

The undersigned and their respective counsel, agents, employers, law firms, entities, parent companies, subsidiaries, and affiliates ("Participants") hereby agree to the terms of this Agreement to Mediate governing their participation in the Mediation Process (including, but not limited to, pre-mediation communications, the mediation session itself, and any post-mediation communications or proposals concerning the Matter, the "Mediation Process") to attempt to resolve the Matter (defined below) with the assistance of Michael Kelsheimer ("Mediator") as follows:

The Mediation Process shall be conducted in accordance with Tex. Civ. Prac & Rem. Code §§ 154.001 *et seq.* and the [Guidelines for Mediation](#). All Participants acknowledge applicability of the Guidelines for Mediation and agree to abide by them throughout the Mediation Process. All the Participants recognize the Mediation Process is voluntary, that the Mediator is not a judge, and that the Mediator has no power or desire to force any Participant to settle a particular dispute. The Participants recognize that the Mediator is not a judge with the power to make binding decisions concerning the outcome of the Matter. Additionally, the Participants understand that the Mediation Providers (defined below) do not warrant, represent, or guaranty that a settlement will result from the Mediation Process.

The Participants recognize that the Mediation Process is just that, a process, by which the Participants endeavor to resolve the Matter. The Participants, therefore, agree to participate in the process until and unless an impasse is declared by the Mediator and to use their best efforts to reach a resolution of the Matter. Moreover, the Participants agree to use the Mediation Process only for the purpose for which it is intended. Each Participant agrees they shall not, directly or indirectly, use the Mediation Process to serve legal process or other subpoena upon any Participant in the Mediation Process at any time during the mediation session, the location appointed for the mediation session, or any location within 100 yards of the facility at which the mediation session may be conducted.

The Participants understand and acknowledge that the Mediation Process, and particularly the mediation session, cannot be successful unless all Participants to the Mediation Process possess full and complete authority to resolve the Matter. The Participants therefore agree they will participate in the Mediation Process with full authority to resolve the Matter upon most, if not all, conceivable circumstances potentially presented during the Mediation Process.

The fee for the Mediation Process shall be charged in compliance with the Mediator's processes and rules concerning payment or cancellation of the Mediation Process. The fee for the Mediation Process shall be due and payable not less than seven days prior to the mediation session and the Mediator shall have the right to cancel the mediation in the event the full mediation fee has not been received from all Participants. Information concerning full payment from all Participants is available through the Mediator's office. One or more Participant shall have the right to cancel the Mediation Process at any time prior to the beginning of the mediation session.

When a Participant cancels the Mediation Process with inadequate notice to the Mediator to refill the time slot allotted for the mediation session, the Mediator is unlikely to be able to refill that session slot and, short of collecting the full or partial fee for the Mediation Process, the Mediator will be without revenue for that slot. Therefore, cancellation or termination of the Mediation Process prior to completion of the mediation session shall be subject to a cancellation fee at the rates set forth in advance by the Mediator, which may be the full price of the mediation process or a partial amount. Should the Mediator be able to rebook Participants slot for the mediation session, the Mediator will refund any cancellation or other fee charged the Participants for that session. Any outstanding balance which may be owed by any party shall accrue interest at the rate of 1% per month until paid.

Mediation sessions are generally scheduled for nine hours. In the event a mediation session runs beyond nine hours, the Mediator shall be entitled to charge the Participants \$650.00 per hour (billed in 1/10<sup>th</sup> increments) for additional time. The Mediator may choose to waive some or all of this charge. If the Mediator does so in one instance, it is not an indication that the Mediator will do so in another case. The Mediator may endeavor to facilitate resolution of a Matter that does not resolve during the mediation session. In such instance, the Mediator will not charge for his assistance without advance notice to and agreement of the parties.

The Mediator acts as a neutral intermediary the mediation process, endeavoring to facilitate a settlement of the Matter between the Participants. The Participants may rely upon their own expertise and the advice of counsel during the Mediation Process. The Mediator is not acting in the capacity as counsel to any Participant and is not a legal advocate for any Participant. No attorney-client relationship shall exist at any time between the Mediation Provider and any Participant. All Participants acknowledge and agree they may not rely upon, use or consider any comments, statements, or observations of the Mediation Providers as legal advice. Each party agrees to hold the Mediator harmless for any observations or suggestions and the implications thereof which the Mediator may make during the Mediation Process. Each party specifically agrees to obtain legal advice on any issue of interest to them from their own counsel. Each Participant shall not rely upon the Mediator for such advice.

The Participants agree and understand the Mediation Process is confidential and any settlement negotiations engaged in by any Participant

during the Mediation Process are generally not admissible in any litigation, arbitration, or other dispute resolution tribunal. The Participants agree not to make any recording or transcription of any event that transpires during the Mediation Process for any purpose. The Participants agree that all communications with the Mediation Providers outside of the presence of the other party(s) before, during, and after mediation are private, confidential, and privileged from discovery. The Mediator shall not be required to disclose any information revealed to him, unless authorized by the Participants, or as otherwise provided by law. Notwithstanding the foregoing, the Mediation Providers may discuss the factual or legal position disclosed by any Participant during the Mediation Process with any other Participant during the Mediation Process. Unless a Participant specifically requests the Mediation Provider not share a particular fact or legal position, whether previously designated as confidential in pre-mediation materials, the Mediation Provider may do so during the mediation session.

On occasion during the Mediation Process, the tax consequences of payments made or received by a Participant or other party may be discussed. To ensure compliance with requirements imposed by the IRS under Circular 230, any U.S. federal tax advice that may be communicated by any Participant or the Mediator during the Mediation Process, whether in written or verbal form, unless otherwise specifically stated, was and is not intended or written to be used, and cannot be used, for the purpose of: (1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing or recommending to another party any matters addressed herein.

The Participants agree the Mediation Process is confidential and the Participants, therefore, agree that they will not call or seek to compel the Mediator, Gray Reed & McGraw LLP, any co-mediator(s), or their agents, employees, staff, or observer (the "Mediation Providers") who serve in connection with the mediation to act in any capacity in any court or other forum (including, but not limited to hearings, arbitrations, depositions, administrative proceedings or the like) to testify to facts concerning or relating to the subject matter here being mediated. The Participants acknowledge and agree that neither the Mediation Providers nor their files, may be subpoenaed for any purpose and each Participant agrees not to make any effort to compel the Mediation Providers to produce any information or documents provided to them by any party to the mediation. Notwithstanding the foregoing, the Mediator may provide executed copies of this Agreement to Mediate and/or any mediation attendance roster identifying any party, counsel or participant to any other party, counselor person participating in the mediation. The Mediation Providers shall not be obligated to retain any file or records concerning the Mediation Process for any period of time following the Mediation Process.

In the event any participant in the dispute which is the subject matter of this mediation makes any effort to involve the Mediator in any adversary proceeding or judicial, quasi-judicial, arbitration, deposition, or administrative forum or proceeding or the like relating directly or indirectly to the subject matter of this mediation or the facts relating thereto, or attempts to compel his/her testimony, or attempts to have him/her divulge any information or produce any documents relating directly or indirectly to the mediation, such party agrees to pay all fees and expenses of the Mediator in resisting such efforts, including reasonable attorney's fees and compensation for the Mediator's time in resisting such efforts.

The Participants understand that the conclusion of a successful Mediation Process will typically be reached by the entry of a binding settlement agreement or mediated settlement agreement contemplating the conclusion of a full and final settlement agreement. The Participants understand and agree to the consummation of such an agreement in the event a settlement of the Matter is reached during the Mediation Process. The Participants further agree that a fully executed settlement agreement may be admitted in any court, arbitration or other tribunal proceeding without objection as evidence of such settlement. Each Participant is advised that if an agreement is reached as a result of this mediation and the Mediator assists in the preparation of a written settlement agreement, each participant should have the settlement agreement and any related documents independently reviewed by his/her own counsel before executing the settlement agreement or any related documents and will not rely upon any comments, statements, observations, or advice of the Mediator in connection with entering into any settlement agreement or any related documents.

Because the Mediation Process is a conciliatory effort intended not to be physically threatening to any Participant, all Participants agree not to carry on their person any firearm or threatening weapon. If such a weapon is discovered, the Participants grant the Mediator the right to adjourn the mediation session until such time as all Participants are in compliance with this term of this Agreement to Mediate without return of any portion of any fee for mediation. This requirement is not intended to be a commentary on any person's rights under state or federal law and is not compliant with the requisites of Texas law to prohibit concealed carry.

In a multi-party Mediation Process, one or more of the Participants may endeavor to reach a complete or partial resolution of all or part of the Matter. The Participants recognize this possibility based upon this statement and acknowledge the Mediation Providers may not share information concerning these efforts at the request of the Participants involved in that process.

The Mediator has the discretion to terminate the mediation at any time if the Mediator believes that an impasse has been reached, or that the mediation should not be continued for any other reason. The Participants agree that the Mediator may submit a report concerning the result of the Mediation Process to the applicable court, arbitrator, or other tribunal, but understand the Mediator will advise such tribunal only whether the Matter resolved successfully and whether the Mediation Process was recessed or rescheduled for another date.

The Participants consent and agree to the terms set forth above and acknowledge that they have the right to consult legal counsel before executing this document. The undersigned Participants have read and agreed to the foregoing terms and state that they are authorized to execute this Agreement.

**The Matter:**

Case Style (or Matter description if litigation is not pending)	
Court \ Arbitrator	Docket Number

**Participants:**

Attendee Signature	Counsel Signature
Attendee Printed Name	Counsel Printed Name
Attendee Signature	Counsel Signature
Attendee Printed Name	Counsel Printed Name
Attendee Signature	Counsel Signature
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