## AGREEMENT TO MEDIATE

**THIS AGREEMENT is between**

1. **(Party)**
2. **(Party)**
3. **(Mediator)**
4. **(Mediator)**

**The Parties agree as follows:**

1. Each party will attempt in good faith to resolve the dispute using the mediation process and will attend the mediation, either physically, online or telephonically, with full authority to settle the dispute.
2. The mediation session will take place in a format and on a date and time to be agreed by the parties and the mediator(s).
3. If, at the end of the meeting, the dispute remains unresolved the mediation session can be continued later if that is the wish of all the parties, including the mediator(s).
4. Role of the Mediator(s)

Mediation is provided by University of Strathclyde Mediation Clinic, who will appoint one or two mediators. The role of the mediator(s) is to help the people involved in a dispute to communicate and negotiate in good faith with each other.

1. The mediator(s) will not act as legal adviser to either party.
2. The mediator(s) will be responsible for conducting the mediation meeting in accordance with this agreement and the Scottish Mediation Code of Practice.
3. Voluntary Participation

Any party, including the mediator(s), may withdraw from the mediation at any time.

1. Conclusion of the mediation meeting

A mediation meeting will generally aim to conclude within a period of 2 to 3 hours. If, however, the parties wish to continue discussions they may do so, subject to the convenience of all parties, including the mediator(s). By the conclusion of the meeting the parties will either have reached an agreement or not.

1. Settlement

When/if the parties agree on how to resolve the dispute, the mediators will record the terms of the settlement in a settlement agreement, for all to sign and date. If the mediation is conducted online or telephonically, the mediator(s) will note the terms of the settlement in writing, read them back to the parties and ask them to confirm that those are the terms of their settlement. The mediator(s) will then email a written confirmation to the parties recording those terms, and that document will constitute proof of the parties’ agreement.

1. In the event that one party does not fulfil the terms of the settlement agreement, the other party:

* may be released from the settlement terms if they so wish, by giving written notice to that effect to the other party;
* shall inform the Clinic Director that the terms have not been fulfilled

1. All parties to the dispute reserve their respective legal rights should a settlement not be reached through mediation.
2. Confidentiality

Every person involved in the mediation will keep confidential all information arising out of or in connection with the mediation, including the terms of any settlement, unless otherwise agreed by the parties in writing but not including the fact that the mediation is to take place or has taken place or where disclosure is required by law, or to implement or to enforce terms of settlement. The mediation shall be conducted upon a “without prejudice” basis, the same as “without prejudice” settlement negotiations in court proceedings. Unless otherwise admissible, no documents produced specifically for the mediation (such as settlement proposals and draft settlement agreements) shall be used in any subsequent court proceedings.

No party may have access to the notes of the mediator(s) or call the mediator(s) as witnesses in any court or other proceedings relating to the subject of the mediation.

If the mediation is online or telephonic, the parties shall ensure that no person will be present in the room unless they are present by agreement of all the parties and have signed this agreement.

Where a party privately discloses to the mediator(s) or the Clinic any information in confidence before, during or after the mediation, the mediator(s) or the Clinic will not disclose that information to any other party or person without the consent of the party disclosing it, unless required by law to make disclosure.

1. Exceptions

The preceding paragraph shall not apply where:

* + - * all parties consent to specific disclosure;
      * any of the parties is required by law to make disclosure;
      * the mediator(s) reasonably consider that there is serious risk of significant harm to the life or safety of any person if they do not make such disclosure
      * the mediator(s) discuss the case in professional supervision with the Clinic Director or other supervisor appointed by him

In addition, a settlement agreement made at the mediation will be admissible in subsequent proceedings to enforce that agreement.

A party may disclose information or documents obtained during the mediation to a person not present at the mediation where that party needs to do so in order to obtain professional advice or where the person is within that party’s legitimate field of intimacy. A party disclosing information or documents in these circumstances must inform the professional advisor or any such person that the information or documents are confidential.

1. Complaints

If any party to this agreement is dissatisfied with the conduct of the mediator(s) in conducting the mediation, he or she agrees to first raise this informally with the Clinic Director. If it cannot be resolved to the party’s satisfaction he or she may then write formally to the Director of Scottish Mediation who will deal with it in accordance with their Complaints Policy. No complaints should be directed to the Sheriff Court.

1. The Parties agree that they, and their other participants, will not record or permit the recording of all or any part of the mediation without the consent of all Parties and the Mediator.
2. Monitoring

By using mediation each party agrees to complete and return the questionnaire surveying the quality of the service provided. All parties will have their confidentiality guaranteed in relation to their responses to the questionnaire.

1. Exclusion of Liability

Except as required by law, neither University of Strathclyde Mediation Clinic nor any mediator, nor any body with whom the mediator is professionally associated, shall be liable to the parties for any act or omission in connection with the services provided by the Mediation Clinic.

1. Costs

There is no charge for the mediation, which is provided by University of Strathclyde Mediation Clinic.

1. The mediators are signatories to the World Mediators Alliance on Climate Change ([WoMACC](https://womacc.org/take-the-green-pledge/)) green pledge. They are therefore committed to minimising the environmental impact of the mediation in the ways outlined in the pledge, including avoiding unnecessary travel and using screen-sharing/video technology where possible. The full pledge is attached as an appendix to this agreement.

**Signed (please type your name):**

**(Party) …………….…………….……………………………………………………… (Date)**

**(Party) …………….…………….……………………………………………………… (Date)**

**(Mediator) …………………….……………………………………………………… (Date)**

**(Mediator) …………………….……………………………………………………… (Date)**

**(Observer) …………………….……………………………………………………… (Date)**

**Copy to: Mediation Clinic and each Party above.**

**The WoMACC Green Pledge**

As a mediator committed to ensuring that I minimise the impact on the environment of every mediation I am involved in, I will ensure that, wherever possible:

* If screen sharing/video technology is appropriate, accessible and acceptable to all concerned, I will encourage its use in all aspects of my mediation practice;
* At all times during the mediation process, I will consider the most environmentally friendly way to travel if travel is necessary;
* I will offset the carbon emissions of any flights I make to and from mediations while recognising that this is not in any way a substitute for avoiding flying and will only fly when it is necessary to do so;
* At all times during the mediation process I will only correspond through electronic means, unless hard copy correspondence is expressly required in the circumstances, while recognising that electronic communication itself is carbon emitting and should be limited to what is necessary;
* I will not request hard copies of documents to be provided to me unless there is a special need to do so and I will discourage the use of hard copy documents generally;
* I will encourage parties and their advisers to consider the necessity of participants attending mediation in person if that attendance involves significant travel and is not necessary;
* Wherever possible, I will encourage parties and their advisers to consider the most environmentally friendly venue for their mediation. At mediation venues, in rooms in which I am mediating I will encourage, wherever possible, an environmentally friendly approach to the use of consumables (for example the avoidance of single-use plastic) and the use of energy (for example reviewing the level of air conditioning and heating);
* I will consider the appropriateness of travelling to, and my mode of travel to and from, conferences and other events and wherever possible will encourage and use live streaming/remote participation options;
* I will take steps to reduce the environmental impact of my office/workplace; and
* I will seek to raise awareness of this pledge, for example by referring to it on my website and/or email footer.”