

## **MEDIATION CONFIDENTIALITY AGREEMENT**

**FILE NAME:** \_\_\_\_\_

**MEDIATOR:** \_\_\_\_\_

1. In order to promote honest and candid communication among the parties and the mediator, and to facilitate resolution of the dispute, the parties, their counsel and representative, 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.
3. All statements made during the course of the mediation are privileged settlement discussions, are made without prejudice to any party's legal 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, including, but not limited to civil, criminal, and administrative proceedings, 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 parties 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 parties 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 party to this agreement may obtain an injunction to prevent disclosure of any such confidential information in violation of this agreement. Any party 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 parties fully understand the following with respect to the mediation process:
  - a) The mediator is free to meet and communicate separately with each party both before and during the mediation session. Such private caucuses are very 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 party 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.
  - d) All participants in the mediation shall be bound by the terms of this Agreement and may be required to sign this Agreement as a condition to his/her participation.

Party A Signature: \_\_\_\_\_  
Date:

Party B Signature: \_\_\_\_\_  
Date:

Mediator's Signature: \_\_\_\_\_  
Date: