



## AGREEMENT TO MEDIATE

\_\_\_\_\_ v. \_\_\_\_\_ 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 \_\_\_\_\_ v. \_\_\_\_\_, in accordance with the terms of this Agreement:

Mediator: \_\_\_\_\_ will serve as the mediator, who is an independent contractor and not an agent or employee of USA&M. Mediation is voluntary and the mediator has no authority to force a settlement on the parties or decide any issues.

Terms of Payment: The parties shall equally divide 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. Each party will pay USA&M an administrative fee in the sum of \$250.00 and their share of the mediator’s fee of \$\_\_\_\_\_ per hour. All amounts owed USA&M, shall be due upon the receipt of the bill. Attorneys and client representatives are responsible for payment of their client’s share of the mediation costs. In the event of non payment of any amount due and the matter is turned over to an attorney for collection, the delinquent party and their counsel shall be responsible for all costs of collection, including USA&M’s reasonable attorney’s fee. USA&M is not responsible for obtaining payment from individual or business clients of attorneys. The parties will pay an initial deposit in the sum of \$ 800.00 towards the cost of the mediation. Any surplus will be refunded. Any shortfall will be billed. If any attorney or client has an objection to a bill, they will bring it to the attention of USA&M within 60 days from the date of the bill. Absent such an objection, the bill will be considered an account stated.

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. Neither USA&M nor the mediator are giving legal advice or legal counsel, or analyzing any party’s legal rights. 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. If the mediator assists in preparing any written document, such participation shall not be considered as giving legal advice to any party and 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, Eastern District of Missouri 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 all civil cases of the willingness to participate and attendance of all individuals necessary to facilitate settlement.

- b. 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.
- c. All communications of any kind, nature or description made or disclosed by or to the mediator, any party, attorney, or non-party participant during the course of the mediation are confidential and not admissible in any court or administrative procedure, except as provided under applicable Statutes and Supreme Court Rules of the State of Missouri or Statutes of the United States or Federal Rules of Civil Procedure and may not be disclosed by the mediator, any party, attorney, or other non-party participant unless all of the parties and/or the party's representative and the mediator agree in writing. All communications made during the course of this mediation are conditioned upon this promise and agreement of confidentiality and non-admissibility. Further, each party waives the applicability of the Uniform Mediation Act; if adopted, in the home state of any party.
- 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 and/or any employee, agent or servant of USA&M (collectively called the "USA&M Parties") 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 USA&M Parties 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 USA&M Parties, shall defend and indemnify the USA&M Parties at their joint and several expense against any liabilities, costs or expenses, including reasonable attorneys' fees, which the USA&M Parties 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 USA&M Parties.
- 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 non-party participant herein shall be venued exclusively in the City or County of St. Louis, Missouri. All issues arising under this Agreement will be interpreted and enforced pursuant to the Statutes and Supreme Court Rules of the State of Missouri.
- h. USA&M and/or any party to this Agreement may introduce this Agreement into evidence without objection notwithstanding the provisions of Missouri Supreme Court Rule 17, Section 435.014 RSMo., and/or any other applicable state or federal statute or regulation.
- i. 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.
- j. 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.
- k. This Agreement also applies to the mediator's participation before and/or after the date of the mediation conference held on \_\_\_\_\_.

- l. The parties attending the mediation have full authority to settle the dispute.
- m. Respectful communications are essential to the mediation process and they shall endeavor to communicate with each other in that manner.
- n. No stenographic recording or other recording of the mediation shall be allowed, but the parties, counsel and the mediator may take notes during the mediation sessions. All written material submitted to USA&M relating to this mediation may be destroyed by USA&M in its sole discretion.
- o. E-mail often plays an important role in mediation communication between the parties, counsel and the mediator. There are risks associated with the use of email and the parties and counsel authorize its use in communication with USA&M and the mediator.
- p. No modification of this Agreement may be made except in writing signed by the parties, the mediator and USA&M.

This agreement executed on the \_\_\_\_\_ day of \_\_\_\_\_ 2019.

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

If this case settles, the parties, by their initials below, authorize USA&M to send a letter so informing the Judge assigned to this case.

Name (Please Print)	Signature	Email Address	Plaintiff=PL Defendant =△ Non-Party = NP	Initial to send letter to judge <u>only</u> if case settles

\_\_\_\_\_  
**Mediator**

\_\_\_\_\_  
**USA&M**