

AGREEMENT TO MEDIATE

On this date: _____, this Agreement is entered into between the parties (PARTY 1) and (PARTY 2) _____ as it is their desire to use mediation in an effort to reach a resolution to their disputed issues quickly and economically.

1. Role of the Mediator. The parties appoint Elizabeth Yarbrough, Attorney at Law/Tennessee Supreme Court Rule 31 Listed Mediator, as their non-binding mediator. The Mediator shall not serve as the mediator in any dispute in which she has a personal or financial interest and by accepting this appointment, warrants that no such circumstances exist. Prior to accepting this appointment, the Mediator shall disclose any circumstances likely to compromise her ability to function as a neutral between the parties. Likewise, should the parties have any knowledge of a potential conflict of interest or any facts that would indicate a potential bias on the part of the Mediator, the party or parties with this knowledge shall promptly disclose this information in writing to each other and the Mediator.

Additionally, the parties understand and acknowledge that the Mediator will not act as an advocate or attorney for either of the parties, but that she will act solely as an advocate for settlement. The parties are entitled to counsel with their attorneys at any time and to have their attorneys present with them during the mediation sessions should they so desire.

2. The Mediation Process. The parties understand that the Mediator does not have the authority to decide any issue for the parties not to impose any settlement in their case, but that the Mediator will attempt to facilitate the voluntary resolution of any disputes

the parties have. The Mediator does not warrant or represent that any settlement will result from the mediation process.

The Mediator is authorized to conduct joint and separate meeting with the parties and to offer suggestions to assist the parties achieve settlement. If necessary, the Mediator may also obtain expert advice concerning technical aspects of the dispute provided that all parties agree and assume the expenses of obtaining such advice. Arrangements for obtaining this type of advice shall be made by the Mediator or the parties, as shall be decided by the Mediator.

3. Law. The parties and the Mediator agree to be bound by the law of the State of Tennessee with regard to this mediation and all issues raised therein. They also specifically agree not to be bound by the evidentiary and procedural laws, and by way of clarification and not limitation, the Rules of Procedure and Evidence shall not be applied.

4. Record. The parties agree that there shall not be a record or transcript made of the proceedings. Mediations that occur remotely shall not be recorded by any party or by the Mediator.

5. Issues. The parties agree that the issues presented in the parties affidavits, pleadings, and through statements of counsel and witnesses will be submitted to mediation prior to a trial on the issues.

6. Reservation of Right to Trial. No party shall be bound by anything said or done at the mediation unless a written settlement is reached and executed by all necessary parties. If a settlement is reached, the agreement shall be reduced to writing in letter form by the Mediator and in legal form by counsel for the parties. Each of the

parties expressly agrees that they reserve their right to a trial in the event they are unable to reach a settlement of their issues.

7. Mediation Time and Place. **Effective April 1, 2020, all mediation sessions shall be conducted remotely. All remote mediations shall occur using the Zoom video conference platform. The Mediator shall host the Zoom meeting and shall provide an invitation to all participants via email prior to the mediation session. The session will be password protected and locked after all participants have logged on. Each participant shall ensure that they have a reliable and secure internet connection as well as a private room in which to participate in the mediation, where others are unable to overhear the proceedings, especially the children of the parties. Each participant shall provide the Mediator with their cell phone number, so that they may be reached in case of any technology failure that disrupts a participant's connection. The Mediator may be reached by phone at (901) 264-9680.**

All in person mediation sessions shall be held at the office of Elizabeth Yarbrough Family Law and Mediation, located at the 9040 Garden Arbor Drive, Suite 203, Germantown, TN 38138, at a time agreed to by the parties and the Mediator prior to the commencement of the proceedings, unless otherwise agreed by all participants and confirmed in writing. In person mediations will resume when the recommendations of the CDC regarding COVID19 do not include limiting in person contact with members outside one's own household, and/or at the discretion of Elizabeth Family Law & Mediation.

As the mediation process is a voluntary one, it may be terminated at any time by either party or by the Mediator, however the undersigned participants acknowledge that a good faith effort is encouraged by the Mediator's two (2) hour minimum fees.

8. Mediator's Fees and Costs. There shall be a two (2) hour minimum charge. Unless the parties have agreed otherwise, they shall be equally responsible for payment in full of the Mediator's fees and costs at the conclusion of the session. Each party, by executing this Agreement warrants that they have funds available to pay their half of the balance. It is not unusual for the mediation session to continue past the time when the Mediator has collected her fee for the session, and in that case, the parties shall receive a written statement itemizing the charges and crediting the parties for the amounts they paid at the end of the session. The resulting balance shall be due within ten (10) calendar days of receipt of the final statement.

The Mediator's time shall be billed at **\$250.00* per hour (or the applicable hourly rate if the parties have been approved for a reduced rate per the sliding scale) to be billed in minimum increments of one hour or a portion thereof.** Application for reduced fees per the sliding scale **must** be accompanied by income documentation from each party. Acceptable documentation includes W-2, 1099, K-1, last year's tax returns, previous year's end and current pay advice, sworn financial affidavit filed in the case or a recent child support worksheet approved by the Court. If, during the Mediation, the total family income is shown to be different than the income documentation provided to the Mediator to determine the sliding scale, the rate may be increased or decreased by agreement of all parties and the Mediator.

Nothing in this paragraph restricts the Court's right to reapportion the payment of the Mediator fees between the parties at a later date. Neither does anything in this paragraph restrict the Mediator's right to collect the entire bill from either or both parties, either jointly or severally. Further, if the Mediator must turn over this account for collection, then the parties agree to pay all costs of collection, including a reasonable attorney's fee.

Deposits shall be required five (5) days in advance of the mediation session. Each party shall deposit one half day's fees with the Mediator (\$1000.00 per party). This deposit shall be subject to a two-hour minimum charge for the session. Failure to timely pay the deposit five (5) days in advance will result in a modification of the time allotted for the mediation commensurate with the amount deposited, or rescheduling of the mediation at the discretion of the Mediator. If a mediation session is canceled more than twenty-four (24) hours in advance of the mediation, the entire deposit shall be promptly refunded. If mediation is canceled with less than twenty-four (24) hours' notice, a two-hour cancellation charge will be retained by the Mediator. The two-hour payment is available to be applied in full to a future mediation within sixty (60) days.

9. Interest and Late Charges. Accounts not paid in full are charged a ten (10) percent annual interest as well as a monthly \$10 late fee.

10. Expenses. Reasonable expenses incurred in mediation shall be the responsibility of each party. There is no charge for documents created at mediation to memorialize the settlement, however other copies are billed at .25 per page. Online notary fees shall be the responsibility of the parties.

11. Returned (NSF) Checks. Should a party pay with a check that is returned NSF or Stopped or otherwise not collectible, it shall be the responsibility of the party paying with said check to provide immediate payment for the face value of the check plus any fees charged to Elizabeth Yarbrough by the bank. No checks are accepted for remote sessions.

12. No Weapons. Neither party shall be permitted to carry or possess any weapons of any kind at mediation.

13. Confidentiality and Privacy. Mediation is a confidential process.

Any documents submitted to the Mediator and statements made during the mediation are for settlement purposes only. The parties agree not to request nor subpoena the Mediator nor any document prepared by or submitted to the Mediator during the mediation process. However, nothing in this paragraph is meant to restrict the use of documents prepared by that party at the trial of his or her cause.

Additionally, the parties agree that they shall not, in any judicial, arbitral or other proceedings, rely upon any of the following:

- (A) any views expressed or suggestions made by another party with respect to a possible settlement of the dispute;
- (B) admissions made by another party in the course of the mediation proceeding;
- (C) proposals made or views expressed by the Mediator;
- (D) the fact that another party had or had not indicated willingness to accept the proposal settlement made by the Mediator.

Further, the parties acknowledge that the mediation sessions are private. The parties and their representatives may attend mediation sessions. ***However, other persons may attend only with the permission of the parties and the consent of the Mediator. For remote sessions conducted via Zoom video conference the parties and counsel must ensure the privacy of the session in the rooms they are in, and are encouraged to use headphones to preserve privacy.***

Finally, the parties acknowledge that while the mediation process is a confidential and private one, the Mediator (and perhaps other participants) are in no way relieved of their mandatory obligation to report their knowledge or known or reasonably suspected child abuse or child sexual abuse as required by statute and applicable case law.

11. No Service of Process. The parties hereto agree that neither of them shall serve nor cause to be served any process of any nature at or near the location of the mediation upon any person attending or participating in the mediation.

IT IS SO STUIPULATED AND AGREED:

(SIGNATURE PAGE TO FOLLOW)

We, the undersigned, agree to the terms of the Mediation Agreement:

PARTY1

PARTY 2

CELL PHONE: _____

CELL PHONE: _____

I authorize charges to this account:

I authorize charges to this account:

Credit Card Acct#

Credit Card Acct#

Expiration

Expiration

NAME ON CARD

NAME ON CARD

Billing Address Street

Billing Address Street

City/State/Zip

City/State/Zip

Three digit code

Three digit code

Counsel for _____

Counsel for _____

CELL PHONE: _____

CELL PHONE: _____

Mediator

SLIDING SCALE APPROVED: _____
Rate: \$_____ per hour (\$_____ per hour per party)

Mediator direct dial/text: (901) 410-3630

***Sliding Scale Fee Schedule is available based upon the combined family income as shown on the child support worksheet, including any imputed income. Income must be verified in order to receive a reduced rate.**

CLIENT INFORMATION—MEDIATION

Full Name: _____

COMPLETE MAILING ADDRESS (Include City/State/Zip):

Cell Phone: _____ Email: _____

Name of Attorney (If Represented): _____

Attorney Phone: _____ Attorney Email: _____

Court in which your case is pending: _____

Docket Number: _____

Trial Date (if any): _____

Are there allegations of domestic violence by either party?

Are there any order(s) of protection or injunctions in effect that limit the parties' ability to be around one another or the children? _____ (If yes, please provide a copy of the order prior to the mediation.)

Are you prepared to make a final decision and enter into a written agreement resolving your matter today, if the mediation process results in an agreement?

_____ Yes _____ No

Is there a time or financial constraint that requires that we end the session at a certain time?

_____ Yes, I will only be available until _____ (TIME) _____ NO

Do you have a private room in which to participate in remote mediation without being overheard by others? _____ Yes _____ No

Do you have a secure and reliable internet connection for remote mediation?

_____ YES _____ NO