



Perspectives

www.perspectivesADR.co.za

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MEDIATION AGREEMENT

This is an agreement entered into between:

Herein referred to as '**the Referring Party**'

And

Herein referred to as '**the Responding Party**'

Herein after together referred to as the "**parties**",

and

Tania M Lara Bocher

Herein after referred to as the "**mediator**",

with the intent of resolving the current issues.

1. We have agreed to come to mediation in order to settle the issues with regard to the:
 - 1.1. Divorce or Post Divorce
 - 1.2. Parenting Plan
 - 1.3. Maintenance
 - 1.4. Family issues
 - 1.5. Restorative Justice mediation
 - 1.6. Other (Please specify) _____

2. The parties understand that mediation is an **agreement-reaching process** in which the mediator assists parties to reach agreement in a collaborative, consensual and informed manner.

3. It is understood by the parties that the mediator must remain **impartial** throughout and after the mediation process. Thus, the mediator shall not champion the interests of any party over another in mediation.
4. We understand that progress during mediation depends very much on our efforts to work out arrangements in a **co-operative** way.
5. We understand that any agreement or decision resulting from this mediation is entered into **voluntarily** by mutual acceptance of both parties.
6. We also understand that at any stage either or both of us **can decide to stop mediation** temporarily, or withdraw from mediation. Such decisions may be made for a number of reasons. If possible, we will attempt to explain our reasons and/or concerns in the course of a mediation meeting so that every effort can be made to address our concerns in a satisfactory manner.
7. If the mediators receive any further **information** from either of us or an outside source, pertaining to the situation, this will be shared with us in the next session. This includes telephone calls, correspondence, fax or e-mail or any other form of communication.
8. We also understand that if the mediators become aware that mediation is not **appropriate** in the circumstances or that no further progress can be made, that they will discuss ending mediation at the earliest opportunity.
7. The parties agree to **refrain from pre-emptive manoeuvres** and adversarial legal proceedings (except in the case of an emergency necessitating such action), while actively engaged in the mediation process.

8. A STATEMENT OF OUR INTENTION

It is our intention by signing this agreement:

- 8.1. To treat each other with **respect** and **dignity** during negotiations.
- 8.2. To try to settle our disputes courteously in the **best interests** of ourselves and our children.
- 8.3. To commit ourselves to **mutual co-operation** in resolving the

conflicts submitted to mediation.

- 8.4. To be **fair** and **reasonable** throughout the process.
- 8.5. To strive for the **least** possible **emotional** and **financial upheaval** for all concerned.
- 8.6. To make **full disclosure** to each other of all relevant **financial information**.
- 8.7. To **abide by the mutual agreed upon decisions** made during mediation and to carry out these decisions.

9. FINANCIAL TRANSPARENCY IN DIVORCE, SEPARATION AND POST-DIVORCE MATTERS

We agree:

- 9.1. That in order to make sound financial decisions, it is necessary for both of us to have full knowledge and understanding of both our financial circumstances.
- 9.2. To provide detailed financial statements where necessary.
- 9.3. Not to transfer, obstruct, conceal or dispose of any assets in any way during the process of mediation. This excludes providing for expenses in the ordinary course of business.
- 9.4. Not to add to any further charges under any account for which both of us are legally responsible, unless mutually agreed upon.

10. PROTECTING CLIENT CONFIDENTIALITY

We understand that in participating in mediation; both of us should feel free to communicate sensitive issues without fear that the mediators could later be called as witnesses against us.

- All **online mediation meetings (and in person meetings)** will be confidential and abide by the same rules and procedures of normal in person mediation meetings.
- **No recordings** of these meetings are permitted!
- All outcomes of mediation will be reduced to writing by the mediator only. This will be in the form of the outcomes of mediation documentation which may be the Memorandum of Understanding, Divorce Settlement Agreement and / or Parenting Plan Agreement.
- All case documentation will be **securely stored** in the mediator's cloud storage. This includes a record of payments received from both parties.

11. PROTECTING CONFIDENTIALITY OF THE MEDIATION PROCESS

We agree that:

- 11.1 The **discussions** held during the mediation process should remain **confidential**.

Our discussions, plans or proposals put forward during mediation **cannot be used as evidence in a court** of law, **unless we both agree** that the content of mediation should be referred to in court.

- 11.2 The mediators shall **not be called as witnesses** in court to testify facts concerning or relating to the subject matter being mediated.
- 11.3 We will not **subpoena** documents or information about our mediation belonging to mediators. This means that we will not supply mediation documents as evidence in a court of law.
- 11.4 We shall have **no claim against the mediators** arising from any loss through settling any divorce action on the terms arrived at during the mediation process.
- 11.5 We also understand that the mediator acts in **good faith**. We waive any rights of action that we may have against the mediator for any allegation of wrongful conduct on their part. We agree to hold the mediator harmless for any observation, suggestion or implication that they may make during the course of mediation.

12. DUTY OF CARE

We also understand that the mediators are not required to maintain confidentiality if they have reason to believe that a child, or other family member, is said to be, or appears to be at risk of serious harm, and may be in need of protection. If action is necessary this will be discussed with both parties before contact is made with a relevant welfare or medical agency. We also agree that in the event of early termination of the mediation, the above clauses will also apply.

13. ATTORNEYS' INVOLVEMENT AND FURTHER MEDIATION

We will give due consideration to the option of engaging attorneys for the purpose of preparing a legally binding agreement based upon the Memorandum of Understanding/ Parenting plan if this is necessary. If conflict arises in consultation with the attorney/s either during the legal process or the post-divorce phase we will contact the mediator for further mediation.

14. MEDIATION APPOINTMENTS

Mediation appointments are scheduled for TWO hours unless arranged otherwise.

15. CANCELLATION OF APPOINTMENTS

- 15.1 If one of us is unable to keep a scheduled appointment we agree that we must inform the other party and the mediators at least 48 hours in advance.
- 15.2 We accept that an appointment cancelled at less than 48 hours' notice is charged at the rate of the two-hour session missed.

16. MEDIATION FEES

A registration fee payment of **R600.00** toward the mediator's fees and expenses shall be paid to the mediator along with the signing of this agreement. This fee covers correspondence with both parties and is due when submitting this agreement along with the client registration form. This fee does not cover online mediation or online meetings.

16.1 Fees to be shared equally by both parties: _____

Or Paid in a percentage split of: _____

We have read the above and I accept the terms of the mediation:

SIGNED: _____
Name of Party 1

Name of Party 2

Mediator: _____
Tania M Lara Bocher

DATE: _____