

# SIMON MOLE MEDIATION, LLC

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## Agreement to Mediate

**This Agreement is made between Jane Doe and John Doe who are the Parties to Case No. 19 DR 30028 in the Somewhere County District Court.**

- 1. Scope.** By signing this document, the Parties agree to submit all pending issues to mediation by Simon Mole Mediation, LLC. All pending issues means all issues raised by either party's filings in Case No. 20DR31024 in the Somewhere County District Court.
- 2. Mediator.** Simon Mole will conduct the mediation for Simon Mole Mediation, LLC. He will work as an unbiased and neutral third-person who will help the Parties to negotiate their own settlement. The undersigned Parties acknowledge that the Mediator has no authority to compel anyone to participate in mediation or to settle issues.
- 3. Times and Place.** The Parties agree that any mediation will occur by Zoom.us video conference (Meeting ID XXX-XXX-XXX) beginning at 1:30pm on Thursday, August 22<sup>nd</sup> 2020. The Mediator expects that the mediation may take half of the day (2-4 hours). The mediator will email a link to the conference shortly before it is due to begin.
- 4. Good Faith.** The undersigned Parties agree to negotiate in good faith, and consider all options presented to them by the Mediator. Full disclosure of all relevant information is essential to the mediation process. Each party will honestly disclose to all other parties and the Mediator all relevant documents and information such as is typically required through the civil discovery process.

**5. Mediation is Not Legal Representation.** Simon Mole is a lawyer and former magistrate, but when working as a mediator he does not decide who is right or wrong, or tell either party what to do. As a mediator, Simon Mole does not provide legal advice or legal representation to either party. Even when Parties successfully reach agreement, he does not advise or represent the Parties jointly. The Mediator has no duty to find the best possible solution, and as a neutral, he cannot supply legal information that might assist one party against the other. Each party should have any settlement agreement independently reviewed by their own counsel before signing it

**6 Settlement Conference.** Parties frequently ask for assistance beyond simple interests-based mediation. Often it becomes appropriate to combine the mediation with a settlement conference that includes an informal assessment of the case by the Mediator. It shall be at the Mediator's discretion whether to incorporate such a settlement conference into the mediation. In such situations, the Mediator may discuss the law and precedent relating to the dispute; assist in identifying and refining disputed issues; suggest settlement options; tell the Parties his opinions about reasonable and appropriate compromises; and he may suggest a settlement pursuant to C.R.S. §13-22-302(7). While the Mediator may express his opinions, including opinions regarding the applicable Colorado law, the Parties understand and agree that they will rely on their own independent legal counsel with respect to such law regarding their legal rights, interests and obligations.

**7. Confidentiality.** Mediation is a confidential process. Each person who signs this document will treat all written and oral communications, negotiations and statements made about the mediation as privileged settlement discussions. Neither the Parties nor the Mediator will make any stenographic, audio or video record of the mediation session or any communications related to it. The Mediator will not reveal the Parties' names or matters discussed during the mediation unless authorized by the Colorado Dispute Resolution Act. By this statute, the Mediator is not required to maintain confidentiality if the mediation communication reveals the intent to commit a felony, inflict bodily harm, or threaten the safety of a child under the age of 18 years.

**8. Memorandum of Understanding (MOU).** The undersigned Parties agree to abide by all written agreements that result from the mediation when

these are contained within a written agreement that they have signed together with counsel attending the mediation.

**9. Communications.** The Parties agree to communication and document exchange via e-mail and other electronic means. The Parties may submit open Position Statements to each other and to the Mediator prior to the mediation. Each party may also submit a Confidential Settlement Statement to the Mediator, not provided to the other party or their attorney. Any such Confidential Settlement Statement should be the only confidential communication about the issues submitted to mediation that either party makes to the Mediator before mediation begins.

**10. Pre-Mediation Review.** The Mediator will review documents provided in advance, but make no response before the mediation begins. The Parties may submit copies of documents previously filed with the court, or other documents when all Parties agree to submit them to the Mediator for review.

**11. Fees.** The Mediator charges \$250 per hour (\$125 per party), and he requires a two-hour minimum fee. The Parties' combined minimum fee of \$400 is due when mediation begins. The two-hour fee only becomes due if the mediation session actually commences. If the mediation commences and lasts longer than two hours, any additional amounts are due when the session ends. The Mediator requires each party to contribute 50% to the total fee, unless the Parties have agreed to do otherwise.

**12. Payment Arrangements.** Payments may be made by credit card; personal check; trust account check; cash (with receipt provided), or money order. Any party paying by credit card agrees to the Mediator charging his or her credit card for the fees. If there is any dispute regarding payment of fees by credit card, which is resolved in favor of the Mediator, the party agrees to the Mediator charging any dispute resolution fees to the card of the party who raised the dispute. The Parties agree that if the bank returns payment by check, the party who wrote the check will replace the check with cash or certified funds and be assessed all bank charges plus a \$50 handling fee. Interest of 1.5% per month is due on all unpaid amounts.

**13. Subpoena:** The Parties agree that they will not, at any time before, during, or after mediation, call the Mediator or anyone associated with Simon Mole Mediation, LLC as witnesses in any legal or administrative proceeding concerning this dispute. Likewise, they agree not to subpoena or

demand the production of any records, notes, work product or similar materials from the Mediator in any legal or administrative proceeding concerning this dispute. To the extent that the Parties may have these rights, they are hereby waived. If, at a later time, any party decides to subpoena the Mediator, the Mediator will move to quash the subpoena. That party will reimburse Simon Mole Mediation, LLC for the expenses, including attorney's fees, plus \$250 per hour for the Mediator's time associated with responding to the subpoena. The only documents excepted from confidentiality are this agreement, and any non-confidential Memorandum of Understanding (MOU) that results from the mediation.

**14. Files and Documents.** By the establishment of the Mediator-client relationship with Simon Mole, LLC, the Parties acknowledge that the files created by the Mediator in his office belong to Simon Mole, LLC. Any documents provided by the Parties become the property of the Mediator. The Parties authorize the Mediator to destroy or dispose of all files, documents and papers in his possession regarding the Parties' case after the last mediation session. The document retention policy of Simon Mole Mediation LLC is to erase electronic copies, and to destroy any notes taken in mediation, together with all hard copies of documents provided by the Parties. Simon Mole Mediation, LLC will only retain a copy of this agreement, and any non-confidential Memorandum of Understanding that resulted from the mediation.

The undersigned Parties understand and acknowledge the above:

\_\_\_\_\_  
Petitioner            date

\_\_\_\_\_  
Respondent/Co-Petitioner date

\_\_\_\_\_  
Counsel for Petitioner date

\_\_\_\_\_  
Counsel for Respondent/Cpt. date