

AGREEMENT TO MEDIATE

We the undersigned parties agree to voluntarily enter the mediation process and understand and consent to the following:

1. **Definition of Mediation:** Mediation is a process in which a mediator facilitates communication between the parties and, without deciding the issues or imposing a solution on the parties, enables them to understand and to reach a mutually agreeable resolution to their dispute.
2. **Role of the Mediator:** The mediator acts as a facilitator, not an advocate, judge, jury, counselor, or therapist. The mediator assists the parties in identifying issues, reducing obstacles to communication, maximizing the exploration of alternatives, and helping parties reach voluntary agreements.
3. **Mediator's Style/Approach:** *(for example)* The mediator uses a facilitative approach. A facilitative mediator guides the parties' conversation and discussion of issues that are important to them, without providing an opinion or judgement regarding the merit of the claims or the likely judicial outcome. The mediator can assist the parties in assessing the strengths and weaknesses of their case. The mediator will not tell the parties what to do or suggest a particular outcome.
4. **The Mediation Process:** The process will include at a minimum, an opportunity for all parties to be heard, the identification of issues to be resolved, the generation of alternatives for resolution, and if the parties so desire, the development of a Memorandum of Understanding or Agreement.
5. **Other procedures to be used during the mediation include:** *(for example)* caucus; the ability of any party or the mediator to terminate the mediation.
6. **Confidentiality:**

All memoranda, work products and other materials contained in the case files of a mediator or mediation program are confidential. Any communication made in or in connection with the mediation, which relates to the controversy being mediated, including screening, intake, and scheduling a mediation, whether made to the mediator, mediation program staff, to a party, or to any other person, is confidential. However, a written mediated agreement signed by the parties shall not be confidential, unless the parties otherwise agree in writing.

Confidential materials and communications are not subject to disclosure in discovery or in any judicial or administrative proceeding except:

- (i) where all parties to the mediation agree, in writing, to waive the confidentiality,
- (ii) in a subsequent action between the mediator or mediation program and a party to the mediation for damages arising out of the mediation,
- (iii) statements, memoranda, materials and other tangible evidence, otherwise subject to discovery, which were not prepared specifically for use in and actually used in the mediation,
- (iv) where a threat to inflict bodily injury is made,
- (v) where communications are intentionally used to plan, attempt to commit, or commit a crime or conceal an ongoing crime,
- (vi) where an ethics complaint is made against the mediator by a party to the mediation to the extent necessary for the complainant to prove misconduct and the mediator to defend against such complaint,
- (vii) where communications are sought or offered to prove or disprove a claim or complaint of misconduct or malpractice filed against a party's legal representative based on conduct occurring during a mediation,
- (viii) where communications are sought or offered to prove or disprove any of the grounds listed in § [8.01-581.26](#) in a proceeding to vacate a mediated agreement, or
- (ix) as provided by law or rule.

7. **Mandatory Reporting:** According to Virginia Code §63.2-1509, if mediators have reason to suspect that a child is abused or neglected, they must report the suspected abuse immediately. Therefore, the information about the abuse is not confidential.
8. **Complaints Against Mediators:** If someone who is not a party to the mediation files an ethics complaint against the mediator, confidentiality will be waived to the extent necessary for the complainant to prove misconduct and the mediator to defend against the complaint.
9. **Full Disclosure of Assets:** In domestic relations cases involving divorce, property, support or the welfare of a child, each party agrees to provide substantial full disclosure of all relevant property and financial information.
10. **Legal Counsel / Effect of Agreement:** The mediator(s) does not provide legal advice. Parties are encouraged to seek the advice of independent counsel at any time. Any mediated agreement may affect the legal rights of the parties. Each party to the mediation should have any draft agreement reviewed by independent counsel prior to signing the agreement.
11. **Fees:** *(if applicable)* The fee arrangement is as follows: _____

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| _____ Plaintiff/Petitioner | _____ Date |
| _____ Plaintiff/Petitioner Attorney | _____ Date |
| _____ Respondent | _____ Date |
| _____ Respondent Attorney | _____ Date |
| _____ Mediator | _____ Mediator |