

## Agreement to Mediate

**My Responsibility as a Party:** I will participate in good faith: with honesty, openness and fairness. My judgment and ability to engage in mediation are not impaired in any way. I will make a sincere effort to describe my perspective and to understand the views of others. I will share all relevant information and documentation necessary. *In divorce or child support related cases, this disclosure may include assets, income, liabilities and expenses.* I am here voluntarily and know that I may withdraw at any time.

**Mediator's Style/Approach:** Mediators facilitate important conversations. They reduce obstacles to communication, help identify the topics, maximize the ideas for ways forward, and assist with finalizing plans. They will not take sides and will not offer opinions on the merit of the claims or the likely judicial outcome. Mediators help explore options and the strengths and weaknesses of ideas; however, they will not tell parties what to do. Mediators may stop the mediation if any party fails to participate in good faith (*e.g., failure to reveal information or produce supporting data, undue pressure, or unfair advantage, etc.*).

**Legal Implications:** Mediators do not give legal advice. A signed mediation agreement is enforceable in the same manner as any other written contract. Each party is encouraged to consult with independent legal counsel at any time. Any mediated agreement may affect the legal rights of the parties. Each party to the mediation should have a draft agreement reviewed by independent counsel before signing the agreement.

**Confidentiality:** All memoranda, work products and other materials contained in the case files of a mediator or mediation program are confidential. Any communication made in or in connection with the mediation, which relates to the controversy being mediated, including screening, intake, and scheduling a mediation, whether made to the mediator, mediation program staff, to a party, or to any other person, is confidential. However, a written mediated agreement signed by the parties shall not be confidential, unless the parties otherwise agree in writing. *Confidential materials and communications are not subject to disclosure in discovery or in any judicial or administrative proceeding except:*

1. *where all parties to the mediation agree, in writing, to waive the confidentiality,*
2. *in a subsequent action between the mediator or mediation program and a party to the mediation for damages arising out of the mediation,*
3. *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,*
4. *where a threat to inflict bodily injury is made,*
5. *where communications are intentionally used to plan, attempt to commit, or commit a crime or conceal an ongoing crime,*
6. *where an ethics complaint is made against the mediator by a party to the mediation to the extent necessary for the complainant to prove misconduct and the mediator to defend against such complaint,*
7. *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 a mediation,*
8. *where communications are sought or offered to prove or disprove any of the grounds listed in § 8.01-581.26 in a proceeding to vacate a mediated agreement, or*
9. *as provided by law or rule.*

**Mandatory Reporting:** According to Virginia Code §63.2-1509, if mediators have reason to suspect that a child is abused or neglected, they must report the suspected abuse immediately. Therefore, the information about the abuse is not confidential.

