

**DISTRICT OF COLUMBIA COURT OF APPEALS
AGREEMENT TO MEDIATE**

Case: _____

Consistent with Title 16, Chapter 42 of the D.C. Code, the participants in this mediation agree to participate in mediation pursuant to the following terms and conditions:

1. **Definition of Mediation**: Mediation is a process in which a mediator facilitates communication and negotiation between the parties to assist them in reaching a voluntary agreement regarding their dispute.
2. **Role of the Mediator**: The mediator does not provide legal advice, decide the issues or impose a solution on the parties. The mediator assists the parties in identifying issues, reducing obstacles to communication and maximizing the exploration of alternatives.
3. **Voluntary Participation**: The participants agree that they are entering into this mediation process in good faith and shall make a sincere effort to arrive at a mutually acceptable resolution of the dispute. During the proceedings, any party or the mediator may elect to terminate the mediation.
4. **Caucus**: The mediator may meet separately with one or more parties (“caucus”) at any time during the mediation. All communications made during a caucus are confidential and may not be disclosed by the mediator to any other participant in the mediation except to the extent the participants in the caucus give permission for the mediator to do so.
5. **Confidentiality of Mediator and Mediation Program staff**: The mediator and Mediation Program staff shall maintain the confidentiality of all mediation communications¹. The mediator or Mediation Program staff shall not be subpoenaed to testify as witnesses or deponents in any proceeding.
 - a. **Exceptions**:
 - i. Any communications made in or in connection with this mediation, which relates to the controversy being mediated, including screening, intake, and scheduling this mediation, may be shared between the mediator and Mediation Program staff.
 - ii. The mediator or Mediation Program staff may disclose mediation communications:
 1. that lead the mediator or Mediation Program staff to reasonably believe that a person may be in danger of serious bodily harm or injury;
 2. if necessary to defend the mediator or Mediation Program staff in any legal action;
 3. evidencing abuse, neglect, abandonment, or exploitation of an individual to a public agency responsible for protecting such individuals from such mistreatment;

¹ A “mediation communication” is a statement (oral, written, in a record, verbal, nonverbal) that occurs during a mediation or is made for purposes of considering, conducting, participating in, initiating, continuing, or reconvening a mediation or retaining a mediator.

4. if disclosure is required by the Attorney Rules of Professional Conduct in the state(s) in which they are licensed to practice law, if applicable, and to the extent those Rules are inconsistent with the terms of this Agreement, those Rules shall take precedence.
5. if disclosure is required by law or rule of the District of Columbia.
- iii. The mediator or Mediation Program staff may disclose to the Court:
 1. whether a mediation was held or terminated;
 2. whether a settlement was reached; and
 3. attendance
6. **Participant Confidentiality:** The participants will maintain the confidentiality of all mediation communications, and will not discuss mediation communications with persons who are not directly or indirectly a party to the negotiations.
 - a. **Exceptions:**
 - i. disclosure of the mediation communication is agreed upon by all participants to the mediation; or
 - ii. required by law or rule of the District of Columbia.
7. **Privilege Against Disclosure:** Mediation communications are privileged as provided in D.C. Code §16-4203:
 - a. **Exceptions:**
 - i. the privilege is waived or precluded as provided in D.C. Code § 16-4204; or
 - ii. an exception to privilege as listed in D.C. Code §16-4205 applies.
8. **Otherwise Admissible:** Evidence or information that is otherwise admissible does not become inadmissible or protected from discovery solely by reason of its disclosure or use in mediation.

By signing below, I acknowledge this _____ day of _____, 20____, that I have read, understand and agree to abide by this agreement.

MEDIATOR

PARTY

COUNSEL

PARTY

COUNSEL

PARTY

COUNSEL

PARTY

COUNSEL