

# ***Agreement to Mediate***

## **BASIC PRINCIPLES AND TERMS OF MEDIATION**

***The following are the terms on which this mediation is undertaken. Prior to the first joint mediation meeting, you will be asked to sign this document as an indication of your commitment to the process and of your agreement to the terms set out below.***

### **Mediation Organisation and Code of Practice**

- 1 I undertake this mediation as a member of Resolution (formerly the Solicitors Family Law Association). In doing so I am guided and bound by the Codes of Practice approved by the Law Society of England and Wales.

### **Mediator's professional capacity and functions**

2. I am a family mediator and solicitor and undertake this mediation as part of my practice at Letchers Solicitors Family Mediation Service. When working as a mediator, I do not advise or represent parties but instead I work in an impartial way to help you arrive at your own decisions. I do not give legal or any other advice to you, jointly or individually or make judgments about your individual or joint situation. I can, however, provide legal or other information on an even-handed basis, to assist you both for example in understanding the applicable principles of law and the way those principles are generally applied.
3. My role is to assist you both to consider possible ways of resolving any issues that you may have or of making future arrangements for yourselves and any children. I will help you both to explore the options available to you, with a view to your reaching a resolution that you both consider appropriate to your circumstances. That may not necessarily be the same conclusion that might be arrived at by the court. If practicable I will tell you if I consider that your proposed terms are likely to fall outside of the parameters that a court might approve.
4. I will not tell you what you should do or comment about what your "best interests" are or might be. The choices and decisions are yours. It is possible and often very helpful for you to have advice from your solicitor during the mediation process in order to make informed decisions and so that your respective advisers are kept informed as to progress. I may help you to consider when legal advice outside the meeting is appropriate.

### **No conflict of interests**

5. Mediation cannot take place if I have prior knowledge of the situation through a previous involvement as a solicitor, counsellor or in any other professional role. If any other conflict, potential conflict or perceived conflict of interest arises or emerges, I will not continue to act as mediator.

### **Confidentiality and privilege**

6. I will treat all matters in the mediation as confidential, except as otherwise agreed, and subject to the terms of this Agreement, in particular Paragraphs

10, 11 and 12. I ask you to agree that the mediation and any summaries may be reviewed on a strictly confidential basis by a Professional Practice Consultant/Supervisor and/or other appointee of my mediation organisation and that anonymised details about your case may be used for mediation training purposes.

7. Information, written or oral, which either of you may provide to me will not ordinarily be maintained confidentially as between yourselves, except any address or telephone number either of you ask me to keep private, or otherwise as you may both agree with me.
8. All financial information is provided on an "open" basis, which means that it can be used in court. This may be in support of a consent application made by either of you or in contested proceedings. Such disclosure will assist your individual legal adviser and will avoid information having to be provided twice over. This reinforces the importance of full and accurate disclosure, as your individual legal or financial adviser before advising you on any settlement terms will need to check with you as to the completeness and accuracy of all information received.
9. However, communications about possible options, proposals and terms of financial settlement are conducted on a "without prejudice" basis, so cannot be referred to in court. Also, an evidential privilege will ordinarily be claimed for all attempts to resolve issues in the mediation including those relating to children. Where an evidential privilege exists, it can only be waived by agreement. You both agree not to call me (and/or any co-mediator if applicable) to give evidence in court, nor will you seek to have any of my or our notes brought into evidence.
10. These provisions for confidentiality and privilege will not apply if it appears that a child or other person is suffering or likely to suffer significant harm. In this event, I would normally, as far as practicable and appropriate, seek to discuss the action to be taken with both of you before taking any action to contact the appropriate authority/ies in line with the Mediation Code(s) of Practice under which I work. These provisions are also subject to any overriding obligations of disclosure imposed by law.
11. These provisions for confidentiality and privilege will also not apply if information is communicated to me with the intention of furthering a criminal purpose. I am required by law to comply with the Proceeds of Crime Act 2002 ('the Act') and Money Laundering Regulations 2003 and all other regulations made under the Act ('the Regulations'). The Act may cover your partner's conduct as well as your own. It also covers overseas conduct, which, although lawful outside of the UK, may be or would have been unlawful if committed in the UK. First, the Regulations require me to carry out proper client identification procedures (see below) and to keep the information about identification up to date. Furthermore, if I become aware in the course of acting for you as a mediator, that you have engaged or may engage in any criminal conduct, I am obliged to report that knowledge or suspicion to the National Criminal Intelligence Service (NCIS) and by entering into this agreement, you authorise me to make such reports to NCIS as are appropriate under the Regulations.

12. In order to comply with the obligations as to client identification, I should be grateful if each of you could supply us with a photocopy of your passport (photograph page) or driving licence, together with an original utility or credit card bill showing your current address which is not less than three months old.

### **Financial and other information**

13. You both undertake to provide complete and accurate disclosure of all your financial circumstances, with supporting documents where necessary. I will try to help you to identify what information and documents would help the resolution of any issues, and to consider how best these may be obtained.
14. I do not verify the completeness and accuracy of the information you provide but if required, I can help you to consider the ways in which you may make such enquiries or obtain such verification. I will ask you to sign and date a statement in the Open Financial Statement confirming that you have made a full disclosure. If it should emerge that full disclosure has not been made, any agreements flowing from the proposals reached in mediation based on materially incomplete information could in some cases be set aside and the issues re-opened.

### **Professional advice and qualified nature of agreements**

15. Any significant decisions arrived at in mediation (including any settlement proposals) will not ordinarily be turned into a binding agreement until you have each had the opportunity to seek advice on them from your separate legal advisers. However, decisions on matters that are not materially significant to your respective positions or to the substantive outcome, may be entered into as binding agreements without legal advice. If during the course of the mediation it would be helpful for me to draw up an Interim Summary on a without prejudice basis to record interim decisions on minor matters or options/proposals discussed, I would do so. Such a document would be privileged and could not be produced in evidence to a court.
16. Mediation meetings are commonly conducted without lawyers present. However, your legal advisers may, by agreement between you both and me, participate in the mediation process in any useful and appropriate way.
17. I may help you to consider the desirability of seeking assistance from other professionals such as accountants, expert valuers or others, or from counsellors or therapists.

### **Summaries and recording of agreements**

18.1 During the course of the mediation, usually once financial disclosure is complete, I will ordinarily draw up:-

- **An Open Financial Statement/Summary** of your financial circumstances which will be on the record (and could be used in evidence in a court if need be).

18.2 At the end of the mediation (or earlier if appropriate), I will also ordinarily draw up:

- A privileged summary called a **Memorandum of Understanding** of your mutually acceptable proposals for the settlement of matters discussed in the mediation, outlining the context in which those proposals have been reached. This is a without prejudice document.

In the event of this mediation being conducted under the Legal Services Commission's publicly funded scheme, I may instead draw up an **Outcome Statement** confirming the terms of the outcome of the mediation.

These documents are generally provided to enable you both to obtain separate and independent legal and/or other advice before entering into a legally binding agreement. You will need such independent advice to assess how the proposed settlement terms may affect your own individual position.

19. Your solicitors will usually undertake the formal recording of any agreements that may be reached after you have each been able to seek their advice, including for example the drawing up of any Separation Agreement or draft court consent order.

### **Complaints and Compliance**

21. I hope that I will work with you as a mediator in a manner fully satisfactory to you both. Any concern you may have as to my practice or the service provided by me should be referred to me in the first instance. If I am unable to resolve this with you directly or otherwise, any complaint you have, will be considered through my firm's complaints procedure, and thereafter if it is still unresolved you may refer your complaint to Resolution for consideration in accordance with their complaints procedure. Please let me know if you would like a copy of the Complaints and Compliance Rules and I would be happy to provide this to you.

### **Termination of mediation**

22. Under the Code(s) of Practice to which I subscribe, I will be concerned to ensure that each of you enter into the mediation process able to discuss and plan freely together and without risk of threat or harm. I ask that you inform me if there are concerns for you about your ability to negotiate freely.
23. Either of you may terminate the mediation at any stage. I may also terminate the process if I do not think it appropriate or helpful to continue. In either such event, I will if required provide information as to other options available to you.

### **Mediation fees**

24. My fees, payable at the end of each session or as otherwise arranged, are £190 per hour plus VAT of 17.5% (ie £285 + VAT for a 1½ hour session). These can be shared between you on a 50/50 basis or in any other way you may agree. I will usually ask for an amount on account of costs at the start of a

