

## **AGREEMENT TO MEDIATE AND CONFIDENTIALITY AGREEMENT**

The undersigned agree to participate in a mediation conducted by Steven W. Paul ("the Mediator") in an attempt to reach a settlement of their existing dispute and further understand and agree as follows:

- 1. Role of Mediator:** The Mediator is an impartial, neutral intermediary, whose role is to assist the participants in reaching a settlement by negotiations between or amongst themselves. The Mediator cannot impose a settlement but will assist the participants in achieving their own settlement. The Mediator does not act as an attorney or advocate for or give legal, tax or other professional advice to any participant, and nothing said by the Mediator should be considered legal or tax advice. In this regard, no professional-client or fiduciary relationship is created between any participant and the Mediator.
- 2. Voluntary Agreement:** Mediation is a consensual and voluntary process; the Mediator has no authority to make binding decisions. Any decision to enter into an agreement is voluntary and that participation in the mediation does not guarantee that an agreement will be reached. Any party has the right to terminate the mediation at any time, though they are strongly urged to first advise the Mediator of such intent to allow an opportunity to resolve the concerns raised.
- 3. Attorney Consultation:** The parties have the right to be represented by attorneys before and during the mediation process including upon agreeing to a settlement, and understand that the parties should have the settlement agreement independently reviewed by their own counsel prior to its execution.
- 4. Confidentiality:** It is understood and agreed that this mediation is conducted pursuant to all applicable California Evidence Code sections (and Federal law counterparts) (including CRC Section 1630, et. seq; Evidence Code Sections 1115-1128, 1152 and successor sections, except 1125(a)(5)). With certain limited exceptions, all statements and/ or writings made in the course of or pursuant to the mediation or a mediation consultation as defined by Evidence Code Section 1115(c) shall be inadmissible in any civil proceeding pursuant to Evidence Code Section 1119. Further, in order to encourage open and candid discussions, all statements and documents that are shared as part of the mediation process before, during or after the mediation are deemed confidential to other third parties and other forums. Post-mediation communications between the Mediator and any particular participant or individual related to the subject of the mediation shall be and remain confidential. In an effort to promote continuing settlement discussion between the parties and the Mediator, all participants hereby agree to waive the provisions of Evidence Code Section 1125(a)(5) which provides that a mediation ends when there is no communication between the mediator and any of the parties to the mediation relating to the dispute for a period of ten (10) calendar days. The fact that the mediation took place and the fact that a settlement was, or was not reached, is not deemed confidential (as well as the fee arrangement for purposes of collection by the Mediator of any unpaid mediation fees). All participants further agree that there shall be no recording of any portion of the mediation process, and that only those participants pre-disclosed and authorized will be entitled to be present in full or part either personally, or by video or audio (personal typed or handwritten notes are permitted by authorized participants).

The parties specifically agree that they will not seek, nor will they encourage or permit another, to compel the Mediator to disclose any information in any legal or administrative proceeding or otherwise, and that the Mediator is not competent to testify as set forth in Evidence Code Section 703.5, and that they will not attempt to waive the Mediator's privilege. All disclosures

made during the course of this mediation are conditioned on this promise and agreement of confidentiality.

5. **Release and Indemnification:** The participants hereby each agree to release the Mediator from any and all claims, actions or proceedings arising from a failure to achieve settlement, their decision to enter into any agreement or term of settlement, and/or any other aspect of the mediation process. Any participant who brings any claim, action or proceeding relating to the mediation, or seeks to have the Mediator testify, shall be responsible to indemnify the Mediator for any expense, loss or damage incurred, including without limitation, reimbursement of attorneys' fees and expenses incurred in connection with such claim, action or proceeding.
  
6. **Publication:** Unless requested to the contrary, all participants authorize the Mediator to describe this matter to colleagues for educational purposes, and may publish the general fact pattern, provided no disclosure is made of the participants' names or other information which would specifically identify the participants. Unless notified to the contrary, all participants authorize the Mediator to add the names of their firms, companies, or organizations to the Mediator's published client list.
  
7. **Potential Conflicts of Interest:** The Mediator may have worked with counsel and/or counsel's law firm on prior occasions, and such counsel may be listed on the Mediator's website reference list (and/or a member of the same associations, speaking engagements, etc.). To the extent that any such or other contacts exist with any parties and/or their counsel, the Mediator does not believe that any such contacts and/or relationships will impact his capacity to remain impartial and neutral. If any participant believes that the Mediator is not impartial for any reason, he/she should immediately bring such concern to the Mediator's attention to discuss terminating the mediation, or otherwise address the concern.

By signing below, we each understand and agree to the terms and conditions set forth above.

Date: \_\_\_\_\_ Mediator: \_\_\_\_\_

**PARTICIPANTS:**

Date:	Print Name:	Signature:	Role(Plaintiff/Counsel, etc.):
1. _____	_____	_____	_____
2. _____	_____	_____	_____
3. _____	_____	_____	_____
4. _____	_____	_____	_____
5. _____	_____	_____	_____
6. _____	_____	_____	_____
7. _____	_____	_____	_____
8. _____	_____	_____	_____
9. _____	_____	_____	_____