

AGREEMENT TO MEDIATE

We, the parties, understand and agree that:

General Provisions:

- The Court has referred this matter to mediation. Mediation is a confidential process by which a neutral mediator assists the parties in reaching a mutually acceptable agreement. The role of the mediator is to assist in identifying the issues, reducing misunderstanding, clarifying priorities, exploring areas of compromise, and finding points of agreement as well as legitimate points of disagreement. Through mediation, parties try to resolve their disagreements, but any agreement reached by the parties must be voluntary.
- Mediation may be conducted in person or remotely (remote mediation is discussed more fully below). If in person, no mediation party, attorney, or anyone attending the mediation may bring any weapons, including guns, knives (even pocketknives) or any objects that could be used to injure or harm someone.
- The mediator is a neutral and impartial intermediary who has no personal interest in the matter and will do their best to assist the parties without bias. The primary purpose of the mediator's services is to assist the parties to reach a mutually acceptable resolution of their dispute. The parties understand that the mediator is not obligated to identify or resolve legal issues, whether or not raised by the parties in the course of the mediation.
- The mediator may not act as an advocate or attorney for any party. Regardless of whether the mediator is an attorney, the mediators will not be acting as a lawyer nor giving legal advice to the parties, although the mediator may, as necessary, explain applicable Indiana law.
- The parties are encouraged to have legal counsel or a support person present at the mediation, if that would be helpful to them. Further, if the parties want to enter into a settlement agreement through mediation, the parties may have the settlement agreement independently reviewed by legal counsel before signing or executing the agreement. The parties understand that they may be waiving or compromising legal rights by settlement of their dispute and their claims. They further understand that they may not rely on the mediator for any legal advice.
- Any agreements or decisions resulting from this mediation session must be entered into voluntarily and by agreement of the parties.
- Open, honest communication and a serious effort at compromise are necessary for successful mediation.

- We understand and agree that confidentiality in mediation is required by Rule 2.11(A) of the Indiana Rules of Alternative Dispute Resolution. Accordingly, we understand and agree:
 - The mediator will not testify about or otherwise disclose to the court in this matter what is discussed in mediation. The mediator, however, must report to the appropriate authority previously unreported child abuse or neglect (child protective services or law enforcement); or a crime involving bodily injury that is about to be committed (law enforcement); or abuse, neglect, or exploitation of an adult who is suffering from a physical or mental incapacity (adult protective services). If a report is made, the mediator will disclose all information needed by the appropriate authority for them to take any necessary action or to make any necessary assessment. In this event, the mediation will be terminated.
 - Negotiations are confidential and we agree not to call the mediators as a witness in any case concerning the subject matter of the mediation. This requirement of confidentiality may not be waived by any party or the mediator.
 - Discussions in the mediation may not be used as evidence in any case concerning the subject matter of the mediation. This means that the fact that matters are discussed in mediation are confidential; however, the matters in dispute are not confidential and will likely be addressed at any hearing if the case is not settled. Addressing a matter during mediation will not make the matter confidential – what is confidential is the fact that it was addressed in mediation, or how it was addressed in mediation.
- The parties may agree to settle all or part of their dispute. For a settlement agreement to be binding and enforceable, however, all agreed provisions must be put in writing and signed by each party (and any attorneys), and the Court must also approve the agreement.
- Any written agreement reached by the parties as a result of this mediation will be submitted to the Court, with the report of the mediator (advising whether or not the parties have reached agreement in full or in part and/or completed their mediation). The parties understand that any documents prepared in the course of the mediation will only be those that are necessary to record the parties' agreement, for the Court's review and approval. The mediator's preparation of documents is not for the purpose of giving legal advice. The parties also understand that any agreement signed by the parties constitutes evidence that may be introduced in litigation.
- The mediator may terminate the mediation at any time because of an impasse, or if for any reason the mediator deems it improper, unproductive, or unconscionable to continue. The mediator, in their discretion, may disclose or decline to disclose the reason for terminating the mediation to the parties (and any attorneys).

- The parties understand and agree that the mediator shall have immunity in the same manner and to the same extent as a judge in the State of Indiana. Each party agrees that any attempt to challenge this immunity in any proceeding shall entitle the mediator to a judgment against the party asserting the challenge for the amount of any resulting judgment plus all reasonable attorney fees, court costs, and all other expenses incurred by the mediator as a result of the challenge.
- Each party has received an unsigned copy of this Agreement to Mediate for their records.
- If a party is accompanied by a support person at the mediation, the support person must agree to the confidentiality provisions and adhere to the ground rules set forth by the mediators. We agree to notify the mediator in advance if we intend to bring a support person.
- By signing this Agreement to Mediate, each party entitled to service of documents filed with the Court is consenting to e-mail or e-filing service of any documents filed in this matter by the mediator. Any party who does not have an e-mail address should indicate this in the space provided immediately below the signature lines to this Agreement to Mediate by filling in the party's name so that the mediator does not serve that party through e-mail or e-filing service.

Confidentiality with Remote Mediation:

- We understand that anyone participating in a remote mediation session will be identified and introduced at the start of the session.
- We understand that the mediator will abide by Indiana's mediation confidentiality requirements and believes that communications over Zoom or another platform will also be confidential. However, the mediator is unable to make a guarantee of that confidentiality on behalf of the provider of the remote communication services.

No Recording or Photographs Permitted during the Remote Mediation Process

- We understand that the mediator will not be recording any remote mediation session. This includes audio and/or visual recordings of participant discussions and any documents used or reviewed in the remote mediation sessions. This also includes photographs and/or screenshots of any materials used or reviewed.
- We also agree not to record any remote mediation sessions, including audio and/or visual recordings of participant discussions and any documents used or reviewed in the remote mediation sessions. This also includes photographs and/or screenshots of any materials used or reviewed.

- We further agree not to permit anyone else to record any mediation sessions, including audio and/or visual recordings of participant discussions and any documents used or reviewed in the remote mediation sessions. This also includes photographs and/or screenshots of any materials used or reviewed.

Disclosure of who is Present during the Remote Mediation Process / Prohibition Against Undisclosed Individuals in the Remote Mediation Process

- We understand, as provided above, that the identity of anyone who is present during the remote mediation process will be disclosed.
- We also agree to disclose any individuals who are present with each of us during the remote mediation process, e.g., an attorney or a support person (who was previously disclosed). We understand that mediation is a confidential process, so only the mediator, parties, attorneys, and support persons may be present with each of us. We understand that children are not allowed to be present or to hear any mediation discussions.
- We understand that the mediator will decide whether to conduct remote mediation sessions with everyone participating together on the communications platform, or to speak individually and privately with each of us, or to do a combination of either. We further understand that the same disclosure rules set forth in the paragraph immediately above will apply if the mediator asks to speak privately with each of us, i.e., we will not permit any undisclosed person to be present with us or to hear what is being said in private meetings during the remote mediation process.

Parties' Agreement:

Petitioner

Respondent

Date signed: _____

Date signed: _____

DELETE ONE OR BOTH OF THESE LINES IF NO ATTORNEY(S). If only one attorney, line up under their client.

Attorneys' Agreement:

[insert name of attorney, attorney for
Petitioner]

[insert name of attorney, attorney for
Respondent]

Date signed: _____

Date signed: _____

Other Participants' Agreement as to Confidentiality:

[insert name]

[insert name]

Date signed: _____

Date signed: _____