

## MEDIATION CONFIDENTIALITY AGREEMENT

Case Name: \_\_\_\_\_ Case No. \_\_\_\_\_

Date(s) of Mediation Sessions: \_\_\_\_\_

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

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 meetings, site visits, or conferences of any kind, and any post-mediation communications or conferences relating to the mediation (together, the "Mediation Proceeding").

Consistent with and in recognition of California Evidence Code sections 703.5 and 1115 through 1128, the Participants agree as follows:

1. No written or oral communication made by any Participant or the mediator in the course of the Mediation Proceeding may be used for any purpose in any pending or future proceeding in the case unless all parties, including the mediator, so agree.
2. All statements made during the Mediation Proceeding are 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 later legal or administrative proceeding. However, for clarity, evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its disclosure or use during Mediation Proceedings.
3. The privileged and/or confidential 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 Participant's attorneys or representatives. The mediator shall not testify voluntarily on behalf of any Participant. 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.

4. 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 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.

5. 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.

6. The Participants fully 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, 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. Although 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, the mediator does not have an attorney-client relationship with any of the parties. The mediator does not guarantee any result or outcome of the proceedings.

# COOK MEDIATION

- d) 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.

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

8. Notwithstanding paragraph 3, 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.

Dated: \_\_\_\_\_

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(Party)

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(Party)

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(Party’s Attorney)

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(Party’s Attorney)

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(Party’s Attorney)

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Mediator