

**NORTHERN VIRGINIA MEDIATION SERVICE
AGREEMENT TO PARTICIPATE IN MEDIATION**

We, the undersigned, understand and agree to the following:

1. DEFINITION OF MEDIATION: A process in which a neutral (the mediator) assists parties to a conflict in finding a mutually acceptable solution to their dispute.

2. ROLE OF THE MEDIATORS: The mediators will facilitate discussion between the parties by assisting them in communicating, identifying and clarifying issues and exploring potential solutions. The mediators will use a facilitative style of mediation. The parties decide the outcome.

3. ROLE OF THE PARTIES: The parties will participate in good faith, work together and agree to treat each other with respect and courtesy.

4. CONFIDENTIALITY: By this agreement and by statute, the communications made during and in connection with mediation are confidential. The terms of Virginia Code Section 8.01-581.22 are incorporated here:

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 issues 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. The Mediator will not provide written assessments, evaluations, or recommendations that relate to the topics mediated to any persons, including the participating parties.

Confidential materials and communications are not subject to disclosure in discovery or in any judicial or administrative proceeding except:

- (i) where all parties to the mediation agree, in writing, to waive the confidentiality;
- (ii) in a subsequent action between the mediator or mediation program and a party to the mediation for damages arising out of the mediation;
- (iii) 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;
- (iv) where a threat to inflict bodily injury is made;
- (v) where communications are intentionally used to plan, attempt to commit, or commit a crime or conceal an ongoing crime;
- (vi) 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;
- (vii) where communications are sought or offered to prove or disprove a complaint of misconduct or malpractice filed against a party's legal representative based on conduct occurring during a mediation;
- (viii) 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
- (ix) as provided by law or rule.

