

## **AGREEMENT FOR MEDIATION**

This case has been referred to mediation, either pursuant to a court order or to an agreement of the parties. **Sarah Doke** has been designated as the mediator. Accordingly, it is AGREED as follows:

**Mediation Statement.** At least two days prior to the mediation, each party (through their attorney if applicable) is requested to provide the mediator with a short summary of the facts, the legal issues involved, and any prior settlement negotiations or offers. This will help the mediator proceed most efficiently and save the parties time and money.

**Mediation.** Mediation is a forum in which an impartial person, the mediator, facilitates communication between parties to promote reconciliation, settlement, or understanding among them. A mediator may not impose his own judgment on the issues for that of the parties. No one is asked to commit to settle the case in advance of mediation, but all parties agree to participate in good faith with the intention to settle if at all possible. *Referral to mediation is not a substitute for trial, and the case will be tried if not settled.*

**Scope.** The mediation shall cover the issues asserted in the parties' most recent pleadings filed in the above-referenced matter. At the mediator's sole discretion, the mediation can be expanded to include other issues, terms, or conditions. The parties agree that the terms of this Agreement shall apply to any actions taken by the Mediator relating to this matter.

**Mediator.** The party's consent to the appointment of Sarah Doke as mediator in their case. The parties acknowledge that although the mediator may be an attorney, in this matter she will serve as a neutral intermediary only. She will not act as an attorney or advocate for any party and will not give legal advice. Neither the mediator nor any law firm employing the mediator shall be liable to any party for any act or omission in connection with any mediation conducted under these rules.

**Rules.** This mediation shall be governed by this Agreement, Texas Civil Practices and Remedies Code §154.001, et. seq., and the Ethical Guidelines for Mediators promulgated by the Alternative Dispute Resolution Section of the State Bar of Texas.

**Parties.** Only parties and their attorneys are allowed to be present. If any party does not have an attorney, he or she acknowledges that there may be risks in proceeding without independent counsel or other professional advisors, and further acknowledges that the mediator has encouraged him or her to retain counsel. All parties represent and warrant that they have full authority to settle in this matter. Anyone wishing to have another person present may do so only with prior permission of the mediator. If necessary, the mediator may obtain expert advice concerning technical aspects of the dispute. If there are any costs for said advice, the parties will pay them.

**Legal Process.** No subpoenas, citations, writs, or other process shall be served at or near the location of any mediation session on any person entering, leaving, or attending any mediation session.

**Confidentiality During Mediation.** Each party shall specifically designate any information not to be disclosed to the other party, and the mediator shall comply with such requests.

**Communications.** The mediator is expressly permitted to meet privately with any of the parties or attorneys and to have such *ex parte* communications with any of the parties before, during or after the mediation as the mediator determines is necessary and appropriate.

**Impasse.** The mediator has the discretion to terminate the mediation at any time if she believes that an impasse has been reached, or that the mediation should not be continued for any other reason. The Court will be advised by the mediator only whether the case settled or not, or whether the mediation was recessed or was reset.

**Confidentiality Following Mediation.** All mediation sessions shall be private, confidential and privileged from discovery as provided by law. No one shall make any stenographic or electronic recording of any part of the mediation. The parties shall not rely on or introduce as evidence in any arbitration, judicial, or other proceeding (a) 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 proceedings; (c) proposals made or views expressed by the mediator; or (d) the fact that another party had or had not indicated willingness to accept a proposal for settlement made by the mediator. The mediator shall not be required to disclose any information revealed to her, including any documentation provided by any party, unless authorized by the parties or as otherwise required by law. Each participant agrees not to make any effort to compel any testimony or disclosure of any expenses of the mediation in resisting any such request by that party, including attorney's fees, court costs, and compensation for the mediator's time at her customary hourly rate, and shall provide a retainer in advance in an amount specified by the mediation, in her sole discretion.

**Exceptions to Confidentiality.** In certain instances, applicable law may require disclosure of information revealed in the mediation process. For example, the Texas Family Code may require a mediator to disclose child abuse or neglect to the appropriate authorities. The parties should consult their own attorneys if they have further questions.

**Confidentiality.** The mediator shall not be a witness, and the mediator's records may not be subpoenaed or used as evidence. If either party subpoenas the mediator or otherwise seeks disclosure of any information or documents from the mediator other than whether the case settled or not, that party will be responsible for payment of the mediator at her customary hourly rate, along with all expenses involved, and shall provide a retainer in advance in an amount specified by the mediator, in her sole discretion. Any information provided in the mediation shall be confidential as provided by law. Each party explicitly authorizes the mediator to disclose to the other persons participating at the mediation any information provided in the course of the mediation, unless that party specifically designates such information in advance.

**Fees.** The fee for a private mediation will be \$1,000 for a full day (8 hours), or \$500.00 for a half-day (4 hours), per party. If the mediation continues beyond this initial period, there will be an additional sum of \$125 per hour, per party, payable in advance or as otherwise specified by the mediator. These fees will be due by noon the day before the actual mediation. CPS and/or the county pays for CPS mediations.

**Agreement.** If an agreement is reached as a result of this mediation, it shall be reduced to writing. If the mediator assists in the preparation of that agreement, the parties acknowledge that her assistance is incidental to her services as mediator, and that she is not in any way acting as any party's attorney. Each participant should have the settlement agreement independently reviewed by their own counsel prior to executing it.

# **ELECTRONIC MEDIATION PROCEDURES**

## ***RULES FOR REMOTE MEDIATION***

1. Mediation is a **confidential** process. At the outset of mediation, each party shall identify any other person or persons who are in the room where the remote participant is located. Unless agreed by all counsel of record and approved by the mediator, no non-party may participate or be present during the mediation. An exception is made for participation of the spouse of any participant. Please see my standing rule set for an explanation of my position on this issue.
2. Recording, whether by dictaphone, recording machine, telephone, or any other digital or electronic means of capturing or making a record of the proceedings, is strictly prohibited. This prohibition includes accessing the “record” feature of Zoom. As the administrator and host of the electronic meeting, I will engage the “block recording” feature of Zoom when I set up the meeting and will get an instant message if a participant attempts to record the session.
3. All participants shall remain fully available to participate in the ongoing mediation once it is underway. The remote mediation process will not be a productive use of anyone’s time if someone cannot be reached as needed. I encourage all participants to set aside the scheduled mediation time as his/her exclusive focus, just as you would in an “in-person” setting.
4. If you anticipate using documents which you will refer to during the mediation, please provide me a digital copy of each such document at least 24 hours prior to the time set for mediation to convene.

## ***PROCEDURES FOR REMOTE MEDIATION***

1. Download the Zoom app on your iPhone or computer. Set up your account using your email address. If you are using your desktop computer, make sure that you have video capabilities.
2. If you and your client are going to be in separate locations, your client will also need to download Zoom, and will need to provide me with his/her email address or cell number.
3. I will then send you a meeting notice and invitation. You will click on the link I provide in the invitation, and, at the appropriate time, you will be able to join the meeting.
4. As a mediator, it is my responsibility to ensure the privacy and confidentiality of the mediation process. Our sessions will be a combination of joint sessions and separate sessions.
5. Once an agreement is reached, I will prepare the draft MSA and email it to both attorneys by PDF. We then use the same meeting process to receive and discuss edits to the proposed MSA from the attorneys.
6. At this point, I will email the revised “final form” MSA to all participants for signature via an app that allows for electronic signatures.

## **MEDIATION CONFIDENTIALITY AGREEMENT**

The undersigned parties are attempting to resolve a dispute and have engaged the services of Sarah Elaine Doke as mediator. In order to promote communication among the parties and good faith in facilitating settlement of the dispute, I agree that the mediator has no liability for any act or omission in connection with mediation, and further agree:

All statements made during the course of the mediation are privileged settlement discussions are made without prejudice to any party's legal position and are inadmissible for any purpose in any legal proceeding. Any information disclosed to the mediator by a party, or by a representative of a party, or by a witness on behalf of a party, is confidential and may not be introduced into evidence or used for any adversarial purpose. The mediator cannot be compelled to disclose such information unless required to be law or court order.

As a party, all disclosures made during the course of this mediation are conditioned upon this promise and agreement of confidentiality. No recording devices will be allowed, and cell phones will be turned off and pocketed. The mediator will be neutral and impartial and will not act as an advocate for any party and will not serve as legal counsel to any party. All privileges and the protection of attorney work product that pre-existed the mediation are unaffected by the mediation, whether or not disclosure is made in the mediation.

Breach of this agreement would cause irreparable injury and monetary damages would be an inadequate remedy, since we are relying upon this agreement of confidentiality in disclosing sensitive business and/or personal information. I, therefore, agree and stipulate that any party to this agreement may obtain an injunction to prevent disclosure of any confidential information or mediator communication in violation of this agreement. If any party breaches this agreement, that party shall be liable for and shall indemnify the other parties and the mediator for all costs, expenses, liabilities, and fees, including attorney's fees that may be incurred as a result of such breach.

For the benefit of the parties, I will agree that at least one of the parties will engage a family law attorney to review out agreement, prepare the pleading, and help with the court filing. To achieve this, the mediator and attorney selected have permission to communicate directly with each other.

## **MEDIATED SETTLEMENT AGREEMENTS ARE NOT SUBJECT TO REVOCATION.**

<b>Printed Name</b>	<b>Role Today</b>	<b>Signed Name</b>	<b>Date</b>