

10.4.2.1 Position Memoranda; Pre-Mediation Conference.

Within ten (10) days of the selection of the mediator, each party to the Dispute shall submit a brief memorandum setting forth its position with regard to the issues to be resolved. The mediator shall have the right to schedule a pre-mediation conference and all parties to the Dispute shall attend unless otherwise agreed. The mediation shall commence within ten (10) days following submittal of the memoranda to the mediator and shall conclude within fifteen (15) days from the commencement of the mediation unless the parties to the Dispute mutually agree to extend the mediation period. The mediation shall be held in Maricopa County, Arizona or such other place as is mutually acceptable by the parties to the Dispute.

10.4.2.2 Conduct of Mediation.

The mediator has discretion to conduct the mediation in the manner in which the mediator believes is appropriate for reaching a settlement of the Dispute. The mediator is authorized to conduct joint and separate meetings with the parties to the Dispute and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided the parties to the Dispute agree to obtain and assume the expenses of obtaining such advice as provided in *Subsection 10.4.2.5* below. The mediator does not have the authority to impose a settlement on any party to the Dispute.

10.4.2.3 Exclusion Agreement.

Any evidence of admissions, offers of compromise or settlement negotiations or communications at the mediation shall be excluded in any subsequent dispute resolution forum.

10.4.2.4 Parties Permitted at Sessions.

Persons other than the parties to the Dispute may attend mediation sessions only with the permission of all parties to the Dispute and the consent of the mediator. Confidential information disclosed to a mediator by the parties to the Dispute or by witnesses in the course of the mediation shall be confidential. There shall be no stenographic record of the mediation process.

10.4.2.5 Expenses of Mediation.

All expenses of the mediation, including, but not limited to, the fees and costs charged by the mediator and the expenses of any witnesses or the cost of any proof or expert advice produced at the direct request of the mediator, shall be borne equally by the parties to the Dispute unless agreed to otherwise. Each party to the Dispute shall bear his/hers/its own expert fees, attorneys' fees and costs in connection with such mediation.

10.4.3 Final and Binding Arbitration.

If the parties cannot resolve their Dispute pursuant to the procedures described in *Subsection 10.4.2* above, the Disputing Party shall have thirty (30) days following termination of mediation proceedings (as determined by the mediator) to submit the Dispute to arbitration in accordance with the Arbitration Rules of AAA, as modified or as otherwise provided in the *Subsection 10.4.3*. If the Disputing Party does not submit the dispute to arbitration within thirty days after termination of mediation proceedings, the Disputing Party shall be deemed to have waived any claims related to the Dispute and all other parties to the