

Scott Baker Mediation, LLC

Terms of Mediation

Re: Mediation of Cause No. _____

The terms under which this mediation will be conducted are:

1. Scott Baker Mediation, LLC and its representative(s) (referred to as "SBM") will facilitate communication between the parties and encourage and help them to reach a settlement on their terms. As a neutral and impartial mediator, SBM cannot issue a binding decision on any matter in dispute, cannot direct any party to take any action or refrain from taking any action (other than appropriate rules of decorum for the mediation), and cannot compel any settlement term or require any party to enter into a settlement agreement.
2. SBM may not and will not act as a lawyer or an advocate for any attendee, does not represent any attendee, will not create an attorney-client relationship with any attendee, and will not give legal advice to any attendee. Any evaluation or statement by SBM regarding facts, positions, and the litigation process is its own opinion and does not constitute a prediction or legal advice. Throughout the mediation, SBM may offer ideas, suggestions, questions, or proposals for the parties to consider. No attendee is required to follow or agree with any of those and each attendee is responsible for evaluating the effect of any of those upon the underlying dispute or whether and on what terms to enter into an agreement. Each attendee will rely upon only its, his, or her own analysis and judgment and the advice of its, his, or her own counsel or other representatives for all matters, including whether and on what terms to enter into an agreement. No attendee may or will rely upon any statement, act, or omission of SBM.
3. If there is a dispute concerning the attendance of any person at mediation, the mediation may be delayed or postponed until all parties agree or get resolution on the issue.
4. Each party shall have one or more persons who has authority to negotiate and to make decisions about whether and on what terms to settle present or immediately available throughout the mediation session.
5. The Texas Civil Practice and Remedies Code contains provisions about the confidentiality of mediation communications. *See* TEX. CIV. PRAC. & REM. CODE §§ 154.053, .073. In addition, the Ethical Guidelines for Mediators, adopted by the Texas Supreme Court, contain terms concerning confidentiality. Those provisions

are to encourage frank and candid communications and they will apply to this mediation. Among the provisions concerning confidentiality are:

a. SBM will not disclose to another party or its counsel confidential information without the consent of the disclosing party.

b. Unless all parties agree otherwise, SBM will not disclose to a tribunal the conduct or demeanor of the parties or their counsel during the mediation. SBM may, if requested, report to a tribunal whether a mediation occurred, resulted in a settlement, or was rescheduled.

c. A communication at mediation relating to the dispute is confidential, is not subject to disclosure, and may not be used as evidence in a judicial or administrative proceeding unless one of the exceptions set out in the Texas Civil Practice and Remedies Code sections 154.053(d) and 154.073 (c) – (f) applies (*e.g.* reporting abuse or neglect of a child, elderly person, or person with a disability).

d. SBM will destroy its notes and materials received from the parties immediately after a successful mediation. For a case that does not settle at the mediation session, SBM may retain such materials for a short time to allow for follow-up efforts to help the parties reach an agreement and SBM will destroy such materials when a settlement is reached or when SBM determines that its assistance is no longer requested or productive.

6. Each attendee agrees that it, he, or she may not and shall not ask for or seek in any way (whether through informal request, discovery request, service of process, or through a compulsory process such as a subpoena [collectively “request”]): (a) for SBM to testify or otherwise provide information to any person, tribunal, or other entity about any matter that arises out of or relates in any way to the mediation, including the statements, observations, opinions, or evaluations of the mediator and the statements, offers, counteroffers or other response to offers, acts, or omissions of any attendee of the mediation; or (b) that SBM provide to any person, tribunal, or other entity any record, document, or other information relating in any way to the mediation. To the extent that any attendee has any rights to request testimony, information, documents, or other information from SBM that are prohibited by this Paragraph 6., each attendee knowingly waives those rights.

IF ANY PERSON OR ENTITY BREACHES ANY TERM OF THIS PARAGRAPH 6., HE, SHE, OR IT SHALL BE STRICTLY LIABLE TO SBM FOR ALL ATTORNEYS’ FEES, COSTS, AND EXPENSES THAT SBM INCURS ARISING OUT OF OR RELATING TO: (A) SBM’S OPPOSITION TO THAT PERSON OR ENTITY’S REQUEST; AND/OR (B) FOR SBM’S COMPLIANCE WITH THAT PERSON OR ENTITY’S REQUEST IF SBM WERE REQUIRED BY A COURT OR OTHER TRIBUNAL TO COMPLY WITH SUCH REQUEST. FOR EITHER OR BOTH SBM’S OPPOSITION TO, OR COMPLIANCE WITH, SUCH REQUEST, SBM SHALL BE ENTITLED TO

CHOOSE ITS OWN LEGAL COUNSEL TO REPRESENT IT AND THE BREACHING PARTY SHALL BE LIABLE FOR, AND SHALL PAY TO SBM, ALL REASONABLE AND NECESSARY FEES, COSTS, AND EXPENSES AT THE TIME THAT THOSE FEES, COSTS, AND EXPENSES ARE INCURRED.

7. No attendee may serve upon any other attendee a subpoena, summons, motion, complaint, or other process at the site of the mediation.

8. No attendee may record any portion of the mediation electronically, stenographically, or otherwise.

9. To the extent that the parties or their counsel ask SBM for assistance with the memorialization of the parties' agreement, or if SBM offers ideas or suggestions to consider concerning the agreement, it is understood that SBM does not represent any party, is not engaged in the practice of law, and will act as only a scrivener and at the direction of the parties or their counsel. Each party is encouraged to consult counsel of its choice regarding any term that it includes or does not include in an agreement and should have any agreement independently reviewed by its counsel before he, she, or it signs an agreement. SBM may not and will not give legal advice to any party about the legal effect of any term or the advisability of entering into an agreement.

10. SBM encourages parties to exhaust all efforts and avenues to settle their disputes. But, SBM cannot force any party or person to remain at the mediation and, therefore, it is within the parties' discretion to continue or terminate the mediation session at any time. SBM may terminate the mediation session if, in its sole discretion, it determines that the mediation session is no longer appropriate for mediation, is no longer productive on that day, or if it is not possible to conduct the mediation consistent with the Ethical Guidelines for Mediators or other applicable rules.

11. No part of the fee that any party is required to pay to SBM is contingent or refundable based upon: (a) whether the dispute settles; (b) the amount of time that transpired to reach settlement; (c) whether another party terminates the mediation sooner than desired by a party; or (d) SBM terminates the mediation session pursuant to Paragraph 10., above. The entire mediation fee is deemed to be earned upon the commencement of the mediation.

I have read, understand, and agree to these terms.

Scott Baker Mediation, LLC

By: Scott Baker

Its: Member

Date

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