



## Agreement to Mediate

**Date:**

**Venue:**

**Parties**

(1)

(2)

**Mediator:**

**Assistant Mediator:**

### **The Agreement**

We, the parties, have decided to use mediation to resolve our issues and make our own plans for the future and any proposals we reach may be written in a Memorandum of Understanding or Outcome Statement. We agree to mediation on the following terms and conditions.

1. By signing this agreement, we, the parties express our sincere intention to:

- To participate in negotiations in good faith
- Be fair to each other throughout mediation
- Leave fault and blame out of the negotiations
- Be co-operative in resolving disagreements
- Consider our own individual needs, the needs of each other and each child and the needs of the family as a whole, and
- Work for the least possible emotional and financial upheaval for all concerned.

### **The mediator**

2. The parties agree to the appointment of, \_\_\_\_\_ as mediator. The parties understand that the mediator is independent and neutral.

The parties understand that the mediator does not give legal advice. The parties will only communicate with the mediator about issues in mediation during sessions, unless it is otherwise agreed. The mediator may ask the parties to consent to an assistant-mediator or observer to be present at the mediation.

3. The parties agree that they will not call the mediator as a witness, nor require him/her to produce in evidence any records or notes relating to the mediation, in any litigation or other formal or informal legal process arising from or in connection with the issues being considered in this mediation. Nor will the mediator act or agree to act as a witness, expert or consultant in any such processes. If any party does make such an application, that party will fully indemnify the mediator in respect of any costs, including legal costs, incurred in resisting or responding to such an application, including reimbursement at the mediator's standard hourly rate for the mediator's time spent in resisting and/or responding to such an application. The mediator will be entitled to charge the Service's standard hourly rate for any preparation work done in connection with such an application (referred to as "the mediator's costs, fees and expenses"). In the event the court orders the mediator to give evidence and/or disclose his/her files then:

- i. The party who has made the relevant application to the court will fully indemnify the mediator in respect of the mediator's costs, fees and expenses;
- ii. If the court has made an order requiring the mediator to attend/give evidence/disclose documents then the parties will be jointly and severally liable for the mediator's costs, fees and expenses.

### **Confidentiality**

4. Communications in mediation sessions including written summaries after each session and notes taken by the mediator and or assistant for the purpose of the written summaries will not be used in affidavits or statements for the purpose of any court action. No recordings or transcripts will be made during the sessions

and the parties agree that all communications, to which the Mediation Service is party, are made solely for the purpose of attempting to reach a settlement and are made on the basis that the communications are both:

a) confidential and;

b) will not be referred to in evidence in any court proceedings about the same issues.

5. However the clause of confidentiality above does not prevent the mediator disclosing information where there is significant risk to the life, health or safety of children, the parties or anyone else to the relevant authorities.
6. Disclosing financial information is also exempt from clause 5 to the extent it being necessary to report to the court, the parties' professional advisers and or insurers and or those necessary to implement or enforce the settlement agreement and or making disclosure to any relevant authority or person whether under the *Proceeds of Crime Act 2002* and or under *Regulations* relating thereto, if obliged to do so by law.
7. Where a party privately discloses to the mediator any information in confidence or any legally privileged material before, during or after the mediation, the mediator will not disclose that information to any other party without the consent of the party disclosing it, unless:
  - i. There is a significant risk to the life, health or safety of children, the mediator or anyone else; or
  - ii. He/she is ordered to do so by the court.

### **Finance and Property Mediation only**

8. During the course of mediation the parties agree that:

- They will make full, frank and true disclosure of finances and provide all supporting documentation.
- They will not transfer charge, conceal or otherwise dispose of any assets except for the purpose of providing for living necessities and expenses in the ordinary course of business.
- They will not make any further charges under any charge account for which both of them are legally responsible, unless mutually agreed upon.
- Financial disclosures are made on the basis that they are confidential to the Service but may be disclosed to the parties' solicitors and may be used in evidence in court.

9. The parties are also aware:

- i. that under the *Proceeds of Crime Act 2002*, where the mediator has reason to believe that either of the parties has benefited or may benefit from the proceeds of any crime there may be a duty to make a report to the National Criminal Intelligence Service without informing the parties that this is being done and that mediation may be discontinued without further notice; and;

### **Costs and representation**

10. Each party agrees to bear its own costs relating to the mediation unless otherwise agreed. Each party may be represented if they wish.

11. If either or both of the parties are not eligible for public funding they agree to pay the Mediation Service according to their scale of charges.

### **Mediation Sessions**

12. If one of the parties is unable to keep a scheduled appointment, s/he must notify the other and the Service at least 7-days in advance. If less than 7-days notice is given a cancellation fees that may be incurred.

13. If a Memorandum of Understanding or Outcome Statement is prepared, the parties acknowledge that it is not a binding agreement until it is filed into court for approval.

14. If difficulties should arise in consultation with the solicitors over the Memorandum of Understanding or Outcome Statement, the parties will notify the mediator of the need for further discussions.

### **Other Terms**

15. The parties acknowledge that at no time will they receive financial, legal or other advice from the mediators or the Mediation Service.

16. The parties acknowledge that they have been informed of the advantages of having separate solicitors to whom they will refer before, during and at the end of mediation as appropriate.

### **Ending the Mediation**

17. It is understood by the parties that mediation is a voluntary process and can be stopped at any time by either of the parties or the mediator.

18. This agreement will be governed by English Law.

Signed:

Date:

Signed:

Date: