STATE OF NORTH CAROLINA                  IN THE GENERAL COURT OF JUSTICE

                                                                                           DISTRICT COURT DIVISION

COUNTY OF\_\_\_\_\_\_\_                                                                            \_\_\_CVD\_\_\_\_\_

                                                                                 ASSIGNED JUDGE:\_\_\_\_\_\_\_

|  |  |
| --- | --- |
| **\_\_\_\_\_\_\_**                  PLAINTIFF,    v.    **\_\_\_\_\_\_\_\_**                  DEFENDANT. | **CONSENT ORDER FOR ARBITRATION**        AOC CODE: ORDR; ARB |

This matter came before the undersigned district court judge on this the \_\_\_ day of \_\_\_\_\_\_. It was made to appear that the parties having represented that they have reached an agreement regarding Arbitration and further desire that the terms of said Agreement be made part of an order of this Court such that violation of said Agreement is punishable by the contempt powers of this Court as allowed by law. This arbitration is to be conducted subject to the conditions and provisions set forth herein. It further appearing that the parties have voluntarily waived formal findings of fact and conclusions of law.

            WHEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

1.         North Carolina Canons of Ethics for Arbitrators. The North Carolina Canons of Ethics for Arbitrators shall apply to this Arbitration Agreement.

2.         Place of the Arbitration. The arbitration shall be held at the office of either attorney or at such other place of arbitration as the arbitrator shall designate.

3.         Arbitrator.\_\_\_\_\_\_\_\_shall serve as the arbitrator.

4.         Initiation of Arbitration. This arbitration shall be initiated by filing a copy of this consent order (signed by the parties and the judge and filed with the Clerk of Superior Court) with the designated arbitrator.

5.         Serving Notice.

a.         The parties shall be deemed to have consented that any papers, notices or process necessary or proper for initiation or continuation of an arbitration under this consent order; for any court action in connection therewith; or for entry of judgment on any award made under this consent order may be served on a party by first-class mail addressed to the party\_\_\_\_s counsel at the last known address or by personal service in or outside the State where the arbitration is to be held, provided that reasonable opportunity to be heard with regard thereto has been granted to the party.

b.         The arbitrator and the parties may also use facsimile transmission or other written forms of electronic communication to give notices permitted or required by this consent order.

6.         Interim Relief and Interim Measures.

a.         Prior to the completion of arbitration of this matter, a party may seek interim measures as described in subsection (b) of this section from the arbitrator. Prior to the completion of arbitration of this matter, a party has no right to seek interim relief from a court, except that a party may request from the court, at any time, enforcement of the arbitrator\_\_\_\_\_s order granting interim measures and review and/or modification of any interim measures governing child support or child custody.

b.         The arbitrator may consider and/or grant and/or deny, pursuant to subsection (a) of this section, any of the following:

I.                    An order of attachment or garnishment;

II.                 A temporary restraining order or preliminary injunction;

III.               An order for claim and delivery;

IV.              Appointment of a receiver;

V.                 Delivery of money or other property into court;

VI.              Notice of lis pendens;

VII.            Any relief permitted by N.C.G.S. 7B-502, 7B-1902, 50-13.5(D), 50-16.2A, 50-20(h), 50-20(l), 50-20(i1), or Chapter 50A, Chapter 50B, or Chapter 52C of the General Statutes; or

VIII.         Any other order necessary to ensure preservation or availability of assets or documents, the destruction or absence of which would likely prejudice the conduct or effectiveness of the arbitration.

c.         The arbitrator may, at a party\_\_\_\_s request, order any party to take such interim measure of protection pursuant to subsection (b) of this section, as the arbitrator considers necessary in respect of the subject matter of the dispute. The arbitrator may, at a party's request, require any party to provide appropriate security, including security for costs as provided in N.C.G.S. Â§50-51 in connection with interim measures.

d.         A party seeking interim measures pursuant to subsection (b) of this section, or any other proceeding before the arbitrator, shall proceed in accordance with the agreement to arbitrate. The arbitrator, after consulting with the parties\_\_\_\_ attorneys, shall notify the parties of the date, time and place of the hearing, taking into consideration the distance of the parties\_\_\_\_\_ residences from the place of the hearing.

7.         Administrative Conference, Preliminary Hearing; Mediation Conference.

a.         An administrative conference with the arbitrator and counsel shall be scheduled to expedite arbitration proceedings. This conference may be held by conference telephone call or similar means. The parties' attorneys shall consult with the arbitrator in scheduling the administrative conference.

b.         Upon request by either party, the arbitrator may schedule a preliminary hearing with the parties and their counsel to specify issues to be resolved at arbitration, to stipulate as to uncontested facts, or to consider other matters to expedite the arbitration proceedings. A preliminary hearing may be conducted by conference telephone call or similar means.

c.         Consistent with the expedited nature of arbitration, at an administrative conference or preliminary hearing the arbitrator shall establish (i) the extent of and schedule for production of relevant documents and other information, (ii) the identification of witnesses to be called, and (iii) a schedule for further hearings necessary to resolve the dispute.

d.         The arbitrator may, in his discretion, require each party to exchange and file with the arbitrator, before the administrative conference or other hearing as the arbitrator directs, a full and complete financial statement on forms specified by the arbitrator. Each party shall update these statements as necessary, unless the parties otherwise agree and the arbitrator approves. The arbitrator shall set the schedule for the filing and exchange of these statements and may require production and exchange of any other such information as the arbitrator deems necessary. Corruption, fraud, misconduct or submission of false or misleading financial information, documents or evidence by a party shall be grounds for imposing sanctions by the arbitrator or the court, including but not limited to vacating the award by the arbitrator.

8.         Attendance at Hearings. The arbitrator, the parties and their counsel shall maintain the privacy of the hearing and other proceedings, (e.g., discovery incident to the arbitration) unless the law provides otherwise or unless the parties agree otherwise in writing. The arbitrator shall have the power to require exclusion of any witness, other than a party or other essential person, during the witness\_\_\_\_s testimony. The arbitrator has discretion to determine the propriety of attendance of any other person.

9.         Oaths. Before proceeding with the first hearing, the arbitrator may take an oath of affirmation of office. The arbitrator shall require witnesses to testify under oath or affirmation administered by the arbitrator. The arbitrator\_\_\_\_s oath or affirmation shall state names of parties to the arbitration agreement and shall be substantially in this form:

            \_\_\_\_[Name], being duly sworn of affirmed, hereby accepts this appointment, attests that the biography or other information submitted by the arbitrator to the parties [and the court] is accurate and complete; will faithfully and fairly hear and decide matters in controversy between the above-named parties in accordance with their arbitration agreement, the North Carolina Canons of Ethics for Arbitrators and the rules incorporated into the parties\_\_\_\_ arbitration agreement; and will make an award according to the best of the arbitrator\_\_\_\_\_s understanding.\_\_\_\_

The oath or affirmation shall be signed and dated by the arbitrator, who shall send copies to the parties and the court.

10.       Order of Proceedings; Communication with Arbitrator.

a.                   A hearing shall be opened by the filing of the oath of the arbitrator, where required; by recording the date, time, and place of the hearing, and the presence of the arbitrator, the parties, and their counsel, if any; and by the arbitrator\_\_\_\_s receipt of statement of the claim and answering statement, including any counterclaim, if any.

b.                  At the beginning of the hearing the arbitrator may ask for statements clarifying the issues involved. In some cases, part or all of these statements may have been submitted at the preliminary hearing conducted by the arbitrator.

c.                   The complaining party shall then present evidence to support that party\_\_\_\_\_s claim. The defending party shall then present evidence supporting its defense and counterclaim, if any, after which the complaining party may present evidence supporting its response to the counterclaim. Witnesses for each party shall submit to questions or other examination. The arbitrator has the discretion to vary this procedure but shall afford a full and equal opportunity to all parties for presentation of material and relevant evidence.

d.                  The arbitrator may, in the arbitrator's discretion, receive exhibits in evidence when offered by a party.

e.                   All witnesses\_\_\_\_ names and addresses and a description of exhibits in the order received shall be made a part of the record.

f.                    There shall be no direct communication between the parties and a neutral arbitrator other than at oral hearings, unless the parties and the arbitrator agree otherwise.

g.                   The parties shall arrange for the recording of hearings.

11.       Witnesses; Subpoenas; Depositions; Court Assistance.

a.                   The arbitrator has the power to administer oaths and may issue subpoenas for attendance of witnesses and for production of books, records, documents, and other evidence. Subpoenas issued by the arbitrator shall be served and, upon application to the court by a party or the arbitrator, enforced in the manner provided by law for service and enforcement of subpoenas in a civil action.

b.                  On the application of a party and for use as evidence, the arbitrator may permit depositions to be taken, in the manner and upon the terms the arbitrator designates.

c.                   All provisions of law compelling a person under subpoena to testify are applicable.

d.                  The arbitrator, or a party with the approval of the arbitrator, may request assistance from the court in obtaining discovery and taking evidence, in which event the Rules of Civil Procedure under Chapter 1A of the General Statutes shall govern according to its rules on discovery and evidence, and the arbitrator and/or the court may impose sanctions for failure to comply with the court's orders in this regard.

e.                   A subpoena may be issued as provided by N.C.G.S. Â§8-59, in which case the witness compensation provisions of N.C.G.S. Â§6-51, Â§6-53, and Â§7A-314 shall apply.

12.       Evidence and Procedure.

a.                   The parties may offer such evidence as is relevant and material to the dispute and shall produce evidence that the arbitrator deems necessary to an understanding and determination of the dispute.

b.                  The arbitrator or other person authorized by law to subpoena witnesses or documents may do so upon a party\_\_\_\_s request or independently.

c.                   The arbitrator shall be the judge of the relevance and materiality of evidence offered.

d.                  The rules of evidence and civil procedure shall be general guides in conducting the hearing. The arbitrator has the discretion to waive or modify these rules to permit efficient and expeditious presentation of the case. The rules of privilege shall apply as in civil actions.

e.                   Evidence shall be taken in the presence of the arbitrator and all parties, except where a party is absent in default or has waived the right to be present.

13.       Hearing.

a.         The arbitrator shall appoint a date, time and place for the hearing and notify the parties or their counsel by personal service or by registered or certified mail, return receipt requested, not less than five (5) days before the hearing. Appearance at the hearing waives any claim of deficiency of notice. The arbitrator may adjourn the hearing from time to time as necessary and, on request of a party and for good cause shown or upon the arbitrator's own motion, may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date. The arbitrator may hear and determine the controversy upon evidence produced notwithstanding the failure of a party duly notified to appear.

b.                  The parties are entitled to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

c.                   Upon request of any party or at the election of any arbitrator, the arbitrator shall cause to be made a record of testimony and evidence introduced at the hearing. The arbitrator shall decide how the cost of the record will be apportioned.

14.       Evidence by Affidavits; Post-Hearing Filing of Documents or Other Evidence.

a.                   The arbitrator may receive and consider evidence of witnesses by affidavit but shall give this evidence only such weight as the arbitrator deems it entitled after considering objections to its admission. In order to offer evidence by Affidavit, a party planning to offer evidence by Affidavit must serve said affidavit(s) on the opposing party within five (5) business days of the scheduled arbitration hearing.

b.                  If the parties agree, or the arbitrator so directs, documents or other evidence shall be submitted to the arbitrator after the hearing, at a time, place and manner as directed by the arbitrator. All parties shall be afforded an opportunity to examine such documents or other evidence.

15.       Inspection or Investigation. If the arbitrator finds it necessary to make an inspection or investigation in connection with the arbitration, he shall so advise the parties. The arbitrator shall set the date, time and place of the inspection or investigation and shall notify the parties. Any party desiring to do so may be present at such an inspection or investigation. If one or all parties are not present at the inspection or investigation, the arbitrator shall make a written report and afford them an opportunity to comment,  unless the parties agree otherwise.

16.       Closing of Hearing.

a.         The arbitrator shall specifically inquire of all parties whether they have any further proofs to offer, witnesses to be heard, or whether they wish to be heard in final argument. Upon receiving negative replies or if satisfied that the record is complete, the arbitrator shall declare the hearing closed.

b.         If briefs are to be filed, the hearing will be declared closed as of the final date the arbitrator sets for receipt of briefs. If documents are to be filed as provided above (\_\_\_\_œEvidence by Affidavits\_\_\_\_\_\_) and the date set for their receipt is later than that set for receipt of briefs, the later date shall be the date of closing the hearing.

c.                   The time limit within which the arbitrator must make the award shall begin to run upon the closing of the hearing.

17.       Reopening Hearing.      The hearing may be reopened on the arbitrator\_\_\_\_s initiative or upon any party\_\_\_\_s application with the approval of the arbitrator, at any time before the award is made. The arbitrator may reopen the hearing and shall have thirty (30) days from the closing of the reopened hearing within which to make an award.

18.       Waiver of Oral Hearing. The parties may provide by written agreement for waiver of oral hearings in any case. If the parties are unable to agree on the procedure, the arbitrator shall specify a fair and equitable procedure.

19.       Waiver of Rules. A party who proceeds with the arbitration after knowledge that a provision or requirement of this consent order has not been complied with and who fails to object in writing shall be deemed to have waived the right to object. An objection must be timely filed with the arbitrator with a copy sent to the other party.

20.       Extensions of Time.       The parties may modify any period of time by mutual agreement. The arbitrator may for good cause extend any period of time established by this consent order except the time for making the award. The arbitrator shall notify parties of any extension.

21.       Time of Award. The arbitrator shall make the award promptly and no later than thirty (30) days from the date of closing the hearing.

22.       Form and Scope of Award.

a.         The award shall be in writing and dated and shall be signed by the arbitrator with a statement of the place where the arbitration was conducted and where the award was made. It shall be executed in the manner required by law.

b.                  The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the parties\_\_\_\_\_ claims as asserted in the above-entitled civil action.

23.       Award, Costs.

a.         The arbitrator shall deliver a copy of the award to each party\_\_\_\_\_s counsel by registered or certified mail, return receipt requested. Time of delivery shall be computed from the date of personal delivery or date of mailing.

b.                  The award shall state the reasons upon which it is based and shall enter findings of fact and conclusions of law.

c.                   The arbitrator may award interest as provided by law.

d.                  Costs.

I.          Awarding of costs of an arbitration shall be in the arbitrator\_\_\_\_s discretion.

II.         In making an award of costs, the arbitrator may include any or all of the following as costs:

            (1)        Fees and expenses of the arbitrator and expert witnesses;

            (2)        Fees and expenses of counsel, in such instances and for such claims where the recovery of counsel fees by a party is allowed under the North Carolina General Statutes;

            (3)        Any other expenses incurred in connection with the

arbitration proceedings;

(4)        Sanctions awarded by the arbitrators or the court, including those provided by Rules 11 and 37 of the North Carolina Rules of Civil Procedure; and

            (5)        Costs allowed by N.C.G.S. Chapters 6 and 7A.

III.               In making an award of costs, the arbitrator shall specify each of the following:

(1)        The party entitled to costs;

(2)        The party who shall pay the costs;

(3)        The amount of costs or methods of determining that amount; and

(4)        The manner in which costs shall be paid.

IV.              The award shall be made within the time the court orders on a party\_\_\_\_s application. The parties may extend the time in writing either before or after the expiration of this time. A party waives objection that an award was not made within the time required unless that party notified the arbitrators of his or her objection prior to delivery of the award to that party.

24.       Judicial Review and Appeal.     Judicial review of errors of law in the award is permitted.

25.       Award Upon Settlement. If the parties settle their dispute during the arbitration, the arbitrator shall set forth the agreed settlement terms in an award, termed a consent award.

25.       Delivery of Award to Parties.    The parties shall accept the placing of the award of a true copy of the award in first-class mail and addressed to a party\_\_\_\_s counsel at the counsel\_\_\_\_s last known address, personal service of the award, or filing of the award in any other manner permitted by law as legal and timely delivery.

26.       Release of Documents for Judicial Proceedings. The arbitrator shall, upon either party\_\_\_\_s written request, furnish to the party at the party\_\_\_\_s expense certified copies of any papers in the arbitrator\_\_\_\_s possession that may be required in judicial proceedings relating to the arbitration.

27.       Applications to Court; Exclusion of Liability.

a.                   No judicial proceeding by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party\_\_\_\_\_s right to arbitrate.

b.                  The arbitrator of an arbitration institution in a proceeding under this consent order is not a necessary party in judicial proceedings relating to the arbitration.

c.                   Parties to proceedings conducted pursuant to this consent order shall be deemed to have consented that the judgment upon the arbitration award may be entered in any court having jurisdiction.

d.                  The arbitrator shall be entitled to immunity as provided by law.

28.       Deposits. The arbitrator may require the parties to deposit, in advance of hearing, such sums of money as the arbitrator deems necessary to cover expenses of the arbitration, including the arbitrator\_\_\_\_s fee, and shall render an accounting to the parties and return any unexpended balance at the close of the case. In this case, the Plaintiff shall pay the upfront costs of the arbitration; however, the arbitrator shall have the authority in his discretion, to allocate the costs and fees related to the arbitration as part of his award.

29.       Interpretation and Application of Rules. The arbitrator shall interpret and apply the provisions of this consent order.

30.       Time.    Time periods prescribed under this consent order or by the arbitrator shall be computed in accordance with the North Carolina Rules of Civil Procedure and North Carolina law.

31.       Experts.

a.                   The arbitrator may appoint one or more independent experts to report in writing to the arbitrator on specific issues designated by the arbitrator and communicated to the parties.

b.                  The parties shall provide the expert with any relevant information or produce for inspection any relevant documents or goods that the expert may require and as directed by the arbitrator. A dispute between a party and the expert as to relevance of the requested information or goods shall be referred to the arbitrator for decision.

c.                   Upon receipt of an expert\_\_\_\_\_s report, the arbitrator shall send a copy to all parties and shall give the parties an opportunity to express their opinions on the report in writing. At any party's request, a party may examine any document in order to express his/her opinion on the report in writing. At any party's request, a party may examine any document upon which the expert relied in the report.

d.                  At any party\_\_\_\_s request, the arbitrator shall give the parties an opportunity to question the expert at a hearing. Parties may present expert witnesses to testify on the points at issue during the hearing.

32.       Arbitration Award.       The parties shall faithfully abide by and perform any arbitration award.

This the \_\_ day of \_\_\_\_\_\_

                                                            The Honorable \_\_\_\_\_\_\_\_

                                                           \_\_\_\_\_\_\_County District Court Judge

WE HAVE READ THE FOREGOING AND CONSENT TO IT:

\_\_\_\_\_\_\_\_, PLAINTIFF                                                       DATE

\_\_\_\_\_\_\_\_\_\_, ATTORNEY FOR PLAINTIFF                                DATE

\_\_\_\_\_\_\_\_\_\_, DEFENDANT                                     DATE

     \_\_\_\_\_\_\_\_\_\_, ATTORNEY FOR DEFENDANT                       DATE