

## AGREEMENT TO MEDIATE – APPEAL MEDIATION

Department of \_\_\_\_\_

1. I understand that this is an agreement by the parties to attempt to resolve the following issues by submitting the matters to appeal mediation:

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2. I understand that mediation is a dispute resolution process that is non-adversarial in nature and seeks to find reconciliation between disputing parties. The mediation process does not declare winners or losers. The main focus is to seek a resolution that is informal, timely, and is advantageous to both parties.

3. I understand that the Mediator is committed to treating this matter in a fair and unbiased way. The Mediators' role is to facilitate and help the parties themselves reach a mutually satisfactory resolution to the problem. The decision-making power rests with the parties, not the Mediator. **If the parties cannot agree on a resolution (known as a "Non-settlement, the Mediator will provide a suggested resolution to the Director of the Department of Finance and Administration.** If an impasse exists, either party or the Mediator may stop the proceedings.

4. I understand that the Mediator has no authority to make decisions or act as a judge or arbitrator. Although the Mediator may be an attorney, the Mediator will not act as an advocate for any party in the mediation. To the extent either the employee or the agency wishes to have a representative or legal counsel to consult with or assist at any stage in the mediation, the party is responsible for taking steps to obtain such a person.

5. I understand that mediation is a confidential process. Any documents submitted to the Mediator and statements made during the mediation are for settlement purposes only. I agree not to subpoena or request the Mediator to serve as a witness or request or use as evidence any materials prepared by the Mediator for the mediation, with the exception of a Settlement Agreement signed by the parties. In no event will the Mediator voluntarily testify on behalf of any party or submit any type of report in connection with this mediation, with the exception of the suggested resolution. **If the parties cannot agree on a resolution ("Non-settlement"), the Mediator is required by law to submit a suggested resolution to the Director of the Department of Finance and Administration.** I understand that matters that are admissible in a court of law or other administrative process continue to be admissible, if otherwise discoverable, even though brought up in a mediation session.

6. Mediation is private, confidential and privileged from discovery. To ensure confidentiality, any writings or notes made or taken during the mediation session by the Mediator, or either party and/or representatives shall be collected and destroyed by the Mediator, in the presence of all, prior to adjournment of the mediation.

7. I understand that no party shall be bound by anything said or done at the mediation unless a written settlement is reached and executed by all necessary parties. If a settlement is

reached, the Mediator shall reduce the agreement to writing, and when signed and approved by the parties and/or appropriate authorities, the Settlement Agreement shall be legally binding upon all parties to the agreement.

8. In electing to use mediation, I understand that no external statutory deadlines are waived and that all external statutory deadlines must be adhered to.

9. The employee's rights to pursue external formal processes are not waived and will be protected during the mediation process. At the same time, the employee's responsibilities to comply with all requirements of any external administrative or court process, e.g., time limits, points of contact, ARE NOT WAIVED and must be followed.

10. I understand that in the event the mediation is terminated for any reason, the employee may continue to pursue the matter through the fact-finding process. The employee may also pursue the matter through any external formal resolution of the matter as he/she sees fit as long as they are within statutory time limits.

11. No admission of guilt or wrongdoing by either party is implied, and none should be inferred, by participation in this process.

12. I will sincerely attempt to resolve this matter; agree to cooperate with the Mediator assigned to this matter; and give serious consideration to all suggestions made in regard to developing a realistic solution to the problem. I will conduct myself in a courteous and non-hostile manner, use appropriate language, and allow the Mediator to interrupt the process if they feel a caucus or break is needed to facilitate the mediation process. I enter into this process in good faith.

13. The Mediator agrees to notify the parties, their representatives, and the appropriate management official of the status and results of the mediation process within one (1) business day of the conclusion or termination of the process. **If the parties cannot agree on a resolution ("Non-settlement"), the Mediator is required by law to issue a suggested resolution to the DFA Director within ten (10) business days of the mediation.**

BY SIGNATURE BELOW, I ACKNOWLEDGE THAT I HAVE READ,  
UNDERSTAND, AND AGREE TO THIS AGREEMENT TO PARTICIPATE IN MEDIATION:

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EMPLOYEE'S SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

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EMPLOYEE REPRESENTATIVE'S SIGNATURE (if appropriate) \_\_\_\_\_ DATE \_\_\_\_\_

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MANAGEMENT OFFICIAL'S SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

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AGENCY REPRESENTATIVE'S SIGNATURE (if appropriate) \_\_\_\_\_ DATE \_\_\_\_\_

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MEDIATOR'S SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_