

## AGREEMENT TO MEDIATE

\_\_\_\_\_ and \_\_\_\_\_  
("the Participants") agree to participate in mediation with Rebecca Picard

("the Mediator(s)") to address the following: \_\_\_\_\_  
\_\_\_\_\_.

The Participants agree to abide by the following provisions:

1. **Role of the Mediator**. The Participants understand that the Mediator is an impartial facilitator and is not a decision-maker, attorney or counselor for either or both of them. While the Mediator may ask questions or express concerns about the parties' agreement, the Mediator will respect the Participants' concepts of fairness and has no responsibility for the fairness or legality of the resolution. The Participants further understand that the Mediator is not an accountant and the Participants will not rely on the Mediator for tax information and advice.

2. **Good Faith and Full Disclosure**. The Participants agree to negotiate in good faith and to participate in mediation in a sincere attempt to reach further clarity about the issues in dispute, understanding that they are not required to reach agreement. Parties negotiating the dissolution of their marriage agree to fully disclose information regarding assets and income. For example, upon request, both parties agree to give copies of their retirement statements to the other.

The Participants understand that agreements reached in mediation may or may not be legally enforceable. Participants understand that if they decide that they want a legally enforceable agreement covering any of the issues brought to mediation, they will have to take further steps after agreements are reached in mediation. Since the mediator is not acting as an attorney, they may need to seek legal advice and to have an attorney put their agreement into a form that is legally enforceable. The Participants agree that if, after seeking advice of legal counsel, either one of them has a problem with a specific provision of any agreement reached through mediation, the Participants will attempt to resolve that problem in mediation or in a cooperative manner through their attorneys. Until mediation is terminated or completed, the parties will instruct legal counsel not to file motions or other legal process regarding the issues being mediated without first notifying the other party.

3. **Confidentiality of Mediation**. To the extent that confidentiality is enforceable by law, all communications, documents and notes made in mediation are confidential. In the absence of a court order authorizing the disclosure, the Participants will not:

- a. Subpoena or request an interview or testimony of the Mediator, any person assisting the Mediator in any capacity whatsoever, or any records or documents belonging to or in custody of the Mediator; or
- b. Attempt to discover or use as evidence in any proceeding any communication made in or related to the mediation process or any document, including the meeting notes, developed in or as a result of the mediation process. This is not intended to preclude the use of financial or other discoverable documents not prepared specifically for the mediation process.

4. **Limits on Confidentiality; Mandatory Reporting.** Minnesota Statute 626.556 requires professionals providing social services, which may or may not include mediators, to report child abuse in the form of neglect, physical abuse or sexual abuse. Information shared with the mediator about such abuse may be reported to the appropriate governmental authorities. In addition, if threats of imminent bodily harm to any person are made in front of the mediator, they may be reported and may not be protected from legal processes seeking testimony or records regarding the threat.

5. **Prohibition against Transfers of Property, Changes in Insurance Coverage or Other Changes in the Marital Estate.** Unless the parties agree otherwise in writing in advance, during the mediation process they will not transfer or sell significant assets, will not incur significant new debt, and will not engage in other actions that materially change the marital estate, except as necessary in the usual course of meeting ordinary monthly obligations. They also will not cancel or change beneficiaries on health insurance, life insurance, retirement assets or other benefits without a written agreement to do so.

7. **Participation of Others in Mediation Sessions.** If the parties and the mediator agree in advance other persons who may be helpful to the process may attend mediation sessions or portions of mediation sessions. These may include attorneys, support persons such as therapists or other family members. Children of suitable age and sensitivity may also participate under a specific protocol.

8. **Fees.** Participants agree to pay for the mediator's time devoted to their case both during and between sessions. The rate for the mediator's time is \$\_\_\_\_\_ per hour and is due and payable at the end of each mediation session. In addition, there is a one-time administrative fee of \_\_\_\_\_ payable at the first session. The administrative fee covers scheduling time, set-up, pre-mediation conversations, postage, fax and other incidental fees. It does not cover summary time. Alternatively, the mediator may quote a flat rate for all mediator fees incurred for the first three sessions, which, if chosen, must be paid in full at the first session. Parties choosing the flat fee will be charged on an hourly basis for any session or summary time they may require after the third session and its summary are concluded.

9. **Cancellation Policy.** Participants will attend all scheduled mediation sessions unless they advise the mediator of their need to cancel or postpone a scheduled session at least 24 hours (one business day) before the session. Failure to notify Mediated Solutions of a cancellation at least one business day prior to any scheduled session shall result in a charge of one hour.

10. **Legal Advice.** If the issues to be mediated have a direct impact on the legal rights of either of the participants, the participants are encouraged to obtain legal advice from his or her own attorney as soon as possible, and no later than the conclusion of the mediation process.

11. **Accounting Advice.** The Participants acknowledge that the mediator recommends that each of the Participants seek advice from a certified public accountant regarding the tax consequences, if any, of agreements made in mediation.

12. **Parenting Information and Advice.** The Participants also understand and acknowledge that while the Mediator may provide some general information about the needs of children, and may, at the Participants request, meet with the Participants' children, the Mediator is not, and is not acting as, a child psychologist or other expert. The Participants may choose to retain a child psychologist or other child development expert as a neutral resource to make recommendations to them in the course of the mediation process.

13. **Session Summaries and Memorandum of Agreement.** The mediator shall prepare periodic written summaries of agreements made in mediation. Upon completion of mediation, the Mediator shall send Participants a detailed Memorandum setting forth their agreements.

14. **Conflicts of Interest; Waiver.** The participants and the mediator have discussed the following relationship(s) which may give rise to a conflict of interest:

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After having the opportunity to discuss the possible conflict with counsel, by signing this Agreement to Mediate, the participants agree to waive the potential conflict of interest as they do not expect it to interfere with the Mediator's impartiality.

15. **Caucuses.** If it would facilitate the agreement-making process, such as by affording one participant the opportunity to explore some ideas or to develop his or her communication style, the Mediator or either of the participants may request a caucus with the mediator. If the Mediator agrees to caucus with one participant, the Mediator will also caucus with the other, though not necessarily for the same amount of time. The

Participants agree on the following ground rules for caucuses:

\_\_\_\_\_  
\_\_\_\_\_

16. **Email.** If the participants have occasion to email the mediator, they shall copy each other on any email sent to the mediator.

17. **No Guns or Knives.** The parties shall not bring and shall not allow other persons they may invite to the mediation to bring guns or knives to any part of the process.

18. **Termination of Mediation.** Either Participant or the Mediator may terminate a particular mediation session or the entire mediation process at any time. However, the Participants each agree to make reasonable and appropriate attempts to address in mediation the issues leading him or her to desire termination.

19. **Mediator Qualifications.** The Participants acknowledge that they have been provided with a statement of the mediator's qualifications.

20. **Release to Talk to Parties' Attorneys.** By their initials here, the parties authorize the mediator to discuss issues related to the mediation with their attorneys at the mediator's discretion. \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Participant

\_\_\_\_\_  
Participant

\_\_\_\_\_  
Representative

\_\_\_\_\_  
Representative

Date: \_\_\_\_\_

\_\_\_\_\_  
Rebecca M. Picard, Mediator