

# McLeod ADR, LLC

## Alternative Dispute Resolution

### MEDIATION AGREEMENT

**THIS AGREEMENT** made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between McLeod ADR, LLC (Mediator) and \_\_\_\_\_ & \_\_\_\_\_ counsel for the parties in Case No. \_\_\_\_\_: \_\_\_\_\_ vs. \_\_\_\_\_.

#### 1. Mediation Process

The mediation process is **confidential**. Parties, Counsel and Mediator expressly understand and agree that any communication made during the mediation process shall be confidential and privileged. Parties, Counsel and Mediator acknowledge that Alabama Law § 6-6-25 provides this legal protection of confidentiality and privilege in the mediation process, unless the communication is otherwise discoverable or obtainable. However, for Parties to acquire and develop full and accurate information in order to make informed decisions, Parties agree that each other may consult appropriate experts, especially attorneys, outside of the mediation. Parties agree that they will not request that Mediator testify in any legal proceeding or that Mediator provide any records for use outside of the mediation process. Mediator shall not disclose any information about the Parties or records produced in the mediation process unless compelled by law. The mediation process is voluntary and Parties acknowledge that either Party or Mediator may terminate a mediation session.

#### 2. Responsibilities of Mediator

Mediator agrees to provide mediation services by aiding and facilitating the Parties in their discussions of the matters that each party wishes to present in the efforts to seek resolution. Parties understand that Mediator has no authority to decide a resolution or to determine any fact or to issue rulings about the law. Parties further understand that Mediator, while possibly licensed as an attorney at law, will not provide legal advice or legal representation to Parties. Mediator will disclose to Counsel any conflict of interest, if any, as soon as discovered and prior to the commencement of Mediation. Mediator agrees to continuously disclose any other conflict of interest that reveals itself during the mediation process. At the end of the mediation process, if requested by the Parties Mediator shall prepare a written Proposed Memorandum of Understanding recording Parties' agreements for review by the Parties' attorneys.

#### 3. Responsibilities of the Parties

Counsel represent that the Parties agree to participate in the mediation process by attending mediation sessions at the agreed upon time and place. If an agent represents a Party (such as cases with corporations), that Party agrees that the agent has full authority to resolve issues (or has immediate access to the necessary authority). Since good faith negotiation and informed decision-making necessitate complete and accurate information, Parties agree to the best of their abilities and knowledge to provide complete and accurate information during the mediation process so as to avoid any claims of Fraud. Parties and Counsel agree to pay the professional fees and cost of mediation as more fully stated hereinafter.

#### 4. Pre-Mediation Submissions

Mediator desires a Confidential Position Statement (less than 10 pages) from all parties to educate the mediator and expedite mediation. Any of the following items may also be submitted: Pleadings, Documents, Video, Audio-Visual and/or CD's. Generally these are confidential between Mediator and counsel providing same. Please discuss between counsel and mediator your desires on how these items are to be disseminated, if at all.

**5. Professional Fees and Costs of Mediation**

Parties agree to pay an hourly rate of \$200.00 per hour as the fee for Mediator's services. This fee is separate from fees for accountants, attorneys or other experts with whom Parties may consult. The time charged includes time Mediator may spend outside of the mediation sessions on behalf of Parties. Parties agree to pay Mediator for any travel time out of town, but only for one way at the hourly rate. Portions of any hour shall be charged at the same hourly rate at the nearest tenth-hour increment. If overnight travel is required, Parties agree to pay the reasonable expenses incurred by Mediator.

**6. Deposit of Fees**

Parties agree to prepay Mediator a cash deposit with Mediator. Parties herewith make an initial deposit of \$400.00. Parties authorize Mediator to use the money deposited to pay fees and costs as they are incurred. Mediator periodically will send billing statements to Parties that itemize the charges taken against the deposit. If a billing statement charge exceeds the deposit, Parties agree to pay that balance in full within fifteen (15) days of the date of Mediation. Parties further agree to pay an additional charge calculated as an interest charge of ten (10) percent per annum for any unpaid balance that remains after its due date.

**7. Dispute Resolution**

Parties agree that if any concerns exist about the nature or quality of the mediation services or the fees charged, Parties will raise those concerns directly with Mediator at the earliest opportunity but no later than ten (10) after Mediation. If Parties and Mediator cannot resolve the concerns, Parties and Mediator agree to mediate for at least one session with another professional mediator chosen by Parties. The costs for that mediation shall be evenly divided among all Parties and Mediator, such that each participant in that mediation pays the same amount.

**IN CONSIDERATION** of the mutual promises contained herein, this agreement is made on the \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Signature of Counsel / Date

\_\_\_\_\_  
Signature of Counsel / Date

\_\_\_\_\_  
Signature of Mediator / Date