluation. IT IS ALSO ORDERED that any health information protected by HIPAA is only to be used in connection with this litigation and the parties, their counsel, the employees of their counsel, and their respective agents, are prohibited from using or disclosing health information protected by HIPAA for any other purpose other than in connection with this litigation.

c. Each party is ORDERED to cooperate and comply with all requests of the Evaluator for in person or telephonic interviews or requests for information during the process of conducting the Child Custody Evaluation. The parties are further ORDERED to cooperate and comply with all requests of the Evaluator for the cooperation of each individual residing in a residence subject to the evaluation as outlined in Texas Family Code §107.109.

d. Each party is ORDERED to make the child(ren) available to the Evaluator for interview and observation as directed by the Evaluator.

11. IT IS ORDERED that the court-appointed Child Custody Evaluator shall utilize procedures and protocols, and rely upon such facts and data, which are the type reasonably relied upon by other forensic experts in this field, including but not limited to examinations, interviews, testing as deemed necessary by the Evaluator, records, and other relevant documents and tangible items.

12. IT IS ORDERED that any party who resides outside of the State of Texas shall be initially interviewed by the Evaluator in the State of Texas.

13. IT IS ORDERED that the Evaluator shall prepare a report containing their findings and conclusions and shall therein offer an opinion regarding the conservatorship, possession of, and/or access to the child(ren). The Child Custody Evaluation shall be conducted and the report shall be prepared in accordance with the following standards and requirements:

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a. The Evaluator's actions shall be in conformance with the professional standard of care applicable to the Evaluator's licensure and any administrative rules, ethical standards, or guidelines adopted by the state agency that licenses the Evaluator;

b. The Evaluator shall follow evidence-based practice methods and make use of current best evidence in making assessments and recommendations;

c. The Evaluator shall disclose to each attorney of record any communication regarding a substantive issue between the Evaluator and an attorney of record representing a party in a disputed suit, provided, however, that this requirement does not apply to a communication between the Evaluator and an attorney ad litem or amicus attorney;

d. The Evaluator, to the extent possible, shall verify each statement of fact pertinent to the Child Custody Evaluation and shall note the sources of verification and information in the report;

e. The Evaluator shall state the basis for the Evaluator's conclusions or recommendations in the report; as required under Texas Family Code §107.108, the report shall contain the Evaluator's name, license number, and a statement attesting that the Evaluator has read and meets the requirements of Texas Family Code §107.104.

14. IT IS ORDERED that the Evaluator shall file notice of completion of the report and the report itself with the Court no later than _____. The Evaluator shall furnish notice the report is complete and copies of the report to the attorneys for the parties, each party who is not represented by an attorney, and each attorney ad litem, guardian ad litem, and amicus attorney appointed in the suit no later than the date they file the report with the Court.

15. IT IS ORDERED that following the preparation of the report, the Child Custody Evaluator, at the written request of any court-appointed guardian ad litem, court-appointed attorney ad litem, court-appointed amicus attorney, or attorney of record in the case shall make available for inspection and copying all records collected, including but not limited to the following: Copies of the Evaluator's notes, any written communications, writings, records, memoranda, summaries, data, correspondence, test results, videos, photographs, tape recordings, and other tangible records or documents obtained by or created by the Evaluator in connection with or in any way related to the evaluation ordered herein. The costs of copying the records shall be borne by the requesting party, should that party desire copies of any portion of the records to be made. <u>This provision does not apply to any unredacted Child Protective Services Records that have been provided to the Evaluator which remain confidential pursuant to Texas Administrative Code 700.203 and Texas Human Resources Code 40.005.</u> Parties wanting copies of Child Protective Services Records must either obtain them from the agency directly or request in-camera review by the court.

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16. IT IS ORDERED that no information gathered by the Evaluator, including any conversation between the Evaluator and any party, child, investigator, attorney, or collateral source, is confidential or protected by any privilege. The court finds that pursuant to Rules 509 and 510, Texas Rules of Evidence, **NO RIGHT OF CONFIDENTIALITY OR PRIVILEGE** attaches to any communications between or with the Court-appointed Child Custody Evaluator, the parties, or any other person with whom the Evaluator interacts, that are relevant to this proceeding. Information provided by the parties may be shared with others involved in the evaluation (*including where necessary and appropriate, children and collateral sources*) so that verification of information provided can be sought, and so that others are afforded the opportunity to respond to allegations that may have been made. The Evaluator shall inform any party, child, attorney, or collateral source that any information received shall not be confidential or protected by any privilege or discovery.

17. IT IS ORDERED that the Evaluator shall have **immunity** consistent with Texas law for actions undertaken pursuant to the Court appointment and this Order. Any alleged impropriety or unethical conduct by the Evaluator shall be brought to the attention of the Court in writing, AND IT IS SO ORDERED.

18. IT IS ORDERED that the Evaluator shall testify at the final hearing or other hearing in this case at the written request of any attorney of record without the necessity of a subpoena, however, unless otherwise ordered by the Court, the requesting party shall be responsible for the Evaluator's customary and usual fees for testifying and said fees shall be paid or advanced prior to the hearing and payment of said fees shall be a condition precedent to the Evaluator's required testimony, unless otherwise ordered by the Court or agreed upon by the Evaluator and the requesting party.

19. THE COURT FINDS that the Evaluator is entitled to any report, record, working paper, or other information in the possession, custody, or control of the Department of Family and Protective Services that pertains to the persons involved in the evaluation. Any unredacted Child Protective Services Records that have been provided to the Evaluator remain confidential pursuant to Texas Administrative Code 700.203. Parties wanting copies of Child Protective Services Records must either obtain them from the agency directly or request in-camera review by the court.

20. THE COURT FINDS that, notwithstanding any other state law regarding confidentiality, the Evaluator is entitled to any records that relate to any person residing in a residence subject to a Child Custody Evaluation from: a local law enforcement authority; a criminal justice agency; a juvenile justice agency; a community supervision and corrections department created under Chapter 76, Government Code; or any other governmental entity. Except as provided by Family Code 107.1111(c), records obtained by the Evaluator under this provision are

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confidential and not subject to disclosure under Chapter 552, Government Code, or to disclosure in response to a subpoena or a discovery request.

TESTIMONY

The Evaluator shall testify at any hearing in this case at the written request of any attorney of record sent via subpoena, which may be delivered to Counselor via fax or to this Counselor's email. Unless payment for testimony is already addressed above, the requesting party shall be responsible for the Counselors customary and usual fees for testifying and said fees shall be paid at least **seven** (**7**) **days** prior to the hearing in the manner outlined by the Counselor. **Absent payment, the Evaluator is under no obligation to appear or provide testimony even if formally subpoenaed.**

IT IS SO ORDERED

Signed on this _____ day of_____20_____

_____
Judge Presiding

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AGREED

PETITIONER	**RESPONDENT**
_____	_____
Agency Name	Agency Name
_____	_____
Agency Address	Agency Address
_____	_____
Printed Name: Attorney for **Petitioner**	Printed Name: Attorney for **Respondent**
_____	_____
Signature: Attorney for **Petitioner**	Signature: Attorney for **Respondent**
_____	_____
Bar Number	Bar Number
_____	_____
Email Address	Email Address
_____	_____
Telephone Number	Telephone Number
_____	_____
Fax Number	Fax Number

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