

ATTORNEY'S CONFIDENTIAL INFORMATION SHEET AND REQUEST FOR MEDIATION

COURT/JUDGE: \_\_\_\_\_

CAUSE NO.: \_\_\_\_\_

STYLE: \_\_\_\_\_

TRIAL DATE: \_\_\_\_\_

1. Your firm name, address, telephone and fax numbers: \_\_\_\_\_

2. Name and designation (e.g. Plaintiff, Defendant, Intervenor, etc.) of party you represent: \_\_\_\_\_

3. Name of your party representative (other than the attorney of record) to attend the mediation: \_\_\_\_\_

4. If an insurance company is involved, please provide the following:

a. Name of Company: \_\_\_\_\_

b. Name of adjuster or other representative you will be bringing: \_\_\_\_\_

c. Policy limit and deductible: \_\_\_\_\_

d. Anything unusual or noteworthy: \_\_\_\_\_

5. Summarize the nature of the case and the most contentious issues: \_\_\_\_\_

6. State the specific relief in dollars being sought by any party seeking to affirmatively recover: \_\_\_\_\_

7. Provide the history of settlement offers to date and the current status of settlement dialogue: \_\_\_\_\_

8. What is the status of discovery? (circle one):

(a) little or none; (b) some discovery done but substantially incomplete; (c) substantially complete; or (d) complete.

9. Do you have sufficient information to form a realistic settlement position? If not, what else is needed? \_\_\_\_\_

10. Do you know of any impediment to going forward with a good faith mediation at this time? \_\_\_\_\_

11. Total number of people in your party who will be attending the mediation: \_\_\_\_\_

ON BEHALF OF \_\_\_\_\_, ONE OF THE PARTIES IN THE ABOVE CAUSE, THE UNDERSIGNED ATTORNEY OF RECORD REQUESTS THAT ALAN F. LEVIN ("MEDIATOR") AGREE TO SERVE AS MEDIATOR IN THE ABOVE CASE. MY CLIENT(S) AND I HAVE READ, UNDERSTAND AND AGREE TO BE BOUND BY THE "RULES FOR MEDIATION" INCLUDED HEREWITH SPECIFICALLY INCLUDING RULES 19 AND 20, AS WELL AS BY RULE 408 OF THE TEXAS RULES OF EVIDENCE, BY SECTION 154.001, ET SEQ. OF THE TEXAS CIVIL PRACTICE & REMEDIES CODE AND BY ALL PROCEDURAL RULES ESTABLISHED BY THE MEDIATOR. MY CLIENT AND I HAVE BEEN ADVISED BY THE MEDIATOR THAT THE MEDIATOR SHALL BE SERVING AS A NEUTRAL INTERMEDIARY ONLY AND WILL NOT ACT AS AN ATTORNEY OR ADVOCATE FOR ANY PARTY AND THAT EACH PARTY MUST RELY EXCLUSIVELY ON THEIR OWN COUNSEL FOR ALL ADVICE.

MY CLIENT AND I HAVE ALSO BEEN ADVISED BY THE MEDIATOR THAT IF AN AGREEMENT IS REACHED AS A RESULT OF THIS MEDIATION IT WAS REACHED WITHOUT COERSION OF ANY TYPE. IF THE MEDIATOR ASSISTS IN THE PREPARATION OF A WRITTEN SETTLEMENT AGREEMENT, EACH PARTY SHOULD HAVE THE SETTLEMENT AGREEMENT INDEPENDENTLY REVIEWED BY THEIR OWN COUNSEL BEFORE EXECUTING THE SETTLEMENT AGREEMENT.

DATED on the \_\_\_\_\_ day of \_\_\_\_\_, 2007.

RESPECTFULLY SUBMITTED,

\_\_\_\_\_  
Attorney of Record

Print Name: \_\_\_\_\_

## RULES FOR MEDIATION

1. **Definition of Mediation.** Mediation is a process under which an impartial person, the mediator, facilitates communication between the parties to promote reconciliation, settlement or understanding among them. The mediator may suggest ways of resolving the dispute, but may not and will not impose his own judgment on the issues for that of the parties. The mediator is an advocate for settlement and represents no party. He will give no legal advice.
2. **Agreement of Parties.** Whenever attorneys and parties attend a mediation of this case, they shall have agreed to accept and abide by these rules, as amended and in effect as of the date of the submission of the dispute.
3. **Consent to Mediator.** The attorneys and parties either have selected Alan F. Levin or have consented to the appointment of Alan F. Levin as mediator in this case. The Mediator shall act as an advocate for settlement and shall use his best efforts to assist the parties in reaching a mutually acceptable resolution.
4. **Conditions Precedent to Serving as Mediator.** The Mediator shall not serve as a mediator in any dispute in which he 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 or partiality. In the event that the parties disagree as to whether the Mediator shall serve, the Mediator shall not serve.
5. **Authority of Mediator.** The Mediator does not have the authority to decide any issue for the parties, but will attempt to facilitate the agreed resolution of the dispute by the parties. The Mediator is authorized to conduct joint and separate meetings with the parties and to offer suggestions to assist the parties achieve settlement. The Mediator shall have the right to meet privately with any party or representative, or with any of the attorneys or with any combination of the attorneys, parties and/or representatives as the Mediator shall deem helpful. If necessary, the Mediator may also obtain expert advice concerning technical aspects of the dispute, provided that the parties agree and assume the expenses of obtaining such advice. Arrangements for obtaining such advice shall be made by the Mediator or the parties, as the Mediator shall determine. The Mediator may speak to one or more of the experts or witnesses.
6. **Commitment to Participate in Good Faith.** While no one is asked to commit to settle their case in advance of mediation, all parties do commit to participate in the proceedings in patient, good faith with the intention of maximizing the opportunity to settle.
7. **Parties Responsible for Negotiating Their Own Settlement.** The parties understand that the Mediator will not and cannot impose settlement in their case and agree that they are responsible for negotiating a settlement acceptable to them. The Mediator, as an advocate for settlement, will use every effort to facilitate the negotiations of the parties. The Mediator does not warrant or represent that settlement will result from the mediation process. Any settlement reached during mediation is fully and contractually binding unless the settlement agreement states otherwise.
8. **Authority of Representatives and Attendance.** PARTY REPRESENTATIVES MUST HAVE FULL AUTHORITY TO SETTLE AND ALL PERSONS NECESSARY TO THE DECISION TO SETTLE SHALL BE PRESENT. Once the mediation begins, no one can join the mediation who was not been present from the outset, and no one can leave absent express consent of the Mediator until termination.
9. **Time and Place of Mediation.** The Mediator shall have exclusive control to fix the date and time of each mediation session. The mediation shall be held at the office of the Mediator, or any other convenient location agreeable to the Mediator, the attorneys and the parties.
10. **Identification of Matters in Dispute.** Prior to the first scheduled mediation session, the lead attorney shall provide the Mediator with an executed Attorney's Information Sheet and Request for Mediation on the form provided by the Mediator setting forth the confidential information requested.
11. **Privacy.** Mediation Joint Sessions are private and privileged. Only the parties and their representatives may attend the Mediation Joint Sessions. Other persons may attend only with the permission of the parties and with the consent of the Mediator.
12. **Confidentiality.** Confidential information disclosed to a Mediator by the parties or by witnesses in the course of the mediation shall not be divulged by the Mediator. All records, reports or other documents received or generated by the mediator while serving in that capacity shall be confidential. The Mediator shall not be compelled to divulge such records or to testify in regard to any respect of the mediation under any circumstances. Any party who 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, records or any other information from the Mediator concerning the mediation.
13. **No Stenographic Record.** There shall be no stenographic or other record of the mediation process, and no person shall tape record or type into a computer any portion of the mediation process. Everyone in attendance must agree that all notes, pictures, charts and any other documentation made by the attorney and/or parties during the course of the mediation process must be destroyed immediately upon termination of the mediation regardless of whether the case settles.
14. **No Service at or near the site of the Mediation Session.** No witness or deposition subpoenas, summons, complaints, pleadings, citations, motions, writs or other process may be served upon any person at or near the site of any mediation session upon any person entering, attending or leaving the mediation.
15. **Termination of Mediation.** The mediation may be terminated only by the Mediator, in his sole discretion (a) by the execution of a binding settlement agreement by the attorneys and parties; (b) a declaration of impasse by the Mediator; or (c) on such other terms as the Mediator may propose and the parties accept.
16. **Exclusion of Liability.** The Mediator shall never be a necessary or proper party in any judicial proceedings related to the mediation. Neither the Mediator nor any attorneys or law firm employing the Mediator shall be liable to any person or entity for any act or omission leading to alleged damages which arose from any aspect of the mediation process.
17. **Interpretation and Application of Rules.** The Mediator shall interpret and enforce these rules which decisions shall be final and binding.
18. **Fees and Expenses.** The Mediator's daily fee and costs shall be set by the Mediator prior to mediation and shall be paid by either the attorneys or the parties at least five (5) days in advance of mediation. All fees must be paid before the mediation can begin. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including fees and expenses of the Mediator, and the expenses of any witness and the cost of any proofs or expert advice produced at the direct request of the Mediator, shall be borne equally by the parties unless they agree otherwise. If the mediation persists beyond 6:00 o'clock p.m., the Mediator shall be paid additional compensation at the rate of \$450.00 per hour (measured in twelve (12) minute segments). This supplemental mediation fee shall be billed by the Mediator and divided equally among the parties in such extended mediation. Payment shall be made within three (3) days from the supplemental billing date.
19. **CANCELLATION / RESCHEDULING FEE AGREEMENT.** ONCE A CASE HAS BEEN SET FOR MEDIATION, THE ATTORNEYS AND THE PARTIES RECOGNIZE THAT THE MEDIATOR'S CALENDAR HAS BEEN RESERVED, AND THEY MUST THEREFORE PROVIDE THE MEDIATOR AT LEAST TWO (2) WEEKS ADVANCE WRITTEN NOTICE OF CANCELLATION / RESCHEDULING. IN THE ABSENCE OF SUCH ADVANCE WRITTEN NOTICE, THE ATTORNEYS AND PARTIES AGREE TO AND SHALL PAY THE MEDIATOR FIFTY PERCENT (50%) OF THE TOTAL MEDIATION FEE FOR THE DAY(S) AS AN AGREED CANCELLATION/ RESCHEDULING FEE. THIS RULE ALSO APPLIES TO MEDIATIONS SCHEDULED LESS THAN TWO (2) WEEKS IN ADVANCE OF THE MEDIATION DATE.
20. **Supplemental Mediation Fee.** The attorneys and parties understand and agree that if their mediation extends beyond 6:00 p.m., a supplemental mediation fee in the amount of \$450.00 per hour, or fraction thereof, divided among the parties participating, will be applicable and assessed by supplemental invoice which the attorneys and parties agree to promptly pay.