

AGREEMENT TO MEDIATE

We, _____ and _____, by our signatures below hereby voluntarily agree to participate in mediation, even though it may or may not have been ordered by the court. Alva Escarzaga Miller will serve as the mediator. We understand and agree to the following guidelines:

1. **Good Faith:** We agree to enter this mediation in good faith. This means we will sincerely attempt to resolve the issues at hand by participating fully, honestly, and genuinely in the search for fair and workable solutions.

2. **Honesty:** We agree to be honest and to completely disclose all relevant information and documents concerning this matter to the other party and the mediator. This includes all documentation that would be available through the discovery process in a normal legal proceeding. If either party fails to disclose fully and honestly, the agreement reached in mediation may be voided.

3. **Courtesy:** We agree to cooperate with the mediation process by remaining courteous throughout the session(s). We understand mediation can be an emotional experience and we will refrain from personal attacks and angry outbursts, and will respect the opinions, perceptions, and feelings of the other party(ies) in mediation.

4. **Mediator:** We understand that the mediator serves as a neutral third party whose purpose is to promote communication and help us reach a mutually satisfying agreement. She has no fixed result in mind and cannot decide our case. The mediator is neither advocate, attorney, nor judge and will not offer legal advice or render a judgment. The mediator is not a therapist or a counselor. The mediator is a neutral facilitator. To the extent the mediator and/or her paralegal draft any documents the mediator and/or her paralegal are acting as scribes and not providing legal advice. The mediator and her paralegal shall not be liable to any party for any act or omission in connection with the mediation.

5. **Independent Advice:** We understand that the mediator encourages us to consult with an attorney regarding our legal interests, rights, and obligations. We have also been advised that consultation with other professionals, including a tax advisor or financial planner, may be advantageous in protecting our interests. We also understand that a therapist or family counselor could be helpful in addressing emotional and psychological concerns which may accompany involvement in a dispute.

6. **Confidentiality:** We understand that the mediation process requires open and honest communication in order to succeed. Therefore, it is completely confidential, and all written and oral communications made during the mediation are privileged settlement negotiations. The mediator will not reveal anything discussed in mediation without the permission of both parties. However, she is required to report certain matters such as incidents of child abuse, abuse of an elderly or incapacitated person, computer crimes, and/or threats of physical violence. Confidentiality does not extend to these matters.

The parties agree that they will not at any time during or after the mediation, call the mediator as a witness in any legal or administrative proceeding concerning this dispute. To the extent the parties may have a right to call the mediator as a witness, that right is hereby waived.

The parties agree not to subpoena or demand the production of any records, notes, work product or the like of the mediator in any legal or administrative proceedings concerning this dispute. To the extent that they may have a legal right to demand these documents, that right is hereby waived.

If at a later time, either party decides to subpoena the mediator, the mediator will move to quash the subpoena. We agree in the event the mediator is called to testify at any court or administrative proceeding or is requested to provide documents related in any way to the mediation, the party or parties requiring the information from the mediator will pay all attorney fees, costs, and any other related expenses incurred by the mediator in opposing a subpoena or other Court Order for the production of documents or the mediator's testimony.

The parties understand that the mediator will close and destroy all the notes taken at the mediation after the final mediation agreement has been sent for confidentiality reasons.

The exceptions to the above are that this Agreement to Mediate and any written agreement made and signed by both parties as a result of mediation may be used in any relevant proceedings, unless the parties make agreement not to do so. Also, any matter that is admissible in a court of law continues to be admissible even though raised in a mediation session.

7. Fees: We understand that the hourly **fee for the mediation services is \$150/hr. and payment is due at the end of each mediation session.** This fee will be shared equally by the parties. We understand that the hourly fee applies to all time spent by the mediator in activities related to the completion of mediation including not just when meeting with the parties, but for research, telephone calls, and document preparation.

8. Caucus or Private Meetings: We agree that either party may hold private meetings with the mediator at their or the mediator's request. The parties may specify what will remain confidential from these private sessions. No private meeting will occur without the mutual consent of both parties.

9. Withdrawal from Mediation: We understand that mediation is a voluntary process, and that either party may terminate the mediation at any time. The mediator also reserves the right to withdraw if she determines the issues cannot be resolved in mediation or that she is unable to provide the services necessary to reach resolution. If either party or the mediator decides to withdraw, we agree to discuss the decision with the other involved party(ies), and to confirm the termination in writing.

10. Timeliness and Cancellation: We agree to arrive at mediation on time, and if a change in the appointment time is necessary, to give notice to the mediator of not less than seven (7) days. Should the mediation be cancelled within seven (7) days of the date scheduled for the mediation, a cancellation fee of 2 hours (\$300) is charged to the party requesting the cancellation. If both parties request that the mediation be cancelled, the parties agree to equally share the cancellation fee.

ONLINE MEDIATION GUIDELINES AND GROUND RULES

1. Online Platform: Zoom: We will use the online secure platform provided by Zoom.us to conduct your online mediation sessions. You have been provided with the link. The link will prompt you to download Zoom and enter the meeting. You will be placed into a waiting room, and I will admit you. If you want, to familiarize yourself with the operation of the platform tutorials are available at <https://support.zoom.us>.

2. Document Execution: We can simply sign documents, scan, or photograph and send to the other parties. Or, in the event that original signatures are required or preferred, then **copies** for execution will be transmitted to you for printing and signing and you will be responsible for returning the executed copies to me via mail or overnight delivery service.

3. Secure WiFi or Ethernet Connection: You will need a secure WiFi or Ethernet (hard-wired) connection for your computer. **PLEASE DO NOT** use a public access WiFi connection.

4. Technology Failure Protocol: You understand that despite our best efforts, technology may fail to operate properly, and a mediation session may not start on time or may be interrupted. If that happens, please take the following steps:

1. Log out of Zoom and log back in. This often re-establishes the connection.
2. Call or text me immediately to let me know you are having trouble. My cell phone number is 801-649-9647.

c. Conference call: In the event that we cannot convene the mediation via Zoom, I will issue instructions for participants to join a conference call via cell phone.

5. Separate Caucuses: This meeting, as with in person mediation, will take place in separate rooms, unless agreed otherwise. At the start of the mediation, I will place you and your attorney if you have one into private caucus rooms. I will have the ability to caucus privately with the attorneys in the “conference room.”

CONFIDENTIALITY AND PRIVACY

6. Privacy and Confidentiality: Only the people who have executed these Online Mediation Guidelines and Ground Rules and the attached Agreement to Mediate may participate in the mediation. You must confirm that you are alone in the room and that you cannot be overheard by anyone else around you. Please find a separate room for attending the mediation.

All participants and attendees in this mediation, including every person who may participate by telephone, video, e-mail, text, or other means, agree that all communications related to the mediation, and all negotiations and settlement discussions, communicated in any medium, are private and confidential.

7. Absolute Prohibition on Recording: You, or anyone on your behalf, may NOT audio or video record any mediation session(s) or portion thereof. In the event that you learn of an audio or video recording of any session, you shall take immediate measures to destroy the recording and will not disseminate the recording to third parties. You further agree that you will not transmit a live or deferred video or audio relay of the online mediation session(s) to third parties.

BEST PRACTICES AND TROUBLESHOOTING

8. Interruption Free Zone: You agree to take all reasonable measures to ensure that you are not interrupted during your online mediation sessions while I am in the room. This includes arranging for appropriate childcare, notifying family and friends of your unavailability, and making appropriate scheduling choices. You also agree to refrain from answering phone calls and responding to texts or emails while I am in the room.

9. Technology Hiatus: Except for the computer or mobile device upon which you are conducting your online mediation session, you agree to turn off or put on silent any phones, tablets or computers and disable any alert announcements and/or texts for the duration of your online mediation sessions. Further, you agree to refrain from the use of social media, email and/or internet search engines, other than as may be necessary to conduct the session, during your online mediation sessions.

10. Early Log On: Whenever possible, log on to the scheduled mediation session no less than five minutes in advance of the scheduled start time so that any technology issues can be resolved, and your mediation session can start on time.

11. Waiting Room: To preserve the neutrality of your mediator under all circumstances, you will enter the meeting each time you log on in 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 your mediator.

12. Respectful Online Communication: Due to the nature of the online forum, it is especially important to allow each participant to finish their comments or statements before responding. The audio portion of the technology will only allow one person to talk at a time. 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 non-verbal cues, so it is important to verbalize all communication during an online mediation session.

ACKNOWLEDGED AND AGREED:

We have read the Agreement to Mediate and Online Mediation Guidelines and Ground Rules thoroughly and understand their contents and meaning. We agree to the terms of this mediation and the Online Mediation Guidelines and Ground Rules.

Signature

Date

Attorney

Date

Signature

Date

Attorney

Date

Signature

Date

Signature

Date

Signature

Date

Alva Escarzaga Miller

Date