



MEDIATION ENGAGEMENT AGREEMENT

This Mediation Engagement Agreement sets forth the terms under which Christopher T. Whitten, through Whitten ADR, will serve as mediator. By scheduling and participating in the mediation, the parties and their counsel agree to these terms.

1. ROLE OF THE MEDIATOR AND NATURE OF THE PROCESS

The mediator is a neutral facilitator. He does not represent any party, provide legal advice, decide the merits of the dispute, or have authority to impose a settlement. The purpose of mediation is to assist the parties in evaluating the dispute, communicating effectively, identifying obstacles to resolution, and exploring terms on which they may voluntarily resolve the matter.

Each party remains responsible for evaluating the case, obtaining independent legal advice, and deciding whether and on what terms to settle. The mediator may meet jointly or separately with the parties and may, when useful, offer questions, observations, evaluations, or settlement suggestions to assist the parties in their decision-making.

2. CONFIDENTIALITY, PRIVACY, AND CAUCUSES

The mediation is intended to be confidential to the fullest extent provided by applicable law and the parties' agreement. Mediation statements, communications made for purposes of the mediation, settlement discussions, offers, proposals, and statements made during the mediation shall be treated as confidential and as settlement communications, except as disclosure may be required by law, necessary to enforce a written settlement agreement, or otherwise agreed by the parties.

Mediation statements submitted to the mediator will be treated as confidential and will not be shared with another party unless the submitting party authorizes disclosure or the parties agree otherwise. Information disclosed during a separate caucus or pre-mediation conference will likewise not be shared unless the disclosing participant authorizes disclosure or the mediator reasonably understands that disclosure has been authorized.

Mediation sessions are private. No person may observe, listen to, or record any portion of the mediation without the knowledge and consent of the mediator and the parties. The parties agree not to subpoena the mediator or seek the mediator's notes, files, testimony, or evidence concerning the mediation, except to the extent applicable law does not permit that agreement to be enforced.

3. ATTENDANCE, AUTHORITY, AND PREPARATION

Each party shall ensure that the people needed to make a settlement decision participate throughout the mediation. When an insurer, corporate representative, governmental entity, or other person or entity controls or materially participates in settlement decisions, an appropriate representative with sufficient authority shall participate unless the parties and mediator agree otherwise in advance.

Counsel should prepare their clients not only to present their positions, but also to make informed settlement decisions. Before the mediation, counsel should identify any approval process, lien, coverage issue, tax issue, confidentiality concern, nonmonetary term, release language, or other matter that could prevent a settlement from being completed. Counsel should advise the mediator in advance of any attendance, authority, accessibility, safety, or logistical issue that could materially affect the mediation.

4. MEDIATION STATEMENTS AND PRE-MEDIATION CONFERENCES

Unless otherwise arranged, each side shall provide its confidential mediation statement and the most important supporting exhibits at least seven (7) days before the mediation. The separate Whitten ADR Mediation Submission Guidelines are incorporated into this Agreement. The mediator may request additional information when useful to prepare for the session.

After reviewing the mediation memoranda, the mediator will normally schedule a pre-mediation telephone call with each party or side. These calls are intended to clarify the parties' positions, identify issues that may benefit from advance discussion, and help the mediator prepare for a productive and successful mediation. The parties and their counsel are expected to cooperate in promptly scheduling and participating in these calls.

5. FEES

For a two-party mediation, the fee is \$350 per hour per side. For a three-party mediation, the fee is \$300 per hour per party. For a mediation involving more than three parties, the fee is \$250 per hour per party.

The applicable hourly rate applies to all mediator time devoted to the matter, including pre-mediation conferences, preparation, review of submissions and other materials, the mediation session, and substantive post-mediation follow-up. There are no separate administrative, scheduling, rescheduling, or Zoom fees. All mediations are subject to a four-hour half-day minimum. Unless the parties agree otherwise, each side or party is responsible for its applicable share of the mediation fee.

6. NO DEPOSIT; PAYMENT

No advance deposit is required. Whitten ADR will invoice the parties for time incurred, subject to the applicable minimum. Payment is due on the day of the mediation and is past due fourteen (14) days thereafter. Any past-due balance will accrue a late payment charge at the rate of ten percent (10%) per annum until paid. Counsel are asked to make appropriate arrangements with their clients to ensure timely payment.



7. CANCELLATION OR POSTPONEMENT

Because mediation dates are reserved for the parties and often cannot be replaced on short notice, a mediation cancelled or postponed within 30 days of the scheduled date is subject to a minimum cancellation fee of \$3,000 for a half-day mediation and \$6,000 for a full-day mediation.

The cancellation fee may be avoided if the vacated time is actually filled with another mediation. Whitten ADR will make reasonable efforts to fill the date but does not guarantee that a replacement matter can be scheduled. Any cancellation fee will be allocated among the parties in the same manner as the mediation fee unless the parties agree otherwise.

8. ZOOM AND IN-PERSON MEDIATIONS

Mediations may be conducted by Zoom or in person as agreed. For Zoom mediations, participants should join from a private location with a reliable internet connection and functioning audio and video. Participants may not record the mediation or permit an unauthorized person to observe or listen. For in-person mediations, the parties and mediator will agree on the location in advance. Any unusual facility or travel expense will be discussed with the parties before it is incurred.

9. FOLLOW-UP AFTER THE SESSION

If a matter does not resolve during the scheduled session, the mediator may, when appropriate, continue reasonable settlement efforts by telephone, email, Zoom, mediator proposal, or other agreed means. Time spent on substantive post-mediation follow-up is billed at the applicable hourly rate.

10. SETTLEMENT AND DOCUMENTATION

Any settlement is the parties' agreement, not the mediator's. Counsel should be prepared to document the material terms of any settlement before the mediation concludes. The parties and their counsel are responsible for determining the form and enforceability of the settlement and its legal, tax, lien, confidentiality, release, dismissal, payment, and other consequences. The mediator will assist with the settlement process but does not serve as counsel for any participant.

Whenever practicable, counsel should identify and discuss before the mediation any release terms or other provisions that must be included in a final settlement agreement. If the parties reach agreement in principle, the mediator may encourage them to prepare and sign a term sheet or other written memorialization before the session ends.

11. IMPARTIALITY AND DISCLOSURES

The mediator will remain impartial and will disclose any known circumstance that the mediator believes may reasonably raise a question about impartiality or create a potential conflict. The parties and counsel are likewise expected to promptly disclose any information they believe may bear on the mediator's ability to serve impartially.

12. AGREEMENT TO TERMS

Scheduling the mediation and participating in it constitutes acceptance of these terms unless different terms are confirmed in writing by Whitten ADR and the parties.

Matter: _____

Mediation Date: _____

AGREED AND ACCEPTED BY SIGNATURE:

Party 1/ Authorized Representative

Party 2/ Authorized Representative

Counsel

Counsel



Party 3/ Authorized Representative

Counsel

Christopher T. Whitten, Arbitrator

Party 4/ Authorized Representative

Counsel

Date