

## D S Mediation

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## Parenting 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 \_\_\_\_\_ 2024.

### 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 parenting disputes and family property disputes.
2. The **Parenting 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 parenting arrangements;
    - 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 parenting arrangements for the Parties' children.
  - 2.2 Any agreement reached must accommodate the interests and needs of the Parties and take into account the best interests and needs of any minor children of the Parties and has the effect of resolving the Dispute or of agreeing on some of the issues. A Parenting Agreement (if there is one) is designed to embody the agreement between the Parties reached during the mediation session.
  - 2.3 The Parenting FDR may have to be conducted over a number of sessions.
3. Parenting FDR is subject to the provisions of the commonwealth *Family Law Act 1975* and Regulations made under that Act. These provisions include considerations of the best interests of the minor children of the Parties.

### Appointment of Mediator

4. The Parties appoint the Mediator to conduct the Parenting FDR 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 Parenting FDR (**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 proportions to be decided by the Parties. This fee includes an intake interview with each Party.

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 proportions to be 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 Parenting FDR not proceeding or of any scheduled session not proceeding.
8. The FDR Fee and any Follow-on FDR Fee are not refundable if the Parenting FDR 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 due to complexity of the Dispute and the Parties agree to pay such fee if charged. There will be no charge for an intake interview with each Party.
  - 9.2 If a venue needs to be hired for the Parenting FDR, the Parties agree to pay this fee (**Venue Costs**).
  - 9.3 In the event that a session in the Parenting FDR 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 further than 50 kilometres from Mount Eliza to conduct the Parenting FDR, 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 proportions each as the Parties may decide, of the 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 throughout the Mediation, determine when he may meet with the Parties together or separately; and
  - 10.8 not draft or draw up any final agreement between the Parties; any final agreement between the Parties should 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 Parenting FDR with a commitment to negotiate towards achieving a resolution of the Dispute.
12. 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 Parenting FDR, including towards the Mediator.
13. Once a date or dates have been set for any session of the Parenting FDR, any changes may only be made with the consent of the Mediator and both Parties.

## **Conflict of Interest**

14. The Mediator must, prior to the commencement of the Parenting FDR, 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.
15. If, during the Parenting FDR, 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**

16. 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 Parenting FDR.
  - 16.1 Any disclosures, exchanges and all aspects of any communication occurring within the Parenting FDR shall be 'without prejudice'.
  - 16.2 The confidentiality does not extend to disclosure by a Party to that Party's own legal or financial advisers or to a therapeutic counsellor.
17. In order to preserve confidentiality, audio or video recording of any session of the Parenting FDR by anyone attending such session is strictly prohibited.
18. 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:
  - 18.1 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;
  - 18.2 the willingness of a Party to consider or accept any such settlement proposal;
  - 18.3 any admission or concession made within the Parenting FDR by a Party;
  - 18.4 any views expressed, suggestions made or exchanges passing (orally or documentary) between either of the Parties and the Mediator or between the Parties themselves;
  - 18.5 documents brought into existence for the purpose of the Parenting FDR that have not been or are otherwise incapable of being discovered or subpoenaed for the purposes of legal proceedings.

## **Communication between the Mediator and the Parties**

19. 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 Parenting FDR commences, including any intake interview.
20. The Mediator may communicate with the Parties or their representatives or both, separately or in conference, before the Parenting FDR in order to agree on:
  - 20.1 the suitability of the matter for Parenting FDR;
  - 20.2 the collation, disclosure and presentation of documentation and other material for use in the Parenting FDR;
  - 20.3 the setting of a time, date and venue for any session of the Parenting FDR;
  - 20.4 any other planning or administrative arrangements and considerations to enable the Parenting FDR to take place.

### **Authority of the Parties**

21. Before the Parenting FDR commences, in order to come to the Parenting FDR fully informed, each Party will seek any relevant professional advice in relation to:
  - 21.1 legal matters, including:
    - 21.1.1 relevant provisions of family law in Australia;
    - 21.1.2 the likely costs of the Dispute being taken to a court or tribunal; and
    - 21.1.3 the prospects of success if the Dispute were to be taken to a court or tribunal;
  - 21.2 anything else that may affect that Party's ability to negotiate and settle the Dispute;
22. Each Party shall attend the Parenting FDR on their own behalf and not attend to represent or speak for any other person.
23. If, during the Parenting FDR, a Party needs to seek further advice, the Mediator will facilitate this as far as is practicable.

### **Support People at Parenting FDR**

24. It is not common for a person participating in a Parenting FDR to be accompanied by any other person. However, a Party may wish to have someone accompany them if:
  - 24.1 there is a need for an interpreter because of difficulty with language, hearing or speaking;
  - 24.2 the Party needs a support person for some other reason.
25. If either Party objects to the other Party being accompanied at the Parenting FDR by a support person:
  - 25.1 this will have to be resolved, with the help of the Mediator, before Parenting FDR can take place;
  - 25.2 the Mediator will make a decision whether the other Party may be accompanied by a support person.
26. Anyone attending the Parenting FDR who is not a Party, may only attend after signing a third-party confidentiality agreement.
27. Any support person present at the Parenting FDR does not have the right to speak on behalf of the Party they are supporting.

### **Settlement of the Dispute**

28. In the event that the Dispute is settled, an informal Parenting Agreement may be drafted by the Parties at the Mediation session. The Mediator will not draft any Parenting Agreement.
29. A Parenting Agreement may be informal, in order to give the Parties a clear record of what they have agreed, or it may be a draft for the Parties to take to their respective Lawyers for formal drafting later.
30. The parties will not sign any formal Parenting Agreement at the Mediation.

### **Enforcement of a Parenting Agreement**

31. If the Parties take steps to have a formal Parenting Agreement drafted by their respective lawyers, that formal Parenting Agreement may form the basis of a consent order in court proceedings.

### **Adjournment or Termination of Parenting FDR**

32. The Parties and the Mediator may mutually agree to an adjournment of any session of the Parenting FDR.
33. The Mediator may terminate his involvement in the Parenting FDR if, after consultation with the Parties, the Mediator decides he is unable to further assist the Parties to achieve resolution of the Dispute.
34. Either Party may terminate the Parenting FDR at any time after consultation with the Mediator.

35. If the Parenting FDR is terminated without reaching an agreement, any future Mediation of the Dispute between the Parties will be a new Parenting FDR and not a continuation of the current Parenting FDR. However, a Parenting FDR session may be adjourned to be continued at a future date.

#### **Exclusion of Liability and Indemnity**

36. 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.
37. 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.
38. If a Party requires the Mediator to give evidence in a court or tribunal concerning anything said or done in the course of the Parenting FDR, or to produce documents created for the purpose of or during the Parenting FDR, that Party will:
- 38.1 indemnify the Mediator for all costs and expenses incurred by the Mediator (including the Mediator's legal costs and any legal costs the Mediator is ordered to pay to any other person, such legal costs to be assessed on a solicitor-client basis) in connection with the appearance at the court or tribunal, the giving of evidence or the production of the documents;
  - 38.2 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
  - 38.3 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.
39. 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/>).

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**Schedule 1 – Mediation Costs** (all inclusive of GST)

- a. The **FDR Fee** to be paid for each session under clause 5 is \$ \_\_\_\_\_
- b. The **Follow-on FDR Fee** to be paid for each session under clause 6 is \$ \_\_\_\_\_
- c. The **Expected Duration** of each Parenting FDR session is \_\_\_\_\_ hours
- d. The **Preparation Hourly Fee** to be paid under clause 9.1 is \$ \_\_\_\_\_
- e. The **FDR Hourly Fee** to be paid to the Mediator in relation to clause 9.3 is \$ \_\_\_\_\_
- f. The **Venue Costs** to be paid per session under clause 9.2 is \$ \_\_\_\_\_
- g. The **Hourly Rate** to be paid by a Party under clause 38.2 is \$ \_\_\_\_\_

**Execution of Agreement**

<b>1.</b>	Name of Party (please print):	
	Address of Party (please print):	
	Signature of Party:	

<b>2.</b>	Name of Party (please print):	
	Address of Party (please print):	
	Signature of Party:	

<b>3.</b>	Name of Mediator:	Daan Spijer
	Signature of Mediator:	