

## **AGREEMENT TO MEDIATE**

**XXXXXXXXXXXXXXXX by XXXXXXXXXXXX XXXX; and XXXXXX XXXXXX by XXXXXX XXXXX**, the undersigned parties, hereby agree to have mediation services provided by **United States Arbitration & Mediation Midwest, Inc.**, (hereafter called **USA&M Midwest**), for the mediation between **XXXXXXXX and XXXXXX XXXXX**, in accordance with the following terms:

**Mediation Procedures:** **USA&M Midwest** will administer the mediation in accordance with its Mediation Procedures. All parties recognize that mediation is voluntary and that the mediator has no authority to force a settlement on the parties.

**Mediator:** The parties agree that **XXXXX XXXXXX** will serve as the mediator. The parties acknowledge that the mediator is an independent contractor, and not an agent or employee of **USA&M Midwest**.

**Terms of Payment are as Follows:** The parties shall divide equally all costs of mediation. Any agreement to apportion fees in any different manner shall not be binding on **USA&M Midwest** without the written consent of **USA&M Midwest**. The parties agree to pay a \$225.00 per party administrative fee and the mediator's fee of **\$XXX.00** per hour. **All monies shall be due upon the receipt of the bill.** In the event of non payment of any amount due and the matter should be turned over to an attorney for collection, the delinquent party and their counsel shall be responsible for all costs of collection, including a reasonable attorney fee. Attorneys and client representatives are responsible for payment of their client's share of the mediation costs. **USA&M, Midwest, Inc.** is not responsible for obtaining payment from individual or business clients of attorneys

**Consulting with Attorneys:** During or between mediation sessions and before finalizing an agreement, participants are encouraged to consult with attorneys regarding their legal rights and obligations. The parties and all non-party participants recognize that neither **USA&M Midwest** nor the mediator are giving legal advice or legal counsel, or analyzing anyone's legal rights, and accordingly agree and acknowledge that at the mediation session(s) and at every other point in the proceedings neither **USA&M Midwest** nor the mediator: (a) will be acting as legal advisor or representative for any party or non-party participant; (b) has a duty to recognize, assert, analyze, or protect any legal right or obligation, including, but not limited to, lien rights, statutes of limitation or any other time limit or claim requirement; (c) has a duty to make an independent expert analysis of the situation or raise issues not raised by the parties, or to determine that additional necessary parties should participate in the mediation; and (d) can guarantee that the mediation session will result in settlement. The parties and counsel understand that if the mediator assists in preparing any written document, that such participation shall not be considered as giving legal advice to any party and that the parties shall have the document independently reviewed by their own legal counsel before signing any document.

**Caucuses/Private Sessions:** The mediator may hold sessions with only one party or any non-party participants. These “caucuses” are designed to improve the mediator’s understanding of the parties’ position. Information gained through the private session may be disclosed to the other party, unless any party requests that it be kept confidential.

**Confidentiality:**

- a. The mediator is obligated under Local Rules of the U.S. District Court and the Circuit Court of the City of St. Louis to disclose to the Court whether all required individuals attended the mediation, possessed the requisite settlement authority, and participated in good faith.**
- b. If any party is a Federal Agency, all parties agree that the applicability of the “Confidentiality in Federal Alternative Dispute Resolution Programs” as published in the Federal Register/Volume 65, No. 251 on Friday, December 29, 2000, are waived, except as to the applicability of the Freedom of Information Act.
- c. All written and oral communications made or disclosed to the mediator during the course of the mediation are privileged settlement discussions and are confidential, and may not be disclosed by the mediator, any party, or other participant, unless the parties and mediator otherwise agree in writing. All disclosures made during the course of this mediation are conditioned upon this promise and agreement of confidentiality.
- d. No admission, representation, statement or other confidential communication made in the process of setting up or conducting this mediation shall be admissible as evidence or subject to discovery, except that no fact independently discoverable shall be immune from discovery by virtue of having been disclosed in such confidential communications.
- e. The parties and their counsel and non-party participants agree that they will not subpoena the mediator or USA&M Midwest, Inc. and its employees nor will they encourage or permit another to subpoena or otherwise compel the mediator or USA&M Midwest, Inc. and its employees to disclose in a legal, administrative, or other proceeding any matter disclosed in the process of setting up and/or conducting the mediation. The parties and their counsel further agree that they may not introduce into evidence, or use for any purpose, any written or oral testimony whatsoever of the mediator.

**Miscellaneous**

- a. All disputes regarding payment herein shall be venued exclusively in the City or County of St. Louis, Missouri.
- b. All Parties agree that USA&M, Midwest, Inc. may introduce this agreement into evidence without objection notwithstanding the provisions of Missouri Supreme Court Rule 17 and Section 435.014 R.S. Mo.
- c. By agreeing to use USA&M, Midwest, Inc. and the mediator identified in this agreement, the parties agree that this agreement and all issues of confidentiality will be interpreted and enforced pursuant to the laws of the State of Missouri and/or the Federal Rules of Civil Procedure as shall be appropriate. Further, each party waives the applicability of the Uniform Mediation Act; if adopted, in the home state of any party.
- d. All parties agree to negotiate in good faith.
- e. This agreement executed on the \_\_\_\_\_ day of \_\_\_\_\_ 200 \_\_\_\_.

**YOUR SIGNATURE BELOW INDICATES THAT YOU HAVE READ AND UNDERSTOOD THE**

**FOREGOING AGREEMENT.**

<hr/> <b>Plaintiff 1</b> <hr/> <hr/> <b>Counsel</b> <hr/>	<hr/> <b>Plaintiff 2</b> <hr/> <hr/> <b>Counsel</b> <hr/>
<hr/> <b>Defendant 1</b> <hr/> <hr/> <b>Counsel</b> <hr/> <hr/> <b>Corporate/Insurance Representative</b> <hr/>	<hr/> <b>Defendant 2</b> <hr/> <hr/> <b>Counsel</b> <hr/> <hr/> <b>Corporate/Insurance Representative</b> <hr/>
<hr/> <b>Defendant 3</b> <hr/> <hr/> <b>Counsel</b> <hr/> <hr/> <b>Corporate/Insurance Representative</b> <hr/>	<hr/> <b>Defendant 4</b> <hr/> <hr/> <b>Counsel</b> <hr/> <hr/> <b>Corporate/Insurance Representative</b> <hr/>

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**Non-Party Participant**

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**Non-Party Participant**

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**Mediator**