

SAMPLE AGREEMENT TO MEDIATE

This is an Agreement between _____ and _____ as "participants," and _____, as "mediator," to enter into mediation with the intent of resolving all issues regarding _____'s and _____'s anticipated separation and/or divorce.

The participants and the mediator understand and agree as follows:

1. Nature of Mediation

The participants hereby appoint and retain _____ as mediator for their negotiations. The participants understand that mediation is an agreement-reaching process in which the mediator assists participants to reach agreement in a collaborative, consensual and informed manner. It is understood that the mediator has no power to decide disputed issues for the participants. The participants understand that the mediator's objective is to facilitate the participants themselves reaching their best agreement. The participants also understand that the mediator has an obligation to work on behalf of all participants and that the mediator cannot render individual legal advice to any participant and will not render therapy nor arbitrate within the mediation.

The participants also understand that mediation is not a substitute for independent legal advice. The participants are encouraged to secure independent legal advice throughout the mediation process and are strongly advised to obtain independent legal review of any formal mediated Agreement before signing that Agreement. The mediator may come to require one or both participants to have their agreement reviewed by legal counsel to ensure that a participant is reaching a reasonably informed agreement. The participants agree that, even if the mediator is an attorney, the mediator will not serve any participant, nor all participants, as legal counsel, nor render individual legal advice in this mediation.

2. Scope of Mediation

The participants understand that it is for them, with the mediator's concurrence, to determine the scope of the mediation and this will be accomplished early in the mediation process.

3. Mediation is Voluntary

All participants here state their good faith intention to complete their mediation by an agreement. It is, however, understood that any participant may withdraw from or suspend the mediation process at any time, for any reason or no reason.

The participants also understand that the mediator may suspend or terminate the mediation, if the mediator feels that the mediation will lead to an unreasonable result, if the mediator feels that an impasse has been reached, or if the mediator determines that he or she can no longer effectively perform his or her facilitative role.

4. Confidentiality

It is understood between the participants and the mediator that all mediation communications will be strictly confidential. Mediation discussions, be they in person, on the phone, by email, text or by any other communication modality, any draft resolutions and any unsigned mediated Agreements shall not be admissible in any court, administrative or other contested proceeding. Only a mediated Agreement signed by any participants may be so admissible. The participants further agree to not call the mediator to testify concerning the mediation nor to provide any materials from the mediation in any court or other contested proceeding between the participants. The mediation is considered by the participants and the mediator as settlement negotiations. All participants also understand and agree that the mediator may have private caucus meetings and discussions with any individual participant, in which case all such meetings and discussions shall be confidential between the mediator and the caucusing participant. All participants also understand that the mediator will need to report any serious or imminent threats of harm or abuse.

5. Mediator Impartiality and Neutrality

The participants understand that the mediator must remain impartial throughout and after the mediation process. Thus, the mediator will not champion the interests of any participant over another in the mediation nor in any court or other proceeding. The mediator is to be so "impartial" as to participant and "neutral" as to the results of the mediation. The mediator will seek to affirmatively reveal any operative biases and will disclose any and all prior contacts with the participants and their legal counsel.

6. Mediation Fees

The participants and the mediator agree that the fee for the mediator shall be \$_____ per hour for time spent with the participants and for time required to study documents, research issues, correspond, telephone call, prepare draft and final Agreements and do such other things as may be reasonably necessary to facilitate the participants reaching full Agreement. The mediator shall also be reimbursed for all expenses incurred as a part of the mediation process.

A payment of \$_____ toward the mediator's fees and expenses shall be paid to the mediator along with the signing of this agreement. Any unearned amount of this retainer fee will be refunded to the participants. The participants shall be jointly and severally liable for the mediator's fees and expenses.

As between the participants only, responsibility for mediation fees and expenses shall be: _____.

It is so agreed.

DATED this ___ day of _____, 2014