

ARBITRATION IN THE FAMILY COURT

PRACTICE GUIDANCE

issued on 23 November 2015 by

SIR JAMES MUNBY, PRESIDENT OF THE FAMILY DIVISION

1. This Guidance concerns the interface between the Family Court and Arbitrations conducted in accordance with the provisions of the Arbitration Act 1996 (AA96) where the parties to a post-relationship breakdown financial dispute have agreed to submit issues for decision by an arbitrator whose award is to be binding upon them.
2. It is a fundamental requirement of this Guidance that the arbitrator will decide the substance of the dispute only in accordance with the law of England and Wales. This Guidance does not apply to, or sanction, any arbitral process based on a different system of law nor, in particular, one where there is reason to believe that, whatever system of law is purportedly being applied, there may have been gender-based discrimination.
3. To avoid unnecessary complication this Guidance is directed towards what may well be the most common form of arbitration with which the Family Court will become concerned, where the issues between the parties involve relief or an award by way of one or more of the financial remedies listed in rule 2.3 of the Family Procedure Rules 2010 (FPR).
4. In order to be effective, elements of some arbitral awards (by comprehensive dismissal of claims to create a clean break, or so as to bind the provider to a pension split, for example) will require their terms to be reflected in a Family Court order. If enforcement of the award becomes necessary, doing so via Family Court processes will be available only if orders reflecting the award are obtained. (Paragraph 30 below describes an alternative route which may be available via section 66 of AA96 in the county court or in the Family Division of the High Court.)
5. But it should be borne in mind that not every award need be brought before the Family Court for a financial order to be made, and that it may be more appropriate for some to be brought (if necessary) before a court which does not exercise family jurisdiction. Thus, for instance, where an arbitrator has decided upon the title to or possession of property under the Married Women's Property Act 1882, or has determined the respective beneficial interests of the disputants in a property or fund, the parties may simply choose to operate in accordance with the award and thus have no need for a court order to reflect it. Or a Trustees of Land and Appointment of Trustees Act 1996 ("TOLATA") award might more appropriately be made the subject of an order in the County Court if it simply declares the interests of the parties and does not involve any financial remedy element. It should be noted, however, that (pending any statutory changes to facilitate the Family Court hearing them) only the High Court and county court have jurisdiction to determine applications made under TOLATA or the Inheritance (Provision for Family and Dependents) Act 1975.

6. Taking the most common example of an arbitration where the agreed issues are what periodical payments, lump sum and adjustment of property awards should be received by a claimant spouse, it is important first to establish whether or not financial remedy proceedings have already been instituted and a Form A issued.

A: Where there are subsisting proceedings seeking the same relief as is in issue in the arbitration

Stay of proceedings:

7. The court should be invited to stay the financial remedy proceedings pending delivery of the award. The arbitration agreement (in the case of an IFLA Scheme arbitration, the Form ARB1) will in most instances only recently have been signed by both parties, and thus contested applications for a stay will likely be rare. CPR rule 62.3(2) provides that such an application "must be made by application notice to the court dealing with those proceedings".
 8. The Family Court has an obligation under FPR 3.3(1)(b) "where the parties agree, to enable non-court dispute resolution to take place." Section 9(4) of AA96 requires that the court "shall grant a stay unless satisfied that the arbitration agreement is null and void, inoperative, or incapable of being performed" and makes it clear that a stay application should be made to the court where the subsisting proceedings are pending. By paragraph 6.2 of Form ARB1 the parties will have agreed that they "will apply for or consent to a stay of any existing court proceedings, as necessary."
 9. In such circumstances where the application to stay is by consent or unopposed it should be dealt with on paper and (absent any unusual circumstances indicating a need) without listing or hearing.
 10. Parties seeking such a stay should (in person or through their solicitors, who need not for this purpose be on the court record in the financial remedy proceedings) lodge in the place where the proceedings have been commenced, and within those proceedings, clear evidence of their agreement (or lack of opposition) to the stay order, together with a copy of their signed arbitration agreement (such as the IFLA Form ARB1). One of the standard orders approved for use in conjunction with arbitrations provides for a stay, and a copy completed with the details of the case, and signed by both parties or their representatives to signify approval, should be lodged with the other documents. The file will then be placed before a judge for approval, or for queries to be raised and dealt with by correspondence, and/or (if necessary) a hearing listed. The suite of arbitration-specific standard orders are Annexed to this Guidance: see *below*.
- Applying for an order to reflect the award: by consent
11. The terms of the proposed consent order will be drafted to reflect the decisions and directions contained in the award. Insofar as financial remedy orders are involved, their form should follow the relevant paragraphs of the standard orders, which contain recitals apt for an arbitration award case. Together with a signed copy of the proposed order in the terms agreed, the parties, in order to

take advantage of this accelerated procedure, should at the same time lodge their Forms A and D81, a copy of the arbitrator's award and (unless already on the court file) their Form ARB1. There is no reason in principle why unopposed applications for a consent order should not be dealt with on paper by a District Judge, although the court will always retain the ability to raise questions in correspondence or to call for a hearing.

12. Attention is drawn to my observations in *S v S (Financial Remedies: Arbitral Award)* [2014] EWHC 7 (Fam), [2014] 1 FLR 1257, about the attitude likely to be adopted by the court in such cases: "where the parties are putting the matter before the court by consent, ... it can only be in the rarest of cases that it will be appropriate for the judge to do other than approve the order."
13. Draft orders submitted which invite the court to make orders it has no jurisdiction to make (or which are otherwise in unacceptable form) will, like any other defective consent order submitted, be returned for reconsideration. There is of course no objection to recitals which express the parties' agreement to provisions which fall outside the scope of the available statutory relief. Nor indeed is there anything to prevent parties agreeing to change the terms of an award if they are agreed upon a revised formulation. In that event, though, it would be sensible for the covering correspondence to make it clear which provisions of the award have been overtaken by what subsequent arrangement arrived at by the parties.
14. Parties anxious to preserve the privacy and to maintain the confidentiality of the award should lodge that document in a sealed envelope, clearly marked with the name and number of the case and the words "**Arbitration Award: Confidential**". The award will remain on the court file but should be placed in an envelope clearly marked as above, plus "**not to be opened without the permission of a judge of the Family Court.**" The request for the award to be sealed once the order has been approved should be made prominently in the covering letter.
15. Applying for an order to reflect the award: opposed
The party seeking to have the award reflected in a court order will need to proceed adopting what at para [25] of *S v S* was described as the "notice to show cause" procedure. An alternative formulation of the Arbitration recital for such a situation is contained in each standard order.
16. Similar documentation should be submitted with the application, except of course that the order proposed is likely to have been unilaterally drafted on behalf of the party seeking to obtain the order. An application of this sort will ordinarily be listed for a hearing before a judge of Circuit Judge or High Court Judge level.
17. Attention is drawn to my observations in *S v S* concerning the attitude likely to be adopted by the court in opposed cases:

"The court will no doubt adopt an appropriately robust approach, both to the procedure it adopts in dealing with such a challenge and to the test it

applies in deciding the outcome. ... The parties will almost invariably forfeit the right to anything other than a most abbreviated hearing; only in highly exceptional circumstances is the court likely to permit anything more than a very abbreviated hearing."

18. Applications for consent orders are specifically placed outside the scope of the MIAMs requirement by Practice Direction 3A, para 13(2). So, by virtue of the same provision, are proceedings "for enforcement of any order made in proceedings for a financial remedy or of any agreement made in or in contemplation of proceedings for a financial remedy." Parties who have agreed to arbitrate but have become engaged in any post-arbitral award dispute, as for instance a contested "show cause" application, should not be required to deviate into a MIAM.

B: Arbitration claims

19. An "arbitration claim" is a term of art, and its scope for the purposes of its application to arbitrations conducted under AA96 is defined by CPR rule 62.2(1) in these terms:

[*In relation to AA96*] 'arbitration claim' means –

- (a) any application to the court under the 1996 Act;
- (b) a claim to determine –
 - (i) whether there is a valid arbitration agreement;
 - (ii) whether an arbitration tribunal is properly constituted; orwhat matters have been submitted to arbitration in accordance with an arbitration agreement;
- (c) a claim to declare that an award by an arbitral tribunal is not binding on a party; and
- (d) any other application affecting –
 - (i) arbitration proceedings (whether started or not); or
 - (ii) an arbitration agreement.

20. The court where "arbitration claims" as so defined are to be commenced is governed by CPR PD62 para 2 and the High Court and County Courts (Allocation of Arbitration Proceedings) Order 1996 (S.I. 1996/3215) as amended (the 1996 Order), which do not currently cater for such claims to be launched in the Family Court. Pending changes made to CPR PD62 and/or the 1996 Order, an applicant for an "arbitration claim" should issue the requisite Form (see *below*) in the Commercial Court and should at the time of issue seek transfer to the Family Division. Para [6] of the 1996 Order does not as yet permit the transfer of any such application to the Family Court – the transfer must therefore be to the Family Division of the High Court.

21. The Form N8 initiating such a claim should be prominently marked "**Family business: direction sought for transfer to the Family Division of the High Court**" and should detail (where there are subsisting Family Court proceedings, albeit stayed) the case title and number.
22. Attention is drawn to sections 42 (enforcement of peremptory orders of the arbitrator) and 43 (securing the attendance of witnesses) of AA96 which are the provisions in relation to which an "arbitration claim" is most likely to be sought in the course of an ongoing post-separation financial arbitration. Attention is also drawn to the provisions of section 44 (court powers exercisable in support of arbitral proceedings). Standard Orders have been issued to meet each of these contingencies: see Annex A, *below*.
23. As these are all within the CPR definition of "arbitration claims," pending changes to para [2] of CPR PD62 such applications should (as described *above*) be issued in the Commercial Court and bear prominently upon them a request for speedy transfer to the Family Division (or, in the case of, for instance, a TOLATA claim which does not also invoke the family court jurisdiction, to the relevant county court).
24. In relation to applications under sections 42 and 43 the standard orders are self-explanatory. Such applications should be heard by a judge of High Court level.

C: Arbitrations conducted when there are no subsisting proceedings seeking relevant relief

Stay of proceedings:

25. An application to stay legal proceedings under section 9 of AA96 is in effect excluded from the definition of and procedural requirements for "arbitration claims" by CPR rule 62.3(2), which provides that such an application "must be made by application notice to the court dealing with those proceedings".
26. In the case of an IFLA Scheme arbitration the parties will have agreed (by paragraph 6.2 of their Form ARB1) that they "will not commence court proceedings ... in relation to the same subject matter". If however such proceedings are thereafter initiated then it is open to either party to apply for a stay pursuant to section 9 of AA96 in the court where the proceedings have been commenced, and within those proceedings. If a stay remains opposed an early hearing will obviously be required to determine the application.

Applying for an order to reflect the award: by consent

27. The principles discussed in Part A apply, but if the relief awarded and sought to be reflected in an order includes one or more financial remedies only capable of being made on or after pronouncement of a decree, then it will be necessary for "status proceedings" seeking divorce, judicial separation, nullity or (in the case of civil partners) dissolution to have been instituted, the relevant financial remedies applied for, and the stage in the proceedings reached when it will be appropriate for the court to make an order. In the case of divorce proceedings that would normally predicate a decree nisi having

been pronounced, but see *JP v NP* [2014] EWHC 1101 (Fam), [2015] 1 FLR 659.

Applying for an order to reflect the award: opposed

28. The section of Part A describing the "show cause" procedure applies, and again it would be necessary to have the necessary status proceedings in being for financial remedy orders to be made.
29. Where the aid of the Court is needed in support of a family financial arbitration in relation to which status proceedings have not yet been commenced, then the route suggested in paragraph 20 *et seq. above* must be followed, and transfer from the Commercial Court sought. It will however be necessary for the FPR Part 18 procedure to be adopted in order to bring the arbitration claim (for instance, under section 42 or section 43 of AA96) before the Family Division.

D: Enforcement

30. Section 3 of CPR Part 62 (rules 62.17 and 62.18) make provision for the direct enforcement of awards. In some situations it may be possible to pray section 66 of AA96 in aid to enforce an award. Para 4 of the 1996 Order authorises the commencement in any county court of section 66 proceedings under which awards can, with the court's permission, be enforced in the same way as a judgment or order of the court to the same effect. This may prove effective in the case of a TOLATA award but is not appropriate in the case of a financial remedy award.

E: Challenging the Award under sections 67 to 71 of the Arbitration Act

31. Some very specific bases for challenging arbitrations are contained in these sections of AA96. They are hedged about with preconditions and limitations, and the commercial experience in arbitration is that they are relatively rarely successful. In relation to an arbitration dealing with family financial issues, however, it would ordinarily be appropriate for a High Court Judge of the Family Division to hear them, and thus it is to be expected that applications commenced pursuant to these provisions will by the same route be transferred to that court.

F: Arbitration-specific standard court orders

32. This suite now consists of three orders for use in conjunction with arbitrations. They are reproduced in their approved form within Annex A to this Guidance and comprise orders to:
 - Stay pursuant to Arbitration Act 1996 section 9 and/or under the court's case management powers
 - Enforce an arbitrator's peremptory order under section 42, Arbitration Act 1996
 - Secure the attendance of witnesses under section 43, Arbitration Act 1996

33. The forms of "omnibus" orders already commonly in use for both Financial Remedy and Children Act Schedule 1 Final Orders each contain a recital to be completed where the order sought was to reflect an arbitral award. A slightly revised form for such recital is included in Annex B.
34. Pending any new or revised Practice Direction to accompany Part 5, these formulations should be adopted for use, subject always to the proviso that their provisions may be varied by the court or a party if the variation is required by the circumstances of a particular case.

James Munby
President of the Family Division
23 November 2015

Annex A

Stay pursuant to Arbitration Act 1996 section 9 and/or under the court's case management powers



**In the Family Court
Sitting at [Place]**

No:

The Family Procedure Rules 2010 rules 3.2 and 3.3

The Marriage/Civil Partnership/Relationship/Family of XX and YY

After hearing [*name the advocate(s) who appeared*]

After consideration of the documents lodged by the parties

(In the case of an order made without notice) After reading the statements and hearing the witnesses specified in the Recitals below

ORDER MADE BY [NAME OF JUDGE] ON [DATE] SITTING IN OPEN COURT/PRIVATE

The parties

1. The applicant is XX
The respondent is YY
The second respondent is ZZ
Specify if any party acts by a litigation friend

[Where undertakings have been given]

Notice pursuant to PD 37A para 2.1

You XX, and you YY, may be held to be in contempt of court and imprisoned or fined, or your assets may be seized, if you break the promises that you have given to the court.

Statement pursuant to PD 37A para 2.2

I understand the undertaking that I have given and that if I break any of my promises to the court I may be sent to prison, or fined, or my assets may be seized, for contempt of court.

.....
XX

I understand the undertaking that I have given and that if I break any of my promises to the court I may be sent to prison, or fined, or my assets may be seized, for contempt of court.

.....
YY

Definitions

2. IFLA is the Institute of Family Law Arbitrators.
3. Form ARB1 is the arbitration agreement signed by the parties of which a copy has been lodged with the court.
4. The arbitration is an arbitration which is to be conducted in accordance with the rules of the IFLA arbitration scheme.

Recitals

5. *(In the case of an order made without notice)*
 - (a) This order was made at a hearing without notice to the respondent. The reason why the order was made without notice to the respondent was [set out]
 - (b) The Judge read the following affidavits/witness statements [set out] and heard oral testimony from [name].
6. *(In the case of an order made following the giving of short informal notice)*

This order was made at a hearing without full notice having been given to the respondent. The reason why the order was made without full notice having been given to the respondent was [set out].
7. The applicant/respondent has applied to this court for financial remedies.
8. The court must by rules 3.2 and 3.3 of the Family Procedure Rules 2010 at every stage in proceedings consider whether alternative dispute resolution is appropriate and, if so, whether to adjourn those proceedings so to enable alternative dispute resolution to take place; and has power pursuant to its general powers of management under rule 4.1 to stay the whole or any part of proceedings either generally or until a specified date or event.

...

Agreements

9. By their Form ARB1 the parties have agreed to refer to arbitration the issues described in it which include some or all of the financial remedies for which applications are pending in this court.

10. ...

Undertakings to the court

11. ...

12. ...

IT IS ORDERED (BY CONSENT) THAT:

13. The pending application(s) for financial remedies *is/are* stayed pending receipt of the award in the arbitration (or until the parties may reach agreement in respect of the arbitration issues).

14. Upon receipt of the award (or upon reaching agreement) either party may in a form agreed with the other seek an order of this court to give effect to the award (or their agreement).

15. [*or if the parties cannot reach agreement upon the form of an order to give effect to the award*] Failing agreement between the parties as to the form of an order to give effect to the award either party may apply for the other to show why an order should not be made in the terms of the draft proposed.

16. Any application under either of the preceding 2 paragraphs shall be lodged together with a copy of the award, Form(s) D81 and with a draft of the order which the court is requested to make.

17. [*Provision for the costs of the stay application*]

Dated



**In the Family Court
Sitting at [Place]**

No:

The Arbitration Act 1996 section 42

The Marriage/Civil Partnership/Relationship/Family of XX and YY

After hearing [*name the advocate(s) who appeared*]

After consideration of the documents lodged by the parties

(In the case of an order made without notice)

After reading the statements and hearing the witnesses specified in the recitals below

**ORDER MADE BY [NAME OF JUDGE] ON [DATE] SITTING IN OPEN
COURT/PRIVATE**

The parties

1. The applicant is XX
The respondent is YY
The second respondent is ZZ
Specify if any party acts by a litigation friend

[Where undertakings have been given]

Notice pursuant to PD 37A para 2.1

You XX, and you YY, may be held to be in contempt of court and imprisoned or fined, or your assets may be seized, if you break the promises that you have given to the court.

Statement pursuant to PD 37A para 2.2

I understand the undertaking that I have given and that if I break any of my promises to the court I may be sent to prison, or fined, or my assets may be seized, for contempt of court.

.....

XX

I understand the undertaking that I have given and that if I break any of my promises to the court I may be sent to prison, or fined, or my assets may be seized, for contempt of court.

.....

YY

Definitions

2. IFLA is the Institute of Family Law Arbitrators.
3. Form ARB1 is the arbitration agreement signed by the parties of which a copy has been lodged with the court.
4. The arbitration is an arbitration which is to be conducted in accordance with the rules of the IFLA arbitration scheme.
5. The arbitrator is [*name*].
6. The arbitrator's order is a peremptory order made on [*date*] pursuant to section 41(5) of the Arbitration Act 1996 which required the respondent to comply with its terms [by [*date*]] or [without prescribing a date for compliance].

Recitals

7. (*In the case of an order made without notice*)
 - (a) This order was made at a hearing without notice to the respondent. The reason why the order was made without notice to the respondent was [*set out*]
 - (b) The Judge read the following affidavits/witness statements [*set out*] and heard oral testimony from [*name*]
8. (*In the case of an order made following the giving of short informal notice*)

This order was made at a hearing without full notice having been given to the respondent. The reason why the order was made without full notice having been given to the respondent was [*set out*]
9. (*In the case of an application commenced elsewhere than in the Family Court*)

This application was transferred to this court from the [*specify*] Division/Court by order of [*name of judge*] on [*date*].
10. The arbitration has commenced and is continuing.
11. The parties have by their Form ARB1 and their acceptance of the IFLA arbitration scheme rules agreed that the powers of the court under section 42 of the Arbitration Act 1996 (enforcement of peremptory orders of tribunal) are available, so that if one of them fails to comply with a peremptory order made

by the arbitrator then another party may apply to the court for an order requiring compliance.

12. The arbitrator's order is (so far as relevant to this application) in the following terms:

[set out in the words of the arbitrator's order]

13. This application is for an order under section 42 of the Arbitration Act 1996 for the enforcement of the arbitrator's order and is made:

[by the applicant.] (*or*)

[by the arbitrator, upon notice to the parties.]

14. This court is satisfied that:

- (a) the applicant has exhausted all available arbitral process in respect of the respondent's failure to comply with that/*those* provision(s) of the peremptory order; and
- (b) the respondent has failed to comply with that/*those* provision(s) of the peremptory order [within the time prescribed by the order] *or* [within a reasonable time, no time for compliance having been prescribed].

Agreements

15. ...

Undertakings to the court

16. ...

IT IS ORDERED (BY CONSENT):

17. The respondent shall comply with the peremptory order by no later than [date].

[*or*]

18. [*Other orders*]

19. [*If applied for*] Permission to appeal against this decision is granted/*refused*.

20. [*Provision for costs*]

Dated



**In the Family Court
Sitting at [Place]**

No:

The Arbitration Act 1996 section 43

The Marriage/Civil Partnership/Relationship/Family of XX and YY

After hearing [*name the advocate(s) who appeared*]

After consideration of the documents lodged by the parties

(In the case of an order made without notice)

After reading the statements and hearing the witnesses specified in the recitals below

**ORDER MADE BY [NAME OF JUDGE] ON [DATE] SITTING IN OPEN
COURT/PRIVATE**

The parties

1. The applicant is XX
The respondent is YY
The second respondent is ZZ
Specify if any party acts by a litigation friend

[Where undertakings have been given]

Notice pursuant to PD 37A para 2.1

You XX, and you YY, may be held to be in contempt of court and imprisoned or fined, or your assets may be seized, if you break the promises that you have given to the court.

Statement pursuant to PD 37A para 2.2

I understand the undertaking that I have given and that if I break any of my promises to the court I may be sent to prison, or fined, or my assets may be seized, for contempt of court.

.....
XX

I understand the undertaking that I have given and that if I break any of my promises to the court I may be sent to prison, or fined, or my assets may be seized, for contempt of court.

.....
YY

Definitions

2. IFLA is the Institute of Family Law Arbitrators.
3. Form ARB1 is the arbitration agreement signed by the parties of which a copy has been lodged with the court.
4. The arbitration is an arbitration which is to be conducted in accordance with the rules of the IFLA arbitration scheme.
5. The arbitrator is *[name]*.
6. The witness/*witnesses* is/*are* *[name(s)]*

Recitals

7. *(In the case of an order made without notice)*
 - (a) This order was made at a hearing without notice to the respondent. The reason why the order was made without notice to the respondent was *[set out]*
 - (b) The Judge read the following affidavits/witness statements *[set out]* and heard oral testimony from *[name]*
8. *(In the case of an order made following the giving of short informal notice)*

This order was made at a hearing without full notice having been given to the respondent. The reason why the order was made without full notice having been given to the respondent was *[set out]*
9. *(In the case of an application commenced elsewhere than in the Family Court)*

This application was transferred to this court from the *[specify]* Division/Court by order of *[name of judge]* on *[date]*.
10. The arbitration has commenced and is being conducted in England and Wales and the witness/*witnesses* are in the United Kingdom.
11. This application is for an order pursuant to section 43 of the Arbitration Act 1996 to secure the attendance before the arbitrator of the witness/*witnesses* in order:

[to give oral testimony] (*and/or*)

[to produce documents or other material evidence which the witness/*witnesses* can be compelled to produce in legal proceedings, namely [*specify*].]

12. This application is made:

[by the applicant with the permission of the tribunal.] (*or*)

[with the agreement of the other party/*parties* to the arbitration.]

Agreements

13. ...

Undertakings to the court

14. ...

IT IS ORDERED (BY CONSENT):

15. [*Insert the form of order or notice appropriate to secure the attendance of a witness in order to give oral testimony and/or to produce documents or other material evidence.*]

16. [*Other orders*]

17. [*Provision for costs*]

Dated

Annex B

Recitals for use where "omnibus" orders to reflect an arbitral award are sought for either Financial Remedy or Children Act Schedule 1 Final Orders

For the Financial Remedy Final Order Omnibus:

...

Arbitration award recital

19.

a. The documents lodged in relation to this application include the parties' arbitration agreement (Form ARB1), their Form(s) D81, a copy of the arbitrator's award, and a draft of the order which the court is requested to make.

b. By their Form ARB1 the parties agreed to refer to arbitration the issues described in it which include some or all of the financial remedies for which applications are pending in this court. The issues were referred to [insert arbitrator] under the IFLA scheme, who made an arbitral award on [insert date].

c. *Either:*

[The parties have invited the court to make an order in agreed terms which reflects the arbitrator's award.]

or:

[There has been no agreement between the parties as to the form of an order to give effect to the arbitrator's award. The [applicant]/[respondent] has applied for the other party to show why an order should not be made in the terms of the draft proposed; and the court having considered the representations made by each party has directed that an order be made in the terms of this order.]

For the Children Act Schedule 1 Final Order Omnibus:

...

Arbitration award recital

18.

a. The documents lodged in relation to this application include the parties' arbitration agreement (Form ARB1), their Form(s) D81, a copy of the arbitrator's award, and a draft of the order which the court is requested to make.

b. By their Form ARB1 the parties agreed to refer to arbitration the issues described in it which encompass the application under Schedule 1 to the Children Act 1989 now pending in this court. The issues were referred to

[insert arbitrator] under the IFLA scheme, who made an arbitral award on [insert date].

c. Either:

[The parties have invited the court to make an order in agreed terms which reflects the arbitrator's award.]

or:

[There has been no agreement between the parties as to the form of an order to give effect to the arbitrator's award. The [applicant]/[respondent] has applied for the other party to show why an order should not be made in the terms of the draft proposed; and the court having considered the representations made by each party has directed that an order be made in the terms of this order.]

FAMILY LAW ARBITRATION FINANCIAL SCHEME

ARBITRATION RULES 2018

(6TH EDITION, EFFECTIVE 1 JANUARY 2018)

Article 1 – Introductory

- 1.1 The Family Law Arbitration Financial Scheme ('the Financial Scheme') is a scheme under which financial or property disputes with a family background may be resolved by arbitration.
- 1.2 The Financial Scheme is administered and run by the Institute of Family Law Arbitrators Limited ('IFLA'), a company limited by guarantee whose members are the Chartered Institute of Arbitrators ('CI Arb'), Resolution and the Family Law Bar Association ('FLBA').
- 1.3 Disputes referred to the Financial Scheme will be arbitrated in accordance with:
- (a) the provisions of the Arbitration Act 1996 ('the Act'), both mandatory and non-mandatory;
 - (b) these Rules, to the extent that they exclude, replace or modify the non-mandatory provisions of the Act; and
 - (c) the agreement of the parties, to the extent that that excludes, replaces or modifies the non-mandatory provisions of the Act or these Rules; except that the parties may not agree to exclude, replace or modify Art.3 (Applicable Law).
- 1.4 The parties may not amend or modify these Rules or any procedure under them after the commencement of the arbitration unless the arbitrator agrees to such amendment or modification; and may not amend or modify Art.3 (Applicable Law) in any event.
- 1.5 Expressions used in these Rules which are also used in the Act have the same meaning as they do in the Act and any reference to a section number means the section of the Act so numbered, unless otherwise indicated.

Article 2 – Scope of the Financial Scheme

- 2.1 The Financial Scheme covers financial and property disputes arising from:
- (a) marriage and its breakdown (including financial provision on divorce, judicial separation or nullity);

- (b) civil partnership and its breakdown;
 - (c) co-habitation and the ending of co-habitation;
 - (d) parenting or those sharing parental responsibility;
 - (e) provision for dependants from the estate of the deceased.
- 2.2 The Financial Scheme covers (but is not limited to) claims which would come within the following statutes:
- (a) the Married Women's Property Act 1882, s.17;
 - (b) the Matrimonial Causes Act 1973, Part II;
 - (c) the Inheritance (Provision for Family and Dependants) Act 1975;
 - (d) the Matrimonial and Family Proceedings Act 1984, s.12 (financial relief after overseas divorce);
 - (e) the Children Act 1989, Sched.1;
 - (f) the Trusts of Land and Appointment of Trustees Act 1996;
 - (g) the Civil Partnership Act 2004 Sched.5, or Sched.7, Part 1, para.2 (financial relief after overseas dissolution).
- 2.3 The Financial Scheme does not apply to disputes directly concerning:
- (a) the liberty of individuals;
 - (b) the status either of individuals or of their relationship;
 - (c) the care or parenting of children;
 - (d) bankruptcy or insolvency;
 - (e) any person or organisation which is not a party to the arbitration.

Article 3 – Applicable law

3. The arbitrator will decide the substance of the dispute only in accordance with the law of England and Wales. The arbitrator may have regard to, and admit evidence of, the law of another country insofar as, and in the same way as, a Judge exercising the jurisdiction of the High Court would do so.

Article 4 – Starting the arbitration

- 4.1 The parties may refer a dispute to arbitration under the Financial Scheme by making an agreement to arbitrate in **Form ARB1FS**, signed by both parties or their legal representatives, and submitting it to IFLA.
- 4.2 IFLA has set up the IFLA Financial Panel of arbitrators ('the Financial Panel') comprising Members of the Chartered Institute of Arbitrators who are experienced family law professionals with particular expertise in financial matters and who have received specific training in the determination of family disputes relating to financial matters by means of arbitration.
- 4.3.1 The parties may agree to nominate a particular arbitrator from the Financial Panel; and may, if they are agreed, approach a particular arbitrator directly. Any arbitrator directly approached must refer the approach to IFLA before accepting appointment in order to facilitate the completion of Form ARB1FS before the arbitration commences. IFLA will offer the appointment to the agreed arbitrator. If the appointment is not accepted by their first choice of arbitrator the parties may, if they agree, make a second or subsequent choice. Otherwise, it will be offered to another member of the Financial Panel chosen by IFLA in accordance with paragraph 4.3.3 below.
- 4.3.2 Alternatively, the parties may agree on a shortlist of arbitrators from the Financial Panel any one of whom would be acceptable to them, and may ask IFLA to select one of the arbitrators on the shortlist without reference to any criteria. In this case, IFLA will offer the appointment to one of the shortlisted arbitrators chosen at random. If the appointment is not accepted by the first choice of arbitrator, IFLA will offer the appointment to a second or subsequent shortlisted arbitrator, similarly chosen at random. If none of the shortlisted arbitrators accepts the appointment, IFLA will inform the parties and invite them to submit further agreed names.
- 4.3.3 In all other cases (including if so requested by the parties) IFLA will offer the appointment to a sole arbitrator from the Financial Panel whom it considers appropriate having regard to the nature of the dispute; any preferences expressed by the parties as to the qualifications, areas of experience, expertise or other attributes of the arbitrator; any preference expressed by the parties as to the geographical location of the arbitration; and any other relevant circumstances.
- 4.4 If, after considering Form ARB1FS and any representations from the parties, either IFLA or the arbitrator considers that the dispute is **not suitable** for arbitration under the Financial Scheme, then the parties will be so advised and their reference of the matter to the Financial Scheme will be treated as withdrawn.
- 4.5 The arbitration will be regarded as commenced when the arbitrator communicates to the parties his or her acceptance of the appointment.

- 4.6 Except as provided in Art.4.7, a party to an arbitration under the Financial Scheme may be represented in the proceedings by a lawyer or other person chosen by that party; or, if he is acting in person, may receive the advice and assistance of a McKenzie Friend.
- 4.7 If at any time the arbitrator forms the view that the participation of a non-lawyer representative or the assistance given by a McKenzie Friend unreasonably impedes or is likely to impede the conduct of the arbitral proceedings or the administration of justice, he may direct that the relevant party should not continue to be so represented or assisted, as the case may be, and will state his reasons in writing.

Article 5 – Arbitrator’s appointment

- 5.1 Before accepting the appointment or as soon as the relevant facts are known, the arbitrator will disclose to the parties any actual or potential conflict of interest or any matter that might give rise to justifiable doubts as to his or her impartiality.
- 5.2 In the event of such disclosure, the parties, or either of them (as appropriate), may waive any objection to the arbitrator continuing to act, in which case the arbitrator may commence or continue with the arbitration. If an objection is maintained, the arbitrator will decide whether to continue to act, subject to any agreement by the parties to revoke his or her authority or intervention by the court.
- 5.3 An arbitrator may not accept appointment in any dispute in relation to which he or she has acted in a different capacity; and after accepting appointment, the arbitrator may not concurrently or subsequently act in relation to the same dispute in a different capacity.
- 5.4 If the arbitrator ceases to hold office through revocation of his or her authority, removal by the court, resignation or death, or is otherwise unable, or refuses, to act, and either party or the existing arbitrator so requests, IFLA may appoint a replacement arbitrator from the Financial Panel.
- 5.5 The replacement arbitrator may determine whether and if so to what extent the previous proceedings should stand.

Article 6 – Communications between parties, the arbitrator and IFLA

- 6.1 Any communication between the arbitrator and either party will be copied to the other party.
- 6.2 Unless agreed by the parties, the arbitrator will designate one party as the lead party. For the purposes of the Act, the lead party will equate to a claimant, but will be formally referred to in the arbitration as the ‘Applicant’. The other party will equate to a respondent, and will be formally referred to in the arbitration as the ‘Respondent’.
- 6.3 The arbitrator will not discuss any aspect of the dispute or of the arbitration with either party or their legal representatives in the absence of the other party or their legal

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representatives, unless such communication is solely for the purpose of making administrative arrangements.

- 6.4 Neither IFLA, the CIArb, Resolution nor the FLBA will be required to enter into any correspondence concerning the arbitration or its outcome.

Article 7 – Powers of the arbitrator

- 7.1 The arbitrator will have all the powers given to an arbitrator by the Act including those contained in section 35 (consolidation of proceedings and concurrent hearings); and section 39 (provisional orders), but limited as provided by Art.7.2.
- 7.2 In relation to substantive relief of an interim or final character, the arbitrator will have the power to make orders or awards to the same extent and in the same or similar form as would a Judge exercising the jurisdiction of the High Court. (For the avoidance of doubt, the arbitrator's power does not extend to interim injunctions; committal; or jurisdiction over non-parties without their agreement.)
- 7.3 The arbitrator will have the power to award interest in accordance with section 49 (interest) whether or not it is specifically claimed.
- 7.4 If the arbitrator considers that the dispute is not suitable for arbitration under the Financial Scheme the arbitrator will have the power to terminate the proceedings.
- 7.5 The parties may agree that a third party or parties be joined to the arbitration provided that the third party or parties agree in writing: (a) to be so joined; (b) to abide by the Financial Scheme Rules; and (c) to be bound by any award made by the arbitrator. In such a case, the arbitrator may join the third party or parties to the arbitration on such terms as may be agreed by all relevant parties, or as may be directed by the arbitrator.

Article 8 – Powers of the arbitrator concerning procedure

- 8.1 The arbitrator will decide all procedural and evidential matters (including, but not limited to, those referred to in section 34(2)), subject to the right of the parties to agree any matter (if necessary, with the concurrence of the arbitrator (see Art.1.4)).
- 8.2 In accordance with section 37 (power to appoint experts), the arbitrator may appoint experts to report on specific issues or prepare valuations.
- 8.3 The arbitrator may limit the number of expert witnesses to be called by any party or may direct that no expert be called on any issue or issues or that expert evidence may be called only with the permission of the arbitrator.
- 8.4 Further, and/or in particular, the arbitrator will have the power to:

- (a) direct a party to produce information, documents or other materials in a specified manner and/or within a specified time;
 - (b) give directions in relation to any property, documents or materials which are the subject of the proceedings or as to which any question arises in the proceedings, and which are owned by or are in the possession or control of a party to the proceedings for their inspection, photographing, valuation, preservation, custody or detention by the tribunal, an expert or a party.
- 8.5 If, without showing sufficient cause, a party fails to comply with its obligations under section 40 (general duty of parties) or with these Rules, or is in default as set out in section 41(4) (failure to attend a hearing or make submissions), then, after giving that party due notice, the arbitrator may continue the proceedings in the absence of that party or without any written evidence or submissions on their behalf and may make an award on the basis of the evidence before him or her.
- 8.6 The parties agree that if one of them fails to comply with a peremptory order made by the arbitrator and another party wishes to apply to the court for an order requiring compliance under s.42 (enforcement of peremptory orders of tribunal), the powers of the court under that section are available.

Article 9 – Form of procedure

- 9.1 The parties are free to agree as to the form of procedure (if necessary, with the concurrence of the arbitrator (see Art.1.4)) and, in particular, to adopt a documents-only procedure or some other simplified or expedited procedure.
- 9.2 If there is no such agreement, the arbitrator will have the widest possible discretion to adopt procedures suitable to the circumstances of the particular case in accordance with section 33 (general duty of the tribunal).

Article 10 – General procedure

- 10.1 Generally, on commencement of the arbitration, the arbitrator will invite the parties to make submissions setting out briefly their respective views as to the nature of the dispute, the issues, what form of procedure should be adopted, the timetable and any other relevant matters.
- 10.2 If appropriate, the arbitrator may convene a preliminary meeting, telephone conference or other suitable forum for exchange of views.
- 10.3 Within a reasonable time of ascertaining the parties' views, the arbitrator will give directions and set a timetable for the procedural steps in the arbitration, including (but not limited to) the following:

- (a) written statements of case;
- (b) disclosure and production of documents as between the parties;
- (c) the exchange of witness statements;
- (d) the number and type of expert witnesses, exchange of their reports and meetings between them;
- (e) arrangements for any meeting or hearing and the procedures to be adopted at these events;
- (f) time limits to be imposed on oral submissions or the examination of witnesses, or any other procedure for controlling the length of hearings.

10.4 The arbitrator may at any time direct any of the following to be delivered in writing:

- (a) submissions on behalf of any party;
- (b) questions to be put to any witness;
- (c) answers by any witness to specific questions.

Article 11 – Applications for directions as to procedural or evidential matters

- 11.1 The arbitrator may direct a time limit for making or responding to applications for directions as to procedural or evidential matters.
- 11.2 Any application by a party for directions as to procedural or evidential matters will be accompanied by such evidence and/or submissions as the applicant may consider appropriate or as the arbitrator may direct.
- 11.3 A party responding to such an application will, if feasible, have a reasonable opportunity to consider and agree the order or directions proposed.
- 11.4 Any agreement will be communicated to the arbitrator promptly and will be subject to the arbitrator's concurrence, if necessary (see Art.1.4).
- 11.5 Unless the arbitrator convenes a meeting, telephone conference or other forum for exchange of views, any response to the application will be followed by an opportunity for the party applying to comment on that response; and the arbitrator will give directions within a reasonable time after receiving the applicant's comments.

Article 12 – Alternative procedure

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- 12.1 In any case where it is appropriate, the parties may agree or the arbitrator may decide to adopt the procedure set out in this Article.
- 12.2 The parties may at any stage agree (with the concurrence of the arbitrator) or the arbitrator may direct any variation or addition to the following steps and/or timetable. In particular, the arbitrator may at any stage allow time for the parties to consider their positions and pursue negotiations with a view to arriving at an amicable settlement (see, also, Arts.17.1 and 17.2).
- 12.3 Within 56 days of the arbitrator communicating to the parties his or her acceptance of the appointment, each party will complete and send to the arbitrator and to the other party a sworn statement as to their financial situation (in the form of the 'Form E' or 'Form E1' Financial Statement in accordance with the Family Procedure Rules 2010, as appropriate) together with such further evidence or information as the arbitrator may direct.
- 12.4 Within 28 days of receipt of the other party's financial statement, each party may send to the arbitrator and to the other party a questionnaire raising questions and/or requesting information and/or documents.
- 12.5 Within 14 days of receipt of a questionnaire, a party may send to the arbitrator and to the other party reasoned objections to answering any of the questions or meeting any of the requests, together with a submission as to whether a preliminary meeting is required.
- 12.6 Within 14 days of receipt of objections or, if there is a preliminary meeting, within a reasonable time after that meeting, the arbitrator will direct in respect of each party:
- (a) which questions are to be answered and which requests are to be met, together with the time within which these things are to be done;
 - (b) which property is to be valued, who is to undertake the valuation, how they are to be appointed and the time within which the valuation is to be carried out; and
 - (c) any other steps for providing information, dealing with enquiries or clarifying issues as may be appropriate.
- 12.7 Within a reasonable time of receipt from both parties of replies to questionnaires, valuations and any other information as may have been required, the arbitrator may convene a further meeting to review progress, address outstanding issues and consider what further directions are necessary.
- 12.8 The arbitrator will give detailed directions for all further procedural steps in the arbitration including (but not limited to) the following:
- (a) the drawing up of lists of issues and schedules of assets;
 - (b) written submissions;

- (c) arrangements for any meeting or hearing and the procedures to be adopted at these events;
- (d) time limits to be imposed on oral submissions or the examination of witnesses, or any other procedure for controlling the length of hearings.

Article 13 – Awards

- 13.1 The arbitrator will deliver an award within a reasonable time after the conclusion of the proceedings or the relevant part of the proceedings.
- 13.2 Any award will be in writing, will state the seat of the arbitration, will be dated and signed by the arbitrator, and (unless the parties agree otherwise or the award is by consent) will contain sufficient reasons to show why the arbitrator has reached the decisions it contains.
- 13.3 Once an award has been made, it will be final and binding on the parties, subject to the following:
- (a) any challenge to the award by any available arbitral process of appeal or review or in accordance with the provisions of Part 1 of the Act;
 - (b) insofar as the subject matter of the award requires it to be embodied in a court order (see Art.13.4), any changes which the court making that order may require;
 - (c) insofar as the award provides for continuing payments to be made by one party to another, or to a child or children, a subsequent award or court order reviewing and varying or revoking the provision for continuing payments, and which supersedes an existing award;
 - (d) insofar as the award provides for continuing payments to be made by one party to or for the benefit of a child or children, a subsequent assessment by the Child Maintenance Service (or its successor) in relation to the same child or children.
- 13.4 If and so far as the subject matter of the award makes it necessary, the parties will apply to an appropriate court for an order in the same or similar terms as the award or the relevant part of the award and will take all reasonably necessary steps to see that such an order is made. In this context, ‘an appropriate court’ means a court which has jurisdiction to make a substantive order in the same or similar terms as the award, whether on primary application or on transfer from another division of the court.
- 13.5 The arbitrator may refuse to deliver an award to the parties except upon full payment of his or her fees or expenses. Subject to this entitlement, the arbitrator will send a copy of the award to each party or its legal representatives.

Article 14 – Costs

- 14.1 In this Article any reference to costs is a reference to the costs of the arbitration as defined in section 59 (costs of the arbitration) including the fees and expenses of IFLA, unless otherwise indicated.
- 14.2 The arbitrator may require the parties to pay his or her fees and expenses accrued during the course of the arbitration at such interim stages as may be agreed with the parties, and in the absence of agreement, at reasonable intervals.
- 14.3 The arbitrator may order either party to provide security for the arbitrator's fees and expenses and the fees and expenses of IFLA.
- 14.4 Unless otherwise agreed by the parties, the arbitrator will make an award allocating costs as between the parties in accordance with the following general principle:
- (a) the parties will bear the arbitrator's fees and expenses and the fees and expenses of IFLA in equal shares;
 - (b) there will be no order or award requiring one party to pay the legal or other costs of another party.

This principle is subject to the arbitrator's overriding discretion set out in Art.14.5.

- 14.5 Where it is appropriate to do so because of the conduct of a party in relation to the arbitration (whether before or during it), the arbitrator may at any stage order that party:
- (a) to bear a larger than equal share, and up to the full amount, of the arbitrator's fees and expenses and the fees and expenses of IFLA;
 - (b) to pay the legal or other costs of another party;

and may make an award accordingly.

- 14.6 In deciding whether, and if so, how to exercise the discretion set out in Art.14.5, the arbitrator will have regard to the following:
- (a) any failure by a party to comply with these Rules or any order or directions which the arbitrator considers relevant;
 - (b) any open offer to settle made by a party;
 - (c) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;
 - (d) the manner in which a party has pursued or responded to a claim or a particular allegation or issue;

- (e) any other aspect of a party's conduct in relation to the arbitration which the arbitrator considers relevant; and
- (f) the financial effect on the parties of any costs order or award.

14.7 Unless the parties agree otherwise, no offer to settle which is not an open offer to settle shall be admissible at any stage of the arbitration.

14.8 These rules as to costs will not apply to applications made to the court where costs fall to be determined by the court.

Article 15 – Conclusion of the arbitration

15.1 The agreement to arbitrate will be discharged (and any current arbitration will terminate) if:

- (a) a party to the arbitration agreement dies; or
- (b) a party to the arbitration agreement lacks, or loses, capacity (within the meaning of the Mental Capacity Act 2005); except that:
 - (i) if the party is represented by an attorney who has the power so to act, the attorney may, in his or her discretion, continue with the arbitration or terminate it;
 - (ii) if a Deputy is appointed by the Court of Protection in relation to that party and has the power so to act, the Deputy may, in his or her discretion, continue with the arbitration or terminate it.

15.2 The arbitration will be terminated:

- (a) If the arbitrator considers that the dispute is not suitable for arbitration under the Financial Scheme and terminates the proceedings;
- (b) If and insofar as a court entertains concurrent legal proceedings and declines to stay them in favour of arbitration;
- (c) If the parties settle the dispute and, in accordance with section 51 (settlement), the arbitrator terminates the proceedings;
- (d) If the parties agree in writing to discontinue the arbitration and notify the arbitrator accordingly;
- (e) On the arbitrator making a final award dealing with all the issues, subject to any entitlement of the parties to challenge the award by any available

arbitral process of appeal or review or in accordance with the provisions of Part 1 of the Act.

Article 16 – Confidentiality

- 16.1 The general principle is that the arbitration and its outcome are confidential, except insofar as disclosure may be necessary to challenge, implement, enforce or vary an award (see Art.13.3(c)), in relation to applications to the court or as may be compelled by law.
- 16.2 All documents, statements, information and other materials disclosed by a party will be held by any other party and their legal representatives in confidence and used solely for the purpose of the arbitration, unless otherwise agreed by the disclosing party or compelled by law.
- 16.3 Any transcript of the proceedings will be provided to all parties and to the arbitrator. It will similarly be confidential and used solely for the purpose of the arbitration, implementation or enforcement of any award or applications to the court, unless otherwise agreed by the parties or compelled by law.
- 16.4 The arbitrator will not be called as a witness by any party either to testify or to produce any documents or materials received or generated during the course of the proceedings in relation to any aspect of the arbitration, unless with the agreement of the arbitrator or compelled by law.

Article 17 – General

- 17.1 At relevant stages of the arbitration, the arbitrator may encourage the parties to consider using an alternative dispute resolution procedure other than arbitration, such as mediation, negotiation or early neutral evaluation, in relation to the dispute or a particular aspect of the dispute.
- 17.2 If the parties agree to use an alternative dispute resolution procedure such as mediation, negotiation or early neutral evaluation, then the arbitrator will facilitate its use and may, if appropriate, stay the arbitration or a particular aspect of the arbitration for an appropriate period of time for that purpose.
- 17.3 In the event that the dispute is settled (following a mediation or otherwise), the parties will inform the arbitrator promptly and section 51 (settlement) will apply. Fees and expenses accrued due to arbitrator by that stage will remain payable.
- 17.4 The parties will inform the arbitrator promptly of any proposed application to the court and will provide him or her with copies of all documentation intended to be used in any such application.
- 17.5 IFLA, the CI Arb, Resolution, the FLBA, their employees and agents will not be liable:

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- (a) for anything done or omitted in the actual or purported appointment or nomination of an arbitrator, unless the act or omission is shown to have been in bad faith;
- (b) by reason of having appointed or nominated an arbitrator, for anything done or omitted by the arbitrator (or his employees or agents) in the discharge or purported discharge of his functions as an arbitrator;
- (c) for any consequences if, for whatever reason, the arbitral process does not result in an award or, where necessary, a court order embodying an award by which the matters to be determined are resolved.

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FAMILY LAW ARBITRATION FINANCIAL SCHEME

FORM ARB1FS –2018 EDITION

APPLICATION FOR FAMILY ARBITRATION

1. We, the parties to this application, whose details are set out below, apply to the Institute of Family Law Arbitrators Limited for the nomination and appointment of a sole arbitrator from the Family Arbitration Financial Panel ('the Financial Panel') to resolve the dispute referred to at paragraph 2 below by arbitration in accordance with the Arbitration Act 1996 ('the Act') and the Rules of the Family Law Arbitration Financial Scheme ('the Financial Scheme'):

Applicant's name	
Address	
Telephone	
Mobile	
Email	
Fax	
Represented by*	
Address	
Telephone	
Mobile	
Email	
Fax	

And:

Respondent's name	
Address	
Telephone	
Mobile	

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Email	
Fax	
Represented by*	
Address	
Telephone	
Mobile	
Email	
Fax	

*Delete as applicable.

Add, if necessary, the names of other parties on a separate sheet.

2. The dispute concerns the following issue(s):

(Set these out on a separate sheet if preferred, but as concisely as possible.)

.....

.....

.....

Please complete EITHER paragraph **3(a)** OR **3(b)** OR paragraph **4** below:

3(a) We wish to nominate the following member of the Financial Panel for appointment in this matter:

(This paragraph applies if the parties agree that they would like the matter to be referred to a particular arbitrator and / or have approached a particular arbitrator directly. The appointment will be offered to the nominated arbitrator. If the appointment is not accepted by their first choice of arbitrator the parties may, if they agree, make a second or subsequent choice. Otherwise, it will be offered to another suitable member of the Financial Panel in accordance with paragraph 4 below.)

.....

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- 3(b) We wish the Institute of Family Law Arbitrators Limited to select one of the members of the Financial Panel from the agreed shortlist below for appointment in this matter:**

(This paragraph applies if the parties have agreed on a shortlist of arbitrators from the Financial Panel any one of whom would be acceptable to them, and wishes IFLA to select one of the arbitrators on the shortlist without reference to any criteria. In this case, IFLA will offer the appointment to one of the shortlisted arbitrators chosen at random. If the appointment is not accepted by the first choice of arbitrator, IFLA will offer the appointment to a second or subsequent shortlisted arbitrator, similarly chosen at random. If none of the shortlisted arbitrators accepts the appointment, IFLA will inform the parties and invite them to submit further agreed names.)

.....
.....
.....

- 4. We wish the Institute of Family Law Arbitrators Limited to nominate a member of the Financial Panel for appointment in this matter.**

(This paragraph applies if the parties have not identified a particular arbitrator to whom they wish the matter to be referred. Please set out below the nature of the dispute (insofar as it is not apparent from paragraph 2 above). Please also set out below any preferences as to the arbitrator's qualifications, areas of experience, expertise and / or any other attributes; or as to the geographical location of the arbitration; and any other relevant circumstances.)

.....
.....
.....

- 5. If court proceedings are current, please identify the nature of the proceedings, in which court they are taking place and what stage they have reached. (Please attach copies of any relevant documents and court orders.)**

.....
.....
.....

6. We confirm the following:

- 6.1 We have been advised about and understand the nature and implications of this agreement to arbitrate;
- 6.2 Once the arbitration has started, we will not commence court proceedings or continue existing court proceedings in relation to the same subject matter (and will apply for or consent to a stay of any existing court proceedings, as necessary), unless it is appropriate to make an application to the court arising out of or in connection with the arbitration, or some relief is required that would not be available in the arbitration;
- 6.3 We have read the current edition of the Rules of the Financial Scheme ('the Rules') and will abide by them. In particular, we understand our obligation to comply with the decisions, directions and orders of the arbitrator and, when required, to make full and complete disclosure relating to our financial circumstances;
- 6.4 We understand and agree that any award of the arbitrator appointed to determine this dispute will be final and binding on us, subject to the following:
 - (a) any challenge to the award by any available arbitral process of appeal or review or in accordance with the provisions of Part 1 of the Act;
 - (b) insofar as the subject matter of the award requires it to be embodied in a court order (see 6.5 below), any changes which the court making that order may require;
 - (c) insofar as the award provides for continuing payments to be made by one party to another, or to a child or children, a subsequent award or court order reviewing and varying or revoking the provision for continuing payments, and which supersedes an existing award;
 - (d) insofar as the award provides for continuing payments to be made by one party to or for the benefit of a child or children, a subsequent assessment by the Child Maintenance Service (or its successor) in relation to the same child or children.
- 6.5 If and so far as the subject matter of the award makes it necessary, we will apply to an appropriate court for an order in the same or similar terms as the award or the relevant part of the award. (In this context, 'an appropriate court' means a court which has jurisdiction to make a substantive order in the same or similar terms as the award, whether on primary application or on transfer from another division of the court.) We understand that the court has a discretion as to whether, and in what terms, to make an order and we will take all reasonably necessary steps to see that such an order is made;

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- 6.6 We understand and agree that although the Rules provide for each party, generally, to bear an equal share of the arbitrator's fees and expenses (see Art.14.4(a)), if any party fails to pay their share, then the arbitrator may initially require payment of the full amount from any other party, leaving it to them to recover from the defaulting party;
- 6.7 We agree to the arbitration of this dispute in accordance with the Rules of the Financial Scheme.

IMPORTANT

Parties should be aware that:

- **By signing this form they are entering into a binding agreement to arbitrate (within the meaning of s.6 of the Arbitration Act 1996).**
- **After signing, neither party may avoid arbitration (unless they both agree to do so). Either party may rely on the arbitration agreement to seek a stay of court proceedings commenced by the other.**
- **Arbitration is a process whose outcome is generally final. There are very limited bases for raising a challenge or appeal, and it is only in exceptional circumstances that a court will exercise its own discretion in substitution for the award.**

Signed.....
(Applicant *or* Applicant's legal representative, for and on behalf of Applicant)

Dated.....

Signed.....
(Respondent *or* Respondent's legal representative, for and on behalf of Respondent)

Dated.....

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Please send your completed form, preferably by email, to info@ifla.org.uk, or it can be sent by post to IFLA, PO Box 302, Orpington, Kent BR6 8QX.

Note that by submitting this Form, the parties consent to the processing by IFLA (and/or by Resolution, on IFLA's behalf) of the information and personal data provided in it and in associated documentation for the purposes of this Financial Scheme arbitration. This includes retaining and storing the information and personal data for as long as is necessary in connection with this agreement. It may also be retained for research, training and statistical purposes in connection with family arbitration, but on the understanding that if so used, any information or details about individuals will have been removed so that they cannot be personally identified.

FAMILY LAW ARBITRATION CHILDREN SCHEME

ARBITRATION RULES 2018

(2ND EDITION, EFFECTIVE 1 JANUARY 2018)

Safety and welfare of children

The safety and welfare of children is of the utmost importance to the Family Law Arbitration Children Scheme. Measures providing for safeguarding appear at Article 17 (below) and in the Form ARB1CS and Safeguarding Questionnaire which has to be completed by the parties. These steps are intended to ensure that matters accepted for arbitration are suitable for that process, and that the child(ren) concerned will be safe from harm.

Contents:

- Article 1 – Introductory**
- Article 2 – Scope of the Children Scheme**
- Article 3 – Applicable law**
- Article 4 – Starting the arbitration**
- Article 5 – Arbitrator’s appointment**
- Article 6 – Communications between the parties, the arbitrator and IFLA**
- Article 7 – Powers of the arbitrator**
- Article 8 – Powers of the arbitrator concerning procedure**
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- Article 12 – Alternative procedure**
- Article 13 – The arbitrator’s determination**
- Article 14 – Costs**
- Article 15 – Conclusion of the arbitration**
- Article 16 – Confidentiality**
- Article 17 – Disclosure of issues relating to safeguarding and welfare**
- Article 18 – General**

Article 1 – Introductory

- 1.1 The Family Law Arbitration Children Scheme ('the Children Scheme') is a scheme under which disputes concerning the exercise of parental responsibility and other private law issues about the welfare of children may be resolved by the determination of an arbitrator.
- 1.2 The Children Scheme is administered and run by the Institute of Family Law Arbitrators Limited ('IFLA'), a company limited by guarantee whose members are the Chartered Institute of Arbitrators ('CIArb'), Resolution and the Family Law Bar Association ('FLBA').
- 1.3 Disputes referred to the Children Scheme will be determined by arbitration in accordance with:
- (a) the provisions of the Arbitration Act 1996 ('the Act') both mandatory and non-mandatory;
 - (b) these Rules, to the extent that they exclude, replace or modify the non-mandatory provisions of the Act; and
 - (c) the agreement of the parties, to the extent that that excludes, replaces or modifies the non-mandatory provisions of the Act or these Rules; except that the parties may not agree to exclude, replace or modify Art.3 (Applicable Law).
- 1.4 The parties may not amend or modify these Rules or any procedure under them after the commencement of the arbitration unless the arbitrator agrees to such amendment or modification; and may in any event neither amend nor modify Art.3 (Applicable Law) nor agree to exclude the right of any party to appeal to the court on a question of law (section 69).
- 1.5 Expressions used in these Rules which are also used in the Act have the same meaning as they do in the Act, except that in these Rules 'determine' and 'determination' have an equivalent meaning to 'award' in the Act; and any reference to a section number means the section of the Act so numbered, unless otherwise indicated.

Article 2 – Scope of the Children Scheme

- 2.1 Save as provided by Art.2.2 below, the Children Scheme covers issues between parents (or other persons holding parental responsibility or with a sufficient interest in the child's welfare) which relate to the exercise of parental responsibility or the present or future welfare of the child concerned (including the child's upbringing, present or future living arrangements, contact and education) and extends but is not limited to matters which could be the subject of an application to the Family Court under section 8 of the Children Act 1989.
- 2.2 The following disputes and issues are not within the scope of the Children Scheme:-
- (a) any application under the inherent jurisdiction for the return of a child to England and Wales ('this jurisdiction') from a country which is not a signatory

to the 1980 Hague Convention on the Civil Aspects of International Child Abduction ('the 1980 Hague Convention');

- (b) any application for a child's summary return to this or another jurisdiction under the 1980 Hague Convention;
- (c) any application for permanent or temporary removal of a child from this jurisdiction;
- (d) any application for the court 'to examine the question of custody of the child' under Art.11(7) of Council Regulation (EC) No 2201/2003 after an order of a foreign court on non-return to this jurisdiction made pursuant to Art.13 of the 1980 Hague Convention;
- (e) any application for cross-border access within the scope of Art.41 of the said Council Regulation which, if a judgment, would require a court to issue an Annex III Certificate;
- (f) any dispute relating to the authorisation of life-changing or life-threatening medical treatment or the progress of such treatment;
- (g) any case where a party lacks capacity under the Mental Capacity Act 2005;
- (h) any case where any person with parental responsibility for the child or who seeks to be a party to an arbitration under the Children Scheme is a minor; and any case where any person with parental responsibility for the child is not a party to the arbitration;
- (i) any case where the child concerned has party status in existing proceedings relating to the same or similar issues, or should in the opinion of the arbitrator be separately represented in the arbitration.

Article 3 – Applicable law

- 3.1 The arbitrator will determine the substance of the dispute only in accordance with the law of England and Wales. The arbitrator may have regard to, and admit evidence of, the law of another country insofar as, and in the same way as, a Judge exercising the jurisdiction of the High Court would do so.
- 3.2 When determining any question relating to the upbringing of a child, the welfare of the child shall be the arbitrator's paramount consideration and in considering welfare the arbitrator shall have regard in particular to the welfare checklist set out in section 1(3) of the Children Act 1989.

Article 4 – Starting the arbitration

- 4.1.1 The parties may refer a dispute to arbitration under the Children Scheme by making an agreement to arbitrate in Form ARB1CS, signed by both parties or their legal representatives, and submitting it to IFLA.
- 4.1.2 Form ARB1CS and the Safeguarding Questionnaire shall be in the form of Annex 1 to these Rules.

- 4.2 IFLA has established the IFLA Children Panel of arbitrators ('the Children Panel') comprising Members of the Chartered Institute of Arbitrators who are experienced family law professionals with particular expertise in children matters and who have received specific training in the determination of family disputes relating to children by means of arbitration.
- 4.3.1 The parties may agree to nominate a particular arbitrator from the Children Panel; and may, if they are agreed, approach a particular arbitrator directly. Any arbitrator directly approached must refer the approach to IFLA before accepting appointment in order to facilitate the completion of Form ARB1CS and the Safeguarding Questionnaires before the arbitration commences. IFLA will offer the appointment to the agreed arbitrator. If the appointment is not accepted by their first choice of arbitrator the parties may, if they agree, make a second or subsequent choice. Otherwise, it will be offered to another member of the Children Panel chosen by IFLA in accordance with paragraph 4.3.3 below.
- 4.3.2 Alternatively, the parties may agree on a shortlist of arbitrators from the Children Panel any one of whom would be acceptable to them, and may ask IFLA to select one of the arbitrators on the shortlist without reference to any criteria. In this case, IFLA will offer the appointment to one of the shortlisted arbitrators chosen at random. If the appointment is not accepted by the first choice of arbitrator, IFLA will offer the appointment to a second or subsequent shortlisted arbitrator, similarly chosen at random. If none of the shortlisted arbitrators accepts the appointment, IFLA will inform the parties and invite them to submit further agreed names.
- 4.3.3 In all other cases (including if so requested by the parties) IFLA will offer the appointment to a sole arbitrator from the Children Panel whom it considers appropriate having regard to the nature of the dispute; any preferences expressed by the parties as to the qualifications, areas of experience, expertise or other attributes of the arbitrator; any preference expressed by the parties as to the geographical location of the arbitration; and any other relevant circumstances.
- 4.4 If, after considering Form ARB1CS, the Safeguarding Questionnaires and any representations from the parties, either IFLA or the arbitrator considers that the dispute is not suitable for arbitration under the Children Scheme, the parties will be so advised and their reference of the matter to the Children Scheme will be treated as withdrawn.
- 4.5 The arbitration will be regarded as commenced when the arbitrator communicates to the parties his or her acceptance of the appointment.
- 4.6 Except as provided in Art. 4.7, a party to an arbitration under the Children Scheme may be represented in the proceedings by a lawyer or other person chosen by that party; or, if a party is acting in person, may receive the advice and assistance of a McKenzie Friend.
- 4.7 If at any time the arbitrator forms the view that the participation of a non-lawyer representative or the assistance given by a McKenzie Friend unreasonably impedes or is likely to impede the conduct of the arbitral proceedings or the administration of justice, the arbitrator may direct that the relevant party should not continue to be so represented or assisted, as the case may be, and will state the reasons in writing.

Article 5 – Arbitrator’s appointment

- 5.1 Before accepting the appointment or as soon as the relevant facts are known, the arbitrator will disclose to the parties any actual or potential conflict of interest or any matter that might give rise to justifiable doubts as to his or her impartiality.
- 5.2 In the event of such disclosure, the parties or either of them (as appropriate) may waive any objection to the arbitrator continuing to act, in which case the arbitrator may commence or continue with the arbitration. If an objection is maintained, the arbitrator will decide whether to continue to act, subject to any agreement by the parties to revoke his or her authority or intervention by the court.
- 5.3 An arbitrator may not accept appointment in any dispute in relation to which he or she has acted in a different capacity; and after accepting appointment, the arbitrator may not concurrently or subsequently act in relation to the same dispute in a different capacity.
- 5.4 If the arbitrator ceases to hold office through revocation of his or her authority, removal by the court, resignation or death, or is otherwise unable, or refuses, to act, and either party or the existing arbitrator so requests, IFLA may appoint a replacement arbitrator from the Children Panel.
- 5.5 The replacement arbitrator may determine whether and if so to what extent previous proceedings shall stand.

Article 6 – Communications between the parties, the arbitrator and IFLA

- 6.1 Any communication between the arbitrator and either party will be copied to the other party.
- 6.2 Unless agreed by the parties, the arbitrator will designate one party as the lead party. For the purposes of the Act, the lead party will equate to a claimant, but will be formally referred to in the arbitration as the 'Applicant'. The other party will equate to a respondent, and will be formally referred to in the arbitration as the 'Respondent'.
- 6.3 The arbitrator will not discuss any aspect of the dispute or of the arbitration with either party or their legal representatives in the absence of the other party or their legal representatives, unless such communication is solely for the purpose of making administrative arrangements.
- 6.4 Neither IFLA, the CI Arb, Resolution nor the FLBA will be required to enter into any correspondence concerning the arbitration or its outcome.

Article 7 – Powers of the arbitrator

- 7.1 The arbitrator will have all the powers given to an arbitrator by the Act including those contained in section 35 (consolidation of proceedings and concurrent hearings); and section 39 (provisional orders), but limited as provided by Art.7.2.
- 7.2 In relation to substantive relief of an interim or final character, the arbitrator will have the power to make orders or determinations to the same extent and in the same or similar form as would a Judge exercising the jurisdiction of the High Court. (For the

avoidance of doubt, the arbitrator's power does not extend to interim injunctions; committal; or jurisdiction over non-parties without their agreement).

- 7.3 If the arbitrator at any stage prior to determination of the issues considers that the dispute is no longer suitable for arbitration under the Children Scheme on welfare or other grounds the arbitrator will have the power to terminate the proceedings (see Arts.15.2(b) and 17.2).
- 7.4 The parties may agree that a third party or parties be joined to the arbitration provided that the third party or parties agree in writing: (a) to be so joined; (b) to abide by the Children Scheme Rules; and (c) to be bound by any determination made by the arbitrator. In such a case, the arbitrator may join the third party or parties to the arbitration on such terms as may be agreed by all relevant parties, or as may be directed by the arbitrator.

Article 8 – Powers of the arbitrator concerning procedure

- 8.1 The arbitrator will decide all procedural and evidential matters (including, but not limited to, those referred to in section 34(2)), subject to the right of the parties to agree any matter (if necessary, with the concurrence of the arbitrator (see Art.1.4)).
- 8.2.1 In accordance with section 37 (power to appoint experts), the arbitrator may appoint experts to report on specific issues.
- 8.2.2 The arbitrator may limit the number of expert witnesses to be called by any party or may direct that no expert is to be called on any issue or issues or that expert evidence may be called only with the permission of the arbitrator.
- 8.2.3 Where the parties propose the instruction as an expert of an independent social worker to ascertain the wishes and feelings of a child or otherwise to advise on welfare issues and to report, such instruction will be subject to the confirmation and approval of the arbitrator who will decide the identity of the independent social worker if the parties cannot agree.
- 8.2.4 The arbitrator may of his or her own motion appoint as an expert an independent social worker of appropriate expertise and standing to ascertain the wishes and feelings of a child or otherwise to advise on welfare issues and to report if the arbitrator considers that such evidence will assist in determining the issues. Such an appointment may be made irrespective of whether or not the parties agree.
- 8.3 The arbitrator may not meet with the child concerned at any stage of the proceedings including any meeting with the child to discuss or explain the determination or its implementation.
- 8.4 Further and/or in particular, the arbitrator will have the power to:
- (a) direct a party to produce information, documents or other materials in a specified manner and/or within a specified time;
 - (b) give directions in relation to any documents or other materials as to which any question arises in the proceedings, and which are owned by or are in the possession or control of a party to the proceedings for their inspection, photographing, valuation, preservation, custody or detention by the tribunal,

an expert or a party.

- 8.5 If, without showing sufficient cause, a party fails to comply with his or her obligations under section 40 (general duty of parties) or with these Rules, or is in default as set out in section 41(4) (failure to attend a hearing or make submissions), then, after giving that party due notice, the arbitrator may continue the proceedings in the absence of that party or without any written evidence or submissions on their behalf and may make a determination on the basis of the evidence before the arbitrator.
- 8.6 The parties agree that if one of them fails to comply with a peremptory order made by the arbitrator and another party wishes to apply to the court for an order requiring compliance under section 42 (enforcement of peremptory orders of tribunal), the powers of the court under that section are available.

Article 9 - Form of procedure

- 9.1 The parties are free to agree as to the form of procedure (if necessary, with the concurrence of the arbitrator (see Art.1.4)) and, in particular, to adopt a documents-only procedure or some other simplified or expedited procedure.
- 9.2 If there is no such agreement, the arbitrator will have the widest possible discretion to adopt procedures suitable to the circumstances of the particular case in accordance with section 33 (general duty of the tribunal).

Article 10 – General procedure

- 10.1 Generally, on commencement of the arbitration, the arbitrator will invite the parties to make submissions setting out briefly their respective views as to the nature of the dispute, the issues, the outcome they seek, what form of procedure should be adopted, the timetable and any other relevant matters.
- 10.2 If appropriate, the arbitrator may convene a preliminary meeting, telephone conference or other suitable forum for the exchange of a summary of each party's position on the matters set out in Art.10.1.
- 10.3 Within a reasonable time of ascertaining the parties' views but in any event not more than 14 days, the arbitrator will give such directions as appear appropriate and set a timetable for the procedural steps in the arbitration, including (but not limited to) the following:
- (a) written statements of case;
 - (b) disclosure and production of documents as between the parties;
 - (c) the exchange of witness statements;
 - (d) the number and type of expert witnesses, exchange of their reports and meetings between them;
 - (e) arrangements for any meeting or hearing and the procedures to be adopted at these events;

- (f) time limits to be imposed on oral submissions or the examination of witnesses, or any other procedure for controlling the length of hearings.

10.4 The arbitrator may at any time direct any of the following to be delivered in writing:

- (a) submissions on behalf of any party;
- (b) questions to be put to any witness;
- (c) answers by any witness to specific questions.

Article 11 – Applications for directions as to procedural or evidential matters

11.1 The arbitrator may direct a time limit for making or responding to applications for directions as to procedural or evidential matters.

11.2 Any application by a party for directions as to procedural or evidential matters will be accompanied by such evidence and/or submissions as the applicant may consider appropriate or as the arbitrator may direct.

11.3 A party responding to such an application will have a reasonable opportunity to consider and agree the order or directions proposed.

11.4 Any agreement shall be communicated to the arbitrator promptly and will be subject to the arbitrator's concurrence if necessary (see Art. 1.4).

11.5 Unless the arbitrator convenes a meeting, telephone conference or other forum for exchange of views, any response to the application will be followed by an opportunity for the party applying to comment on that response; and the arbitrator shall give directions within a reasonable time after receiving the applicant's comments.

Article 12 – Alternative procedure

12.1 In any case where it is appropriate, the parties may agree or the arbitrator may decide to adopt the procedure set out in this Article.

12.2 The parties may at any stage agree (with the concurrence of the arbitrator) or the arbitrator may direct any variation or addition to the following steps and/or timetable. In particular, the arbitrator may at any stage allow time for the parties to consider their positions and pursue negotiations with a view to arriving at an amicable settlement (see, also, Arts. 18.1 and 18.2).

12.3 Within 14 days of the arbitrator communicating to the parties his or her acceptance of the appointment, each party will complete and send to the other party a sworn statement setting out their case, a brief outline of the facts upon which they rely and the outcome that they seek, together with such further evidence or information as the arbitrator may direct.

12.4 Within 14 days of receipt of the other party's statement, each party may send to the arbitrator and to the other party a questionnaire raising questions and/or requesting information and/or documents.

- 12.5 Within 7 days of receipt of a questionnaire, a party may send to the arbitrator and to the other party reasoned objections to answering any of the questions together with a submission as to whether a preliminary meeting is required.
- 12.6 In the absence of any such objection, the party in receipt of the questionnaire shall within 14 days provide succinct answers and/or documents.
- 12.7 In the event of such objection, the arbitrator will consider and decide in writing whether and to what extent the request should be answered together with a time limit or, alternatively, convene a meeting between the parties face-to-face or in such other form as he or she may decide to be the most appropriate having regard to convenience and costs and may require short written submissions in support of each party's position.
- 12.8 14 days after exchange of statements or, in the event that questionnaires have been served and allowed, within a reasonable time of receipt from both parties of the responses thereto, the arbitrator may convene a further meeting to review progress, address outstanding issues and consider what further directions are necessary, if he or she deems it appropriate having regard to costs and the avoidance of delay.
- 12.9 If he or she considers it appropriate having regard to the scope of the dispute between the parties, the arbitrator will give detailed directions for all further procedural steps in the arbitration including (but not limited to) the following:
- (a) the drawing up of a list of issues and/or a schedule of points of agreement or disagreement;
 - (b) written submissions;
 - (c) arrangements for any meeting or hearing and the procedures to be adopted at these events;
 - (d) time limits to be imposed on oral submissions or the examination of witnesses, or any other procedure for controlling the length of hearings.

Article 13 – The arbitrator's determination

- 13.1 The arbitrator will deliver a determination within a reasonable time after the conclusion of the proceedings or the relevant part of the proceedings.
- 13.2 Any determination will be in writing, will state the seat of the arbitration, will be dated and signed by the arbitrator, and will contain sufficient reasons to show why the arbitrator has reached the decisions it contains.
- 13.3 Once a determination has been made, it will be final and binding on the parties, subject only to the following:
- (a) any challenge to the determination by any available arbitral process of appeal or review or in accordance with the provisions of Part 1 of the Act;
 - (b) insofar as the subject matter of the determination requires it to be embodied in a court order (see Art.13.4), any changes which the court making that order may require;
 - (c) any subsequent determination superseding the determination; or any changes to the determination or subsequent order superseding the

determination which the Family Court considers ought to be made in the exercise of its statutory and/or inherent jurisdiction whether under the Children Act 1989 or otherwise.

- 13.4 If and so far as the subject matter of the determination makes it necessary, the parties will apply to an appropriate court for an order in the same or similar terms as the determination or the relevant part of the determination or to assist or enable its implementation and will take all reasonably necessary steps to see that such an order is made. In this context, 'an appropriate court' means the Family Court or such other court in England and Wales which has jurisdiction to make a substantive order in the same or similar terms as the determination.
- 13.5 Where the terms of the determination require any party to give an undertaking, the determination shall not take effect unless and until a suitable form of undertaking has been lodged with and accepted by an appropriate court.
- 13.6 The arbitrator may refuse to deliver the determination to the parties except upon full payment of his or her fees or expenses. Subject to this entitlement, the arbitrator will send a copy of the determination to each party or their legal representatives.

Article 14 – Costs

- 14.1 In this Article any reference to costs is a reference to the costs of the arbitration as defined in section 59 (costs of the arbitration) including the fees and expenses of IFLA and the fees of any expert, unless otherwise stated.
- 14.2 The arbitrator may require the parties to pay his or her fees and expenses accrued during the course of the arbitration at such interim stages as may be agreed with the parties or, in the absence of agreement, at reasonable intervals.
- 14.3 The arbitrator may order either party to provide security for the arbitrator's fees and expenses and the fees and expenses of IFLA.
- 14.4 Unless otherwise agreed by the parties, the arbitrator will make a determination allocating costs as between the parties in accordance with the following general principles:
- (a) the parties will bear the arbitrator's fees and expenses, the costs of any expert and the fees and expenses of IFLA in equal shares;
 - (b) there will be no order or determination requiring one party to pay the legal or other costs of another party.

These principles are subject to the arbitrator's overriding discretion set out in Arts.14.5 and 14.6.

- 14.5 Where it is appropriate to do so because of the conduct of a party in relation to the arbitration (whether before or during it), the arbitrator may at any stage order that party:
- (a) to bear a larger than equal share, and up to the full amount, of the arbitrator's fees and expenses and the fees and expenses of IFLA;
 - (b) to pay the legal or other costs of another party;
- and may make a determination accordingly.

- 14.6 In deciding whether, and if so, how to exercise the discretion set out in Art.14.5, the arbitrator will have regard to the following:
- (a) the principles applied by the courts in relation to cases concerning child welfare;
 - (b) any failure by a party to comply with these Rules or any order or directions which the arbitrator considers relevant;
 - (c) any open offer to settle made by a party;
 - (d) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;
 - (e) the manner in which a party has pursued or responded to a claim or a particular allegation or issue;
 - (f) any other aspect of a party's conduct in relation to the arbitration which the arbitrator considers relevant;
 - (g) the financial effect on the parties of any costs order or determination.
- 14.7 Unless the parties agree otherwise, no offer to settle which is not an open offer to settle shall be admissible at any stage of the arbitration.
- 14.8 These rules as to costs will not apply to applications made to the court where costs fall to be determined by the court.

Article 15 – Conclusion of the arbitration

- 15.1 The agreement to arbitrate will be discharged (and any current arbitration will terminate) if:
- (a) a party to the arbitration agreement dies; or
 - (b) a party to the arbitration agreement lacks, or loses, capacity (within the meaning of the Mental Capacity Act 2005).
- 15.2 The arbitration will be terminated:
- (a) if the arbitrator considers that the dispute is not suitable for arbitration under the Children Scheme and terminates the proceedings;
 - (b) if the arbitrator at any time after the commencement of the arbitration considers that the dispute is no longer suitable for arbitration under the Children Scheme on welfare or other grounds (see Arts.7.3 and 17.2);
 - (c) if and insofar as a court entertains concurrent legal proceedings and declines to stay them in favour of arbitration;
 - (d) if the parties settle the dispute and, in accordance with section 51 (settlement), the arbitrator terminates the proceedings (however, the parties may not request the arbitrator to record the settlement in the form of an agreed determination);

- (e) if the parties agree in writing to discontinue the arbitration and notify the arbitrator accordingly;
- (f) on the arbitrator making a final determination dealing with all the issues, subject to any entitlement of the parties to challenge the determination by any available arbitral process of appeal or review or in accordance with the provisions of Part 1 of the Act.

Article 16 – Confidentiality

- 16.1 The general principle is that the arbitration and its outcome are confidential, except insofar as disclosure may be necessary:
- (a) to challenge, implement, enforce or vary a determination, or in relation to applications to the court;
 - (b) in the performance under Art.17 of an arbitrator's duty to convey information relating to the welfare of the child to any appropriate local authority or government agency, or in the exercise of an arbitrator's obligation to inform IFLA of a decision to decline an appointment or to terminate an arbitration; or
 - (c) as may otherwise be compelled by law.
- 16.2.1 All documents, statements, information and other materials disclosed by a party to the arbitration will be held by any other party and their legal representatives in confidence and used solely for the purpose of the arbitration unless otherwise agreed by the disclosing party; or if required to be disclosed to any appropriate protection/safeguarding authority; or as may otherwise be compelled by law; or as may be provided for by a direction given by the arbitrator under Art.16.2.2 below.
- 16.2.2 Upon application by a party to the arbitration, the arbitrator may direct that any document, statement, information or other material disclosed in the arbitration by any party may be disclosed to any person mentioned in Art.16.2.3 below (the person and purpose of disclosure being identified in the direction), upon that person agreeing in writing to confine their use of the disclosure to the terms of the direction.
- 16.2.3 The arbitrator may permit disclosure under Art.16.2.2 above to a professional acting in furtherance of the protection of children; or to any other person to whom disclosure is necessary, for one or more of the following purposes:
- (a) to enable that person to provide expert or other evidence for the purposes of the arbitration or related legal proceedings;
 - (b) to enable a party to the arbitration, by confidential discussion, to obtain support, advice (whether legal or other professional) or assistance in the conduct of the arbitration or related legal proceedings;
 - (c) to enable a party to the arbitration to make and pursue a complaint against a person or body concerned in the arbitration;
 - (d) to make and pursue a complaint regarding the law, policy or procedure relating to arbitration as it concerns children.
- 16.3 Any transcript of the proceedings will be provided to all parties and to the arbitrator. It will similarly be confidential and used solely for the purpose of the arbitration,

implementation or enforcement of any determination or applications to the court unless otherwise agreed by the parties, or if it forms part of any necessary disclosure to any appropriate protection/safeguarding authority, or as may otherwise be compelled by law, or as directed by the arbitrator under Art.16.2.2 above.

- 16.4 The arbitrator will not be called as a witness by any party either to testify or to produce any documents or materials received or generated during the course of the proceedings in relation to any aspect of the arbitration unless with the agreement of the arbitrator, or in connection with any necessary disclosure to any appropriate protection/safeguarding authority, or as may otherwise be compelled by law.

Article 17 – Disclosure of issues relating to safeguarding and welfare

17.1.1 Prior to the formal commencement of the arbitration each party shall have a duty:

- (a) to provide accurate information regarding safeguarding and protection from harm in their Form ARB1CS and Safeguarding Questionnaire;
- (b) to obtain a Basic Disclosure from Disclosure Scotland and promptly send it to the arbitrator and to every other party;
- (c) to send to the arbitrator and to every other party any relevant letter or report prepared by CAFCASS or any local authority children’s services department or similar agency in relation to the welfare or safeguarding of any child who is the subject of the proposed arbitration.

17.1.2 Prior to the formal commencement of the arbitration and at every stage of the process each party shall have a continuing duty to disclose fully and completely to the arbitrator and to every other party any fact, matter or document in their knowledge, possession or control which is or appears to be relevant to the physical or emotional safety of any other party or to the safeguarding or welfare of any child the subject of the proceedings, or to a decision by the arbitrator under Art.17.2.1. Such disclosure shall include (but not be limited to) any criminal conviction, caution or involvement (concerning any child) with children’s services in respect of any party or any person with whom the child is likely to have contact.

17.2.1 If at any time prior to or during the arbitration but prior to communication of the determination to the parties the arbitrator (whether as a result of information received or by reason of behaviour on the part of either party) forms the view that there are reasonable grounds to believe that there may be a risk to the physical or emotional safety of any party or to the safeguarding or welfare of any child, it is the arbitrator's duty to consider whether the arbitration may safely continue.

17.2.2 If in such a case the arbitrator concludes that the dispute is no longer suitable for arbitration under the Children Scheme then he or she must inform the parties in writing of that decision and of its grounds, and will terminate the proceedings (see Arts.7.3 and 15.2(b)). The arbitrator must also inform IFLA of a decision to decline an appointment or to terminate an arbitration on safeguarding or welfare grounds.

17.3.1 If at any time during the arbitration but prior to communication of the determination to the parties the arbitrator becomes aware of any matters which lead him or her reasonably to apprehend that a child or any party has suffered or is likely to suffer significant harm by reason of the actual or likely future behaviour of any party, it is

the arbitrator's duty to communicate his or her concerns as soon as possible to the relevant local authority or appropriate government agency.

- 17.3.2 In such a case the arbitrator shall be entitled, if he or she considers it appropriate, to communicate such concerns to the relevant local authority or appropriate government agency without prior intimation to any party of an intention so to do.

Article 18 – General

- 18.1 At relevant stages of the arbitration, the arbitrator may encourage the parties to consider using an alternative dispute resolution procedure other than arbitration, such as mediation, negotiation or early neutral evaluation, in relation to the dispute or a particular aspect of the dispute.
- 18.2 If the parties agree to use an alternative dispute resolution procedure such as mediation, negotiation or early neutral evaluation, then the arbitrator will facilitate its use and may, if appropriate, stay the arbitration or a particular aspect of the arbitration for an appropriate period of time for that purpose.
- 18.3 In the event that the dispute is settled (following a mediation or otherwise), the parties will inform the arbitrator promptly and section 51 (settlement) will apply (however, the parties may not request the arbitrator to record the settlement in the form of an agreed determination). Fees and expenses accrued due to the arbitrator by that stage will remain payable.
- 18.4 In the event that an arbitrator under the Children Scheme is at the same time conducting a parallel financial arbitration under the IFLA Financial Scheme which involves one or more of the same parties, then in the event of any conflict between the two Scheme Rules, the arbitrator shall have sole discretion to decide which will prevail. For the avoidance of doubt, subject to the discretion of the arbitrator, all evidence adduced and all reports and documents disclosed in each arbitration shall stand as evidence in the other.
- 18.5 The parties will inform the arbitrator promptly of any proposed application to the court and will provide him or her with copies of all documentation intended to be used in any such application.
- 18.6 IFLA, the CI Arb, Resolution and the FLBA, their employees and agents will not be liable:
- (a) for anything done or omitted in the actual or purported appointment or nomination of an arbitrator, unless the act or omission is shown to have been in bad faith;
 - (b) by reason of having appointed or nominated an arbitrator, for anything done or omitted by the arbitrator (or his employees or agents) in the discharge or purported discharge of his functions as an arbitrator;
 - (c) for any consequences if, for whatever reason, the arbitral process does not result in a determination or, where necessary, a court order embodying a determination by which the matters to be determined are resolved.

IFLA

Institute of Family Law Arbitrators

FAMILY LAW ARBITRATION CHILDREN SCHEME

FORM ARB1CS –2018 EDITION

APPLICATION FOR FAMILY ARBITRATION, CHILDREN SCHEME

1. We, the parties to this application, whose details are set out below, apply to the Institute of Family Law Arbitrators Limited for the nomination and appointment of a sole arbitrator from the IFLA Children Panel ('the Children Panel') to resolve the dispute referred to at paragraph 3 below by arbitration in accordance with the Arbitration Act 1996 ('the Act') and the Rules of the Family Law Arbitration Children Scheme ('the Children Scheme'). We confirm that all the persons who have parental responsibility for the child(ren) concerned are parties to this arbitration.

Applicant's name	
Address	
Telephone	
Mobile	
Email	
Fax	
Represented by*	
Address	
Telephone	
Mobile	
Email	
Fax	

And:

Respondent's name	
Address	
Telephone	

I F L A

Institute of Family Law Arbitrators

Mobile	
Email	
Fax	
Represented by*	
Address	
Telephone	
Mobile	
Email	
Fax	

*Delete as applicable.
 Add, if necessary, the names of other parties on a separate sheet.

2. The child(ren) concerned is/are:

Please insert names and dates of birth and relationship of each child to the parties and whether (as regards each party) they have parental responsibility. Please also state the current location of each child.

.....

.....

3. The dispute concerns the following issue(s):

(Set these out on a separate sheet if preferred, but as concisely as possible.)

.....

.....

.....

Please complete EITHER paragraph 4(a) OR 4(b) OR paragraph 5 below:

IFLA

Institute of Family Law Arbitrators

4(a) We wish to nominate the following member of the Children Panel for appointment in this matter:

(This paragraph applies if the parties agree that they would like the matter to be referred to a particular arbitrator and / or have approached a particular arbitrator directly. The appointment will be offered to the nominated arbitrator. If the appointment is not accepted by their first choice of arbitrator the parties may, if they agree, make a second or subsequent choice. Otherwise, it will be offered to another suitable member of the Children Panel in accordance with paragraph 5 below.)

.....

4(b) We wish the Institute of Family Law Arbitrators Limited to select one of the members of the Children Panel from the agreed shortlist below for appointment in this matter:

(This paragraph applies if the parties have agreed on a shortlist of arbitrators from the Children Panel any one of whom would be acceptable to them, and wishes IFLA to select one of the arbitrators on the shortlist without reference to any criteria. In this case, IFLA will offer the appointment to one of the shortlisted arbitrators chosen at random. If the appointment is not accepted by the first choice of arbitrator, IFLA will offer the appointment to a second or subsequent shortlisted arbitrator, similarly chosen at random. If none of the shortlisted arbitrators accepts the appointment, IFLA will inform the parties and invite them to submit further agreed names.)

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5. We wish the Institute of Family Law Arbitrators Limited to nominate a member of the Children Panel for appointment in this matter.

(This paragraph applies if the parties have not identified a particular arbitrator to whom they wish the matter to be referred. Please set out below the nature of the dispute (insofar as it is not apparent from paragraph 3 above). Please also set out below any preferences as to the arbitrator's qualifications, areas of experience, expertise and / or any other attributes; or as to the geographical location of the arbitration; and any other relevant circumstances.)

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6. **If any court proceedings are current in relation to the child(ren), or your marriage or relationship, please identify the nature of the proceedings, in which court they are taking place and what stage they have reached. (Please attach copies of any relevant documents and court orders.)**

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7. **Please carefully read paragraphs 8.3(a)-(d) below and provide with this Form:**

- **a Basic Disclosure from Disclosure Scotland in relation to each party;**
- **a Safeguarding Questionnaire (as attached to this Form) completed and signed by each party, together with any relevant documentation;**
- **any relevant letter or report prepared by CAFCASS or any local authority children’s services department or similar agency in relation to the safeguarding or welfare of the child(ren) concerned (if there is one).**

8. **We confirm the following:**

- 8.1 We have been advised about and understand the nature and implications of this agreement to arbitrate;
- 8.2 Once the arbitration has started, we will not commence court proceedings or continue existing court proceedings in relation to the same subject matter (and will apply for or consent to a stay of any existing court proceedings, as necessary), unless it is appropriate to make an application to the court arising out of or in connection with the arbitration, or some relief is required that would not be available in the arbitration;
- 8.3 **We have read the current edition of the Rules of the Children Scheme (‘the Rules’) and will abide by them. In particular, we understand our obligations:**
- (a) **to provide accurate information regarding safeguarding in this Form and in the attached Safeguarding Questionnaire;**
 - (b) **before the arbitration starts, to obtain a Basic Disclosure from Disclosure Scotland and promptly send it to the arbitrator and to every other party;**

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- (c) **to send to the arbitrator and to every other party any relevant letter or report prepared by CAFCASS or any local authority children's services department or similar agency in relation to the welfare or safeguarding of the child(ren) concerned.**
- (d) **before the arbitration starts and at every stage of the process (as a continuing duty) to disclose fully and completely to the arbitrator and to every other party any fact, matter or document in our knowledge, possession or control which is or appears to be relevant to the physical or emotional safety of any party or to the safeguarding or welfare of any child the subject of the proceedings, or to a decision by the arbitrator whether to terminate the arbitration under Art.17.2.1. Such disclosure shall include (but not be limited to) any criminal conviction, caution or involvement (concerning any child) with children's services in respect of any party or any person with whom the child is likely to have contact;**
- (e) **at all stages of the process, to comply with the decisions, directions and orders of the arbitrator;**

8.4 We understand and agree that any determination of the arbitrator appointed to determine this dispute will be final and binding on us, subject to the following:

- (a) any challenge to the determination by any available arbitral process of appeal or review or in accordance with the provisions of Part 1 of the Act;
- (b) insofar as the subject matter of the determination requires it to be embodied in a court order (see 8.5 below), any changes which the court making that order may require;
- (c) any subsequent determination superseding the determination; or any changes to the determination or subsequent order superseding the determination which the Family Court considers ought to be made in the exercise of its statutory and/or inherent jurisdiction whether under the Children Act, 1989 or otherwise.

8.5 If and so far as the subject matter of the determination makes it necessary, we will apply to an appropriate court for an order in the same or similar terms as the determination or the relevant part of the determination. (In this context, 'an appropriate court' means a court which has jurisdiction to make a substantive order in the same or similar terms as the determination.) We understand that the court has a discretion as to whether, and in what terms, to make an order and we will take all reasonably necessary steps to see that such an order is made;

8.6 We understand and agree that although the Rules provide for each party, generally, to bear an equal share of the arbitrator's fees and expenses (see Art.14.4(a)), if any party fails to pay their share, then the arbitrator may initially

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require payment of the full amount from any other party, leaving it to them to recover from the defaulting party;

- 8.7 We agree to the arbitration of this dispute in accordance with the Rules of the Children Scheme.

IMPORTANT

Parties should be aware that:

- By signing this form they are entering into a binding agreement to arbitrate (within the meaning of s.6 of the Arbitration Act 1996).
- After signing, neither party may avoid arbitration (unless they both agree to do so). Either party may rely on the arbitration agreement to seek a stay of court proceedings commenced by the other.
- Arbitration is a process whose outcome is generally final. There are very limited bases for raising a challenge or appeal, and it is only in exceptional circumstances that a court will exercise its own discretion in substitution for the determination.

Signed.....
(Applicant *or* Applicant's legal representative, for and on behalf of Applicant)

Dated.....

Signed.....
(Respondent *or* Respondent's legal representative, for and on behalf of Respondent)

Dated.....

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Please send your completed form, preferably by email, to info@ifla.org.uk, or it can be sent by post to IFLA, PO Box 302, Orpington, Kent BR6 8QX.

Note that by submitting this Form, the parties consent to the processing by IFLA (and/or by Resolution, on IFLA's behalf) of the information and personal data provided in it and in associated documentation for the purposes of this Children Scheme arbitration. This includes retaining and storing the information and personal data for as long as is necessary in connection with this agreement. It may also be retained for research, training and statistical purposes in connection with family arbitration, but on the understanding that if so used, any information or details about individuals will have been removed so that they cannot be personally identified.

FAMILY LAW ARBITRATION CHILDREN SCHEME FORM ARB1CS SAFEGUARDING QUESTIONNAIRE

Each party should complete and individually sign a copy of this Safeguarding Questionnaire.
(Please make further copies as necessary.)

Name

Applicant / Respondent / Other Party

1. Have there been any court proceedings in relation to the child(ren), or your marriage or relationship, other than as mentioned in paragraph 6 of Form ARB1CS?
Yes / No

(If 'Yes', please identify the nature of the proceedings, in which court they took place and the outcome. Please attach copies of any relevant documents and court orders.)

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2. Has a child protection plan been put in place by a local authority in relation to the child(ren), or have a local authority's children's services been involved in any way?
Yes / No, or not to my knowledge

(If 'Yes', please provide details and say whether the local authority's involvement is continuing.)

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3. Have you, or any person with whom the child(ren) is/are likely to have contact ever been convicted of an offence concerning a child, or ever been cautioned or investigated in that connection?

Yes / No

(If 'Yes', please provide full details.)

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4. Do you have any concerns that the child(ren) has/have experienced, or is/are at risk of experiencing, harm of any the following kinds from any person with whom the child(ren) is/are likely to have contact?

- | | |
|-------------------------------------|----------|
| • Any form of domestic violence | Yes / No |
| • Child abduction | Yes / No |
| • Child abuse | Yes / No |
| • Drugs, alcohol or substance abuse | Yes / No |
| • Other safety or welfare concerns | Yes / No |

(If 'Yes' to any of the above, please provide full details of your concerns.)

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I confirm that the information I have provided in response to this Safeguarding Questionnaire is true and complete to the best of my knowledge and belief.

Signed

Dated