



AGREEMENT TO MEDIATE

The undersigned parties (“Parties” or “Party”) agree to mediate in good faith the issues between them and to abide by the mediation process, the details of which are presented below.

Introduction

1. Each Party will seek to understand the other Party’s point of view, concerns and interests and to treat the other Party with respect.
2. The Parties agree to work cooperatively with, and to respect, the Mediator. The Mediator will assist the Parties to reach a resolution of their dispute by facilitating communication and negotiations as needed.
3. Parties are encouraged to participate directly in the mediation process. However, if they need to act through a representative, or if they want to come to mediation accompanied by others (e.g., counsel, advocate, family member), they should communicate this to the Mediator and the other Party as soon as possible.
4. If either of the Parties or the Mediator becomes aware of a potential conflict of interest, she or he shall immediately advise the Office of Ombudsman for United Nations Funds and Programmes (the “Office of the Ombudsman”) of the possible conflict of interest. Upon recommendation of the Office of the Ombudsman, if both of the Parties and the Mediator agree that the potential conflict of interest is waivable, they can continue the process of mediation.

Confidentiality

5. Every person involved in the mediation, including the Mediator, the Parties and other participants, will keep all information received during the mediation confidential, including the terms of any mediated settlement agreement, except that:
 - (a) documents and oral statements that existed or were made before the mediation are not protected under this Agreement to Mediate;
 - (b) a Party may give express permission to the Mediator to disclose his or her information, provided that such disclosure will not concern the other Party’s information;
 - (c) disclosure is permitted when compelled by law or applicable rules;
 - (d) disclosure is permitted if necessary in relation to the work of the Office of the Ombudsman, such as when sharing the information confidentially within the Office of the Ombudsman, with the other mediators of the Global Mediation Panel, or with the International Advisory Board is needed;
 - (e) disclosure is permitted if the Office of the Ombudsman determines that there appears to be an imminent risk of serious harm and there is no other reasonable option for confidentially handling the matter; and
 - (f) disclosure is permitted as needed to enforce a mediated settlement agreement.
6. Notwithstanding paragraph 5 above, all documents prepared for, and all oral statements made during, mediation are absolutely privileged and confidential with regard to proceedings before the United Nations Tribunal and shall never be disclosed to the Tribunal.¹ However, when the Tribunal is to determine the dates and extent of the involvement of the Office of the Ombudsman in a case before it,

¹ Rules of Procedure of the United Nations Dispute Tribunal, paragraph 7, at <https://www.un.org/en/internaljustice/pdfs/2009-12-16-undt-rop.pdf> (effective as of 16 December 2009).



upon the request of both parties or the Tribunal without an objection of any of the parties, the Office of the Ombudsman may issue a certificate confirming the start and end dates of the mediation process without disclosing any information pertaining to the substantive discussions that took place during the mediation process.

7. The Parties agree that they will not call the Mediator or a member of the staff of the Office of the Ombudsman as a witness or require her or him to produce any notes or evidence in any subsequent formal proceedings. The Mediator, the staff of the Office of the Ombudsman, and the Parties will not voluntarily testify regarding anything said during mediation unless there is an imminent risk of serious harm and there is no other reasonable option for confidentially handling the matter, as determined by the Office of the Ombudsman.
8. The Parties and the Mediator acknowledge and agree that, since they are disruptive to confidentiality in the mediation process, recordings or transcripts of the contents, discussions and communications in a mediation, whether audio, video or otherwise, shall not be made or used by any Party, participant, her or his representative or the Mediator.

Authority to Settle and Representation

9. Each Party confirms to the Mediator that a person with full authority to settle the issues between them will participate in the mediation session, and that in case a terms sheet is agreed upon without the participation of the person with full authority, the participating person shall promptly procure the confirmation of such person. If additional parties are needed to reach an agreement, they should be immediately available for contact during the mediation session.

Termination and Settlement Agreement

10. The Parties understand that mediation may be terminated at any time by either Party or the Mediator by communicating such decision in writing.
11. The Parties may ask the Mediator for help in memorializing any agreement. However, the Parties are responsible for consulting with each other regarding their respective rights and obligations and, if needed, involving appropriate individuals (e.g., manager, representative of the human resources unit). Any final agreement will bind the Parties, who shall make a good-faith effort to implement it. The Mediator does not bear any responsibility for the terms agreed upon by the Parties or the implementation thereof.

Print Name (Party)

Signature

Date

Print Name (Party)

Signature

Date

Print Name (Mediator)

Signature

Date