

AGREEMENT TO MEDIATE

This is an agreement between the parties and with mediators through Our Family Mediator, LLC. The parties have entered into mediation with the mediator with the intention of reaching a conceptual settlement of their separation and divorce related issues. The provisions of this agreement are as follows:

1. We agree that Our Family Mediator, LLC, shall be paid the amount of \$200 per hour for all work performed while mediating with the parties, including but not limited to document review and preparation and meetings with the parties. The parties agree that telephone calls, texts and emails to and from the parties will be billed at the minimum rate of 0.2 hours. Although counsel attempts to promptly return all telephone calls from the client, telephone calls to this office may not be returned for up to three (3) business days or longer, depending on the mediators time, availability, etc. Time will be billed at \$400.00 per hour for service after hours, holidays, weekends or scheduled attorney vacations, unless otherwise agreed in advance. The parties agree that they are jointly and severally liable to Our Family Mediator, LLC for any fees or costs owed to Our Family Mediator, LLC. Counsel has accepted a retainer in the amount of _____, which shall be billed against per this agreement. In the event the retainer is extinguished, parties agree to promptly pay an additional amount of _____ within 3 days of notice of the same. The parties agree that the mediator may prepare any and all documents associated with the divorce, APR or JV case. The parties further agree that the typical cost associated with full document preparation for divorce is in the range of \$3500-5000 if issues of decision making, parenting time and child support are addressed. Matter without child-related issues are typically in the range of \$2000-3,500. However, more complex matters, or matter requiring more the mediator time can exceed these amounts. The parties agree to pay a retainer at the beginning of the case.

_____ So long as the matter is completed within 4 months of the date of hire, the parties will receive a final bill at the conclusion of her time, which shall be paid-in-full at the conclusion mediation services or when either the party or the mediator ends the mediation. In the event the matter is with the mediator a period of longer than four months, they shall receive quarterly bills, which shall be paid-in-full at the time of receipt. Parties that come in for one session of mediation in which all matters are resolved, or in which the parties reach only partial or no-agreements, shall be paid-in-full at the conclusion of mediation. Should the parties request the mediator to draft the agreement after the conclusion of the mediation, the session shall be paid-in-full along with a reasonable retainer.

2. Mediators are neutral facilitators who will attempt to assist the parties to reach their own settlement. The mediator will not make decisions about “right” or “wrong” or tell the parties what to do.

3. Mediation is a voluntary and non-binding process of dispute resolution. The purpose of mediation is to attempt to compromise, settle or resolve disputed claims between the parties. Mediation is also not psychotherapy or counseling, nor is it intended to replace such services. Rather, mediation is the distinct professional practice of alternative dispute resolution.

This is solely the service provided by Our Family Mediator, LLC. The parties are entitled to receive information about their mediator's background and training, and are encouraged to discuss any aspect of the nature of mediation or the services provided Our Family Mediator, LLC, prior to the beginning the mediation.

4. It is understood that in order for mediation to work, open and honest communications are essential. The parties agree that all proceeds in connection with this mediation shall be subject to C.R.S. §13-22-301, et. seq. Accordingly, all written and oral communications, whether in made in preparation of the mediation, or during the mediation session, or associated with the mediation, and negotiations and statements made in the course of mediation, will be treated as privileged settlement discussions and therefore inadmissible in the parties litigation proceedings. Additionally, all notes, flip charts or other demonstrative aids created by Our Family Mediator, LLC during the mediation process are absolutely confidential. Notes taken by the mediator, include impressions to solely assist her in future mediation and are not available to others under any circumstances. Therefore:

a. the mediator will not disclose or produce to any party outside the mediation any such information, and will not do so unless 1) both parties consent and 2) in her sole judgment and discretion, she believes it advances the cause of the mediation process. However, it is understood that the mediator is not required to maintain confidentiality if she has a reason to believe that a child is in need of protection or if any party is in danger of bodily harm.

b. The parties agree that they will not at any time, before, during, or after mediation, call the mediator or anyone associated with the office, as witnesses in any legal or administrative proceeding concerning this dispute. To the extent that they may have a right to call the mediator or anyone associated with Our Family Mediator, LLC as a witness, that right is hereby waived.

c. The parties agree not to subpoena or demand the production of any records, notes, work product or the like of the mediator for any purpose, including, but not limited to, any legal or administrative proceeding concerning this mediation. To the extent that they may have a right to demand these documents, that right is hereby waived, the only exception being a Certificate of Mediation which the mediator may sign and provide to parties or counsel to sign with the court.

d. If, at a later time, either party decides to subpoena the mediator, the mediator will move to quash the subpoena. Further, the party issuing the subpoenas shall reimburse the mediator for any expenses incurred in such an action (including reasonable attorney fees) plus \$300 per hour for all mediator time (including court time and preparation) required in addressing the matter. The mediator shall be required to provide a declaration or finding as to a fact or issue relating to the mediation proceedings or the dispute which is the subject of said mediation proceedings. The Mediator shall not be liable to any party for any act or omission in connection with the mediation proceedings conducted pursuant to this Agreement. The parties recognize that the agreement and any other documents the parties agree the mediator should drafted, may be drafted out of their presence.

e. Once the mediation session or sessions are complete, Our Family Mediator, LLC and/or the mediator has no further obligation to keep or store any documents associated with the mediation session(s).

f. The Agreement may be executed in any number of counterparts which when taken together shall constitute one fully executed Agreement. This Agreement when so executed shall inure to the benefit of and be binding on the undersigned parties as well as their respective representatives or other persons they have caused to be present during these mediation proceedings.

g. As a sole exception to the above provisions, however, this Agreement to Mediate and any written agreement made and signed by the parties as a result of mediation, including the parties' Memorandum of Understanding, may be used in any relevant proceeding, unless the parties make a written agreement not to do so.

5. It is understood that full disclosure of all relevant and pertinent information is essential to the mediation process. Accordingly, there will be complete and honest disclosure by each of the parties to the other and the mediator with all information and documentation that usually would be available through the discovery process in a legal proceeding. If either party fails to make such full disclosure, the agreement reached in mediation may be set aside. Additionally, the parties agree that the mediator will have full access to all reports or other pertinent documents, whether sealed or not. These documents may include CFI reports, medical or mental health reports, or other evaluations. Moreover, the parties agree that the mediator may review any sealed records, Child and Family Investigator reports, or PRE reports, along with any other documents in the court's file, and that the mediator may communicate directly with anyone directly involved with the minor children, as part of the mediation session(s).

6. Although both parties intend to continue with mediation until a settlement agreement is reached, it is understood that either or both parties may withdraw from mediation at any time. Parties may obtain or consult with counsel at any time during the process or have counsel review any written stipulations or any other documents they deem fit. They may also consult outside counsel or experts at any time during the process. The parties may bring third parties to the mediation subject to agreement of the other parties and agreement of the mediator. However, by doing so, they may breach the confidentiality of the process.

7. The parties acknowledge the mediator has discussed how mediation of issues relating to dissolution related or parenting disputes often raises difficult and emotionally charged issues and concerns. The parties agree that the mediator shall have the right in her sole discretion at any time to postpone or terminate a scheduled mediation session (including sessions that have commenced but not concluded) or the entirety of the mediation, because of the mediator's belief that moving forward at that time or continuing the mediation generally would not be productive, constructive or likely to result in a reasonable agreement, or because of the mediator's belief that the parties are unable or unwilling to participate meaningfully in the mediation process. The parties understand that this may require rescheduling a court appearance or other event requiring the completion of the parties' work in mediation.

8. A mediator may be an attorney. Although the mediator has a background and education in law and may provide general legal information, they are acting as neutrals in this

case, not as attorneys and cannot and will not represent either party. The mediator does not offer legal advice nor provide legal counsel. Each party is advised to retain his/her own attorney in order to be properly counseled about his/her legal interests, rights and obligations. If appropriate, the mediator may express opinions on legal and factual issues, but the parties will only rely on their lawyers for legal advice. The parties agree that neither opinions by the Mediator nor the conduct of the mediation constitutes the practice of law.

9. When an agreement is reached, the mediator will, at the request of the parties, prepare a Memorandum of Understanding setting forth that Agreement. Each party is advised to review this with his/her own attorney before the agreement is placed in final form and signed. Each party agrees that (with or without the assistance of counsel or other advisors) they will make all the decisions with regard to any final agreements reached, and be solely responsible for the decision reached in mediation.

10. The mediator will not be responsible for filing any documents with the court, or returning the Orders to the parties, unless agreed to by the parties and mediator in writing. Additionally, the mediator will not prepare any Qualified Domestic Relations Orders (QDRO), or Domestic Relations Orders (DRO), nor will she be responsible for filing these documents with the participant's plan, or at any other address. Parties or their counsel shall file the QDRO and/or DRO, or any other document used to divide a pension/retirement plan with the proper authorities to ensure that the plan is divided pursuant to court order.

11. The parties understand that unless Our Family Mediator, LLC receives instructions that certain information may not be conveyed to any other parties, she may convey the information as she sees fit to any other parties involved in the mediation.

12. We further agree that Ms. Kreis will be paid for a minimum of two hours total time, regardless of whether we use this time or not. Each party shall be responsible for one-half of the two hours in the event it is not entirely used. This minimum charge is made in lieu of travel time. Any work done by the paralegal or secretary will be billed at the rate of \$200.00 per hour.

13. We understand that this fee applies to all time spent by Our Family Mediator, LLC in assisting us in mediation, including by way of example: individual and joint mediation sessions; telephone calls and for other than scheduling purposes; preparation of documents, including drafting and revision to our agreement (the Memorandum of Understanding) and related court appearance documents; compilation of tax or pension analysis materials for our consideration with our advisors; and other related activities. In addition, we agree to pay for other mediation related expenses such as long distance calls and photocopying materials.

14. If we need to change a scheduled appointment time, we agree to give the mediators at least 48 hours notice. If we fail to do so, we agree to pay for the scheduled time, not to exceed two (2) hours. If either of us does not appear for a scheduled appointment without having proved the 48 hour notice, and our co-disputant does appear, we agree to be responsible for the other's share of the mediation fee as well.

15. We understand that all fees will be paid at the conclusion of each session, and at the again at the time of delivery of documents. Our Family Mediator, LLC will discuss with us an estimate of special projects and of required drafting time prior to beginning this work. We understand that mediation and drafting may be postponed until these fee arrangements can be fulfilled by us.

16. The parties agree that any documents drafted by the mediator may be done outside of their presence. Any concerns or questions will be communicated between the mediator and the parties via email. The parties agree that each document drafted by the mediator will be billed at the minimal rate of 0.5 hours. Furthermore, the mediator is an attorney and will draft all documents the parties agree in mediation to have the mediator draft. The parties acknowledge that the Mediator is also a licenced attorney in the State of Colorado. The parties agree that she may use her legal skills on behalf of the parties within the parties mediation session(s) to draft documents for both of them in contemplation of their Dissolution of Marriage, or Legal Separation, APR action or Paternity action (or any other legal actions they request documents associated with any other legal action), including, but not limited to, the Petition for Dissolution, Legal Separation, APR or Paternity; 16.2 disclosure Forms for both parties; Financial Statements or Affidavits; Case Information Sheet; Memorandum of Understanding; Support Order or other Orders; other joint stipulations or agreements; Decree of Dissolution or Legal Separation; Affidavit of Non-Appearance or other affidavits; Case Information Sheet; Certificate of Mailing or Service; Maintenance Advisement or Child Support Worksheets or any other documents prepared or filed on behalf of the parties. The mediator can prepare documents agreed upon documents by the parties for their legal matter inside of the mediation process. The parties further agree to waive any and all conflict of interests raised by the preparation of these documents drafted by the mediator utilizing her legal skills and prepared on their behalf.

17. We agree, in the event of our breach of this Agreement, to pay for all costs of collection, filing fees, service costs and trial costs, and including reasonable attorney's fees incurred by Our Family Mediator, LLC. Reasonable interest in the amount of 1.5% per month shall accrue on all bills.

We have read, understood, and agree to each of the provisions in this agreement.

Name:
Social Security Number:
DOB:

Date

Name:
Social Security Number:
DOB:

Date