

Recitals

1. Disputes have arisen between the parties resulting in a lawsuit filed in court (“the disputes”).
2. The parties have requested the mediator, and the mediator has agreed, on the terms and conditions of this agreement to assist the parties to resolve, if possible, the disputes.

Mediation Agreement

1. The parties appoint the mediator, and the mediator accepts the appointment, to mediate the disputes (“the mediation”) in accordance with the terms of this agreement.
2. The parties will share equally and will be liable together and separately to the mediator for the mediator's fees and all the other costs of the mediation, as described in schedule 2 to this agreement. The timing of payment of those fees and other costs are also set out in schedule 2 to this agreement.
3. If the mediation does not result in an agreement to resolve the disputes, the costs of the mediation, may be taxed as costs in the lawsuit, that is, paid by the party who loses the action to the party who wins the action, if an order for costs is made in that party's favor.
4. The mediator will be neutral and impartial. The mediator will assist the parties to isolate the issues, develop and explore options for resolution of these issues and, if possible, achieve expeditious resolution of the disputes by agreement between them. Mediation is not a substitute for independent legal or tax advice. The parties are encouraged to obtain independent legal and tax advice throughout the mediation process. The mediator does not represent any party in the disputes and nothing the mediator says or does constitutes legal advice or representation.
5. The mediator will not make decisions for a party or impose a solution on the parties. If the parties request, and the mediator agrees, the mediator may, if the parties reach impasse, provide the parties with a non-binding recommendation (e.g., a “mediator’s proposal”).
6. The mediator acknowledges that, prior to commencement of the mediation, the mediator has disclosed to the parties any prior dealings that the mediator has had with any of the parties and any interest that the mediator has in the disputes.
7. If in the course of the mediation, the mediator becomes aware of any circumstances that might reasonably be considered to affect the mediator's capacity to act impartially the mediator will immediately inform the parties of those circumstances. The parties will then decide whether the mediation will continue with that mediator, or with a new mediator appointed by the parties.
8. Each party must use its best efforts to comply with reasonable requests made by the mediator to promote the efficient and expeditious resolution of the disputes. If either party does not do so, the mediator may terminate the mediation.
9. In the absence of consent by the other parties and the mediator, if a party is a natural person, that party must attend the mediation. If a party is not a natural person or is not present in person, it must be represented at the mediation by a person with knowledge of the relevant issues and with authority to settle within any range that can reasonably be anticipated and to make agreements binding on that party in settling the disputes. Without limiting the responsibility of the parties, if any party has any limitation on their authority to settle, this must be disclosed to the mediator before the commencement of the mediation.

10. Each party may have one or more persons, including legally qualified persons, to assist and advise them at the mediation.
11. The mediation, including all preliminary steps, shall be conducted in such manner as the mediator considers appropriate having due regard to the nature and circumstances of the disputes, the agreed goal of an efficient and expeditious resolution of the disputes and the view of each party as to the conduct of the mediation.
12. The mediator may give directions as to:
 - a. the exchange of brief written outlines of the issues raised by the disputes and a supporting bundle of documents which are relevant to those issues,
 - b. providing the mediator prior to the mediation with any such outlines and documents, and any further information or documents that the mediator may request following perusal of the outlines and supporting documents, and
 - c. preliminary conferences, by phone or meeting, prior to the mediation.
13. The mediator may meet as frequently as the mediator deems appropriate with the parties together or with a party alone.
14. The mediator may communicate with a party or the parties orally and/or in writing.
15. Except as the parties may otherwise agree in writing, anything said or done by any person at the mediation is said or done in confidence and no party shall be entitled to call evidence of anything said or done by any person at the mediation. The mediation shall be conducted pursuant to Texas Rule of Evidence 408 and/or Federal Rule of Evidence 408.
16. Information, whether oral or written, disclosed to the mediator in private will be treated as confidential by the mediator unless:
 - a. the party making the disclosure states otherwise
 - b. the law imposes an obligation of disclosure, or
 - c. the mediator believes believe that the life or safety of any person is or may be at serious risk
17. The parties and the mediator agree in relation to all confidential information disclosed to them during the mediation, including the preliminary steps:
 - a. to keep that information confidential
 - b. not to disclose that information except to a party or a representative of that party participating in the mediation or if compelled by law to do so, and
 - c. not to use that information for a purpose other than the mediation
18. The parties and the mediator agree that all documents or statements produced, used or made in the mediation, not otherwise available or known or subject to other obligations of discovery, will be privileged and will not be disclosed in or relied upon or be the subject of a summons to give evidence or to produce documents in any arbitral or judicial proceeding in respect of the disputes.
19. The mediator will not accept an appointment in relation to any arbitral or judicial proceeding relating to the disputes or any of them unless all parties to the disputes agree in writing.
20. No party will summons the mediator to give evidence or to produce documents in any arbitral or judicial proceeding in respect of the disputes.
21. If a party does not wish to continue the mediation, the mediator will terminate the mediation in so far as it relates to that party and may terminate the mediation as regards all the parties.
22. The mediator may terminate the mediation if:

- a. after consultation with the parties, the mediator feels unable to assist the parties to achieve resolution of the disputes,
 - b. the mediator receives from a source outside the mediation, confidential information relevant to the disputes or any party,
 - c. the mediator receives confidential information relevant to a client during the mediation, or
 - d. mediator considers it appropriate for any other reason, which the mediator may decline to give to the parties.
23. The mediation will be terminated upon execution of a settlement agreement in respect of the disputes.
24. Termination of the mediation does not terminate this agreement.
25. Unless otherwise agreed by the parties, a settlement reached at the mediation will need to be written down and signed by the parties or their representatives in order to be binding on the parties. If the mediation has been ordered by a court the parties or the mediator may advise the court of the outcome of the mediation.
26. In the event one or more of the disputes is or are settled, as the case may be, either party may:
- a. enforce the terms of the settlement agreement by judicial proceedings, and
 - b. in such proceedings adduce evidence of and incidental to the settlement agreement (other than matters which are privileged).
27. The mediator will not be liable to a party for any act or omission in the performance or purported performance of the mediator's obligations under this agreement.
28. The parties together and separately covenant not to sue the mediator against all claims arising out of or in any way connected with any act or omission by the mediator in the performance or purported performance of the mediator's obligations under this agreement.
29. Should the parties have a dispute or matter of difference that arises out of or in connection with the mediation, the parties agree to mediate that dispute or matter of difference prior to seeking court intervention.
30. This agreement is governed by, and is construed and takes effect in accordance with, Texas law. Unless otherwise specified in any settlement agreement, the applicable state or federal courts will have jurisdiction to settle any claim, dispute or matter of difference that may arise out of or in connection with the mediation.

Signatures:

For Plaintiff(s):

For Defendant(s):

Mediator:

 Date:
