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[INSERT NAMES OF PARTIES]

**DRAFT
AGREEMENT TO MEDIATE**

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**THIS AGREEMENT
BETWEEN:**

(1)

Party 1

(2)

Party 2

(3)

Mediator

PREAMBLE:-

This agreement does not alter the parties' or their legal representatives' responsibility to adhere to professional codes of conduct, or any statutory or regulatory regime to which they are subject.

WHEREAS:-

The Parties have agreed to submit the issues in dispute to mediation by the Mediator

IT IS AGREED:-

1. The Parties appoint the Mediator, and the Mediator accepts the appointment to mediate the Dispute in accordance with the terms of this Agreement and the Court of Protection Mediation Scheme Guide at www.courtprotectionmediation.uk.

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CONFIDENTIALITY

2. Everyone involved in any manner in the Mediation, undertakes to each other that, unless otherwise agreed in writing by the Parties or their respective advisers, they shall maintain and respect the confidentiality of any and all information of any nature made or produced for, or arising in connection with, the Mediation. The confidentiality provisions in the Agreement are however subject to the following exceptions:
 - a. Confidentiality does not apply insofar as any Party needs to disclose any such statements and matters in order to comply with any statutory obligation or in order to obtain professional advice.
 - b. Without prejudice to the generality of the above, the mediator has an absolute obligation under the Proceeds of Crime Act 2002 to report to the National Crime Intelligence Service any knowledge or suspicion relating to the involvement of the proceeds of crime (including tax evasion) and is precluded by law from informing the Parties of his intention to do so.
 - c. The Parties agree that the Mediator is authorised to disclose information relating to abuse and neglect disclosed during the mediation, to the appropriate authorities.
 - d. Clause 3 below.
 - e. The parties' agreement to provide information about the mediation to the evaluation team.

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3. The following information is NOT confidential save that any information about these matters can only be disclosed in a way so as not to breach any transparency order made by the Court of Protection:
 - a. the fact that the parties have agreed that a mediation should take place,
 - b. the fact that the mediation has taken place,
 - c. whether a settlement was agreed or not,
 - d. the terms of any settlement.

4. The following information IS confidential and so cannot be referred to in any court proceedings (unless agreed in writing between the parties that it can be referred to):
 - a. All documents, submissions and statements made or produced for the purposes of the mediation whether oral or written.
 - b. What happens at the mediation.
 - c. What is said by any party at the mediation.

For the avoidance of doubt, this material can be shared with the researchers as part of the evaluation.

5. The Parties further agree and understand:
 - (a) that each of their respective attendees at the Mediation day must sign the Declaration of Confidentiality on or before the first session commences on the Mediation Day;

 - (b) that permission has been sought by the parties from the Court of Protection to provide information about these proceedings to the mediator and the evaluation team;

 - (c) that each of the parties has consented to participate in the evaluation of the Court of Protection mediation scheme and will co-operate with this evaluation;

 - (d) their obligation to facilitate P's participation in the mediation;

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- (e) that the Mediator will not meet P alone, and if information is provided by P to the Mediator which in the Mediator's view is relevant information to the issues in dispute, the Mediator may (if P does not have a litigation friend/accredited legal representative or rule 1.2 representative to make this decision on P's behalf) have to apply to the Court for directions as to whether to share such information with the Parties in P's best interests;
 - (f) that at the conclusion of the Mediation, if agreement is reached, the parties will agree in writing what information from the Mediation can be shared with the Court.
 - (g) that if information is disclosed during the mediation which gives rise to a safeguarding concern there is an obligation on the mediator to pass this information on to the relevant authorities and may result in the mediation being terminated early, with no refund of fees;
 - (h) that the Mediator may not act for the Parties in any capacity with regard to the subject matter of the mediation; and the Parties acknowledge that in acting under this agreement, the Mediator is not representing or giving legal advice to, nor assessing, upholding or protecting (or attempting to assess, uphold or protect) any rights of the Parties;
 - (i) that the Parties shall not take any action that would cause the Mediator to breach his/her obligations contained in this Agreement.
 - (j) Evidence disclosed in this mediation which is otherwise admissible shall not be rendered inadmissible as a result of its use in the mediation.
6. The Mediator shall keep confidential any private communications made to him by the Parties at any stage unless and until whichever of them who made such communication agrees otherwise subject to clause 2 above.

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7. Save as agreed by a written agreement between them, the Parties reserve their legal rights should the mediation not result in a settlement of all of the Dispute.

THE MEDIATOR

8. The Mediator fulfils the criteria for mediator set by the Court of Protection Mediation Scheme.
9. The Mediator shall be neutral and impartial. The Mediator shall help the Parties to develop and explore options for resolution of the Dispute and, if possible, achieve resolution of the Dispute by agreement between them.
10. The Mediator makes no representation that any agreement reached between the parties will be equivalent to any result which might be achieved in court of protection proceedings concerning the Disputes or any part of them, nor that the agreements reached by the parties will be approved by the Court of Protection.
11. The Mediator shall not make decisions for a party nor impose a solution on either of them. If both the parties request and the Mediator agrees, the Mediator may provide the parties with a non-binding recommendation based on the Mediator's own knowledge of the subject matter and law. Such a recommendation will not attempt to anticipate what a court might order but will set out what the Mediator suggests are appropriate ways of resolving any outstanding issues or possible settlement terms in all of the circumstances of the Disputes.
12. The Mediator shall not obtain advice or an opinion on any aspect of the Disputes from any person.
13. The Mediator acknowledges that, before beginning the mediation, (s)he will have disclosed to the Parties any prior dealings that he has had with any of them and any other matters that may be thought to cause any doubt as to his impartiality.

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14. If, during the mediation, the Mediator becomes aware of any circumstances that might reasonably be considered to affect his/her capacity to act impartially, the Mediator shall immediately inform each of the Parties of those circumstances. The Parties shall then decide whether the mediation will continue with the Mediator, or with a new mediator appointed jointly by the Parties.
15. If during the mediation, the Mediator becomes aware of any circumstances that might reasonably be considered to make the dispute unsuitable for mediation, (s)he will inform the parties immediately and end the mediation.

THE MEDIATOR'S FEES AND EXPENSES

16. The Mediator's fees and expenses are charged at the reduced hourly rates as follows:
 - a. All work including reading, preparatory work, telephone calls and pre-mediation meetings and the mediation day will be charged at £100.80 per hour.
 - b. Travel time at £40. per hour
 - c. Expenses: standard class train travel to the mediation venue or mileage at £0.45 per mile and taxi fares where necessary.
17. The Mediator's fees shall be paid within 14 days of receipt of the Mediator's fee note.
18. The Parties agree that the Mediator shall be paid by [jointly/shared/paid by X party]. VAT will be charged at the prevailing rate if appropriate.

CONDUCT OF THE MEDIATION

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19. The Parties have agreed the following steps in relation to the conduct of the Mediation
- (a) The parties must agree a venue for the mediation and how the cost of that venue is to be met.
 - (b) The Parties shall on or before [] provide to the Mediator:
 - (i) Their completed confidential pre-mediation questionnaires.
 - (ii) The (agreed) documents the Parties wish the Mediator to read.
 - (iii) Their proposals as to how 'P' shall participate in the mediation.
 - (iv) The evidence that 'P' lacks capacity to make the decision(s) that are the subject of the dispute.
 - (v) Any evidence of 'P's' wishes and feelings about the matter(s) in dispute.
 - (vi) Any position statement they wish the other party and the Mediator to read.
 - (vii) Any private communications or documents they wish only the Mediator to read.
 - (c) The Mediator shall as far as possible speak to each of the parties in advance of the mediation, either in person or on the phone.
 - (d) The Main Mediation Meeting shall take place at [] on [] with a start time of [].
 - (e) On or before [] the Parties shall send each other, and copy to the Mediator, a list of the people that will attend with them at the Mediation day and an explanation of who they are.
20. The Mediator shall, in consultation with the parties, give such further directions in relation to suitable procedural steps that the Mediator considers necessary and useful in facilitating the mediation process.
21. No formal record or transcript of the Mediation shall be made.

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22. No informal recording of any sessions between the Mediator and any of the parties shall take place using a mobile phone or other recording device.
23. The Mediator is entitled, but not obliged, at any stage in the Mediation if so requested by either the Parties to express his view privately to whichever of them has requested his view, as to the reasonableness or otherwise of any argument or proposal made by that party.

COOPERATION

24. Each of the parties and their respective representatives shall, in good faith, use its best endeavours to comply with requests made by the Mediator and to promote the efficient and expeditious resolution of the Disputes. If either party or its representative does not do so, the Mediator may terminate the mediation.

AUTHORITY

25. Each of the Parties may be represented by such person or persons that he/it/they shall choose but such representatives shall include a person with full authority to settle all or any of the Dispute and to agree to any other matters that may assist or cause the efficient and economic resolution of all or any of the Dispute. If either of such authorised representatives has any limitation on his or her authority to settle, this shall be disclosed to the Mediator and the Parties before the mediation begins.

TERMINATION

26. The mediation will terminate if:
 - (a) The Parties agree that it should not continue;
 - (b) Any of the Parties withdraws from the mediation;
 - (c) The Mediator feels unable to further assist the Parties to achieve resolution of the Dispute; or

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- (d) The Mediator considers it appropriate for any other reason, without explanation to any party;
- (e) A written settlement agreement resolving all the Dispute is signed on behalf of the Parties and the Parties have agreed in writing what if any information is to be disclosed during the Mediation can be shared with the Court of Protection.

SETTLEMENT

- 27. No agreement as to the terms of any settlement reached during the Mediation shall be legally binding on each and all of the Parties unless and until it is put in writing and signed on behalf of all of them
- 28. If the parties reach agreement as to terms of settlement, they will also agree the material that is to be shared with the Court on any application for orders for the Court or for permission to withdraw proceedings or for orders from the Court.

ENFORCEMENT

- 29. If the Dispute is settled either party may:
 - (a) enforce the terms of the settlement agreement for those Disputes by judicial proceedings including by bringing an application in the Court of Protection for orders reflecting the settlement agreement;
 - (b) cite evidence of, and incidental to, the settlement agreement in such proceedings (other than any matters which are confidential or privileged and are not essential evidence).

FEES, COSTS AND EXPENSES

- 30. Unless otherwise specified in any settlement agreement reached at the mediation, each of the Parties shall bear its own legal and other costs of

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preparation for, participation in, and representation at, the mediation and all expenses other than the costs and expenses of the Mediator (which are dealt with at paragraph 16 above) and the costs (if any) of the venue (which are dealt with at paragraph 17 above).

EXCLUSION OF LIABILITY

31. The Mediator shall not be liable to either of the Parties for any act or omission (whether negligent or otherwise) in the performance of his obligations under this agreement provided that this clause shall not relieve the Mediator from any liability for fraud or wilful misconduct. This agreement may be produced and relied upon by the Mediator as a defence to any claim arising out of the mediation made against the Mediator.
32. The Parties will not have access to the Mediator's notes nor may they call the Mediator as a witness nor require the Mediator to produce documents, in any arbitral, judicial or other proceeding in respect of the Dispute.
33. If contrary to this, any Party does seek to call the Mediator or any other person as a witness or make such an application, that Party will fully indemnify the Mediator or the employee or staff in respect of any costs any of them incur in resisting and/or responding to such an application, including reimbursement at the Mediator's standard hourly rate (£500+VAT) for the Mediator's time spent in resisting and/or responding to such application including but not limited to waiting, travelling, preparing, attending or being at Court or any other tribunal.

GOVERNING LAW AND JURISDICTION

34. This Agreement is governed by, and is construed and takes effect under, the laws of England and Wales. The courts of England and Wales shall have exclusive jurisdiction to settle any claim, dispute or matter of difference that may arise out of, or in connection with, the mediation.

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GENERAL

35. Neither this agreement, nor the mediation, will affect or impair the rights of the Parties under the laws of England and Wales. Should the dispute not be settled by mediation the Parties' rights to a fair trial remain unaffected.
36. This document contains the entire agreement between the Parties as to the subject matter hereof. This Agreement may be signed in three counterparts, in which event the three originals together will constitute the entire agreement between the Parties.

This Agreement has been entered into on the dates stated on the first and second pages of this document

Signed for and on behalf of Party 1 by:

Signature

Signed for and behalf of Party 2 by:

Signature

Signed by The Mediator:

Signature

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IN THE MATTER OF A MEDIATION BETWEEN:

(1)

Party 1

(2)

Party 2