



MEDIATION CONFIDENTIALITY AGREEMENT

Case Name: _____.

ADRS Case Number: _____.

Date(s) of Mediation: _____.

This is an agreement between the parties to the above-entitled action and their respective counsel, who desire to enter into mediation with the intention of resolving all issues arising from an existing controversy. The parties and their counsel agree as follows:

Settlement Negotiation. The mediation shall be considered to be a settlement negotiation as contemplated by the California Evidence Code. In the event that this matter is not resolved in mediation, any offer of settlement shall be inadmissible pursuant to the provisions of Evidence Code sections 1152 and 1119.

1. **Confidentiality.** All communications in connection with or in the course of the mediation are confidential and the provisions of Evidence Code sections 703.5 and 1115 et. seq., are incorporated herein by this reference. Confidentiality applies to anything communicated, exchanged, said, done or occurring in the convening and course of the mediation, whether oral or written, including discussions between the mediator and any party or counsel until termination of the mediation.

2. **NO RECORDING POLICY:** If the mediation is being conducted via Zoom, counsel, all parties and all participants to this mediation acknowledge and agree that any and all Audio, Video and Photographic Recording during Pre-Mediation, Mediation and/or Post-Mediation communications of any kind are expressly prohibited. (Personal typed or handwritten notes are permitted.)

3. **Documents Submitted.** To the extent that information or documents are privileged, such privilege is not altered or affected by disclosure to the mediator or the parties during mediation. However, mediation confidentiality does not apply to the following:

- This Agreement and the mediator's statements for services rendered and costs advanced to the parties by the mediator pursuant thereto are not protected from disclosure by mediation confidentiality, and shall be deemed discoverable and admissible into evidence in any civil action pursuant to Evidence Code section 1123.

- Any written settlement agreement prepared and signed during or after the mediation for the purpose of enforcing the provisions of such agreement.

- Evidence otherwise admissible or subject to discovery outside of mediation.

4. **Continuing process.** The mediation process may continue until settlement of the matter in writing, until a party notifies the other that the mediation is terminated, or the mediator provides written notice of termination. In that event, subsequent oral or written communication between or among the parties and the mediator, as part of the mediator's continuing effort to resolve the dispute, shall be subject to this agreement. Accordingly, the parties waive the automatic termination provisions of Evidence Code section 1125(a)(5).

5. **Settlement Enforcement.** In the event that it may become necessary to introduce in a court proceeding or arbitration a written settlement agreement prepared and signed during or after the mediation for the purpose of enforcing the provisions of such agreement under CCP sections 664.6 or 664.7 or otherwise, the parties agree to waive the mediation confidentiality provisions of the Evidence Code for that purpose only.

6. **Recourse for Breach.** The parties understand, acknowledge and agree that neither ADR Services, Inc., nor the mediator have the authority, power, obligation, jurisdiction or other ability to enforce the provisions of this agreement or the provisions of the Evidence Code that apply to this mediation proceeding or to provide or fashion a remedy for any claimed breach of this agreement. The parties understand and agree that their sole forum to seek redress for any claimed breach of this agreement by any other party shall be the court or arbitration proceeding where the action is pending. The parties understand and agree that neither ADR Services, Inc. nor the mediator shall have any responsibility to testify in such proceedings, or to present evidence, or provide information or otherwise be involved in such proceedings and the parties shall not require or request ADR Services, Inc. or the mediator to initiate, support or become involved in such proceedings. The participants in this mediation shall not subpoena the mediator nor any employee or officer of ADR Services, Inc. or request any documents from them that were created or prepared in connection with this mediation.

7. **Legal Advice.** The mediator is serving as a neutral person who is assisting the parties in an effort to resolve their dispute. The mediator does not act as an advocate for any party. The mediator's statements do not constitute legal advice to any party. The parties shall seek and rely solely on the legal advice that they obtain from their counsel. If the mediator assists the parties in preparing a settlement agreement, the parties agree that the mediator is acting as a mere scrivener and the parties shall have such settlement agreement reviewed and approved by their legal counsel before executing the agreement and the mediator shall have no liability for any error or omission with respect to such settlement agreement.

8. **Limited Liability, Release and Indemnification.** The participants hereby agree that the Mediator has no liability for any act or omission in connection with or arising out of the mediation. (*Howard v. Drapkin* (1990) 222 Cal.App.3d 843, 855, n.6 and 860.) Further, the Mediator makes no representation that the participants will reach an agreement on any of the issues, disputes or controversies discussed in the mediation. Any participant who brings any claim, action or proceeding of any nature against the Mediator or who seeks to have the Mediator testify in any proceeding shall be responsible to indemnify the Mediator for any expenses, loss or damage incurred, including, without limitation, attorney's fees and expenses incurred in connection with such claim, action or proceeding brought by such participant.

9. Compensation. The fees and costs of the mediator shall be borne equally by the parties, unless otherwise agreed between the parties in writing. The mediator charges an hourly rate pursuant to the fee schedule issued with formal notice. The fee applies equally to any time spent in mediation with the parties and counsel, or in sessions with all parties and counsel present, or in caucuses with one side only. The hourly fee in mediation applies to the time required to study submitted documents, research if needed, telephone conferences with parties and/or counsel, email and preparation of settlement agreements or other documents. Fees shall be paid to ADR Services, Inc. as invoiced, including the required initial deposit and non-refundable administrative fee in accordance with the Fee Schedule attached and incorporated herein.

10. Spanish Translation (where applicable). The parties sign and approve this Agreement in the English and Spanish languages. The parties agree that in the event of a discrepancy between the two versions, the English version shall prevail. The parties acknowledge to having obtained sufficient independent legal advice and to having read and understood (through their respective appointed interpreters, legal counsel, or other agreed upon means) the legal effects and validity of this Agreement in both the Spanish and English versions.

Dated: _____ and signed in counterparts for by each of the participants whose signatures appear below.

CONFIDENTIALITY AGREEMENT – SIGNATURE PAGE

CLIENT / ATTORNEY CARD HERE OR	Client Name:
	Plaintiff / Defendant / X-Comp / X-Def
Name:	
Address:	Date:
City:	Signature:
Phone:	Email Address:

CLIENT / ATTORNEY CARD HERE OR	Client Name:
	Plaintiff / Defendant / X-Comp / X-Def
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