

TERMS AND CONDITIONS

1.0 INTRODUCTION

- 1.1 These terms and conditions govern the delivery of the of the New Zealand Family Dispute Resolution Centre (**FDR Centre**) FDR Mediation process.

2.0 APPOINTMENT

- 2.1 Any party to a parenting or guardianship dispute may apply for the appointment of an FDR Provider (**Mediator**) by completing the online application form on the FDR Centre's website (the **Application**).
- 2.2 On receipt of the Application, the FDR Centre will make the necessary administrative arrangements for FDR including among other things, appointing the most appropriate available Mediator to assess the parties' readiness and suitability for FDR, and where appropriate, to mediate the family dispute on the earliest practicable date.
- 2.3 In making any appointment, the FDR Centre will have regard to, but will not be bound by, any mediator preferences indicated by the parties in the Application.
- 2.4 The parties must accept the appointment of the Mediator appointed by the FDR Centre unless a party can demonstrate on reasonable grounds that circumstances exist that give rise to justifiable doubts as to the Mediator's impartiality or independence in the eyes of any of the parties.
- 2.5 The decision as to whether to appoint a substitute Mediator will be made by the FDR Centre promptly after giving due consideration to the request. The decision is of an administrative nature and is final and binding on the parties and the Mediator. It is not subject to appeal to the FDR Centre, or any court, or other body having jurisdiction, and the FDR Centre is not required to state or communicate reasons for its decision.
- 2.6 In the event parties are redirected back to FDR by the Family Court, the policy of the Ministry of Justice is that the same Mediator will be appointed.

3.0 FDR ASSESSMENT

- 3.1 Once the Mediator has been appointed, he or she will communicate with the parties separately to conduct the FDR Assessment.
- 3.2 The Mediator may communicate with the parties for the purpose of conducting the FDR Assessment in person, by telephone, or video conference, or by any other means of electronic communication that the Mediator considers appropriate in the circumstances.
- 3.3 If the Mediator considers that the dispute is not suitable for FDR because:

- (a) at least one of the parties is unable or unwilling to participate effectively;
- (b) at least one of the parties, or a child of one of the parties, has been subject to domestic violence by a party; or
- (c) one of the parties refuses to attend or continue to attend FDR,

the Mediator must give each of the participating parties a form that complies with s12 of the Family Dispute Resolution Act 2013 (**Outcomes of Family Dispute Resolution Form**) and the FDR Mediation process will be terminated at that point.

- 3.4 If the Mediator considers that FDR is appropriate for the dispute, any party may seek on its own initiative, or the Mediator may recommend that any of the parties attend Preparation for Mediation, or any other service that may help prepare them for the FDR Mediation process (this may include Parenting through Separation and/or FLAS).
- 3.5 Fulfilment of any recommendations of the Mediator is not required to proceed to FDR Mediation.

4.0 FDR MEDIATION

- 4.1 Your FDR Mediation process may involve the Mediator meeting with you separately and/or jointly. It may also involve 'Preparation for Mediation' and/or 'Voice of the Child'. We recognise that every case that comes to us is unique. There is no one size fits all. Your mediator will work with you to design a process that will achieve the best outcome for you and your children.
- 4.2 All parties must sign the FDR Centre's FDR Mediation Agreement to proceed with FDR Mediation.
- 4.3 The Mediator may conduct the FDR Mediation process in such manner as the Mediator thinks fit, having regard to the parties and the nature and circumstances of the family dispute, and may arrange conferences and mediation sessions at times to suit the parties.
- 4.4 The Mediator may conduct FDR Mediation in person, by telephone, or video conference, or by any other electronic communication means that the Mediator considers appropriate in the circumstances.
- 4.5 The parties must co-operate in good faith with the Mediator and with every other party to the family dispute in attempting to settle the matters in difference and agree to comply with the Mediator's reasonable directions to attend joint FDR Mediation sessions and provide information.
- 4.6 The Mediator may conduct joint and separate sessions with any or all of the parties at any time for the purposes of the FDR Mediation process.
- 4.7 The Mediator will not provide legal advice and will not make any decisions for the parties. Any agreement reached during the mediation is the parties' agreement alone (**Parenting Plan**).



5.0 REPRESENTATION AND SUPPORT

- 5.1 Parties may be represented during the FDR process by any person, whether legally trained or not (**Representative**), provided that the engagement of the Representative by a party does not threaten or bring into question the integrity of the mediation due to a past or present relationship with any party, unless none of the parties object after proper disclosure.
- 5.2 Parties may, subject to clause 5.4 below, bring a **Support Person** to any FDR Mediation session. A Support Person may provide reassurance and emotional support for a party. Otherwise, a Support Person is not entitled to intervene or participate in the FDR Mediation process.
- 5.3 Parties must advise the Mediator of the names and relevant details of those persons who they wish to accompany them at any FDR Mediation session, not less than three working days prior to the session. The Mediator will advise the other parties accordingly where that session is a joint one. The Mediator will require the Representative or Support Person to sign a Confidentiality Agreement as a condition of the Representative's or Support Person's attendance at any joint FDR Mediation session.
- 5.4 The Mediator may withhold approval for a Representative or Support Person to attend a joint FDR Mediation session where the Mediator, in his or her sole discretion, considers the Representative's or Support Person's attendance could threaten or bring into question the integrity of the mediation.
- 5.5 The Mediator, in his or her sole discretion, may limit the number of Representatives and/or Support Persons to preserve the integrity of the FDR Mediation process.

6.0 FEES AND EXPENSES

- 6.1 The Parties must pay the FDR Centre any relevant fees and expenses in advance of the provision of any Mediation services.

7.0 CONFIDENTIALITY

- 7.1 The parties must not use statements made during FDR Mediation in any subsequent court proceedings unless required by the law to do so.
- 7.2 If a party wishes to involve in the FDR Mediation Process a non-party, including a Support Person, Representative, translator, interpreter, or any other person, that party must secure the non-party's advance agreement to preserve the confidentiality of any Confidential Information. This agreement must be recorded in the form provided by the FDR Centre prior to that person attending any FDR Mediation session.
- 7.3 Confidential Information includes:
 - (a) any statement, admission or document created or made for the purpose of the FDR Mediation process and all matters disclosed orally in the course of the mediation sessions; and
 - (b) all non-public materials and information provided for FDR Mediation by a party, including documents used or generated for the purpose by a Representative or



Support Person.

(Confidential Information)

7.4 Notwithstanding 7.1 and 7.2 above the FDR Centre, a party, a Representative, a Support Person, the Mediator or a non-party involved in the FDR Mediation may disclose Confidential Information to the extent necessary to:

- (a) protect the safety of any person from being endangered;
- (b) record participation in FDR and generate Outcomes of Family Dispute Resolution Forms for the purposes of the Family Dispute Resolution Act 2013;
- (c) enforce any Parenting Plan agreed;
- (d) pursue a legal right;
- (e) protect a party's legal rights in relation to a third party;
- (f) respond to a professional or other adviser of any of the parties after that person has signed the Confidentiality Agreement;
- (g) respond to legitimate subpoena, governmental request for information, or other compulsory process; or
- (h) comply with the order of a court of competent jurisdiction or any legal requirement which is binding on the party making the disclosure

provided always that such publication, disclosure, or communication is no more than what is reasonably required for the purpose.

7.5 Any person intending to make disclosure under 7.4(c)-(e) above must, within a reasonable period of time prior to the intended disclosure, notify the Mediator, every other party and the FDR Centre.

7.6 This notification must include full details of the intended disclosure and an explanation of the reasons for it.

8.0 OUTCOME OF FDR MEDIATION

8.1 If at any time the Mediator decides that:

- (a) one or more of the parties is unable to participate effectively in FDR Mediation; or
- (b) one of the parties, or a child of one of the parties, has been subject to domestic violence by a party; or
- (c) a situation exists that gives the Mediator reasonable grounds for deciding that FDR Mediation is inappropriate for the parties,

the Mediator must give each of the parties an Outcomes of Family Dispute Resolution Form that states that FDR Mediation is inappropriate for the dispute.

8.2 If at any time the Mediator finds that it is inappropriate to continue with FDR Mediation because one of the parties refuses to attend or to continue to attend FDR Mediation, the



Mediator must give every other party an Outcomes of Family Dispute Resolution Form which states that FDR Mediation was not possible because that party refused to attend or to continue to attend FDR Mediation.

- 8.3 If at any time the Mediator considers the FDR Mediation process to be taking an undue length of time to resolve, the Mediator must give each of the parties an Outcomes of Family Dispute Resolution Form that:
- (a) describes the parenting and guardianship matters agreed by the parties and the agreements reached in respect of those matters; and/or
 - (b) describes the parenting and guardianship matters not agreed on by the parties; and
 - (c) states whether, in the opinion of the Mediator;
 - (i) a settlement conference would be likely to facilitate settlement of the matters on which the parties did not reach resolution; and/or
 - (ii) at least one of the parties would need legal representation to participate effectively in the settlement conference.
- 8.4 If the Mediator and the parties agree that resolution has been reached on all matters in dispute, the Mediator will:
- (a) assist the parties to draw up a Parenting Plan that the parties must sign; and
 - (b) give each of the parties an Outcomes of Family Dispute Resolution Form that describes:
 - (i) the parenting and guardianship matters agreed by the parties; and
 - (ii) the agreements reached in respect of those matters.
- 8.5 The parties may not call the Mediator or the FDR Centre to attend any legal or administrative proceeding to explain the opinion reached under 8.3 above or the agreements reached under 8.4 above.

9.0 OUTCOME OF OTHER MATTERS

- 9.1 Where the family dispute involves matters in addition to parenting and guardianship issues, and the parties reach agreement on some or all of those matters, the Mediator will discuss with the parties the process for recording and implementing the agreement.
- 9.2 Where a partial agreement has been reached, the Mediator will discuss with the parties the procedures available to them to resolve the remaining issues.
- 9.3 If the Mediator considers that any agreement reached may be illegal or impossible to enforce or uphold, the Mediator will recommend to the parties that they take further independent legal advice.
- 9.4 The parties are under a duty at all times following the FDR Mediation process to abide by the terms of any agreement in good faith and in a timely manner.



10.0 EXCLUSION OF LIABILITY

- 10.1 The parties, together and separately, release and discharge the Mediator and the FDR Centre, its agents and employees, from all liability of any kind (whether involving negligence, misrepresentation, breach of contract, or breach of any equitable, fiduciary, statutory, or other duty, or otherwise) which may be alleged to arise in connection with, or to result from, or to in any way relate to the exercise of any of their functions, duties, or powers, whether under the laws of New Zealand, these terms and conditions, or otherwise, unless the act or omission is the fraudulent act of the Mediator, or the FDR Centre, its agents or its employees. The Mediator, the FDR Centre, or any agent or employee of the FDR Centre who has not acted fraudulently and is shown to be unaware of the fraud of any other person, will continue to be released and discharged from liability as provided in these terms and conditions.
- 10.2 No statements or comments, whether written or oral, made or used by the Mediator, the FDR Centre, its agents, or employees in connection with, or resulting from, or in any way relating to the FDR process may be relied on to found or maintain any action for defamation, libel, slander, or any related complaint.
- 10.3 The Parties, together and separately, undertake to indemnify and keep indemnified the Mediator and the FDR Centre, its agents and employees, against all claims, costs, expenses, liabilities, awards, damages, and proceedings of any kind (properly sustained or incurred by them directly, or indirectly made by any third party) in relation to, or in connection with, the exercise of their functions, duties, or powers, whether under the laws of New Zealand, these terms and conditions, or otherwise, unless the act or omission is the fraudulent act of the Mediator, or the FDR Centre, its agents or its employees. If the Mediator, the FDR Centre, or any agent or employee of the FDR Centre has not acted fraudulently and is shown to be unaware of the fraud of any other person, he or she will continue to be indemnified as provided in these terms and conditions.
- 10.4 The purpose of 10.1-10.3 above is to provide the Mediator and the FDR Centre, its agents, and employees with the widest immunity from liability that the law will allow.

11.0 GENERAL PROVISIONS

- 11.1 Parties may not call for the records, notes, or work product of the FDR Centre or the Mediator for any purpose, including any legal or administrative proceeding that may arise before, during, or after the FDR mediation process. However, any written agreement resulting from the FDR mediation process, that is intended by the parties to have legal effect and to be legally enforceable, may be subpoenaed, called for, or produced in any proceedings to which it is relevant.
- 11.2 Parties must not at any time before, during, or after the FDR Mediation process, call the Mediator to testify in any legal or administrative proceeding concerning the dispute or the nature and extent of any agreement(s) that may be reached as a result of participating in FDR Mediation.
- 11.3 The FDR Mediation process will be held without prejudice to any other legal rights or remedies.

