



## AGREEMENT TO MEDIATE

### BASIC PRINCIPLES AND TERMS OF MEDIATION

*The following terms are the basis for mediation conducted by mediators regulated by Family Mediators Association (FMA). Please would you read each point carefully, noting any questions you may have to bring to your first meeting with a mediator. At that meeting we shall ask you to sign this document as an indication of your commitment to the process and the terms listed.*

#### **A. OUR ROLE AS MEDIATORS**

As mediators we act in an impartial way. We therefore seek to help each of the participants equally. Our role is to assist you each to explore possible ways of resolving disputes or making arrangements or any range of matters related to your separation or future separate living or in any matters relating to family issues.

We may only provide legal and/or financial or other information in a neutral way in order to help you understand the options available to you. We may not, do not and cannot provide any advice (of any nature) on a 'best interests' or personalised basis. The choices and decisions remain yours to make. It is possible and often very helpful for you to have advice from your own solicitor or legal adviser during the mediation process, in order to make informed decisions. You may also wish to liaise with your advisers as mediation progresses, in order to enable them to remain informed as to progress.

We will, as appropriate, offer evaluation during or following mediation to inform you as to whether or not any specific way forwards identified in mediation is likely to receive the endorsement of the Court. You may ask us to offer evaluation at any stage of mediation, although there are some circumstances where the FMA Code of Practice requires us to do so. We do not otherwise express opinions or make judgments about your individual or joint situation.

We cannot act as mediators if either of us have prior knowledge of the situation through any previous involvement as a lawyer, counsellor or in any other professional role. Although we may have other qualifications, in this context we act only as mediators.

We shall do our best to help each of you. We ask you to show your integrity and commitment to the mediation process and to co-operate as fully as possible in looking for workable solutions.

**B. WHAT WE ASK YOU TO DO:**

**1. Financial disclosure**

We shall ask each of you to provide complete and accurate disclosure of all your financial circumstances, with supporting documents where necessary. This is called *financial disclosure*. We do not verify the completeness and accuracy of the information you provide, but we shall ask you to sign and date a statement confirming that you have made full disclosure. If it should emerge that full disclosure has not been made, any agreements flowing from the proposals reached in mediation based on incomplete information, can be set aside and the issue re-opened.

Information about your finances and other relevant facts related to personal finance is provided on an open basis. This means that the information is available to your individual legal or financial advisers and can be referred to in Court, either in support of an application made with your joint consent or in contested proceedings. This would be the case in any situation relating to financial disclosure on separation or divorce. It will assist your individual legal adviser and avoids information having to be provided twice over or duplicated. (However, it does reinforce the importance of full and accurate disclosure as your individual legal or financial adviser is required to verify all information received.)

**2. Discussions in the course of mediation**

The discussions you have with us with regard to possible terms of settlement or proposals for the future are understood to be **legally privileged**. This means that your discussion about the matters you need to settle and the proposals for settlement cannot be referred to in Court unless you each agree to waive your privilege. We also ask that you each and all agree not to call **any** of us to give evidence in Court.

**3. The appropriateness of mediation**

We work to the Family Mediators Association's Code of Practice at all times and will be concerned to ensure that each of you enter into the mediation process able to negotiate freely together and without risk of threat or harm. We ask you to tell us if there are concerns for you with regard to your ability to negotiate freely.

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**C. WHAT WE DO FOR YOU:**

**1. Share information:**

Because mediation is an open process between us, all information or correspondence from either of you will be shared openly with each of you. **The only exception to this is an address or telephone number which either of you wishes to keep confidential.**

## **2. Produce the following documents:**

At the completion or closing of the mediation process, or as appropriate during the mediation process, and as required, we shall draw up:

- (a) **A privileged summary** (the Memorandum of Understanding) of your proposals for settlement which will include your proposals on all matters discussed in the mediation, arrangements for any and each child, property, finance, maintenance, child support and any other matters discussed and as appropriate to each of you. It may also include such evaluation as may be offered by us or requested by you.
- (b) **An open summary** (Statement of Finances) detailing your financial circumstances (except in mediations which relate only to issues concerning children).

These documents are provided to help you obtain separate and independent legal and/or other advice before entering into a legally binding agreement. It is also to safeguard you from making a legally binding agreement without fully understanding how it may affect your own individual position.

Following the end of mediation, if there is any original documentation you would like returned to you, we should be happy to arrange this upon request; otherwise all materials (including our file and case notes) will be retained for six years but may then be destroyed without further reference to you.

## **3. Maintain confidentiality:**

Mediation is a confidential process. We will not give information to your legal or other advisers or to any third parties without obtaining your joint permission.

There are two exceptions to this confidentiality.

The first would be where you or any other person (most particularly a child) is at risk of serious harm. In these exceptional circumstances, we would normally seek to discuss the action to be taken with each of you before taking any action to contact the appropriate authorities in line with the FMA Code of Practice.

The second is where we are required to make disclosure to the appropriate government authorities under the Proceeds of Crime Act 2002 and/or the relevant money laundering regulations. We may also be under a linked obligation to make such disclosure without informing you that we are doing so. We have no choice in this matter where the Act or the regulations apply, and may also in these circumstances have to discontinue mediation with you without further notice.

We are 'processors' of personal data for the purposes of the Data Protection Act 1998. You consent to us processing your personal data (including sensitive personal data) for the purpose of this Agreement to Mediate. You understand that processing involves our retaining and storing your personal data for as long as is necessary in connection with this Agreement to Mediate.

Exceptionally, we may disclose personal data that is in connection with the alleged or established commission of any unlawful act, and this corresponds with the two exceptions to confidentiality mentioned early in this section.

Further, we may retain data for research and statistical purposes, but in doing so we will only process data that has been stripped of all features from which you, as an individual, could be identified. This use for statistical research purposes is exempt from the provisions of the Data Protection Act.

Additionally, the Legal Services Commission and the FMA require us to maintain professional standards, which may require a waiver of confidentiality as set on in paragraph 5 below.

#### **4. Keep proper records**

We usually make notes during mediation. All our notes are open notes and any of the participants in mediation may have access to these at any stage. If you wish to make notes during mediation, please feel comfortable doing so, although we do ask that no sound or video recordings are made of the mediation process.

#### **5. Maintain professional standards**

Our practice is monitored by our governing association, the Family Mediators Association, and we are required to have professional supervision/consultancy or our practice. From time to time, therefore, we discuss professional practice with our supervisor/consultant(s), who may see files and related documents concerning your mediation. Such discussions are treated on a confidential basis.

Our practice is contracted to the Legal Services Commission, to whose quality assurance requirements we are required to manage our mediation files. From time to time, the Commission may have sight of files. Any access is strictly controlled and on a similar confidential basis.

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### **D. ENDING MEDIATION**

Each of you may terminate the mediation at any stage. We may also terminate the process if we do not think it appropriate or helpful to continue. If such a termination should occur on either basis, we shall do our best to provide you with information as to other appropriate ways of progressing your situation.

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### **E. CHARGES**

If you do not qualify for public funding, we charge at the rate of £95 + VAT (£16.62) per hour for each of you (the total charge for each 90 minute session will therefore be **£167.44** for each person). We shall ask you to pay at the end of each session, and shall then issue receipts for payments received. Payment in Northampton can be made by cheque, cash or most credit or debit cards (Mastercard, Visa, Maestro or Solo). Payment in Rugby can be made by cheque or cash only. The hourly rate is generally inclusive of all work undertaken on your behalf except for preparation of a Memorandum of Understanding and Statement

of Finances. The charge for preparation of these two summaries is £150 plus VAT per person (£75 plus VAT per summary per person). If your issues are particularly complicated with your personal advisers, the cost will be negotiated separately and in consultation with you both. A cancellation fee of £55 per person is payable for meetings cancelled with less than two full working days notice.

**F. CONCERNS AND COMPLAINTS**

Our practice is governed by Family Mediators Association (FMA). Any concern you may have as to our practice should be referred to us in the first instance, but if unresolved or otherwise, in writing to: The Family Mediators Association, P.O. Box 5, Bristol, BS99 3WZ.

*The Quality Mark has been established by the Legal Services Commission (LSC) so that members of the public who need mediation services can be assured that they will receive a quality service in which key information will be given to them throughout their case.*

*As part of the scheme, some of Mediation First's files may be checked by auditors who are part of the LSC, to make sure that we are providing a good service. They will keep all information about your case confidential.*

*Because of Mediation First's confidentiality policy, we would find it helpful for you to give your permission for LSC auditors to see this file as part of their quality checks.*

***I give my consent / do not give my consent*** (please delete as appropriate) to LSC auditors seeing my file as part of any quality checks.

*Note that a refusal to consent will not prevent Mediation First from providing mediation and will have no bearing on the service offered.*

I have read and understood the above:

Signed: ..... Signed: .....

Date: ..... Date: .....

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