XXXXXXX

Mediator

AGREEMENT TO MEDIATE

BASIC PRINCIPLES AND TERMS OF MEDIATION

The following terms are the basis for mediation conducted by XXXXXXXX. Please read each point carefully, noting any questions you may have to bring to the first meeting or raise in advance. Each party to the mediation will be asked to sign this document before the mediation commences as an indication of your commitment to the process and agreement to the terms. Thank you.

Mediation Organisation and Code of Practice

1. I undertake this mediation as a member of resolution, formerly known as the Solicitors Family Law Association (SFLA). In doing so I am guided and bound by the Code of Practice approved by the Law Society of England and Wales.

Mediator's professional capacity and functions

2. I am a family mediator and a solicitor and I undertake this mediation as part of my practice at ZZZZZ. My role is to assist you to resolve any issues that you may have or in making future arrangements for yourselves and any children. I will help you to explore the options available to you, with a view to your reaching a resolution that you consider appropriate to your circumstances. The choices and decisions are yours. I require you to give your commitment to the mediation process and to co-operate as fully as possible in seeking workable solutions and a settlement.

3. When working as a mediator, I do not represent the parties but instead I act in an impartial way to help you arrive at your own decisions. I will not assert or protect any legal rights of either party. I may provide legal or other information on an even-handed basis to assist you, for example in understanding the applicable principles of law and the way those principles are generally applied. 4. I may make positive suggestions, observations and proposals that I consider, in my judgment and experience, may help you in reaching a fair and just outcome. 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. If I consider necessary to help produce an outcome, I may provide a legal opinion or analysis on the merits of respective arguments and claims, on what may be the outcome if the matter were litigated at court or other directive legal views and opinions to encourage resolution.

5. It is always very helpful for you to have advice from your solicitor before the first mediation session and between sessions to discuss progress, developments and take advice on the next stage.

6. Mediation is commonly conducted without lawyers present. However sometimes it can be helpful for parties to have their lawyers present with them in the mediation room. I am happy to proceed on this basis if agreed by all parties. If your lawyers are present at the mediation meetings, you will have the opportunity of seeking legal advice from them before turning any decisions arrived at in the mediation (including any settlement proposals) into an open agreement.

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No conflict of interests

7. Mediation cannot take place if I have prior knowledge of the situation through a previous involvement including as a solicitor, judge or in any other professional role. If any other conflict subsequently arises or emerges, I will not continue to act as mediator (except with your specific informed permission).

Confidentiality and privilege

8. I will treat all matters in the mediation as confidential except as otherwise agreed, and subject to Paragraph 12. I ask you to agree that for training and quality assessment purposes that the mediation and any mediation documents may be reviewed on a strictly confidential basis by my Professional Practice Consultant and/or any other appointee of my mediation organisation.

9. At the mediation sessions I will meet with the parties together. Mediation is a transparent process. All information or correspondence from you or your lawyers will be shared openly with other parties. An exception to this is an address or telephone number which any party wishes to keep confidential. As the mediation progresses, I may exceptionally meet with the parties separately when at my discretion I feel that private meetings are appropriate and helpful towards a settlement. Any information disclosed to me in private meetings will remain confidential and will not be disclosed by me without the prior consent of the party who provided the information.

10. All financial or other factual information or evidence 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 you or in contested proceedings. Such disclosure will assist your legal adviser and will avoid information having to be provided twice over. (This reinforces the importance of full and accurate disclosure, as your legal adviser will need to check with you about the completeness and accuracy of all information received before advising you on any settlement terms.)

11. However, communications about possible options, proposals and terms of financial settlement are conducted on a "without prejudice" basis. This means, for instance, it cannot be referred to in court. They will not be turned into an open agreement until you have each had the opportunity to seek advice on them from your legal advisers. Also, an evidential privilege will ordinarily be claimed for all attempts to resolve issues in mediation including those relating to children. Where an evidential privilege exists, it can only be waived by agreement. (An exception to this is when the parties lawyers are present and advise each party on the proposed terms and a settlement outcome document is then signed. This cannot bind a family court but is treated as open and from which it is difficult to resile.)

12. These provisions for confidentiality and privilege may not apply if it appears that any child or other person is suffering or likely to suffer significant harm or a child is likely to be abducted. In this event, I would, as far as practicable and appropriate, seek to discuss the action to be taken with you before taking any action to contact the appropriate authorities in line with the Mediation Code of Practice under which I work and the Guide to the Professional Conduct of Solicitors and the Law Society Family Law Protocol. These provisions are also subject to any overriding obligations of disclosure imposed by law.

13. You agree not to call me to give evidence in court nor will you seek to have any of my notes brought into evidence.

Financial and other disclosure information

14. You undertake and commit to provide complete and accurate information of all your financial and/or other relevant circumstances, with supporting, corroborative documents where necessary. This is called disclosure. If disclosure has already been given via court proceedings or voluntarily between lawyers, I may ask that each of you provide in advance of the first mediation session the Financial Statement (Form E), any chronology, the statement of issues, any balance sheets and any other relevant disclosure prepared already on your behalf, together with any written offers made.

15. Exceptionally if a dispute is well advanced, I may request in advance of the mediation meeting that your lawyers each provide to me (and simultaneously exchange) a written summary of your views on the case (a 'Position Statement'), together with all of the documents to which that Position Statement refers, together with any written offers that have been made. I will read in advance and may ask questions or seek clarification. This can have the result of helping better progress to be made at the mediation sessions themselves and be more time and cost efficient.

16. It is not my task as a mediator to 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 verification and help you to identify what information and documents would help the resolution of any issues, and to consider how best these may be obtained. I may point out where any disclosure may be unacceptable to a court or may seem incomplete or require more verification by you or your lawyers.

17. I may also help you to consider the desirability of seeking assistance from other professional advisers such as accountants, expert valuers or others, or from counsellors or therapists.

18. I will 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 or court orders flowing from the proposals reached in mediation based on materially incomplete or inaccurate information could in some cases be set aside and the issues re-opened and costs orders made.

Disclosure Summaries and recording of agreements

19. At the end of the mediation (or earlier if appropriate and required), I will ordinarily draw up:

- **A disclosure summary** of your financial and/or other relevant circumstances and facts which will be "on the record" and could be used in evidence in court if need be. This is the factual basis on which the mediation outcome is reached.

- **A mediation outcome** (sometimes called a memorandum of understanding) of your mutually acceptable proposals for the settlement of matters discussed in the mediation. This is a without prejudice document.

20. These documents enable you to obtain separate and independent legal and/or other advice before entering into an open agreement. You will need independent advice to assess how the proposed settlement terms may affect your own individual position.

21. I may also draw up as required:

- **An interim privileged mediation outcome**. This is a record of mutually acceptable proposals about interim or short-term arrangements. It is also without prejudice.

- **A privileged statement of the final offers of settlement** made by each of you. This is only in the event that a mediation outcome is not achieved. It might also include the areas of agreement and the areas where you are apart. It can be valuable

for your legal advisers. It is simple privilege and cannot be referred to openly nor has any efficacy in "new costs rules" cases.

- **Heads of agreement**. This will only arise if your lawyers are present, have advised on the mediation outcome and everyone is content to proceed to sign a comprehensive document. It is open and may be referred to subsequently in court proceedings. Often your lawyers and I will draft (and you will sign) heads of agreement before you leave the mediation meeting. Your signing of heads of agreement will make the mediation outcome open and as close to binding as possible in family law matters.

- **Draft consent order.** This will only arise if there has been a comprehensive privileged mediation outcome and/or open heads of agreement on the terms of the mediation outcome and the parties and their lawyers ask me to draw up a draft consent order, either at the mediation meeting or subsequently. It has to be filed at court by the applicant's lawyers. It cannot be filed by the mediator. Solicitors usually undertake the formal recording of any agreements that may be reached in mediation after you have taken their advice. This includes drawing up a separation agreement or draft court consent order. I am willing to do this drafting if agreed by you and your lawyers. This has sometimes the advantage that the drafting is undertaken in a neutral fashion. Your signing of a draft consent order will make the mediation outcome open and as close to binding as possible in family law matters.

Termination of mediation

22. I am concerned to ensure that you enter into and continue with the mediation process able to discuss and negotiate freely together without risks of threat or harm or duress. Please inform me immediately and privately if you have concerns about your ability to negotiate freely and/or your safety.

23. 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 provide information as to other options available to you to progress your case and resolve any outstanding issues.

Mediation fees

24. My fees are £££ per hour (plus VAT/but no VAT as I am not VATable/but no VAT as you are both non EU resident *[review VAT fees arrangements if only one is EU resident*]) plus reasonable expenses. You are each liable in full for my charges but they can be shared equally or in any other way as may be agreed by you and with me. Exceptionally, I may require payments on account including for costs of preparation of documents. I will send bills after each session or as may be agreed with you. I require outstanding bills to be paid before any mediation session begins. [I require payment (by cheque or credit card) at the end of each session when I will give details of my fees to date.]

25. Depending on the issues, 3 or 4 sessions are commonly required, but more or less may be needed. Often sessions are of about 90 minutes duration but the first is invariably longer and subsequent sessions can be longer or shorter dependant on what needs to be covered and how the sessions develop. In exceptional cases where disclosure has already been given and where you agree, mediation can be in just one session with a view to producing an immediate outcome but the session would then be longer than 90 minutes but with a final conclusion time agreed in advance.

26. The hourly charging rate also applies for any work that may be required in preparation for mediation sessions and between sessions, for example in reading documents submitted, drafting documents or interim documents, and in the preparation of the final documentation as set out above. I

will give an estimate, if requested, for the drafting process.

Regulation (*Please check these terms with your firm's individual policy/terms of business and adapt if required. Amend if a sole practitioner).*

27. I will work with you as a mediator in a manner which I trust and expect to be 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, any complaint or concern 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 their Complaints and Compliance Rules and their details, and I will provide this to you.

Dated the day of 200

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XXXXXXXX - Mediator

I agree to the above terms which I have read and understood :

Signed :……..Dated ……..

Signed :…….. Dated ……..