

CONFIDENTIALITY AGREEMENT/ACKNOWLEDGMENT REGARDING CALIFORNIA EVIDENCE CODE

Re: Mediation of: ABC v. XYZ

In order to promote communication among the parties and to facilitate resolution of the dispute, all undersigned participants agree as follows:

- 1) This mediation process is to be considered settlement negotiations for the purpose of all state and federal rules protecting disclosures made during such process from later discovery and/or use in evidence. The participants' sole purpose in conducting or participating in mediation is to compromise, settle, or resolve their dispute, in whole or in part.
- 2) The provisions of California Evidence Code §§ 1115 through 1128 and 703.5 apply to this mediation and are incorporated into this Agreement. All communications, negotiations, or settlement discussions during the mediation and mediation consultation shall remain confidential pursuant to California Evidence Code §§ 1115-1128. Without the consent of all persons who participated in the mediation, and other than as set forth in Paragraph 4, below, anything said or any document prepared solely for or during the mediation is not admissible in evidence, or subject to discovery and shall not be compelled, in any civil action, administrative adjudication or other noncriminal proceeding in which testimony can be compelled. This Agreement extends to all present and future civil, judicial, quasi-judicial, arbitral, administrative or other non-criminal proceedings. The foregoing notwithstanding, the mediator may report, and not maintain as confidential, information concerning the commission of a crime of violence.
- 3) The privileged character of any information or documents is not altered by disclosure to the mediator. The mediation process may continue after the date appearing below. Therefore, the mediator's subsequent oral and written communications with the mediation participants in a continuing effort to resolve the dispute are subject to this Agreement. Accordingly, the parties waive the automatic termination provisions of Evidence Code § 1125(a)(5).
- 4) This Agreement and any written settlement agreement resulting from the mediation (whether prepared during, at the conclusion of, or following the mediation) are subject to disclosure, binding, enforceable, and admissible to prove the existence of, and/or to enforce, this Agreement or any such settlement agreement pursuant to California Code of Civil Procedure § 664.6, if applicable, or under any similar procedure permitted by law.
- 5) The parties agree not to call the mediator to testify or obtain his notes concerning the mediation or mediation consultation, for any civil action, administrative adjudication or other noncriminal proceeding in which testimony can be compelled.
- 6) Since the parties are disclosing sensitive information in reliance on this agreement of confidentiality, any breach of this agreement would cause irreparable

injury for which monetary damages would be inadequate. As a remedy for such a breach, any party to this agreement may obtain an injunction to prevent disclosure of any such confidential information in violation of this agreement.

7) The mediator is serving as a neutral intermediary and settlement facilitator and may not act as an advocate for any party. THE MEDIATOR'S STATEMENTS DO NOT CONSTITUTE LEGAL ADVICE TO ANY PARTY. ACCORDINGLY, THE PARTIES ARE STRONGLY ENCOURAGED TO SEEK LEGAL ADVICE FROM THEIR OWN COUNSEL. If the mediator assists in preparing a settlement agreement, each participant is advised to have the agreement independently reviewed by his or her own counsel before executing the agreement.

8) If the mediation is conducted through the use of remote video/audio technology, all undersigned participants further agree as follows:

- a. The mediator will provide a Zoom registration and link to the meeting to all participants. The participants will not forward or provide the link to the meeting to anyone else.
- b. The mediator will not record the mediation session, and as "host" of the Zoom session the mediator will control the "record meeting" feature, and it will be disabled. The participants will not record the session, or any part of it, through any method (e.g., by taking "screen shots" or recording the session in any manner on another device).
- c. All individuals physically present in the room with any participant, whether on camera or not, will identify themselves to the mediator immediately upon the beginning of the session. No one who is not identified will be physically present in the respective participants' rooms at any point during the mediation session.

Mediator Date _____

Plaintiff ABC Date _____

John Doe, Esq.
Attorneys for Plaintiff ABC Date _____

Defendant XYZ Date _____

Jane Roe, Esq.
Attorneys for Defendant XYZ Date _____