

SIMPLY POSITIVE MEDIATION, PLLC AGREEMENT

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FOREWORD: You should read this entire Agreement so you have a better understanding of the mediation process and you should not sign this Agreement until any questions you may have are answered or satisfied by your own inquiries and research. A simple web search will reveal that mediation is a process which dates back before Ancient Greece and the Roman Empire, and it is being used worldwide today in ever-increasing numbers because it is cost effective and it works. Think positive and it will probably work for you.

Recitals: The undersigned party has agreed to participate in mediation to be conducted by Attorney George J. Pearce III, dba Simply Positive Mediation, PLLC, in an effort to compromise, settle or resolve certain disputes and disagreements affecting their life, and hereby agrees as follows:

1. Mediation Proceedings. Mediation is a voluntary, non-binding alternative to the legal process, unless the parties reach a subsequent written agreement pursuant to the mediation which may or may not be incorporated in or become a part of a court order. If the parties are unable to reach a written agreement as a result of mediation, no verbal agreements occurring during or resulting from the mediation are binding upon the parties. All proceedings in connection with the mediation shall be subject to this Agreement and applicable provisions of Montana law.

The purpose of the mediation is to attempt to compromise, settle or resolve disputed issues and claims between and/or among the parties. The Mediator's role is to act as a neutral party for the purpose of assisting the parties in resolving their differences. During the course of the mediation, the Mediator is authorized to conduct joint and separate meetings with the parties and, at his discretion, to provide an evaluation of each party's case and to make recommendations for settlement.

The undersigned party acknowledges that the Mediator is not acting as an attorney or advocate for any individual party participating in the mediation and that any recommendations or statements by the Mediator do not constitute specific legal advice, but may incorporate general statements of applicable Montana law and proceedings which the parties can generally verify through public information, websites, common-knowledge, and other easily available resources.

The undersigned party acknowledges that although being represented by an attorney is not a prerequisite necessary to participate in mediation, they have been advised that they may seek and rely upon the advice of their own legal counsel in connection with any negotiations, proposed settlements, or any other agreements resulting from the mediation efforts.

The undersigned party further acknowledges and understands that each party may terminate or temporarily suspend any mediation efforts at any time to seek independent legal counsel or for any other reason any party may deem necessary, although it is agreed that each party should act with fairness and discretion in suspending or terminating any mediation efforts.

Although the parties may reach a written agreement as the result of mediation, and they are encouraged to do so, each party shall have five (5) additional business days from the date of signing the mediated agreement to have the agreement reviewed by their own independent legal counsel of their choosing, if they so choose, at their own expense. At the close of five (5) business days after the date of signing, the mediated agreement shall become binding upon the parties unless a Montana court determines the agreement to be unconscionable or otherwise inapplicable pursuant to any provision of Montana law.

In the event that there are any relevant or associated legal proceedings initiated before or after the signing of any mediated agreement, including the five (5) business day provision, the signed mediated agreement shall be incorporated in, and become an integral part of any court order, unless a judge determines that the agreement is unconscionable, contrary to Montana law, or irrelevant to the proceedings before that court.

The undersigned party recognizes that although a mediated agreement is not a substitute for the authority of any court, a judge may consider a mediated agreement to be binding on the parties if the agreement is not unconscionable or otherwise contrary to Montana law.

2. Montana Statute Governing Mediation. Mediation in Montana is governed for the most part by **Montana Code Annotated, Section: 26-1-813. Mediation -- confidentiality -- privilege -- exceptions.**

(1) Mediation means a private, confidential, informal dispute resolution process in which an impartial and neutral third person, the mediator, assists disputing parties to resolve their differences. In the mediation process, decision-making authority remains with the parties and the mediator does not have authority to compel a resolution or to render a judgment on any issue. A mediator may encourage and assist the parties to reach their own mutually acceptable settlement by facilitating an exchange of information between the parties, helping to clarify issues and interests, ensuring that relevant information is brought forth, and assisting the parties to voluntarily resolve their dispute.

(2) Except upon written agreement of the parties and the mediator, mediation proceedings must be:

- (a) confidential;
- (b) held without a verbatim record; and
- (c) held in private.

(3) A mediator's files and records, with the exception of signed, written agreements, are closed to all persons unless the parties and the mediator mutually agree otherwise. Except as provided in subsection (5), all mediation-related communications, verbal or written, between the parties or from the parties to the mediator and any information and evidence presented to the mediator during the proceedings are confidential. The mediator's report, if any, and the information or recommendations contained in it, with the exception of a signed, written agreement, are not admissible as evidence in any action subsequently brought in any court of law or before any administrative agency and are not subject to discovery or subpoena in any court or administrative proceeding unless all parties waive the rights to confidentiality and privilege.

(4) Except as provided in subsection (5), the parties to the mediation and a mediator are not subject to subpoena by any court or administrative agency and may not be examined in any action as to any communication made during the course of the mediation proceeding without the consent of the parties to the mediation and the mediator.

(5) The confidentiality and privilege provisions of this section do not apply to information revealed in a mediation if disclosure is:

- (a) required by any statute;
- (b) agreed to by the parties and the mediator in writing, whether prior to, during, or subsequent to the mediation; or
- (c) necessary to establish a claim or defense on behalf of the mediator in a controversy between a party to the mediation and the mediator.

(6) Nothing in this section prohibits a mediator from conveying information from one party to another during the mediation, unless a party objects to disclosure.

3. Mediator's Services and Compensation. Mediation is not a substitute for litigation; it is an alternative dispute resolution (ADR) process, encouraged and supported by the American Bar Association (ABA), and every state Bar Association for many reasons, including being cost effective and allowing the parties to remain in control of critical issues which affect their lives, rather than placing those decisions in the hands of a judge or some other decision maker who is constrained by various legal rules and other considerations. Mediation gives the parties the opportunity to discuss their problems openly and candidly, and supports their quest for solutions which may not always be available through litigation. Accordingly, it is no wonder that many courts are mandating mediation in various cases. Nonetheless, mediation is not for everyone; if a party needs someone to decide what is important to them or for them, mediation may not work. The parties have to be willing to empower themselves to make their own decisions.

The primary goal of Simply Positive Mediation, PLLC, is to assist the parties in reaching an agreement which is acceptable to them and which, if necessary, can be incorporated in or become part of a subsequent court order. The parties can participate in mediation with or without an attorney. The costs and the enrollment process for a minimum two (2) hour mediation session are as follows:

a. Prior to scheduling any mediation, the parties will have to arrange for the mediation location. The location can be rented or borrowed, including a conference room at a church, a public meeting room, or even a dining room or kitchen table. The parties can be creative in their choices of location, but both parties must feel comfortable with the location and the location must have at least one accessible electrical outlet. If there are any costs associated with the location, the parties will have to agree to share those nominal costs. Since mediating is the journey toward reaching an agreement, the parties should start by communicating and agreeing on the selection of the location.

b. The actual costs for mediating are one hundred dollars (\$100) an hour for a minimum of two (2) hours and one hundred dollars (\$100) for each subsequent hour, shared equally by the parties. That equates to one hundred dollars (\$100) for each party for a two hour mediation session. Each party must pay their one hundred dollar (\$100) fee prior to mediation being scheduled unless other arrangements are made with the Mediator. Any additional fees for mediations exceeding two hours are due at the conclusion of each mediation session(s). Once a mediation date is scheduled, which only occurs after both parties have paid their initial one hundred dollar (\$100) fee, there will be a fifty dollar (\$50) charge for cancellation and/or rescheduling charged to the party causing or requesting the rescheduling or cancellation unless a bonafide emergency warranting rescheduling exists. Accordingly, both parties should make sure they are willing to mediate before paying their fee to schedule a mediation date.

c. Mediation sessions can be scheduled for days, evenings, and weekends, excluding holidays, for the convenience of the parties, based on the availability of the Mediator. The scheduling availability will allow parties to attempt to arrange mediation without losing income from their employment. There are no additional charges for evening or weekend mediation.

d. Emergency mediation can be scheduled at one hundred dollars (\$150) an hour for a minimum of two (2) hours, and one hundred dollars (\$100) an hour for each subsequent hour, based upon the availability of the mediator. The parties shall share the costs of emergency mediation equally, unless the parties agree otherwise due to the immediate need for mediation and the financial circumstances of the parties. Emergency mediation is described as any mediation scheduled forty-eight (48) hours or less in advance of the time of the actual mediation.

e. No other individuals in addition to the mediating parties will be permitted to attend the mediation session(s) other than the attorney(s) for each party if that party decides they need to have an attorney present. However, the actual involvement of attorneys throughout most of the mediation session is strictly limited and controlled by the Mediator. Mediation is the opportunity for the parties to work on reaching an agreement with the help of the Mediator and an attorney's involvement is usually limited to periods during mediation when the Mediator meets privately with each side, commonly referred to as a caucus. If a party chooses to have an attorney advise them during the mediation process, rather than having the attorney present the party might prefer the less expensive option of telephoning their attorney during a caucus or break. No texting, recording, or any other telephone calls are allowed except during breaks or caucuses unless agreed to by the mediating parties and the Mediator.

f. Any agreement reached by the parties during or at the close of mediation will be immediately reduced to writing, will be printed, and then immediately presented to the parties for their review and signature before the mediation session comes to a close or as soon thereafter as the Mediator can accomplish the agreement in final form. Each agreement will include a clause which allows an additional five (5) business days from the date of signing before the agreement will become final to allow each party the opportunity to have the signed agreement reviewed by an attorney of their choice, at their own expense, if they so choose. After the additional five (5) business days, the signed agreement will become final unless it is rejected by a party or their attorney, or becomes subject to judicial review. If the agreement is rejected within the five (5) business days, the parties will be encouraged to return to additional mediation to resolve any differences and finalize their agreement. The signed agreement will also provide a clause to allow the non-contesting party to the signed agreement their reasonable attorney fees and costs in seeking any legal enforcement of the agreement if a Montana court decides the agreement is not unconscionable or otherwise contrary to Montana law.

g. Any additional legal documents which may become necessary to memorialize or enforce any agreement(s) entered into by the parties can either be accomplished by an attorney or attorneys retained by one or both of the parties, or by the Mediator who is licensed to practice law in the State of Montana, provided the subsequent matters are within the jurisdiction of the Montana courts. If both the mediating parties agree that the Mediator should accomplish any additional legal documents, Mediator agrees to do so at the same rate charged for mediating, one hundred dollars (\$100) per hour, for accomplishing the documents, and one hundred (\$100) dollars per hour for any court appearances, shared equally by the parties. The parties shall share equally any filing and court costs unless they agree otherwise to some other shared proportion based upon their respective financial circumstances. If one or both of the parties agree that the Mediator should accomplish any remaining legal documents and make any necessary court appearance to obtain a related court order, judgment, or decree, they shall be required to sign a "Limited Scope of Representation Agreement" recognizing that Mediator is not representing either party individually and is only fulfilling any necessary statutory requirements to obtain the court order, judgment, or decree and that Mediator's role in doing so as an attorney will terminate immediately upon the order, judgment or decree being granted.

h. Mediator shall charge fifty dollars (\$50) an hour for travel to conduct any mediation outside the Helena, East Helena and the Montana City limits with a minimum fee of fifty dollars (\$50) round trip. There are no additional charges for mileage or meals, but overnight lodging may be charged if mediation extends to more than one day.

i. If either party cannot personally pay the costs associated with any mediation session, a third-party may pay those costs on behalf of one or both of the parties; however, that third-party payer is not entitled to participate in any mediation session and any information concerning the mediation shall remain confidential as previously set forth in this Agreement and pursuant to applicable Montana law.

j. One party may pay the entire costs of any mediation session(s) if the other party has limited financial resources or there are any other reasons which would limit or prohibit mediation from occurring, but one party paying the costs shall not be considered any favoritism or undue influence upon the Mediator.

k. All mediating parties are required to be at the agreed upon place for mediation at least fifteen (15) minutes prior to the scheduled start of any mediation session(s). Time charged for any mediation session(s) begins at the scheduled time provided the Mediator is present.

4. Legal Venue: The principal place of business for Attorney George J. Pearce III, dba Simply Positive Mediation, PLLC, is in Helena, Lewis and Clark County, Montana, and venue for any interpretation or enforcement of this Agreement shall be pursuant to the laws of the State of Montana with venue properly before the Lewis and Clark County Justice Court or the Montana First Judicial District Court in Helena, Lewis and Clark County, Montana, regardless of the actual place of signing of this Agreement or the actual place where the mediation occurs, unless otherwise provided by Montana law.

5. Success of Mediation: The Mediator makes no promises or guarantees as to the success of any mediation session(s) other than that he will exercise his best efforts in facilitating the mediation session(s) and in encouraging the parties to reach a mutually acceptable agreement. As such, Mediator and Simply Positive Mediation, PLLC, will not be held liable to the mediating parties for any act or omission arising, directly or indirectly, in connection with the services he provides as Mediator unless a court of law has determined that Mediator has acted in bad faith. The success of the mediation depends in most part on each party's willingness to participate and maintain a positive attitude toward working on reaching an acceptable agreement.

6. Resolving Disputes Between A Mediating Party and the Mediator: If any dispute arises under this Agreement, both the Mediator and the mediating party agree to meet and confer within ten (10) days of written notice by either party that the dispute exists. The purpose of this conference will be to discuss a solution short of further dispute resolution proceedings and resolve any misunderstandings about the mediation process. If the dispute is not resolved through this informal conference, Mediator and the affected party shall attempt to agree on a neutral mediator whose role will be to facilitate further communications to resolve the dispute.

7. Acknowledgement of Understanding: The undersigned party participant acknowledges they have read this entire Agreement, and that they have sufficient education to understand its contents and to ask questions or make other inquiries to enable them to understand any portion of the Agreement they may not understand before signing. The undersigned party also acknowledges that they do not suffer from any mental illness or incompetency, nor are they under the influence of alcohol, prescription medication, or any illegal substances which would affect their ability to understand this Agreement or hinder their ability to participate in mediation and make decisions on their own.

8. Encrypted Electronic Storage of Documents and Return of Other Documents: Six (6) months after the completion of any mediation, whether successful or not, all documents reflecting the mediation between the parties will be scanned and converted to encrypted electronic record storage only. Those documents will remain confidential unless disclosure is ordered necessary pursuant to law by a court in the Montana First Judicial District Court, Helena, Montana. In the event disclosure is ordered by the court, copies of any electronically stored documents shall be treated as true and correct copies of the original documents pursuant to law. The original documents associated with any mediation will be shredded and destroyed. All personal documents used or relied upon by any party to support their position during mediation shall remain the personal property of that party to retain or dispose of unless destruction of any document would be contrary to law.

Dated: _____

Dated: _____

By: _____
(Signature of Mediation Participant)

George J. Pearce III, dba
Simply Positive Mediation, PLLC

(Printed Name of Mediation Participant)

NOTE: You must initial each page of this Agreement at the bottom of each page, acknowledging that you have read and understood that page. If you have any questions before signing this Agreement, you should visit SimplyPositiveMediation.com, research the mediation process on your own, or direct any remaining questions by e-mail or by contacting Simply Positive Mediation, PLLC directly.

This webpage copy of the Mediation Agreement is for review only and an actual copy of this agreement should be printed from the [Download PDF Version of Mediation Agreement](#) at the top of this page for your signature and signing.