

AGREEMENT TO MEDIATE

We the undersigned agree to voluntarily enter the mediation process with Clay Phillips, Tennessee Supreme Court Rule 31 Listed Mediator, and understand and consent to the following:

1. **Definition of Mediation**: Mediation is an informal process in which a neutral person (mediator) conducts discussions among the disputing parties to assist them in reaching a mutually acceptable agreement among themselves on all or any part of the issues in dispute.
2. **Role of the Mediator**: The mediator is a neutral person who conducts discussions among disputing parties to enable them to reach a mutually acceptable agreement among themselves on all or any part of the issues in dispute. The mediator acts as a facilitator, not an advocate, judge, jury, counselor, or therapist. The mediator assists the parties in identifying and prioritizing issues, reducing obstacles to communication, maximizing the exploration of alternatives, and helping parties reach voluntary agreements. The mediator may share an observation with a party of the strengths and weaknesses of their case, however, the mediator will not tell the parties what to do, advise them or suggest a particular outcome.
3. **Role of the Parties**: The parties' roles at mediation are: 1. to not be adversarial; 2. to provide information requested by the mediator prior to and during mediation; 3. to commit to the mediation process and finding a mutually acceptable agreement on the issues in dispute; 4. to remain open-minded and creative when considering possible solutions; and 5. to be respectful of the mediator, the other party/parties, all attorneys, all advocates, and the entire mediation process. The parties are responsible for the contents of their agreement.
4. **Role of the Attorneys**: The attorneys' role at mediation is much different than at any other legal proceeding. During mediation, the attorneys' primary role is to provide their client with legal advice and support them in making informed decisions about their agreement. The attorneys may speak on their clients' behalf at mediation from time to time, but they will encourage their clients to speak directly and openly with the mediator at all times.
5. **Role of non-Attorney Advocates**: Non-attorney advocates (*spouses, experts, support persons, Guardians Ad Litem, etc.*) are not parties to the mediation proceeding, and are permitted only to assist the parties in reaching a mutually acceptable agreement. Mediation is a collaborative process that requires everyone present to conduct themselves in a manner, which encourages collaboration and the possibility of settlement at all times. Advocates understand that they are prohibited from discussing anything observed by them at mediation with anyone not lawfully present at mediation, during or after mediation. Advocates agree to be bound by the privilege and confidentiality provisions of Tennessee Supreme Court Rule 31 and the terms of this Agreement. All Advocates are required to sign this agreement prior to the commencement of mediation.
6. **The Mediation Process**: The mediation process will include, at a minimum: 1. An orientation/introduction session provided by the mediator prior to the commencement of mediation; 2. ample opportunity for all parties to be heard by the mediator; 3. the identification and prioritization of the issues to be resolved by the parties; 4. the generation of alternatives for resolution and agreement; and, 5. if the parties so desire, an executed memorialization of the terms of their agreement in the form of a *Mediated Agreement*, or a *Memorandum of Understanding*. The agreement reached by the parties will otherwise be memorialized by the parties' attorneys, or the parties themselves.

7. **Other procedures to be used during the mediation include:** Depending on the needs of the mediation session, as determined by the mediator, the mediator may bring the parties and their attorneys together for a joint session, and/or meet privately with either party and/or their attorney at any time. Should the mediator meet privately with an attorney, the party should know that the attorney is not negotiating on their behalf unless specifically permitted to do so by the party. At times, due to geographical separation or other impediments to live attendance, it may be necessary and appropriate for one or more party or their attorney(s) to attend mediation via a remote mode (*secure videoconference or telephone*) approved by the mediator. In those cases, only the mediator will determine the platform of such remote mode to ensure it's reliability, accessibility, and security.
8. **Confidentiality:** The mediator will preserve and maintain the confidentiality of all dispute resolution proceedings except where provided by law to disclose information. The mediator will not disclose and will keep privileged information obtained in individual caucuses unless specifically permitted to do so by the disclosing party. The mediator will not be called as witness to enforce any terms of the resulting agreement. There are three exceptions to the confidentiality provisions of mediation; they being allegations made by any party and heard by the mediator of abuse of a child, an elder, or a disabled person. As a result of any such allegation, the mediator will immediately suspend mediation and report the allegation to the appropriate authority. After making said report, the mediator will determine whether it is appropriate to resume mediation. The mediator may not be compelled to testify by deposition or otherwise regarding any conduct, information, or statements observed in the mediation proceeding.
9. **Honesty and Full Disclosure:** All statements made to the mediator must be accurate and honest within the context of the mediation session. This pertains to all matters of personal or business finances, taxes, insurance, property value, property damage, medical expenses, lost wages, etc. Any dishonesty or known failure to disclose may invalidate any agreement reached during mediation.

It is understood that, because of the nature of the mediator's profession, there is a likelihood that he knows, has known, has made the acquaintance of, or is familiar with the attorneys representing the parties and/or their respective partners and staff. The mediator assures the parties that, if such a relationship exists or existed between the mediator and any attorney and/or their partners or staff, specifically disclosed or not, no such relationship will effect or otherwise hinder the mediator's ability to remain neutral throughout the mediation process.

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. The parties will be allowed to confer privately with their attorneys at any time, and as often as needed during the mediation process. A written mediated agreement signed by the parties is admissible to enforce the understanding of the parties.
11. **Fees:** The fee for mediation is determined as follows:
 - Fee for mediator preparation (review of case documents, etc.): \$ 200.00/hour
 - Fee for in-session mediation time: \$ 400.00/1st two hours or \$ 600.00/1st four hours
and \$ 225.00/add'l. hour
 - Travel/Lodging/Parking (if any cost incurred): Actual Cost

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Fees *(continued)*

In the event a mediation session progresses beyond 5:30pm (Central US), the fee for mediation is increased to \$350.00 per hour and is billed by the hour.

All fees for mediation are earned when paid and are non-refundable.

Any unpaid fees for mediation will be subject to late fees of 10% of the amount due per annum, compounded monthly until paid in full. Owing party(ies) will be responsible for all costs involved in collecting any unpaid fee, including but not limited to filing fees, court costs, and attorney fees.

AGREED BY:

Plaintiff/Petitioner *(printed)* Plaintiff/Petitioner *(signed)* Date

Plaintiff/Petitioner Attorney *(printed)* Plaintiff Attorney/Petitioner *(signed)* Date

Defendant/Respondent *(printed)* Defendant/Respondent *(signed)* Date

Defendant/Respondent Attorney *(printed)* Defendant Attorney/Respondent *(signed)* Date

Clayton J. Phillips
Mediator _____
Mediator *(signed)* Date

**Add Signatures/Pages Below As Needed for Additional Parties/Counsel and/or Advocates

