

SAMPLE DRAFT REFERRAL¹

In the _____ Court

v.

_____ County, Texas

Agreed Order for Managed Dispute Resolution

This agreed order is made and entered by the Court upon the written stipulations of the undersigned parties for the purpose of establishing an efficient and cost-effective procedural forum for the resolution of this dispute. For the purpose of this order, the said parties hereby stipulate as follows:

1. The said parties expressly acknowledge that the provisions of this stipulated agreement and the consequences of their engaging in this managed dispute resolution process have been fully explained to them by their respective counsel and that the agreement represents their voluntary act and deed.

2. The said parties request that _____, hereinafter called the “MDR Manager” be appointed by the Court pursuant to Tex. Civ. Prac. & Rem. Code §154.051 (b) to manage and facilitate this managed dispute resolution process in a fair, efficient, and cost-effective manner and said parties represent to the Court that said individual fully qualifies for such appointment.

3. The said MDR Manager will assist the parties and their counsel in developing a procedural format and time schedule for the exchange of documents and information deemed appropriate for the process; making an objective evaluation of their respective positions; and engaging in good faith settlement negotiations upon the understanding that any unresolved issues will be submitted for final determination by an impartial third-party as hereinbelow provided.

4. The parties agree to work cooperatively and in good faith with one another and with the MDR Manager in developing a procedural format and time schedule and in making an objective case evaluation of their respective positions in the matter. The parties also agree to engage in settlement negotiations as directed by the MDR Manager and to make a good faith effort to reach an expeditious and mutually acceptable resolution of all claims and issues in dispute. In this regard, the Parties agree to work cooperatively with the MDR Manager in developing a written specification of the principal issues in dispute and, if the parties are unable to reach a mutually acceptable settlement of all such specified issues, they agree to submit such unresolved issues for final and binding determination by a jointly selected arbitrator or other third-party neutral as hereinafter provided.

5. For the purposes of this agreed order, the parties agree that they will disclose and exchange all documents and other information (whether oral or written and whether specifically requested by

¹ This sample draft of an Agreed Order for a Managed Dispute Resolution Process is being made available by Resolution Forum, Inc., a non-profit §501(c)(3) dispute resolution organization solely for the purpose of providing experienced lawyers and their clients a basic reference point regarding the managed resolution process and a general idea regarding the types of provisions that could be incorporated in such agreements.

the other party or not) that the other party might reasonably consider to have some relevance to the issues in dispute. After the parties have completed their initial exchange of information and documents, they agree to continue to disclose and exchange such additional information and documents as may become available or brought to their knowledge. If the MDR Manager determines that the settlement process will likely be expedited through the retention of a neutral third-party such as a mediator, communication coach, financial advisor, or other impartial third-party expert, the parties, after conference with the MDR Manager regarding the need for and affordability of such neutral expert, agree to jointly retain the services of a mutually acceptable person to serve in such capacity and unless otherwise agreed the costs of such services will be borne equally by the parties.

6. Each party hereto expressly waives its rights to seek judicial or administrative remedies, including the right to a trial by jury in civil litigation or other adversarial proceedings. Either party, however, may seek judicial or administrative remedies for the enforcement of the terms of this agreement or to enforce any final award issued by the arbitrator under the provisions of this agreement.

7. This process constitutes a forum for the compromise and settlement of disputes within the meaning and scope of applicable federal and state rules of evidence governing the admission of evidence of compromise and settlement. Any and all communications of the parties, their representatives, advisors, and counsel, and of the MDR Manager and other neutral entities retained by said parties or their counsel for any purpose hereunder, including statements, offers, views, and opinions, whether written or oral, shall be considered to be privileged and confidential communications protected by the Texas Alternative Dispute Resolution Procedures Act (Tex. Prac. & Rem. Code Ann. § 154.073 Vernon's 1990). Accordingly, such communications shall not be discoverable or admissible for any purpose, including impeachment, in any subsequent trial or other proceedings involving the said parties.

8. If the parties reach a compromise and settlement with respect to all or a portion of the issues in dispute between them, the terms of the settlement, including any award made by an arbitrator or other third-party neutral as hereinafter provided, will be incorporated in a final written agreement, which shall be considered a compromise and settlement contract under the provisions of Tex. Civ. Prac. & Rem. Code § 154.071, and any award issued by an arbitrator, as hereinabove provided, will also be enforceable as an agreed arbitration award under the provisions of the Texas General Arbitration Statute. (If the parties separately agree in writing, the agreed arbitration award may also constitute a document in the nature of a standby letter of credit enforceable in any appropriate bank or financial institution.) If the parties' negotiations do not result in a settlement of all issues in dispute, the MDR Manager will assist the parties and their counsel in selecting an appropriate individual to serve as an arbitrator or other third-party neutral for the purpose of making a final and binding determination of any resolved issues as hereinafter provided.

9. All issues not resolved by the parties' settlement negotiations will be submitted for final and binding determination by an impartial arbitrator or other third-party neutral selected and retained by the parties. The MDR Manager will assist the parties in the selection procedure and in the initiation and conduct of the determinative process. If the parties are unable to agree upon an individual to be selected for such purpose, the MDR Manager will make such selection on behalf of both parties, and while the MDR Manager will not be compelled to serve in such capacity, his or her service as MDR Manager will not in itself constitute a disqualification if both parties mutually agree in writing to such a selection. The decision and award of the arbitrator or other third-party neutral shall be due within thirty (30) days after submission of such matter, and said decision and award will be incorporated in the parties written settlement agreement and may be

enforced as herein provided. Unless otherwise specified herein or agreed to in writing by the parties, any arbitration conducted under the provisions hereof will generally follow the then applicable rules of the American Arbitration Association.

10. The undersigned parties will be responsible for the payment of any and all costs and expenses incurred by the parties in connection with the initiation and conduct of this managed process, including but not limited to the cost and expense of the retention of the MDR Manager and, if needed, the cost of an arbitrator or other third-party neutral, and said costs and expenses will be shared equally by said parties unless otherwise agreed in writing by said parties.

11. The said MDR Manager and other said impartial third-parties selected by the parties will have the same immunity as a judge sitting in a court of law and will be held harmless and indemnified against any and all claims relating to or arising out of this process. It is also agreed that the said MDR Manager and other said impartial third parties will never be subpoenaed nor called as a witness by either party in any proceeding relating to this process or their dispute.

Signed and entered by the Court this ___ day of _____ 2010.

Presiding Judge, _____ Court
_____ County, Texas

Approved for Entry:

Party:

Counsel:

Party:

Counsel: