

Surface Transportation Board

Agreement to Mediate

- 1) *Purpose.* The parties agree to engage in mediation under the auspices of the Surface Transportation Board.
- 2) *Commencement.* The mediation process commences once the Board assigns a case for mediation.
- 3) *Termination.* The mediator may stop the mediation at any point if he or she feels that an impasse has been reached. The mediator will stop the mediation if he or she can no longer maintain neutrality or cannot perform his or her role in an ethical or effective manner. The mediator will discuss this decision with the parties.
- 4) *Authority and Representation.* The parties shall ensure that their representatives in mediation sessions are vested with the authority to negotiate and settle the issues presented in the docketed proceeding.
- 5) *Scope.* The parties are not required to reach a settlement on the issues presented in Docket No _____. The parties may reach an agreement on some or all of the issues. The parties may engage in discussions and agreements on issues not presented in the docketed proceeding as may be necessary to reach resolution on other issues.
- 6) *Procedures.* Mediation will be governed by the rules and procedures set forth at 49 C.F.R. Part 1109 and this agreement. The Board's rules governing mediation found at 49 C.F.R. Part 1109 are expressly incorporated into this agreement by reference.
- 7) *Role of the Mediator.* The parties understand that the mediators are to serve as facilitators of the mediation process and are not to give the parties advice. The parties further understand that the mediators have no authority to decide the case and are not acting as an advocate or attorney for any party. The mediators may, in their best judgment, provide clarification of STB rules and regulations. The parties understand that they have a right to have legal representation present at all mediation proceedings.
- 8) *Confidentiality.* Mediation is a privileged and confidential process, subject to 49 C.F.R. §§ 1109.3(d) and 1109.4(e). The parties agree that statements and documents are to remain confidential.
 - a) *Statements.* The parties and their representatives agree that the mediation sessions are confidential settlement negotiations, which are not subject to discovery. Therefore, the parties and their representatives agree not to introduce in any subsequent forum any statements made during the mediation, unless a statement has been properly obtained through a later discovery process.

- b) *Documents*. The parties and their representatives agree that the mediation sessions are confidential settlement negotiations, which are not subject to discovery. Therefore, the parties and their representatives agree not to introduce in any subsequent forum any documents produced during the mediation, unless a document has been properly obtained through a later discovery process.
 - c) *Discovery Issues*. The parties agree that mediation shall not be used as a shield to discovery in the event a settlement is not reached. Information presented at mediation that is otherwise discoverable shall remain so regardless of the mediation process. The parties agree not to subpoena the mediators or the Board's mediation program administrator to produce any documents prepared by or submitted to the mediators in any future proceedings. The mediators and the program administrator will not testify on behalf of any party or submit any type of report on the substance of the mediation.
 - d) *Exceptions to Confidentiality*. The only exceptions to confidentiality are those set forth in 5 U.S.C. § 574(a)-(b) of the Administrative Dispute Resolution Act of 1996.
- 9) *Settlement*. No party shall be bound by anything said or done at the mediation unless a written settlement agreement is prepared and signed by all necessary parties. If a settlement is reached on some or all of the issues presented, the agreement shall be reduced to writing. The parties are responsible for reducing their agreements to a written document, though the mediators may assist the parties as necessary to reduce verbal agreements to writing.

By signature we acknowledge that we have read, understand and agree to the foregoing Agreement to Mediate.

Mediation Participant	Date
Mediation Participant	Date
Mediation Participant	Date
Mediation Participant	Date
Mediator	Date
Mediator	Date