

D S Mediation

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Property FDR Mediation Agreement

This agreement for mediation (**this Agreement**) is made between Daan Spijer (**the Mediator**) and each of the two parties (**the Parties**) whose names and signatures appear at the end of this Agreement.

This Agreement is made on the _____ day of _____ 20__.

Family Dispute Resolution (FDR) Process

1. Daan Spijer is a nationally accredited Family Dispute Resolution (**FDR**) Practitioner (registration number R1005915) and is empowered to mediate both family property disputes and family parenting disputes.
2. The **Property FDR (Mediation)** process referred to in this Agreement is part of Family Law in Australia.
 - 2.1 It is a voluntary process by which the Parties, with the assistance of the Mediator:
 - 2.1.1 systematically isolate the issues in dispute (**the Dispute**) in relation to their property;
 - 2.1.2 develop options for the resolution of those issues;
 - 2.1.3 explore the usefulness of those options and consider alternatives with the aim of reaching an agreement on the division of their property.
 - 2.2 Any agreement reached:
 - 2.2.1 must accommodate the interests and needs of the Parties;
 - 2.2.2 must take into account the best interests and needs of any minor children of the parties;
 - 2.2.3 must have the effect of resolving the Dispute or of agreeing on some of the issues.A Property Agreement (if there is one) is designed to embody the final agreement between the parties on all matters relating to their property.
 - 2.3 The Mediation may have to be conducted over a number of sessions.
 - 2.4 The Parties will be transparent and honest with each other and make full disclosure of any and all property they own or have control over, as well as any debts and other liabilities they may have.
3. Property FDR is subject to the provisions of the commonwealth *Family Law Act 1975* and Regulations made under that Act. These provisions include the need for any property settlement to take into account and provide for the best interests of any minor children of the Parties and the possibility of the payment of spousal maintenance.

Appointment of Mediator

4. The Parties appoint the Mediator to conduct the Mediation in accordance with the terms of this Agreement. The Mediator accepts this appointment.

Payment of Session Fees and Other Fees

5. The fee to be paid for the Mediation (**FDR Fee**) for the first session is the amount set out in Schedule 1 (a) and this shall be paid by the Parties before the first session in a manner directed by the Mediator, with each Party paying 50% of the fee or in such other proportions as decided by the Parties. This fee includes an intake interview with each Party and review of any relevant documentation.
6. If a subsequent session is needed, the fee to be paid for this (**Follow-on FDR Fee**) is the amount set out in Schedule 1 (b) and this shall be paid by the Parties before any subsequent session in a manner directed by the Mediator with each Party paying 50% of the fee or in such other proportions as decided by the Parties.
7. The FDR Fee and any Follow-on FDR Fee are non-refundable except, at the discretion of the Mediator, in the event of the Mediation not proceeding or of any scheduled session not proceeding.
8. The FDR Fee and any Follow-on FDR Fee are not refundable in the event that the Mediation or any subsequent session proceeds and no final agreement is reached by the Parties.
9. **Other Fees**
 - 9.1 The Mediator may charge the **Preparation Hourly Fee** set out in Schedule 1 (d) for any extensive preparation required by the Mediator due to the complexity of the Dispute and the Parties agree to pay such fee if charged. There will be no charge for an initial intake interview with each Party, unless no Mediation session is subsequently held for any reason.
 - 9.2 If a venue needs to be hired for the Mediation, the Parties agree to pay this fee (**Venue Costs**) as set out in Schedule 1 (f).
 - 9.3 In the event that a session in the Mediation extends beyond the time set aside for its conduct as indicated in Schedule 1 (c) (the **Expected Duration**), the Parties agree to pay **the FDR Hourly Fee** set out in Schedule 1 (e) for any such extended time, subject to the Mediator's right to waive any or all of the FDR Hourly Fee.
 - 9.4 If the Mediator needs to travel farther than 50 kilometres from Mount Eliza to conduct the Mediation, the Parties agree to reimburse him for the costs of travel and any accommodation he may require (**Travel Costs**).
 - 9.5 If payable, the Parties agree to pay 50% each, or such other proportions each as the Parties may decide, of any Preparation Hourly Fee, Venue Costs, the FDR Hourly Fee and Travel Costs.

Role of the Mediator

10. The Mediator will:
 - 10.1 be neutral and impartial;
 - 10.2 not make decisions for either Party or impose a solution on the Parties;
 - 10.3 not bind the Parties by any comments, suggestions or statements made by the Mediator;
 - 10.4 not give legal, financial or other professional advice to either Party;
 - 10.5 not arbitrate between the Parties or make any rulings in relation to the issues in dispute between the Parties;
 - 10.6 not act as an advocate for either Party;
 - 10.7 offer information about useful resources as appropriate;
 - 10.8 throughout the Mediation, determine when he may meet with the Parties together or separately; and
 - 10.9 not draft or draw up any final agreement between the Parties; any final agreement between the Parties is to be drafted by their respective lawyers.

Commitment to Mediation

11. Each Party agrees to co-operate with the Mediator and the other Party in the Mediation with a commitment to negotiate in good faith towards achieving a resolution of the Dispute.
12. Each Party agrees:
 - 12.1 before the first Mediation session, to prepare a full inventory of their respective assets, liabilities and income and, to the extent known, the assets, liabilities and income of the other party; and
 - 12.2 during the Mediation session, to make full and honest disclosure of their respective assets and liabilities and income even though not all property, liabilities or income may be subject to inclusion in a final agreement.
13. The Parties acknowledge each other's right to be heard and agree to behave with courtesy and respect towards each other and towards every person participating in the Mediation, including towards the Mediator.
14. Once a date or dates have been set for any session of the Mediation, any changes may only be made with the consent of the Mediator and both Parties.

Conflict of Interest

15. The Mediator must, prior to the commencement of the Mediation, disclose to the Parties to the best of his knowledge any prior dealings with either of the Parties as well as any interest in the Dispute and any other possible conflict of interest.
16. If, during the Mediation, the Mediator becomes aware of any circumstances that may affect his capacity to act impartially, he will, to the extent that he may do so, immediately inform the Parties of this situation.

Confidentiality

17. To the extent allowed by law, the Mediator and the Parties agree to keep confidential all information and documents concerning the Dispute which are disclosed during the course of the Mediation, including during any intake interview and during any private communications between the Mediator and either Party.
 - 17.1 Any disclosures, exchanges and all aspects of any communication occurring within the Mediation shall be 'without prejudice', which means they cannot be used in any subsequent legal proceedings.
 - 17.2 The confidentiality does not extend to disclosure by a Party to that Party's own legal or financial advisers or to a therapeutic counsellor.
18. In order to preserve confidentiality, audio or video recording of any session of the Mediation by anyone attending such session is strictly prohibited, including during any online session or discussion.
19. Subject to any limits imposed by law, including to ensure the safety of any person, the Parties and the Mediator agree that the following will be privileged and will not be disclosed or be the subject of a subpoena to give evidence or to produce documents in any proceedings in respect of the Dispute:
 - 19.1 any settlement proposal made in the course of attempting to resolve the Dispute, whether such proposal be made by a Party or by the Mediator;
 - 19.2 the willingness of a Party to consider or accept any such settlement proposal;
 - 19.3 any admission or concession made within the Mediation by a Party;
 - 19.4 any views expressed, suggestions made or exchanges passing (orally or documentary) between either of the Parties and the Mediator or between the Parties themselves;
 - 19.5 documents brought into existence for the purpose of the Mediation that have not been or are otherwise incapable of being discovered or subpoenaed for the purposes of legal proceedings.
20. In Property FDR all property over which each party has full or partial control, whether individually or jointly, needs to be disclosed and considered.

- 20.1 Subject to clauses 17 and 19, the Parties acknowledge that the conduct of this Mediation is only possible if each makes full disclosure of their respective assets, liabilities and incomes and of all property over which they have full or partial control.
- 20.2 The Mediator may postpone or conclude the Mediation before a final agreement is reached between the Parties if he is of the opinion that either of the parties is not fully disclosing their assets or income.

Communication between the Mediator and the Parties

21. Any information disclosed by a Party to the Mediator in private is to be treated as confidential by the Mediator unless the Party who makes the disclosure authorises the Mediator to disclose the information to the other Party. This includes any information communicated by either Party to the Mediator during any private session between the Mediator and either Party before the Mediation commences, including any intake interview;
22. The Mediator may communicate with the Parties or their representatives or both, separately or in conference, before the Mediation in order to agree on:
 - 22.1 the suitability of the matter for Mediation;
 - 22.2 the collation, disclosure and presentation of documentation and other material for use in the Mediation;
 - 22.3 the setting of a time, date and venue for any session of the Mediation;
 - 22.4 any other planning or administrative arrangements and considerations to enable the Mediation to take place.

Authority of the Parties

23. Before the Mediation commences, in order to come to the Mediation fully informed, each Party will seek any relevant professional advice in relation to:
 - 23.1 legal matters, including:
 - 23.1.1 relevant provisions of family law in Australia;
 - 23.1.2 the likely costs of the Dispute being taken to a court or tribunal; and
 - 23.1.3 the prospects of success if the Dispute were to be taken to a court or tribunal;
 - 23.2 financial matters;
 - 23.3 taxation matters, including the taxation implications of possible settlement scenarios;
 - 23.4 anything else that may affect that Party's ability to negotiate and settle the Dispute.
24. Each Party shall attend the Mediation on their own behalf and not attend to represent or speak for any other person and come with full authority to negotiate and settle the Dispute and to enter into a binding agreement.
25. If, during the Mediation, a Party needs to seek further advice, the Mediator will facilitate this as far as is practicable.

Support People at Property FDR

26. At the Mediation, each Party may be accompanied by one or more 'support' people, including a lawyer or other professional advisor, provided the other Party consents to such support people being present. Such a support person may be:
 - 26.1 a lawyer or accountant;
 - 26.2 an interpreter, because the Party has difficulty with language, hearing or speaking;
 - 26.3 some other person deemed necessary for support by the Party.
27. If either Party objects to the other Party being accompanied at the Mediation by a support person:

- 27.1 this will have to be resolved, with the help of the Mediator, before Mediation can take place;
- 27.2 the Mediator will make a decision whether the other Party may be accompanied by a support person and any conditions that such support person may have to be subject to.

In any case:

- 27.3 the Mediator reserves the right to speak before a Mediation session with any support person suggested by a Party; and
 - 27.4 the Mediator may impose conditions that any support person will be subject to.
28. Anyone attending the Mediation who is not a Party, may only attend after signing a third-party confidentiality agreement.
29. Any support person present at the Mediation does not have the right to speak on behalf of the Party they are supporting. The Mediator may direct if and when any support person may speak at the Mediation.

Settlement of the Dispute

30. In the event that the Dispute is settled:
- 30.1 a settlement agreement (**Property Settlement**) may be drafted by the Parties with the aid of their respective lawyers if these are present at the Mediation;
 - 30.2 the parties will not sign any Property Settlement at the Mediation unless both Parties are accompanied by legal professionals who are able to properly advise them at the time;
 - 30.3 any informal agreement drafted by the Parties at the Mediation will not be binding until it is drafted by a lawyer and signed by both parties;
 - 30.4 the Mediator will not draft any Property Settlement, but may, at the end of the Mediation session or later, give the parties a document setting out his understanding of the matters the Parties have agreed on.

Enforcement of Property Settlement

31. The Parties may apply to a competent court for a consent order in the terms of any Property Settlement.
32. Either Party will be at liberty to enforce the Property Settlement referred to in clause 30 by judicial proceedings and for those purposes, either Party may call evidence of any Property Settlement.

Adjournment or Termination of Property FDR

33. The Parties and the Mediator may mutually agree to an adjournment of any session of the Mediation.
34. The Mediator may terminate his involvement in the Mediation if, after consultation with the Parties, the Mediator decides he is unable to further assist the Parties to achieve resolution of the Dispute.
35. Either Party may terminate the Mediation at any time after consultation with the Mediator.
36. If the Mediation is terminated without the Parties reaching a final agreement, any future Mediation of the Dispute between the Parties will be a new Mediation and not a continuation of the current Mediation. However, a Mediation session may be adjourned to be continued at a future date.
37. If the Mediator decides that it is appropriate for him to issue a Section 60I Certificate during or after the conduct of a Mediation session, he may issue the Certificate to both parties.

Exclusion of Liability and Indemnity

38. The Mediator will not be liable to either Party for any act or omission in the performance of the Mediator's obligations under this Agreement unless the act or omission is fraudulent.
39. The Parties together and separately indemnify the Mediator against any claim for any act or omission in the performance of the Mediator's obligations under this Agreement unless the act or omission is fraudulent.

40. If a Party requires the Mediator to give evidence in a court or tribunal concerning anything said or done in the course of the Mediation, or to produce documents created for the purpose of or during the Mediation, that Party will:
- 40.1 indemnify the Mediator for all costs and expenses incurred by the Mediator (including the Mediator's legal costs, such legal costs to be assessed on a solicitor-client basis, and any legal costs the Mediator is ordered to pay to any other person) in connection with the appearance at the court or tribunal, the giving of evidence or the production of documents;
 - 40.2 pay the Mediator at the **Hourly Rate** specified in Schedule 1 (g) for the time expended by the Mediator in connection with the appearance, the giving of evidence or the production of documents; and
 - 40.3 reimburse the Mediator for any travel or other expenses properly incurred by the Mediator in connection with the appearance, the giving of evidence or the production of documents.
41. For the purposes of any dispute handling between either Party and the Mediator, the Mediator is a professional member of the Resolution Institute (<https://resolution.institute/>), which may be called upon by a Party or by the Mediator to handle any such dispute.

Online Mediation

42. The Mediator will decide whether to hold any session of the Mediation or any pre-mediation interview in person (face-to-face) or via an online platform. If a session of the Mediation or any pre-mediation interview is held via an online platform, the Parties and the Mediator undertake:
- 42.1 not to record audio or video of the Mediation or the pre-mediation interview or any part of it;
 - 42.2 not to have any undisclosed people in the room with them or within hearing of the Mediation or the interview;
 - 42.3 not to make a screen capture of any part of the Mediation or the interview without the consent of the Mediator and the other Party.
43. If the Mediation takes place using online technology:
- 43.1 the Mediator will take all possible steps to ensure that the platform used and the Mediator's connections to that platform are secure;
 - 43.2 as far as he is able, the Mediator will assist, the Parties and any other person 'attending' the Mediation to obtain a secure connection to the platform being used;
44. the Mediator will not be liable for any breach of security, whether involving breach of confidentiality or not, that may arise from the Mediation being conducted online.

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Schedule 1 – Mediation Costs (all inclusive of GST)


- a. The **FDR Fee** to be paid for the first session under clause 5 is **\$1,980**
- b. The **Follow-on FDR Fee** to be paid for each session under clause 6 is **\$1,100**
- c. The **Expected Duration** of each Parenting FDR session is **2½** hours
- d. The **Preparation Hourly Fee** to be paid under clause 9.1 is **\$132**
- e. The **FDR Hourly Fee** to be paid to the Mediator in relation to clause 9.3 is **\$132**
- f. The **Venue Costs** to be paid per session under clause 9.2 is **\$220** per half-day session
- g. The **Hourly Rate** to be paid by a Party under clause 40.2 is **\$165**

Fees will be invoiced and payment details will appear on each invoice.

Execution of Agreement

1.	Name of Party (please print):	
	Address of Party (please print):	
	Signature of Party:	

2.	Name of Party (please print):	
	Address of Party (please print):	
	Signature of Party:	

3.	Name of Mediator:	Daan Spijer
	Signature of Mediator:	

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