



AGREEMENT TO MEDIATE

XXXXXXXXXXXXXXXXXX, 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 XXXXXXXXXX, 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 XXXXXXXXXX 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 XXXX per party administrative fee and the mediator's fee of XXXX 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, 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. **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 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, the Circuit Court of the City of St. Louis and the Circuit Court of Madison County, Illinois 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 by any party, attorney, or non-party participant 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. All disclosures made during the course of this mediation are conditioned upon this promise and agreement of confidentiality. (Revised June 2007)
- 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. No party, counsel or non-party participant in the mediation process will call or subpoena the mediator 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 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, shall defend and indemnify at their joint and several expense, the mediator against any liabilities, costs or expenses, including reasonable attorneys’ fees, which the mediator 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.

New as of July 2008

- f. **Exceptions to confidentiality under the Missouri Rules of Professional Responsibility apply to all attorneys, including the mediator, involved in this mediation.**

Miscellaneous

- a. All disputes **between USA&M Midwest and any party or participant** 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, Section 435.014 R.S. Mo., and/or any other applicable state or federal statute or regulation.
- 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.

PLEASE SIGN AND PRINT NAME

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

Non-Party Participant

Non-Party Participant

XXXXX, Mediator