

## **Agreement to Mediate**

### Southwest Virginia Mediations Agreement to Mediate

Style of case: \_\_\_\_\_

The Parties agree to mediate one or more disputes which now exist between them. The Mediation will be conducted by a trained Neutral of Southwest Virginia Mediations with the agreement of all parties under the following terms:

1. Mediation is where the parties to a dispute retain the services of a neutral person known as "Mediator" to assist them in determining whether an agreed resolution can be reached without having to proceed with, or resort to, contested litigation before a judge or jury.
2. The Mediator does not have any authority to decide the issues in this case, but works with the parties and their attorneys to discuss options that may enable the parties to resolve the issues themselves.
3. The Mediator is not a legal adviser to the parties, nor is the Mediator a fact-finder. The Mediator is a trained Neutral who has experience in resolving complex legal and factual issues, and will work with the parties and their counsel to attempt to find a mutually agreed resolution of their dispute.
4. The Mediator may meet with the parties and/or their counsel in caucus outside the presence of the other parties and/or their counsel.
5. At the request of the parties, the Mediator may provide an evaluation of the factual and legal issues in the case, which evaluation will be made available for consideration by the parties and their counsel. The parties agree that such an evaluation is not legal advice, and that they will rely solely upon the advice of their attorneys for legal advice.
6. Any draft agreement or any document is prepared by the parties, and/or their counsel. The parties agree to have the document reviewed by their counsel and to be advised by their counsel as to the validity and/or acceptability of any agreement.
7. It is agreed between the parties who have engaged Southwest Virginia Mediations that no Mediator supplied by it may be compelled to appear on behalf of any party at any judicial, regulatory or administrative proceeding. Furthermore, it is agreed that:
  - a) Southwest Virginia Mediations shall not be required to preserve any documents it may have received or generated in connection with any of the mediation process.
  - b) Unless the parties agree in writing to the contrary, the settlement agreement, or other agreement reached as a result of the mediation, shall not be confidential.
8. All information relating to the Mediation, except for a final agreement, shall be confidential except:

a) where all parties to the Mediation agree, in writing, to waive the confidentiality;

b) in subsequent action between the Mediator or Mediation program and a party to the Mediation for damages arising out of the Mediation;

c) 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;

d) where a threat to inflict bodily injury is made;

e) where communications are intentionally used to plan, attempt to commit, or commit a crime or conceal an ongoing crime;

f) where an ethics complaint is made against the Mediator, to defend against such complaint;

g) 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 Mediation;

h) where communications are sought or offered to prove or disprove any of the grounds listed in Va. Code § 8.01-581.26 in a proceeding to vacate a mediated agreement;

i) as provided by law or rule.

9. Notwithstanding the provision of paragraph 8, in any case where the dispute involves support of the minor children of the parties, financial information used to calculate child support, including information contained in the child support guidelines worksheet, may be disclosed by the parties to a court of competent jurisdiction for the purpose of computing a child support amount pursuant to Va. Code § 20-108.2.

10. There shall be no stenographic transcript or any recording made during the Mediation session.

11. Southwest Virginia Mediations agrees to provide the services of Jonathan M. Apgar, Esq. as the Mediator in this case. The Mediator's fee is \$200.00 per hour.

12. There will be a four (4) hour minimum charge for each mediation. Any travel time in excess of one (1) hour will be charged at the rate of Fifty Percent (50%) of the Mediator's hourly rate, plus any accommodation expenses necessitated by travel.

13. When the date of a Mediation session has been scheduled by Southwest Virginia Mediations, if this session is canceled by one or more of the parties, the four-hour deposit is non-refundable if the cancellation occurred less than seven days prior to the session.

14. The Mediator's hourly rate will be charged for all of the time (excluding one (1) hour of travel time) required for the Mediator to perform his activities including, but not limited to, review of the parties' submissions prior to the mediation session, mediation sessions, post-mediation, time for subsequent conference calls (as needed), and the preparation of any decision requested by the parties.

15. Unless agreed otherwise, the mediation or arbitration fee shall be apportioned equally among the parties.

16. If any party is represented by an attorney, the attorney's firm shall be responsible for advancing to Southwest Virginia Mediations the amounts generated by this agreement.

17. All invoices for professional services rendered shall be due and owing upon presentment.

18. If the parties desire Southwest Virginia Mediations to provide venue for the mediation session and/or other services, such will be provided, and the parties, if requested, will advance appropriate funds prior to mediation session.

\_\_\_\_\_  
Printed Name of Party

\_\_\_\_\_  
Printed Name of Party

\_\_\_\_\_  
Signature of Party

\_\_\_\_\_  
Signature of Party

Date: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Counsel

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Signature of Counsel

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Printed Name of Counsel for Party

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Printed Name of Counsel for Party

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Address of Counsel

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Address of Counsel

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Email address

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Email address

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Telephone/Fax

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Telephone/Fax

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ACCEPTED:

SOUTHWEST VIRGINIA MEDIATIONS

By: \_\_\_\_\_

Date: \_\_\_\_\_