

## AGREEMENT TO MEDIATE

This is an agreement the signatories of this agreement (referred to as “the parties” in this agreement) and Our Family Mediator, LLC, (referred to as “the mediation company”), through which the mediator is employed. The parties have entered into mediation with Our Family Mediator, LLC (and not directly with the mediator) with the intention of reaching a consensual settlement of their separation and divorce related issues. The provisions of this agreement are as follows:

1. We agree that Our Family Mediator, LLC, shall be paid the amount of \$200 per hour for all work performed while mediating with the parties, including but not limited to document review and preparation and meetings with the parties. The parties agree that telephone calls and emails to and from the parties will be billed at the minimum rate of 0.2 hours. Although Our Family Mediator, LLC attempts to promptly return all telephone calls from the client, telephone calls to this office may not be returned for up to three (3) business days or longer, depending on the mediator’s time, availability, etc. Time will be billed at \$400.00 per hour for service after hours, holidays, weekends or scheduled attorney vacations, unless otherwise agreed in advance. Travel time over one-half hour will be billed at her normal hourly rate. For parties appearing with counsel, Our Family Mediator, LLC will review any and all documents provided to it ahead of the mediation session (one time only) for up to ½ hour for free. Any review or research that goes beyond the initial ½ hour will be billed at the normal hourly rate of \$200/hr. The parties agree that \_\_\_\_\_ shall pay \$ \_\_\_\_\_ hour and \_\_\_\_\_ shall pay \$ \_\_\_\_\_ per hour.

2. Our Family Mediator, LLC is a neutral facilitator who will attempt to assist the parties to reach their own settlement. The mediator will not make decisions about “right” or “wrong” or tell the parties what to do.

3. Although the mediator has a background and education in law and may provide general legal information, she is acting as a neutral in this case, not as an attorney and cannot and will not represent either party. Our Family Mediator, LLC does not offer legal advice nor provide legal counsel. Each party is advised to retain his/her own attorney in order to be properly counseled about his/her legal interests, rights and obligations. If appropriate, the mediator may express opinions on legal and factual issues, but the parties will only rely on their lawyers for legal advice. Neither opinions by Our Family Mediator, LLC or the Mediator, nor the conduct of Our Family Mediator, LLC or the mediator constitutes the practice of law.

4. Mediation is a voluntary and non-binding process of dispute resolution. The purpose of mediation is to attempt to compromise, settle or resolve disputed claims between the parties. Mediation is also not psychotherapy or counseling, nor is it intended to replace such services. Rather, mediation is the distinct professional practice of alternative dispute resolution. This is solely the service provided by Our Family Mediator, LLC. The parties are entitled to receive information about their mediator’s background and training, and are encouraged to discuss any aspect of the nature of mediation or the services provided by Our Family Mediator, LLC, prior to the beginning the mediation.

5. It is understood that in order for mediation to work, open and honest communications are essential. The parties agree that all proceeds in connection with this mediation shall be subject to C.R.S. §13-22-301, et. seq. Accordingly, all written and oral communications, whether in made in preparation of the mediation, or during the mediation session, or associated with the mediation, and negotiations and statements made in the course of mediation, will be treated as privileged settlement discussions and therefore inadmissible in the parties litigation proceedings. Additionally, all notes, flip charts or other demonstrative aids created by Our Family Mediator, LLC during the mediation process are absolutely confidential. Notes taken by Our Family Mediator, LLC, include impressions to solely assist the mediator in future mediation and are not available to others under any circumstances. Therefore:

a. Our Family Mediator, LLC will not disclose or produce to any party outside the mediation any such information, and will not do so unless 1) both parties consent and 2) in its sole judgment and discretion, it believes it advances the cause of the mediation process. However, it is understood that the mediator is not required to maintain confidentiality if it has a reason to believe that a child is in need of protection or if any party is in danger of bodily harm.

b. The parties agree that they will not at any time, before, during, or after mediation, call the mediator or anyone associated with the office, as witnesses in any legal or administrative proceeding concerning this dispute. To the extent that they may have a right to call the mediator or anyone associated with Our Family Mediator, LLC as a witness, that right is hereby waived.

c. The parties agree not to subpoena or demand the production of any records, notes, work product or the like of the mediator for any purpose, including, but not limited to, any legal or administrative proceeding concerning this mediation. To the extent that they may have a right to demand these documents, that right is hereby waived.

d. If, at a later time, either party decides to subpoena the mediator, the mediator will move to quash the subpoena. Further, the party issuing the subpoenas shall reimburse the mediator for whatever expenses he incurs in such an action (including reasonable attorney fees) plus \$300 per hour for all mediator time (including court time and preparation) required in addressing the matter. The mediator shall not be required to provide a declaration or finding as to a fact or issue relating to the mediation proceedings or the dispute which is the subject of said mediation proceedings. The Mediator shall not be liable to any party for any act or omission in connection with the mediation proceedings conducted pursuant to this Agreement.

e. Once the mediation session or sessions are complete, Our Family Mediator, LLC has no further obligation to keep or store any documents associated with the mediation session(s), and as such may destroy all documents associated with the mediation session as she sees fit.

f. This Agreement may be executed in any number of counterparts which when taken together shall constitute one fully executed Agreement. This Agreement when so executed shall inure to the benefit of and be binding on the undersigned parties as well as their respective representatives or other persons they have caused to be present during these mediation proceedings.

g. As a sole exception to the above provisions, however, this Agreement to Mediate and any written agreements or documents made and signed by the parties as a result of mediation, including the parties' Memorandum of Understanding, may be used in any relevant proceeding, unless the parties make a written agreement not to do so.

h. The parties acknowledge and understand that the confidential nature of mediation may be breached by having a third party (other than counsel or staff) in the room. The parties acknowledge that they have been informed of this issue, and are solely responsible for any outcomes associated with allowing non-counsel third-parties into the mediation session.

6. It is understood that full disclosure of all relevant and pertinent information is essential to the mediation process. Accordingly, there will be complete and honest disclosure by each of the parties to the other and the mediator with all information and documentation that usually would be available through the discovery process in a legal proceeding. If either party fails to make such full disclosure, the agreement reached in mediation may be set aside. Additionally, the parties agree that the mediator will have full access to all reports or other pertinent documents, whether sealed or not. These documents may include CFI reports, medical or mental health reports, or other evaluations. Moreover, the parties agree that the mediator may review any sealed records, Child and Family Investigator reports, or PRE reports, along with any other documents in the court's file, and that the mediator may communicate directly with anyone directly involved with the minor children, as part of the mediation session(s).

7. Although both parties intend to continue with mediation until a settlement agreement is reached, it is understood that either or both parties may withdraw from mediation at any time. Parties may obtain or consult with counsel at any time during the process or have counsel review any written stipulations or any other documents they deem fit. They may also consult outside counsel or experts at any time during the process. The parties may bring third parties to the mediation subject to agreement of the other parties and agreement of the mediator. However, by doing so, they may breach the confidentiality of the process, and the mediator reserves the right to tell anyone other than counsel or the parties to leave the mediation session(s).

8. The parties acknowledge the mediator has discussed how mediation of issues relating to dissolution related or parenting disputes often raises difficult and emotionally charged issues and concerns. The parties agree that the mediator shall have the right in it's sole discretion at any time to postpone or terminate a scheduled mediation session (including sessions that have commenced but not concluded) or the entirety of the mediation, because of the mediator's belief that moving forward at that time or continuing the mediation generally would not be productive, constructive or likely to result in a reasonable agreement, or because of the mediator's belief that the parties are unable or unwilling to participate meaningfully in the mediation process. The parties understand that this may require rescheduling a court appearance or other event requiring the completion of the parties' work in mediation.

9. When an agreement is reached, the mediator will, at the request of the parties, prepare a Memorandum of Understanding, and perhaps an Order and Child Support Worksheet setting forth that Agreement. Each party is advised to review this with his/her own attorney before the agreement is placed in final form and signed. Each party agrees that (with or without the assistance of counsel or other advisors) they will make all the decisions with regard to any final agreements reached, and be solely responsible for the decision reached in mediation.

10. The mediator will not be responsible for filing any documents with the court, or returning the Orders to the parties, unless agreed to by the parties and mediator in writing. Additionally, the mediator will not prepare any Qualified Domestic Relations Orders (QDRO), or Domestic Relations Orders (DRO), nor will it be responsible for filing these documents with the participant's plan, or at any other address. Parties or their counsel shall file the QDRO and/or DRO, or any other document used to divide a pension/retirement plan with the proper authorities to ensure that the plan is divided pursuant to court order.

11. The parties understand that unless Our Family Mediator, LLC receives explicit instructions that it may not convey certain information to any other parties, it may convey the information as it sees fit to any other parties involved in the mediation.

12. We further agree that Our Family Mediator, LLC will be paid for a minimum of two hours total time, regardless of whether we use this time or not. Each party shall be responsible for one-half of the two hours in the event it is not entirely used, unless they otherwise agreed above in this document. This minimum charge is made in lieu of travel time. Any work done by the paralegal will be billed at the rate of \$75.00 per hour.

13. We understand that this fee applies to all time spent by Our Family Mediator, LLC in assisting us in mediation, including by way of example: individual and joint mediation sessions; telephone calls and for other than scheduling purposes; preparation of documents, including drafting and revision to our agreement (the Memorandum of Understanding) and related court appearance documents; compilation of tax or pension analysis materials for our consideration with our advisors; and other related activities. In addition, we agree to pay for other mediation related expenses such as long-distance calls and photocopying materials.

14. If we need to change a scheduled appointment time, we agree to give the mediators at least 48 hours notice. If we fail to do so, we agree to pay for the scheduled time, not to exceed two (2) hours. If either of us does not appear for a scheduled appointment without having proved the 48 hour notice, and our co-disputant does appear, we agree to be responsible for the other's share of the mediation fee as well.

15. We understand that all fees will be paid at the conclusion of each session, and at the again at the time of delivery of documents. Our Family Mediator, LLC will discuss with us an estimate of special projects and of required drafting time prior to beginning this work. We understand that mediation and drafting may be postponed until these fee arrangements can be fulfilled by us.

16. We agree, in the event of our breach of this Agreement, to pay for all costs of collection, including reasonable attorney's fees incurred by Our Family Mediator, LLC. Interest shall accrue from date of service at 1.5% per month from the date of service.

We have read, understood, and agree to each of the provisions in this agreement.

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Name:	Date
Social Security Number:	
DOB:	

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Name:	Date
Social Security Number:	
DOB:	