

# DISPUTE SOLUTIONS, INC.

## MEDIATION RULES

### 1. BEGINNING THE MEDIATION PROCESS

If an aggrieved party cannot resolve its dispute after exhausting all of the Company's internal dispute resolution procedures available, the aggrieved party may file a request for mediation with the Plan Director within thirty (30) days of denial by the review committee. A Request for Mediation form is available from the Plan Director. Within ten (10) days of receipt of the Request for Mediation, the Company will send the request to DSI.

### 2. DESCRIPTION OF DISPUTE

The Request for Mediation shall include a description of the aggrieved party's dispute, the names of the persons involved and the remedies sought.

### 3. APPOINTMENT OF MEDIATOR

If the Company and the aggrieved party (the "Parties") agree on a person from DSI's panel of mediators, DSI will appoint that person as mediator. If the Parties do not agree on a mediator within thirty (30) days of the date the request for mediation is filed with DSI, DSI will submit to each Party a list of persons chosen from DSI's panel of mediators, along with information on their background and qualifications. The Parties may then agree on a person or persons from the list. If the Parties fail to agree on a mediator, each Party may cross off the name of one person on the list to whom the Party objects. Each Party will then mark the remaining names on the list in order of preference and return it to DSI within ten (10) days of the date DSI sent it. DSI will then appoint as mediator the person whose average preference rating by the Parties is the highest. If a Party fails to return the list within the time limit, that Party agrees to the appointment of any person on the list. If no Party returns the list within the time limit, DSI may appoint any person on the list. The Parties agree that the person appointed as mediator is an independent contractor and not an agent or employee of DSI.

### 4. MEDIATOR DISCLOSURE AND CHALLENGE

- (a) The mediator shall reveal to DSI any information that might affect the mediator's ability to mediate. Such information includes any bias or interest, personal or financial, in the result of the mediation and any relationship with the Parties or their attorney. DSI shall convey this information to the Parties.
- (b) After DSI appoints the mediator, any Party who objects to the mediator shall notify DSI by telephone within seven (7) days of the date that the Party received the notice of the mediator's appointment. If DSI, in its sole discretion, finds that the mediator should be disqualified, DSI will appoint a new mediator.
- (c) If no Party objects to the mediator, all Parties are deemed to consent to the mediator's appointment.

### 5. MEDIATOR'S DUTIES AND AUTHORITY

- (a) The mediator shall use his or her best efforts to ease communication between the Parties and to help them reach an acceptable settlement agreement.
- (b) The mediator shall set the date, time, and place of each mediation session based on the preference of the Parties.
- (c) The mediator may obtain independent expert advice concerning technical aspects of the dispute with the Parties' consent and at their expense. If a Party has insufficient knowledge or expertise about an issue to make an informed decision, the mediator shall encourage the Party to seek competent advice.
- (d) The mediator shall interpret these Rules as they relate to his duties and authority. DSI shall interpret all other rules.
- (e) The mediator may suggest options for resolving the dispute but shall not impose a settlement on the Parties unless requested to do so by the Parties.

## **6. PRIVACY OF MEDIATION SESSION**

- (a) Besides the Parties and their attorney or other representative, no person may attend a mediation session unless all Parties and the mediator approve.
- (b) No one shall record the mediation session in any way without the consent of all Parties and the mediator.

## **7. CONFIDENTIALITY**

- (a) The Parties agree not to compel disclosures of records, reports, documents or other information received by or prepared by the mediator or DSI.
- (b) All aspects of the mediation, all communications in the mediation, and all information revealed during the mediation are considered part of settlement discussions and are confidential.
- (c) Unless compelled to do so by law or court order, the mediator shall not reveal information given confidentially to the mediator by a Party unless the Party consents.
- (d) Neither a Party nor a Party's attorney shall require the testimony of the mediator or of any Employee or representative of DSI about anything related to a mediation. Neither the mediator nor DSI shall be necessary Parties in any proceeding among Parties to a mediation.

## **8. NOTICE**

DSI may give any notice to the Parties and to the attorneys for the Parties by telephone, facsimile transmission, or by mail to the latest address in DSI's files.

## **9. MEDIATION PROCEDURES**

- (a) Mediation is a voluntary process. Any Party may withdraw at any time after mediation has commenced.
- (b) The mediator shall manage the procedural aspects of the mediation. However, the Parties are responsible for negotiating an acceptable settlement. The Parties decide for themselves whether to agree to any settlement proposal developed during the mediation.
- (c) At least five (5) days before the mediation session, each Party is requested to provide the mediator the following information, which shall not be revealed to the other Parties:
  - (i) A concise statement (not more than 4-5 pages) of the issues in dispute and the Party's position on each issue.
  - (ii) If legal issues are involved in the dispute, copies of applicable cases and statutes.
  - (iii) If technical, medical or financial issues are involved, copies of key medical reports, documents, photographs, etc.
- (d) The Company shall have a representative with settlement authority at the mediation session or shall arrange to have a person whose approval is needed for settlement available by telephone during the session.
- (e) Each Party will have an opportunity to state his or her views about the facts and issues. The mediator may ask questions to clarify the facts and issues. The Parties will have the opportunity to get the mediator's perception of the strengths and weaknesses of the case.
- (f) The mediator will decide when to meet with all Parties, when to meet separately with each Party, and when, if necessary, to meet only with the attorneys for the Parties or only with the Parties.
- (g) The mediator will lead the Parties in discussions to clarify the issues to be mediated and to explore possible settlement options.
- (h) If the Parties cannot agree on settlement terms, they may ask the mediator to give a nonbinding settlement proposal that the mediator considers equitable to all Parties.

## **10. ENDING THE MEDIATION**

The mediation shall end when:

- (a) The Parties agree to a settlement,
- (b) A Party withdraws from further participation, or
- (c) The Mediator concludes and informs the Parties that further efforts would not be useful.

## **11. SETTLEMENT**

If the Parties agree to settle the dispute, the mediator or the attorney for a Party shall write out the settlement terms to which the Parties have agreed. The mediator shall circulate the draft among the Parties and their attorneys for review, edited as necessary, and, if acceptable, signed by the Parties or their representatives. Parties who mediate without an attorney should understand the legal implications of the proposed settlement and should consider having the settlement agreement reviewed by an attorney before signing it.

## **12. DISCLAIMERS AND EXCLUSION OF LIABILITY**

Neither DSI nor the Mediator:

- (a) Warrant or represent that the Parties will reach a settlement because of the mediation.
- (b) Shall be liable for any act or omission concerning the mediation.
- (c) Are providing legal advice or acting as the attorney for any of the Parties.

## **13. FEES AND EXPENSES**

Unless otherwise agreed by the parties, all fees and expenses for the mediation, including DSI's fees and the mediator's reasonable fee, shall be shared equally by the Company and the aggrieved party. Each party is responsible for its own attorney's fees.