

CONFIDENTIALITY AGREEMENT

(To be signed by counsel, each party and each person attending the Mediation)

Please sign, date, and return this form by email to Scott@ScottMillerMediation.com within five days of receipt.

Case:

Superior Court for the State of California, _____ County
Case. No. _____

Date(s) of Mediation Sessions: _____, and follow on sessions or correspondence.

To promote honest and candid communication among the parties and the mediator, to facilitate resolution of this dispute, and in recognition of mediation confidentiality as provided in California Evidence Code sections 703.5 and 1115 through 1129, the parties, their counsel and any representatives (collectively, “Participants”) and the mediator hereby enter into this Confidentiality Agreement (the “Agreement”).

1. This Agreement governs all aspects of the mediation process, including those that pre-date the execution of this Agreement, including without limitation 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 in-person or virtual meetings, site visits, or conferences of any kind, and any post-mediation communications or conferences relating to the mediation (together, the “Mediation Proceeding”).

2. This entire mediation process is a facilitated negotiation in contemplation of settlement or compromise and thus should remain confidential and inadmissible pursuant to common law and state and federal rules of evidence regarding settlement discussions. All offers, promises, conduct and statements, whether oral, written or digital, made in the course of the mediation by any of the parties, their agents, representatives, employees, experts and attorneys and the Mediator are confidential. Such offers, promises, conduct and statements will not be disclosed to third parties, except those associated with the parties in the mediation process and persons or entities to whom a party or the Mediator has a legal or contractual obligation to report.

3. All statements made by the mediator, or any Participant during the Mediation Proceeding, are intended to be confidential 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 proceeding. For clarity, however, evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non- discoverable because of its disclosure or use during Mediation Proceeding.

4. The Participants understand and acknowledge each of the following:

- a) The mediator is free to communicate or meet 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 private caucus 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, the Participant must clearly inform the mediator that such information is to be held in strict confidence and not to be shared with opposing parties.
- c) Although the mediator may express personal views about factual or legal issues related to the dispute and may propose the terms of a settlement if it appears beneficial to the resolution of the case to do so, the mediator is neutral and 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) Participants agree not to record—by video, audio or stenographic means— any portion of the mediation session or to transmit or relay any portion of the mediation session, live or delayed. In the event that you learn of any such recording or relay, you agree to take immediate measures to destroy the recording and/or stop the transmission.
- e) The Mediator will keep in confidence, from all other parties, information, which is communicated during private sessions, and which parties explicitly request shall be kept confidential, unless the Mediator has a legal or contractual duty to disclose such information.
- f) California counsel should take note of their responsibilities under California Evidence Code sections 1122 (as amended) and 1129 with respect to pre-mediation disclosures to their clients. The Mediator assumes no responsibility in this regard.

5. All Participants waive the provisions of California Evidence Code section 1125 concerning the “end” of this mediation, meaning that any and all post-mediation session communications of any nature shall remain confidential and protected.

6. The Participants agree that confidentiality does not apply to any settlement document executed in the course of the Mediation Proceeding, which the parties intend to be both enforceable and admissible, unless the parties state in that agreement that the terms of settlement are to remain confidential. However, should a confidential 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. 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 Participant’s attorneys or representatives. Such proceedings include but are not limited to civil, criminal, and

administrative proceedings. The mediator 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.

8. Notwithstanding paragraph 7, immediately above, should the mediator be compelled to testify in any further proceeding, the Participant responsible for such testimony shall compensate the mediator for all fees for time spent, including travel and expenses associated with his testimony at mediator's then customary rate, and for any associated legal fees.

9. 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 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/or the mediator for all costs, expenses, liabilities, and fees, including attorney's fees, which may be incurred as a result of such breach.

All Participants shall be bound by the terms of this Agreement and are required to sign it as a condition to his/her participation in the mediation. This Agreement may be signed in counterparts.

Mediation Date: _____

Scott R. Miller, Mediator

Counsel for Plaintiff etc.

Counsel for Defendants, etc.

Plaintiff

Defendant

Plaintiff

Defendant

Plaintiff

Defendant