

APPENDIX 3 AGREEMENT TO MEDIATE

We, the undersigned participants, voluntarily agree to engage in good faith in the mediation process to resolve the issues in dispute. We understand and consent to the following ground rules:

1. **Definition of Mediation:** Mediation is a process in which a Mediator facilitates communication between the participants and, without deciding the issues or imposing a solution on the parties, enables them to understand and to reach a mutually agreeable resolution to their dispute.
2. **Role of the Mediator:** The Mediator acts as a facilitator, not as an advocate, advisor, counselor, fact-finder, or judge. The Mediator has no authority to decide the case and is not acting as a representative of the participants or the Employing Office. The Mediator assists the participants in identifying issues, reducing obstacles to communication, maximizing the exploration of alternatives, and helping participants reach voluntary agreements.
3. **The Mediation Process:** Mediation is an informal process and will include at a minimum, an opportunity for all participants to be heard, the identification of issues to be resolved, the generation of alternatives for resolution, and if the participants agree, the development of a Memorandum of Understanding or Settlement Agreement. The mediation process is voluntary and may be terminated by any participant at any time.
4. **Caucus Sessions:** The Mediator reserves the opportunity to meet with the participants individually in private sessions to gather more information and explore options. Information shared in these private caucus sessions will remain confidential unless the participant gives the Mediator permission to share it with the other participant(s).
5. **Confidentiality:** Confidentiality is essential to effective mediation as it allows the parties to have a full and candid exchange of information. A successful mediation requires that participants be able to speak with complete candor, acknowledge risks and weaknesses, and look for common ground, without fear that if a settlement is not reached, their words will be used against them in an EDR hearing or otherwise.

As per the EDR Plan, the proceedings of the mediation, including any written submissions, positions taken by the participants, views expressed, and admissions or suggestions made by the participants or the Mediator in the course of the mediation, shall be strictly confidential. Positions taken by the participants during any stage of the mediation process shall also be strictly confidential and may not be disclosed or used for any other purposes, including an EDR Complaint Hearing.

The participants, any attorneys or representatives, or anyone involved in the settlement or mediation discussions may not disclose information or records obtained through or prepared

specifically for the mediation process, except:

- 1) As necessary to consult with the participants or their counsel or representatives, and then only with notice to all participants;
- 2) If the information or records are otherwise properly discoverable in an EDR Formal Complaint proceeding;
- 3) When a participant needs to share the contents of the Mediation Agreement for purposes of its enforcement or implementation; or
- 4) When there appears to be imminent risk to safety or security of any person. Whether this risk exists is a determination to be made by the Mediator.

Any written settlement or mediation agreement will be filed with the EDR Coordinator and/or Director of Workplace Relations.

The Mediator may not act as a witness in any other EDR Formal Complaint proceeding in relation to the mediated claim.

6. **Participation:** The Mediator does not provide legal or other advice. Participants are encouraged to seek the advice or representation at any time if needed to make informed decisions. If all the participants and the Mediator agree, a representative from a Unit's human resource office, a subject matter expert, or other third party may participate in the mediation.
7. **Time Limits:** Discretion to extend the applicable time limits for mediation rests with the Chief Judge of the Court or other Presiding Judicial Officer.
8. **Agreements:** Any final agreement will be voluntary and bind the participants to make a good faith effort to implement it. The Mediator may memorialize the agreement; however, the participants are responsible for consulting with others regarding rights and policies and, if needed, to involve individuals whose concurrence may be needed to ratify or implement any agreement (i.e. Chief Judge, Circuit Executive, etc.). Before the Mediation Memorandum of Understanding can be concluded, the Employing Office's delegate must confirm its approval on behalf of the Court or Unit.
9. **Good Faith:** Mediation is a good faith attempt at informally resolving the issues. It is a violation of the Mediation Rules to retaliate against any person for using mediation services or for participating in mediation and may be grounds for a finding of misconduct.

By signing below, we acknowledge that we have read, understand, and agree to the terms and conditions of this agreement.

Participant Name Date

Participant Name Date

Participant Name Date

Participant Name Date

Mediator Date