



## **AGREEMENT TO MEDIATE**

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

**Mediation Procedures:** USA&M 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 **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.

**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 without the written consent of USA&M including, without limitation, those situations in which a party leaves the mediation prior to the conclusion of the mediation session. The parties agree to pay a \$225.00 per party administrative fee and the mediator's fee of **XXX.00** per hour. All monies, less deposits, 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 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 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 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. Further, there is no attorney-client privilege between the mediator and any party and/or non-party participant. The parties 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 one or more parties 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 any other party or non-party participant, unless any party requests that it be kept confidential.

**Miscellaneous:**

- a. The mediator is obligated under Local Rules of the U.S. District Court to disclose whether all required individuals attended the mediation, possessed the requisite settlement authority, participated in good faith, and whether the case settled or not. The Circuit Court of Madison County, Illinois requires disclosure in medical malpractice cases of the willingness to participate and attendance of all individuals necessary to facilitate settlement.
- c. **If one or more of the parties is a Federal Agency, in no event shall the mediator be called to testify in any matter relating to this claim/mediation under the provisions of 5 U.S.C. 574(a) and that this clause shall serve as an exemption under the provisions of 5 U.S.C. 574(d)(1-2). A copy of 5 U.S.C. 574 is available at our office upon request. (September 2011)**
- d. All written and oral communications made or disclosed to the mediator by any party, attorney, or non-party participant during the course of the mediation are privileged settlement discussions and are confidential and are not admissible in any court or administrative procedure except as provided under applicable Supreme Court Rules and Statutes of the State of Missouri or Federal Rules of Civil Procedure, and may not be disclosed by the mediator, any party, or other participant, unless the parties and mediator otherwise agree. All disclosures made during the course of this mediation are conditioned upon this promise and agreement of confidentiality.
- d. (May 2011). 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. No party, counsel or non-party participant in the mediation process will call or subpoena the mediator and/or any employee, agent or servant of USA&M to produce in any civil action, arbitration, or other legal or administrative proceedings of any kind whatsoever any notes or documents related to the mediation or to testify regarding any notes or documents or the mediator's thoughts or impressions. If so called or subpoenaed by anyone, the mediator and/or any employee, agent or servant of USA&M will refuse to testify or to produce such notes or documents. Should any party, counsel, non-party participant or other signatory to this Agreement or any other participant in the mediation process or any non-participating third party, entity or agency, attempt to compel such testimony or production, the parties or signatories to this Agreement, upon notice from the mediator and/or any employee, agent or servant of USA&M, shall defend and indemnify at their joint and several expense, the mediator and/or any employee, agent or servant of USA&M against any liabilities, costs or expenses, including reasonable attorneys' fees, which the mediator and/or any employee, agent or servant of USA&M may incur resisting such compulsion. 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 and/or any employee, agent or servant of USA&M.
- f. Potential exceptions to confidentiality under the Missouri Rules of Professional Responsibility apply to all attorneys, including the mediator, involved in this mediation.
- g. All disputes between USA&M and any party or participant herein shall be venued exclusively in the City or County of St. Louis, Missouri.
- h. All Parties and USA&M may introduce this agreement into evidence without objection notwithstanding the provisions of Missouri Supreme Court Rule 17, Section 435.014 RS

Mo., and/or any other applicable state or federal statute or regulation.

- i. By agreeing to use USA&M 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.
- j. The mediator has either disclosed all known conflicts or is unaware of any conflict of interest. If any party is or becomes aware of a possible conflict of interest, the party shall immediately notify the mediator. The mediator is under a continuing duty to disclose any conflict (June 2011).
- k. Any settlement reached by any of the parties over the matters at issue in this mediation shall, in order to be binding, be in the form of a written agreement, signed by the parties and/or their representatives who are agreeing to be bound.
- l. If this case settles, the parties authorize USA&M to send a letter so informing the Judge assigned to this case.

This agreement executed on the \_\_\_\_\_ day of \_\_\_\_\_ 201\_\_.

Your signature below indicates that you have read and understood this agreement.

**\*PARTY PARTICIPANTS AND THEIR REPRESENTATIVES PLEASE SIGN HERE\***

| <b>Name<br/>(Please Print)</b> | <b>Title<br/>(Plaintiff,<br/>Defendant, etc.)</b> | <b>Email<br/>Address</b> | <b>Signature</b> | <b>Initial to<br/>send letter<br/>to Judge</b> |
|--------------------------------|---|--------------------------|------------------|--|
|                                |   |                          |                  |  |
|                                |   |                          |                  |  |
|                                |   |                          |                  |  |
|                                |   |                          |                  |  |
|                                |   |                          |                  |  |
|                                |   |                          |                  |  |

**\*NON-PARTY PARTICIPANTS PLEASE SIGN HERE\***

| <b>Name (Please Print)</b> | <b>Signature</b> |
|----------------------------|------------------|
|                            |                  |
|                            |                  |

\_\_\_\_\_  
 «f31», Mediator

\_\_\_\_\_  
 USA&M Midwest, Inc.