

MEDIATION CONFIDENTIALITY AGREEMENT

FILE/CASE NAME: _____

MEDIATOR: _____

1. To promote honest and candid communication among the participants and the mediator, and to facilitate resolution of the dispute, the parties, their counsel and representative, (collectively "participants") and the mediator hereby enter into this Confidentiality Agreement.

2. This Agreement governs all aspects of the mediation process, including those that pre-date the execution of this Agreement, including, but not limited to, the selection of a mediator, the convening of the mediation, all phone calls, correspondence, e-mail and other documents relating to the mediation and the mediation process, all person to person meetings, site visits, or conferences of any kind, and any post-mediation communications or conferences relating to the mediation. The participants all agree that this mediation shall be governed by California Evidence Code sections 1115-1128, 1152, 1154 and any other applicable law, rule or regulation related to the confidentiality and inadmissibility of mediations and the communications made that are related thereto. The mediator follows the Standards of the California Dispute Resolution Council in conducting mediations.

3. All statements made during the course of the mediation are privileged settlement discussions, are made without prejudice to any participant's legal or strategic position, and are non-discoverable and inadmissible for any purpose in any later legal or administrative proceeding whatsoever. However, evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its disclosure or use during the mediation proceedings.

4. The privileged character of any information is not altered by disclosure to the mediator. Disclosure of any records, reports, or other documents received or prepared for or by the mediator cannot be compelled. The mediator shall not be subpoenaed or otherwise compelled to testify in any later proceedings, by any participant or any present or future counsel that any participant may retain. Such proceedings include, but are not limited to civil, criminal, and administrative proceedings. The mediator and shall not be required to produce any notes or documents, as to any aspect of the dispute that was the subject of

the mediation proceedings or was otherwise communicated to the mediator in confidence.

5. No aspect of the mediation shall be relied upon or introduced in the evidence in any legal, administrative or other proceedings, including but not limited to:

(a) views expressed or suggestions made by a party with respect to a possible settlement of the dispute;

(b) admissions made in the course of the mediation proceedings;

(c) proposals made or views expressed by the mediator or the response of any party, and

(d) the fact that another party had or had not indicated willingness to accept a proposal for settlement made by the mediator.

6. The participants further agree that confidentiality does not apply to any executed settlement document unless the parties explicitly stipulate that the terms of settlement are to remain confidential. However, should the settlement agreement be required as proof in a proceeding to enforce the terms of settlement, such settlement agreement shall no longer have the privilege of confidentiality and may be introduced into evidence.

7. Because the participants are disclosing sensitive information in reliance upon this privilege of confidentiality, any breach of this agreement could cause irreparable injury for which monetary damages would be inadequate. Consequently, any participant in this agreement may obtain an injunction to prevent disclosure of any such confidential information in violation of this agreement. Any participant breaching this agreement shall be liable for and shall indemnify the non-breaching parties and the mediator for all costs, expenses, liabilities, and fees, including attorney's fees, which may be incurred as a result of such breach.

8. The participants fully understand the following with respect to the mediation process:

a) The mediator is free to meet and communicate separately with each party or side both before and during the mediation session. Such private caucuses are beneficial in facilitating a resolution of the dispute.

b) The mediator reserves the right to share information learned in the private caucuses with the opposing party if the mediator believes that such information will facilitate a resolution of the dispute. However, should a participant divulge certain information that they do not want the opposing party to know, such party will clearly inform the mediator that such information is to be held in strict confidence and not to be shared with the opposition.

c) The mediator is a neutral party who may not act as an advocate for any party during the course of the mediation. Though the mediator may freely express his views to the parties on the legal issues of the dispute and his suggestion of a settlement proposal if such appears beneficial to the resolution of the case, he/she does not have an attorney-client relationship with any of the parties. The mediator does not guarantee any result or outcome of the proceedings.

d) All participants in the mediation shall be bound by the terms of this Agreement and shall be required to sign this Agreement as a condition to his/her participation.

9. The participants and parties waive the requirements of California Evidence Code section 1125 as to the end of the mediation, so that any and all post-mediation communications of any nature are protected.

10. There are no actual or potential conflicts of interest between the mediator and any participant or ground for disqualification under California Code of Civil Procedure section 170.1 that would affect the mediator's impartiality. By executing this agreement the participants waive any actual or potential conflicts. If any participant believes that the mediator is not impartial, the participant should terminate further involvement in the mediation.

11. Notwithstanding paragraph 4, should the mediator be compelled to testify in any further proceeding, any participant or his/her/its present or future counsel shall compensate the mediator for all fees for time spent, including travel and expenses associated with his testimony at mediator's customary rate, and for any legal fees associated therewith.

12. PLEASE NOTE CONCERNING PAYMENT: PAYMENT IS THE OBLIGATION OF COUNSEL AND/OR THE FIRM REPRESENTING EACH OF THE PARTIES OR SIDES TO BE MADE AT THE TIME OF RETURNING THIS

AGREEMENT. Any balance due to the mediator that is not made at the time of the hearing will be invoiced promptly after the hearing. **Any balance shall be remitted within fifteen (15) days of receipt of any invoice.** After fifteen (15) days, the balance will accrue interest at the rate of 1.5% per month, until it is paid in full.

13. After the mediation is concluded, whether by settlement or by mutual agreement that the mediation is concluded, the mediator will destroy his file on the matter.

Date: _____

Participant: _____

Participant: _____

Participant: _____

Participant: _____

Participant: _____

Participant: _____

Mediator's Signature: _____