

**RICHARD A. WACKER**  
**ATTORNEY-AT-LAW & REGISTERED MEDIATOR**  
**WACKER MEDIATION LLC**

4520 W. Jurist Court  
Trafalgar, Indiana 46181  
(317) 878-2300

[rick@wackermediation.com](mailto:rick@wackermediation.com)  
[www.wackermediation.com](http://www.wackermediation.com)

**MEDIATION SERVICES CONTRACT**

This **MEDIATION SERVICES CONTRACT** is made to retain my services to help you reach a mutually agreed upon settlement of matters that might otherwise become an adversarial proceeding in a court of law. This Contract becomes effective when signed by both of you and upon my receipt of the Scheduling Payment and Administrative Fee as provided herein. If neither of you have hired counsel and wish to proceed under Indiana's Early Option Mediation, as allowed by Rule 8 of the Indiana Rules for Alternative Dispute Resolution, as adopted by the Indiana Supreme Court, then this mediation shall be conducted in accordance with that Rule and no counsel shall be present at the mediation.

**1. THE MEDIATOR AND THE MEDIATION PROCESS:**

1.1 Both of you have requested that I provide mediation services with regard to certain issues that have resulted in the current dispute(s) between you.

1.2 As a mediator, I am a neutral third party and do not represent the interests of either of you. Mediation is a collaborative process during which I will help you come to an agreement that resolves your issues in a consensual and informed manner. **AS A MEDIATOR, I DO NOT HAVE THE POWER TO DECIDE ANY OF THE DISPUTED ISSUES FOR YOU.** My objective is to help you reach the most constructive and fairest agreement possible under the circumstances. As a professional mediator, I follow the Standards of Practice set out by the Association for Conflict Resolution. Copies of those standards are available to you upon request.

**2. LEGAL COUNSEL AND LEGAL ADVICE:**

2.1 **AS A MEDIATOR, I WILL NOT PROVIDE LEGAL, FINANCIAL OR ANY OTHER FORM OF PROFESSIONAL ADVICE TO EITHER OF YOU DURING THE MEDIATION PROCESS.** My role is only to facilitate the mediation process in a collaborative, consensual, and informed manner. Both of you understand and agree that I have **no** power to make decisions for either of you or to decide the issues that are being disputed. You are responsible for reaching the most constructive and fairest agreement possible under the circumstances and both of you are strongly encouraged to consult with professionals you trust both before and during the mediation process. Lawyers, financial planners, accountants, therapists, family, and friends may be able to offer valuable information and support that will help you make informed decisions as to your rights and responsibilities. You are also strongly encouraged to talk to legal counsel at any time during the mediation proceedings, but especially before a Final Settlement Agreement is signed. I may provide general legal information to you that will help you make informed decisions, but the general legal information I might provide is not a substitute for legal advice based on your particular facts and circumstances. Tax issues and the results of making financial decisions during mediation should be carefully reviewed with your tax advisor. I do not assume any responsibility for the tax effects or ramifications of financial decisions you make during mediation.

### 3. THE MEDIATION PROCEDURE AND RULES OF MEDIATION:

3.1 As part of the mediation process, you agree to enter the mediation process with a clear understanding that the goal is to resolve the present dispute(s) in a calm and respectful manner and you agree, in good faith, to fully and completely disclose to the other party and to me complete and accurate financial, income, and expense statements, as well as to provide any and all other supporting documents about your financial circumstances. The normal confidentiality of the mediation process, as described below, does not extend to these financial disclosures, which are required by law.

3.2 You have both been advised, understand and agree that we will meet together for as many sessions as you determine are necessary, although the number and length of the sessions may vary depending on the circumstances and complexities of the issues to be mediated. Many times, a half-day or entire day for the mediation is all that is needed. Typically, I will meet with both of you; however, I may also meet individually with each of you and if this occurs, any information I receive during such private meetings will not be shared with the other party without your express authorization. Other persons will not be allowed in the mediation sessions except with the prior mutual consent of all of the parties involved.

3.3. You both agree that you will set aside your anger and attempt to deal with the issues in a fair and honest manner. Each of you agrees to treat the other with respect and courtesy. The communication process will be maximized if you don't interrupt one another and do not make critical or demeaning comments to each other.

3.4 To succeed, the mediation process must be strictly confidential. You expressly understand and agree that any statements made during the mediation process by either of you about any matter shall be considered confidential. However, although I will maintain this confidentiality, there are some limits to this confidentiality that are required by law and that may require me to breach this confidentiality. For example, as a professional, Indiana law requires me to report any suspected child abuse or neglect. If either of you expresses an intent to harm himself or herself or others, I may determine that confidentiality is superceded by the need to warn or take appropriate action to protect the affected individual(s). Further, you understand and agree that insofar as the mediation process is directed towards the settlement of issues that might otherwise be the subject of litigation, statements made by either of you during the process are intended to be construed as being made as part of the negotiations to reach a settlement. Therefore such statements are not admissible as evidence in court if the mediation does not result in a settlement.

Furthermore, in signing this Agreement, each of you agrees not to subpoena me to testify in court as to what may have been said during any mediation session by you or by the other party, or to subpoena my notes or records for use in any legal proceeding. As a mediator, I can only advise the Court if settlement was or was not reached. Each of you expressly agrees not to involve me in any breaches of confidentiality.

3.5 Unless otherwise agreed, the content of telephone calls and letters made to or received by me between sessions will not be considered confidential. As an example, if I receive an e-mail from one of you, a copy of that e-mail will be provided to the other party, along with my response to the initial e-mail. I may use e-mail to communicate with either of you because it is fast and convenient for many people. Such e-mail is not encrypted for security and passes over the internet like any other e-mail. If you do not wish for me to use e-mail to communicate with you, please let me know. Important letters, court papers, and copies of Settlement Agreements will be sent by U.S. Mail, in addition to being sent by e-mail.

3.6 Pursuant to ADR Rule 2.7(B)(1), your attorneys are to be present for the mediation sessions, unless you agree that your counsel won't be present. At the end of this Contract, there is a place to indicate whether or not your attorney will be present during the mediation session(s). If you choose to check this box, you are agreeing to waive the presence of your attorney during the mediation

process. You may revoke this waiver by contacting me and the other persons involved in this mediation of your decision to do so. If, at the end of this Contract, the appropriate boxes have been checked, then it will be assumed that your attorney will be present during the mediation process.

3.7 If your attorneys are not present at the mediation, at the end of the mediation process and at your request, I may prepare a letter to your counsel outlining the terms of any agreement reached. While the mediation process can lead to the settlement of issues, it will be necessary for the Agreement to be put into the proper legal form and for Court approval of the Agreement to be obtained. If your attorneys are available in person or by telephone, at your request, I may prepare a written document outlining the terms of any agreement reached, which, unless otherwise agreed, shall be signed by both you and your counsel pursuant to ADR Rule 2.7(E)(2). **AN AGREEMENT SIGNED BY BOTH OF YOU AND YOUR ATORNEYS MAY BE CONSIDERED BY THE COURT TO BE A LEGALLY ENFORCEABLE AGREEMENT AND MAY BE BINDING.**

#### **4. RIGHT OF THE MEDIATOR TO WITHDRAW; TERMINATION BY A PARTY WITHOUT CAUSE**

4.1 As a mediator, I will try to resolve the outstanding dispute(s) between you as long as both of you continue to make a good faith effort to reach an agreement that is acceptable to both of you. However, you must be able and willing to participate in the process for it to work. Since mediated agreements require compromise, you agree to try to be flexible and receptive to new ideas as possible ways to resolve your disputes. If, in my best professional judgment, I determine that agreement is not possible or that continuing mediation would harm, damage or prejudice either or both of you, then I may choose to withdraw and terminate the mediation.

4.2 A mediation can also be terminated by either of you, without cause, at any time. If this is done, you do not need to give a reason or explanation, either to me or to the other person(s) involved. Upon such a termination, as the mediator, I will not counsel either of you or represent either of you in any court proceeding, adversarial negotiation or other proceeding involving the matters discussed in the mediation, provided that this provision shall not be interpreted to prohibit a discussion by me with either of you on how to re-initiate the mediation process at a later date.

4.3 Impasse is defined as “having failed to reach an agreement on an issue after examining all information and options reasonably available.” It is also defined as the failure or refusal of one or both of the parties to abide by the Mediation Contract. At my discretion, I may declare an impasse if the situation arises and either or both of you are not participating in the mediation process in good faith.

#### **5. MEDIATION DOES NOT PROMISE RESULTS.**

Each of you acknowledge that since mediation is a process of negotiation and compromise, it is possible that agreement will not be reached, or that one of you might agree to terms that might be considered to be less favorable than what you *might* have received from a Judge after a contested hearing, or after negotiations with independent legal Counsel, if mediation had not been used. It is not possible for me, as a mediator, to make any representation that the ultimate result of mediation would be the same in kind or degree as the result of either negotiation or a contested hearing on one or more issues. Any questions that either of you may have with regard to fairness should be brought to my attention as they arise. **YOU ARE STRONGLY ENCOURAGED TO CONSULT WITH INDEPENDENT LEGAL COUNSEL TO REVIEW ANY COMPROMISES THAT HAVE BEEN MADE DURING MEDIATION AND TO HAVE SUCH COUNSEL REVIEW THE PROVISIONS OF THE PROPOSED FINAL SETTLEMENT AGREEMENT PRIOR TO SIGNING THE FINAL SETTLEMENT AGREEMENT.**

#### **6. THE FEE AGREEMENT.**

6.1 Hourly Rate. You have agreed to pay an Hourly Rate of \$150.00 for my services as a mediator for Domestic Relations mediations or an Hourly Rate of \$195.00 for my services as a mediator for Civil Mediations. The hourly rate applies to time actually spent in mediation sessions and time spent outside sessions, including, but not limited to, time spent reviewing documents, researching

issues, preparing correspondence, responding to and initiating telephone calls, preparing documents, preparing pleadings to the Court, and such other time as may be reasonably necessary to facilitate you reaching an agreement. A minimum charge of one quarter-hour will be billed for phone calls or correspondence with the parties and after the first 15 minutes, time will be rounded, either up or down to the nearest quarter hour. Travel time in excess of one hour per mediation session is billed at the rate of \$50.00 per hour. My fees are separate from fees for accountants, legal counsel, or other experts with whom you may consult. **PAYMENT IS DUE AT THE END OF EACH MEDIATION SESSION AND UNLESS OTHER ARRANGEMENTS HAVE BEEN AGREED UPON BETWEEN YOU, THAT YOU WILL EACH BE PAYING HALF OF THE FEES DUE.**

6.2 The Administrative Fee. A one-time, non-refundable Administrative Fee of \$100.00 is charged for time spent setting up the mediation file(s), distributing initial documents, scheduling sessions, and for secretarial assistance, office overhead, and performing a conflict-of-interest review. **THIS FEE IS NOT REFUNDABLE, EVEN IF A MEDIATION SESSION IS NOT HELD.**

6.3 Minimum Session Time. Domestic Relations mediations are scheduled for a minimum two-hour period of time. Civil mediations are scheduled as either in sessions of either a half-day session (4-hours) or whole day (8-hours) session. Payment in full for the first scheduled mediation session, plus the Administrative Fee, as described in paragraph 6.4 below, is due upon signing this Contract. This payment will be held by me, without interest, and credited to your final mediation session. If the parties or their attorneys can't provide suitable office space for the mediation, then the cost of renting a location for the mediation will be billed to the parties as an additional expense. Miscellaneous expenses such as telephone, copying and other similar expenses at such a location exceeding \$25 are payable by the party incurring such expenses. I do not charge a retainer for mediation - you simply pay for the hours and services you receive as you receive them.

6.4 Appointment Scheduling Payment. To schedule a mediation session, a non-refundable payment for the minimum type of mediation (2 hours for Domestic Relations mediation or 4 hours for Civil mediation) plus the amount of the Administrative Fee described in paragraph 6.2 above, must be received. **UNLESS OTHER ARRANGEMENTS HAVE BEEN MADE IN ADVANCE, IF YOUR PAYMENT FOR THE INITIAL SESSION AND THE ADMINISTRATIVE FEE HAVE NOT BEEN RECEIVED AT LEAST 3 BUSINESS DAYS PRIOR TO THE SCHEDULED MEDIATION, THE MEDIATION WILL BE POSTPONED UNTIL PAYMENT HAS BEEN RECEIVED.** This payment is **FORFEITED** if you cancel or reschedule your mediation session less than 3 business days before the scheduled mediation. The payment for your initial session will be credited to the bill for your final mediation session. If you cancel or reschedule your mediation more than 3 business days before the scheduled mediation, your payment will be credited to your next mediation session, provided it is held within 3 months of the originally scheduled mediation. After 3 months from the date of the originally scheduled mediation session, your payment will be forfeited. This payment is non-refundable and the parties agree to be jointly and severally responsible for my fees and expenses.

6.5 Option for Monthly Payment for Multiple Sessions. If multiple mediation sessions are held, payment for each session is expected at the end of such session. However, if we agree in advance to monthly billing, you will be billed on a monthly basis for my time. Payment in full of any balance due is expected within ten (10) days of receipt of the monthly statement unless I have agreed to other arrangements. If payment of the monthly balance remains outstanding for 30 days from the date of the invoice, I reserve the right to suspend mediation sessions until payment is current. In any event, any outstanding balance must be paid in full before the final letter is sent to your attorneys outlining any terms of agreements reached. If more than one day has been reserved for a mediation and the extra day or days is not required, there will be a \$300 charge for each unused day for Domestic Relations mediation sessions or a \$585 charge for Civil mediations.

6.6 Payments Not Timely Made. If you do not make any payment when due, I may stop all work on your behalf, including scheduling future sessions or the drafting or distribution of your agreement and may choose to withdraw from the mediation. If non-payment requires me to

undertake legal action to collect fees that are overdue, or if I have to file a court action to collect fees and expenses under this Contract, then if the Court agrees that I am entitled to my fees and expenses, you agree that I will also be entitled to reasonable attorneys fees and costs incurred. As an attorney, I may choose to prepare my own legal filings to collect outstanding fees and expenses, and if I choose to perform this work on my own behalf, my Hourly Rate will apply to the time spent in this regard.

6.7 Enforcement Through the Pending Court Action. I reserve the right to request, and each of the parties consents and agrees, that I may enforce the terms of this Contract (including the payment of fees and expenses as well as the payment of late payment fees) through the Court and through the pending action, Cause Number \_\_\_\_\_, which was filed in the Johnson County Circuit / Superior Court 2 and the Order appointing me as the Mediator for the parties.

6.8 Late Payment Fee. The parties each agree that if payment is not made by a party to the Mediator for fees due under the terms of this Contract within thirty (30) days of the date of a mediation, that in addition to the Mediator's fees due under the terms of this Contract, the party agrees to pay a late payment fee of \$100.00 each month until the entire amount due from a party has been paid in full.

6.9 Absence of a Party at a Mediation Session. If either of you fails to show up at a scheduled mediation session without notifying the other party at least 3 business days before the mediation, you will be responsible for paying the fee for that session without contribution by the other party. Any cancellation and/or rescheduling of a mediation session must be approved by all of the persons attending the session. This provision will not apply to your absence due to circumstances that are completely outside your control, such as illness, weather, or similar unavoidable circumstances.

6.10 Late Arrivals. As a mediator, my billable time begins at the time your mediation session is scheduled to begin. I will dedicate uninterrupted time for your appointment and will be ready to begin at the scheduled time, so you will be charged accordingly. A telephone call advising that you will be late is appreciated, but you will still be charged beginning at the time your mediation was scheduled to begin. Remembering your scheduled mediation time and date is your sole responsibility and generally, I will not call or e-mail you to confirm appointments.

**7. EXECUTION OF THIS MEDIATION SERVICES CONTRACT.** By initialing each page of this Contract and by signing below, each of the parties agrees and acknowledges that they: (i) have carefully read this Mediation Services Contract; (ii) have asked the mediator any questions necessary to clarify its meaning; (iii) have been given a copy of the Contract and agree that the original Contract shall be a part of our file; (iv) agree to each of the provisions of this Contract; and (v) agree to be bound by the terms of this Contract.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

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

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

If I have hired an attorney, by checking the box above, I am signifying that my attorney will not be present for the mediation. I reserve the right to have my attorney present and if I choose to do so, will inform the mediator and the other party or parties participating in this mediation.

The parties are not represented by counsel and this Mediation will be conducted under Indiana's Early Option Mediation Rule.

Accepted by: \_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_, 2013.  
Richard A. Wacker, Registered Mediator