

AGREEMENT TO MEDIATE

This Agreement to Mediate ("Agreement") is entered between or among the undersigned Parties to the mediation, including their representatives, if any, (each a "Party" and together, the "Parties"); and between the Parties and John P. "Jack" Wade ("Mediator"). The Parties and Mediator agree to the following terms:

1. **Purpose.** The Parties understand that the purpose of mediation is to attempt to find a mutually acceptable agreement among themselves on all or any part of the issues in dispute. The Parties agree to mediate in a good faith effort to reach a resolution of their disagreements.
2. **Scope of Agreement.** The Parties agree that all discussions predating the in-person mediation session, including but not limited to, the selection of the Mediator, convening of the mediation, all phone calls, correspondence, emails and other documents relating to mediation discussions, including all discussions or electronic communications prior to, during or after the mediation session during which the Mediator is engaged in the settlement discussions constitutes "in the course of" the mediation.
3. **Role of the Mediator.** The Parties understand and agree that settlements and compromises are dependent upon the consent of the Parties and that the Mediator does not have the authority to decide any issue for the parties or to impose any settlement in their case. They further understand and agree that the Mediator is an impartial facilitator who will assist the Parties in their effort to reach voluntary resolution of their disputes.
4. **Rule 31.** The Parties agree that the mediation is being conducted pursuant to Tennessee Supreme Court Rule 31 and the Tennessee Supreme Court ADR Plan. Rule 31 may be accessed at <https://www.tncourts.gov/rules/supreme-court/31> and the Tennessee Supreme Court ADR Plan at <https://www.tncourts.gov/ADRPlan>.
5. **Confidentiality.** Except as provided in paragraph seven (7) below or as otherwise required by law, the mediation proceedings and all information obtained by the Parties and the Mediator "in the course of" the mediation will be treated as strictly confidential, meaning that they will not be shared with entities other than the Parties and the Mediator without the express consent of the Mediator and the Parties. The Mediator may share information obtained by the Mediator in a caucus only with permission of the Party disclosing such information. In addition to any joint session, the Mediator may meet separately with each Party and/or the Party's counsel.
6. **Duration of Confidentiality Obligations.** The confidentiality obligations set forth in this Agreement shall remain in effect even after the completion of the mediation process, regardless of whether settlement resolving the dispute is reached. Additionally, any follow-up conversations between the Mediator and any Party are also subject to the confidentiality provisions of this Agreement and any applicable law or rule.
7. **Exceptions To Confidentiality.** The exceptions to the confidentiality provisions in paragraph 3 above are: a) this Agreement to Mediate and any agreement made by the Parties as a result of the mediation may be used in any relevant proceeding to enforce the

respective agreement; b) inadmissibility of evidence of conduct or statements will be determined under the applicable rules of evidence; c) discoverability of information obtained or used in the mediation will be determined under the applicable rules of civil procedure; d) in some situations, the law may require certain disclosures whether or not the information was first obtained in mediation, such as, but not limited to, disclosures concerning child abuse, elder abuse, fraud, or a planned future crime; e) in the case of government agency disputes, public records or open meetings statutes may apply; f) except as otherwise provided by law, information already known to a Party or the Mediator, or properly coming to a Party or the Mediator later outside of the parameters of this mediation will not become burdened by mediation restraints beyond any duty of the Parties and the Mediator to keep confidential the fact that it was disclosed or used in mediation; g) the Parties and the Mediator will be permitted to make any reports, notifications, or disclosures required by law or established by applicable rules or programs. The Parties understand and agree that Rule 31 obligates the Mediator to file a report with the Court (see, Rule 31, Section 5 unless it is pre-suit) and a report to the ADRC. (See, Section 15(d))

8. **Recordings/Privacy.** Proceedings before the Mediator are informal and private. No voice, stenographic or recording of any kind may be made of the mediation. Additionally, support persons other than the Party's counsel or, if needed, the Party's insurance representative, may attend only with permission of the Parties and the consent of the Mediator. Any such person(s) shall agree in writing to be bound by the confidentiality of the mediation process.
9. **Discovery.** The Parties agree not to call the Mediator as a witness to any proceeding and not to subpoena or otherwise seek discovery of any information in the Mediator's possession. Each Party agrees that s/he will not make any attempt to subpoena or otherwise discover a confidential written statement to the Mediator, whether in the possession of the Mediator or of the Party submitting the statement.
10. **AI.** A Party using or relying on any document, data or information developed with the use of AI (Artificial Intelligence) is solely responsible for verifying its accuracy. Also, I occasionally use artificial intelligence tools for administrative matters and to help summarize materials. These tools never decide or recommend outcomes.
11. **Legal Representation.** The Mediator does not offer legal advice, provide legal services or dictate or recommend any settlement offer in the course of this mediation. The Mediator's role is to facilitate discussion between or among the Parties to assist them in resolving their dispute. The Mediator's services in this matter are distinct from her law practice. Neither the client-lawyer relationship nor the protections of that relationship will exist between the Mediator and any Party in this matter. The Parties understand that any agreement reached in mediation can have a significant effect upon their rights. Any Party has the right to be represented by and rely on the advice of legal counsel who can address any questions concerning the construction of any agreement or any question of law. The Mediator will not, during or following the mediation proceedings, represent any Party in connection with the matter in which the mediation proceeding was conducted.

12. **Settlement Agreement.** In the event that the Parties request that the Mediator assist in memorializing any settlement agreement reached by the Parties, it is understood and agreed by all Parties that the Mediator will be acting only as a scrivener to record the Parties' agreement. Each participant is advised that if the Mediator assists in preparing a written settlement agreement reflecting the decisions made by the Parties as a result of mediation, then each Party should have the settlement agreement independently reviewed by his/her own counsel before executing the settlement agreement.
13. **Reservation of Right to Trial.** No party shall be bound by anything said or done at the mediation unless a written settlement is reached and executed by all necessary parties. Each of the parties reserves all litigation and appeal rights currently held by them in the event the parties are unable to reach a settlement of their issues.
14. **Voluntary Participation.** Any Party may terminate the mediation at any time. The Parties agree, however, that the subject of termination of the mediation by one or more of the Parties is a proper one for discussion. The Mediator may terminate the mediation in the event that the Mediator determines that further discussions would not likely be productive; that the mediation proceeding is, or is likely to become, inappropriate, unfair, or detrimental; that the case is unsuitable for mediation; or that one or more of the Parties is unwilling or unable to participate in the mediation process in a meaningful manner.
15. **Compensation.** A \$175.00 flat administrative fee is charged per matter which is to be divided equally among the parties unless otherwise agreed by the parties. The Mediator's fee shall be \$300.00 per hour for any mediation session(s), any time spent preparing for mediation sessions, and any follow-up communications by or with the Mediator. The Mediator shall also be reimbursed for any reasonable expenses incurred by the Mediator. Each Party shall be responsible for paying an equal share of all fees and expenses. For example, in a two-party mediation, the parties would each pay one-half (1/2) of the administrative fee, one-half (1/2) of the Mediator's fee and one-half (1/2) of any reasonable expenses incurred by the Mediator unless otherwise agreed by the parties. The fee and expenses, if any, will be due and payable within thirty (30) business days following the receipt of the Mediator's invoice unless other accommodation is requested and agreed upon in advance.
16. **Independent Contractor.** The Mediator is an independent contractor. Activity of Rule 31 Mediators "in the course" of Rule 31 Mediations shall be deemed to be privileged and the performance of a judicial function and for such acts Rule 31 Mediators shall be entitled to judicial immunity.
17. **Research, Training and Statistical Compilations.** The Parties agree that the case may be used for research, education, training or any combination of these but only if information that might identify the Parties has been removed.
18. **Miscellaneous**
 - a. **Entire Agreement.** This Agreement constitutes the entire Agreement of the Parties and the Mediator as to the mediation described above and supersedes all previous oral or written agreements between or among them regarding this mediation.

- By my signature, I certify that I have read, understand, and agree to each of the provisions of this Agreement to Mediate.*

BY COUNSEL:

Signature
Date

BY COUNSEL:

Signature _____

Date _____

Mediator	Date
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