



NVMS Conflict Resolution Center

AGREEMENT TO PARTICIPATE IN ONLINE 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;
- ii) 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;
- iii) where a threat to inflict bodily injury is made;
- iv) where communications are intentionally used to plan, attempt to commit, or commit a crime or conceal an ongoing crime;
- v) 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;
- vi) 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;
- vii) 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
- viii) as provided by law or rule.



5. COMPLAINTS AGAINST MEDIATORS: If someone who is not a party to the mediation files an ethics complaint against the mediator, confidentiality will be waived to the extent necessary for the complainant to prove misconduct and the mediator to defend against the complaint.

6. 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.

7. VOLUNTARY: Mediation is voluntary. The parties or the mediators may decide to stop the mediation at any time for any reason. If there is an order to mediate by a court, the parties are only required to attend an initial orientation session. They may choose at that time whether to continue through the mediation process. No substantive information about the mediation is provided to the court or other referring agency. Either party may choose to end the session if they feel their participation is no longer voluntary.

8. JOINT & SEPARATE SESSIONS: The mediation will generally occur with all parties present. The mediators may also meet separately with each party during the process.

9. LEGAL ADVICE: The mediators do not provide legal advice. Each party to the mediation has the opportunity to consult with independent legal counsel at any time and is encouraged to do so.

10. AGREEMENT: All terms of a settlement are non-binding until they are put into a written agreement and signed by all parties. Any signed, mediated agreement may affect the legal rights of the parties. Each party to the mediation should have any draft agreement reviewed by independent counsel prior to signing the agreement.

11. USE OF TECHNOLOGY – Parties agree to the following rules regarding the use of technology.

The ODR platform:

- Commit to check the ODR platform at least once/day for any communication.
- Respond to any communication from the mediator promptly, within 24 hours.

Mediation sessions conducted via video conferencing or phone:

- No 3rd parties (relatives, interpreters, others) are allowed unless agreed to by all parties.
- No eavesdropping is allowed by unauthorized parties.
- Use secure Wi-Fi when participating in sessions.
- No video or audio recording is allowed during the session(s).

We, the parties, in order to protect the confidentiality of mediation, understand and agree to the terms presented on pages 1 and 2 of this Agreement to Participate in Online Mediation form provided by the NVMS – Conflict Resolution Center.

Participant Signature Date

Participant Signature Date

Participant Signature Date

Participant Signature Date

Participant's Attorney (if present) Date

Participant's Attorney (if present) Date

Mediator Date

Mediator Date

Other person present Date

Other person present Date