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MEDIATION POLICIES AND PROCEDURES

If a party is represented by an attorney, the participation of both the attorney and the client is essential to mediation. All natural persons who are parties must be present for the entire process. Any party who is not a natural person must be present through an officer or other representative (not including counsel) who has authority and discretion to meaningfully negotiate a settlement. If a non-party insurance company has control over settlement within policy limits for an insured party, the insurance company should also be present through a representative with authority and discretion to negotiate a settlement up to policy limits.

Mediation is fundamentally an assisted settlement negotiation. The proceedings are private and confidential. Communications to the mediator are also confidential unless permission to disclose is expressly given by the parties. As mediator, I will facilitate settlement negotiations between the parties, but will not impose a settlement upon anyone and will not act as an advocate for any party. Please be aware that I have a cancellation and rescheduling policy. See the Fee Schedule for details.

The mediation fee includes the following:

- Scheduling and administering the mediation
- Any pre-mediation attorney conferences
- Preparations for and conducting the mediation
- Conducting post-session telephone facilitation as needed
- Refreshments for all present
- Lunch for all present at full-day mediation

In order to expedite the mediation, please e-mail to mediations@terryfry.net or deliver to me at my office 1776 Yorktown #100, Houston, TX 77056, a statement containing the following information about the case:

- The basis of your client's claims and/or defenses
- The nature and amount of damages or other relief being sought
- The nature and amount of liens or claims being asserted by third parties
- The amount of available insurance
- Whether or not there are any authority or coverage problems
- The status of prior settlement negotiations
- The names and status with respect to the lawsuit of those persons who will attend the mediation on behalf of your client

Please include in what you send to me any excerpts from documents or depositions which you feel support your client's view of the case.

Unless you request of me otherwise, at the conclusion of the mediation, I will notify the Court that the case settled, did not settle, or that we are continuing to work towards resolution.

RULES FOR MEDIATION

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 impose his/her own judgment on the issues for that of the parties.

Agreement of Entities

Whenever the entities have agreed to mediation, they shall be deemed to have made these rules, as amended and in effect as of the date of the submission of the dispute, a part of their agreement to mediate.

Consent to the Mediator

The entities consent to the appointment of the individual named as mediator in their case. The Mediator shall act as an advocate for resolution and shall use his best efforts to assist the entities in reaching a mutually acceptable settlement.

Conditions Precedent to Serving as Mediator

The mediator Shall not serve as a mediator in any dispute in which he/she has any financial or personal interest in the result of the mediation. Prior to accepting an appointment, the mediator shall disclose any circumstances likely to create a presumption of bias or prevent a prompt meeting with the parties.

Authority of Mediator

The mediator does not have the authority to decide any issues for the parties, but will attempt to facilitate the voluntary 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. 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.

Commitment to Participate in Good Faith

While no one is asked to commit to settle their case in advance of mediation, all entities commit to participate in the proceedings in good faith with the intention to settle, if at all possible.

Parties Responsible for Negotiating Their Own Settlement

The parties understand that the mediator will not and cannot impose a settlement in their case. 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.

Authority of Representatives

Party representatives must have authority to settle and all persons necessary to the decision to settle shall be present. The names and addresses of such persons shall be communicated in writing to all parties and the mediator.

Time and 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.

Identification of Matters in Dispute

Prior to the first scheduled mediation session, each party shall provide the mediator and attorneys of record with an information sheet and request for mediation on the form provided by the mediator setting forth its position with regard to the issues that need to be resolved.

Providing of Information

At or before the first session, the parties will be expected to produce all information reasonably required for the mediator to understand the issues presented. The mediator may require any party to supplement information.

Privacy

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 mediation.

Mediator's Responsibility for 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 by the mediator while serving in the capacity shall be confidential. The mediator shall not be compelled to divulge such records or to testify in regard to the mediation in any adversary proceeding or judicial forum. Any party that violates this order shall pay all reasonable 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.

Parties Responsibility for Confidentiality

The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial or other proceeding: a) views expressed or suggestions made by another party with respect to a possible settlement of the dispute; b) admissions made by another party had or had not indicated willingness to accept a proposal for settlement made by the mediator.

No Stenographic Record

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

No Service or Process at or Near the Site of Mediation Session

No subpoenas, summons, complaints, citations, 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 session.

Termination of Mediation

The mediation shall be terminated: a) by the execution of a settlement agreement by the parties; b) by the declaration of the mediator to the effect that further efforts at mediation are no longer worthwhile; or c) after the completion of the full mediation session, by a written declaration of a party of parties to the effect that the mediation proceedings are terminated.

Exclusion of Liability

The Mediator is not a necessary or proper entity in judicial proceedings relating to the mediation. Neither Mediator nor any law firm employing Mediator shall be liable to any entity for any act or omission in connection with any mediation conducted under these rules.

Interpretation and Application of Rules

The mediator shall interpret and apply these rules.

Fees and Expenses

The mediation daily fee, if agreed upon prior to mediation, shall be paid in advance of each mediation day. 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 at the direct request of the mediator, shall be borne equally by the parties unless they agree otherwise.