

## State of Utah – ADR Council

### Model Agreement to Mediate

1-08-04

**Neutrality:** I understand that mediation is a voluntary process in which the parties work together, using the help of a neutral, unbiased mediator, to reach a mutually satisfactory solution to their dispute. The decision-making power rests with the parties and not the mediator. The mediator will not impose a solution or tell the parties what to do. I understand that the mediator will not act as an advocate or attorney for any party and that I may obtain legal advice from an attorney if I wish.

**Confidentiality:** I understand that the mediation process requires open and honest communication in order to succeed and that the purpose of mediation discussions is to explore possible solutions. The mediator will not reveal any discussions or information disclosed by the parties in mediation. I agree that I will keep confidential all discussions and information exchanged during mediation. I understand that any documents created or notes taken by anyone during the mediation session will be destroyed after the mediation and that I may not subpoena or use them as evidence in any future legal proceedings. I agree that I will not call the mediator as a witness in any legal proceeding concerning this dispute. I understand that the mediator is required to report incidents of child abuse or neglect, abuse or neglect of an elderly or incapacitated person, computer crimes, and threats of physical violence.

**Voluntary:** I agree to commit to a good faith effort to reach a mutually satisfactory solution to this dispute. However, I understand that mediation is voluntary and that either party may withdraw from the mediation at any time and for any reason. The mediator may withdraw from the mediation session if the mediator determines that the issues cannot be resolved in mediation or that the mediator is unable to provide the services necessary to reach resolution. I understand that no one will be bound by anything discussed during the mediation unless and until it is reflected in a written and signed memorandum of understanding or settlement agreement.

**Caucus:** I understand that the mediator may hold private sessions with a party at the request of either the party or the mediator. Information disclosed by a party in these private sessions will remain confidential if the party so instructs the mediator.

**Understanding:** I understand that this mediation process and agreement does not diminish or replace any of the provisions in the Governmental Immunity Act, the Whistleblower Act, the Medical Malpractice Act, or any other statutory provisions that require (among other things), certain timely acts, procedures and notices in order to maintain a claim or lawsuit against the State, its departments, employees, officers or agents. I understand that I must comply with all such legal requirements to file and maintain such an action, including (but not limited to) the timely filing of a Notice of Claim, the timely filing of a lawsuit and all other requirements under law. I understand that this mediation is a separate, independent process and does not take the place of or qualify for any of those legal requirements.

I have read the Agreement to Mediate and agree to these terms.

\_\_\_\_\_  
Signature – Party

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature – Party

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature – Mediator

\_\_\_\_\_  
Date