

Agreement to Mediate
&
Rules for Mediation

Re: Cause No. _____; _____

This is an agreement between _____ and _____ (“Parties”) and _____ (“Mediator”), to enter into mediation with the intent of resolving issues related to:

The parties and the mediator understand and agree as follows:

1. Nature of Mediation

The mediation will be conducted in accordance with Section 154.001 et seq. Texas Civil Practice and Remedies Code, and/or applicable Federal Rules. The Parties hereby appoint _____ as Mediator for negotiating settlement of the above referenced issues. The Parties understand that mediation is an agreement-reaching process in which an impartial person, the Mediator, facilitates communications between the Parties and assists the Parties in reaching an agreement or settlement in a collaborative, consensual, and informed manner. It is understood that the Mediator may suggest ways of resolving the dispute, but has no power to decide disputed issues for the Parties. The Parties understand that mediation is not a substitute for independent legal advice. The Parties are encouraged to secure such advice throughout the mediation process and, if the Parties are not represented by an attorney, are strongly advised to obtain independent legal review of any mediated agreement before signing that agreement. The Parties understand that the mediator's objective is to facilitate the parties themselves reaching their most constructive and fairest agreement, but that *they* are responsible for negotiating a settlement acceptable to them. The Parties also understand that the Mediator has an obligation to work on behalf of each Party equally and that the Mediator cannot render individual legal advice to any Party.

2. Scope of Mediation

Prior to the first scheduled mediation session, each Party shall, upon the Mediator’s request, provide the Mediator with information regarding the issues that need to be resolved. The Parties understand that it is for the Parties, with the Mediator's concurrence, to determine the scope of the mediation, and this will be accomplished early in the mediation process.

3. Conditions Precedent to Serving as Mediator

The Mediator shall not serve as a mediator in any dispute in which he or she has any financial or personal interest in the result of the mediation. Prior to accepting an appointment, the Mediator shall disclose any circumstance likely to create a presumption of bias. In the event that the Parties disagree as to whether the Mediator shall serve, the Mediator shall not serve.

4. Time & Place of Mediation

The Mediator shall fix the time of each mediation session. The mediation shall be held at the office of the Mediator or at any other convenient location agreeable to the Mediator and the Parties, as the Mediator shall determine.

5. Authority of Representatives

Party representatives must have authority to settle; unless otherwise agreed by all Parties, the Mediator and the Court if a Court has ordered the mediation. All persons necessary to the decision to settle shall be present. The names of such persons shall, upon request, be communicated in writing to all Parties and the Mediator.

6. Mediation Is Voluntary but Parties Must Participate in Good Faith

All Parties here state their good faith intention to complete their mediation by an agreement. It is, however, understood that any Party may withdraw from or suspend the mediation at any time, for any reason.

The Parties also understand that the Mediator may suspend or terminate the mediation if he feels that the mediation will lead to an unjust or unreasonable result, if the Mediator feels that an impasse has been reached, or if the Mediator determines that he can no longer effectively perform his facilitative role.

7. Confidentiality & Privacy

It is understood between the Parties and the Mediator that the mediation will be strictly confidential. Information disclosed in the course of mediation shall not be divulged. All records, reports or other documents received by a mediator while serving in that capacity shall be confidential.

Mediation discussions, written and oral communications, any draft resolutions, and any unsigned mediated agreements shall not be admissible in any court proceeding. Only a mediated agreement, signed by the Parties may be so admissible.

The Parties further agree to not call the Mediator to testify concerning the mediation or to provide any materials from the mediation in any court proceeding between the Parties. The mediation is considered by the Parties and the Mediator as settlement negotiations. Any party that violates this agreement shall pay all fees and expenses of the mediator and

other Parties, including reasonable attorneys' fees, incurred in opposing the efforts to compel testimony or records from the Mediator.

The Parties understand the Mediator has an ethical responsibility to break confidentiality if he or she suspects another person may be in danger of harm.

Each Party agrees to fully and honestly disclose all relevant information and writings as requested by the Mediator and all information requested by any other Party of the mediation if the Mediator determines that the disclosure is relevant to the mediation discussions.

There shall be no stenographic record of the mediation process, and no person shall tape record any portion of the mediation session.

Mediation sessions are private. The Parties and their representatives may attend mediation sessions. Other persons may attend only with the permission of the Parties and with the consent of the Mediator.

8. Mediator Impartiality

The Parties understand that the Mediator must remain impartial throughout and after the mediation process. Thus, the Mediator shall not champion the interests of any Party over another in the mediation or in any court or other proceeding. The Parties agree that the mediator may discuss the Parties' mediation process with any attorney any party may retain as individual counsel. Such discussions will not include any negotiations, as all mediation negotiations must involve all parties directly. The Mediator will provide copies of correspondence, draft agreements, and written documentation to independent legal counsel at a Party's request. The Mediator may communicate separately with an individual mediating Party, in which case such "caucus" shall be confidential between the Mediator and the individual mediating Party unless they agree otherwise.

9. Litigation

The Parties agree to refrain from pre-emptive maneuvers and adversarial legal proceedings (except in the case of an emergency necessitating such action), while actively engaged in the mediation process.

No subpoenas, commons, complaints, citations, writs or other process may be served upon any person at or near the site of any mediation session or upon any person entering, attending or leaving the session.

10. Mediation Fees and Expenses

The Parties and the Mediator agree that the fee for the Mediator ("Mediator's Fee") shall be as stated in the Mediation Rate Sheet attached hereto. The Mediator's Fee shall be

paid in advance of each mediation session. Each Party is responsible for payment of its own Mediator's Fee in the amount of \$_____.

The Parties further understand that all fees and expenses of the Mediator including but not limited to copying, postage and long-distance phone calls shall be billed to them and shall be borne equally by the Parties unless they agree otherwise. The Mediator shall be reimbursed for all expenses incurred as a part of the mediation process.

The expenses of witnesses for either Party shall be paid by the Party producing such witness. All other expenses of mediation including but not limited to the expenses of any witness and the cost of any expert advice produced at the Mediator's request shall be billed to them and shall be borne equally by the Parties unless they agree otherwise.

The Parties understand that they shall be responsible for half of the Mediator's Fee for any appointment which they do not attend and do not provide at least 24 hours advance notice of the cancellation.

Dated this ____ day of _____, 200__.

On behalf of my client, I request _____ to act as Mediator in the above-referenced matter and agree that the proceedings are confidential in accordance with §154.073 of the Texas Civil Practice and Remedies Code.

Submitted by: _____

Attorney for: _____

Submitted by: _____

Attorney for: _____