

EXPERT KNOWLEDGE CONSULTING

30343 Canwood Street, Suite 204
Agoura Hills, California 91301
818-991-7200 818-991-5077 fax
ExpertKnowledgeConsulting.com

Mediation Services Agreement

_____ and _____
(herein "Party" or "Parties") agree to retain _____
("Mediator") to facilitate and mediate the discussions and negotiations regarding the resolution of the disputes that exist between them. The Parties understand and acknowledge that the mediation services provided by Mediator will consist of directing the negotiations of the Parties, developing additional alternatives, and confronting the attitudes and perspectives of each Party in an attempt to have the Parties enter into an agreement ("Agreement") resolving their dispute.

Each Party understands and acknowledges that:

- The mediator will not give legal advice to either Party even though Mediator is a licensed attorney, and each Party agrees and acknowledges that no attorney-client relationship is created between the Party and Mediator;
- Each Party is encouraged to consult with the Party's attorney and other advisors concerning the Party's legal and financial rights and obligations in this dispute before signing this Agreement commencing the mediation process, during the mediation process (each Party's attorney may be present), and before any agreements are reached concerning the dispute; and,
- The Mediator will not render any oral or written, binding or non-binding decision reflecting his view of how the conflict should be resolved.

Because each Party is committed to seeking a voluntary resolution of this dispute, he / she understands and acknowledges that any agreements reached in the mediation process concerning the dispute may differ greatly from, and could be substantially more disadvantageous to him / her, than the outcome of litigation or other approaches to the resolution of the dispute. Each Party agrees to release the Mediator from liability in relation to claims that the Mediator failed to provide any Party with the same, similar, or equally advantageous outcome that he or she could have obtained from a judge.

The Parties agree that evidence of statements made in the course of mediation shall be inadmissible for any purpose in a proceeding in a court of law, as provided in California Evidence Code Sections 1115-1128, a copy of which is attached and incorporated by this reference and specifically made part of this Agreement. Pursuant to Evidence Code Sections 1115-1125, it is agreed that:

Please Initial: _____

- A. All statements, including admissions, made in the course of the dispute resolution proceeding shall be inadmissible in any subsequent civil action; and/or
- B. Any document or copy of any document prepared for the purpose of, in the course of, or pursuant to the dispute resolution proceeding shall be inadmissible in any subsequent civil action.

However, each Party further understands and acknowledges that statements made by him / her during the mediation process could be verified outside of the mediation process and used to the Party's disadvantage in a subsequent legal proceedings if the dispute is not resolved through the mediation.

The Parties agree to pay to Mediator a deposit of \$_____ at least 10 calendar days before the scheduled mediation date which will be credited toward work performed by Mediator. Mediator's hourly rate is \$_____ per hour which shall be paid equally by the Parties. Any excess deposit shall be returned to the Parties within 10 days of the conclusion of the mediation.

The location of the mediation shall be _____.
 Four hours have been set aside. The mediation shall start at _____ AM PM.

I / We have read and understand the foregoing terms and agree to them. If more than one party signs below, we agree to be liable jointly and severally for all obligations under this Agreement. By signing this Agreement, I / we acknowledge receipt of a fully executed duplicate of this Agreement.

Date: _____

Date: _____

Client Signature: _____

Client Signature: _____

Client Name: _____

Client Name: _____

Address: _____

Address: _____

Cell Phone: () _____

Cell Phone: () _____

Other Phone: () _____

Other Phone: () _____

Fax: () _____

Fax: () _____

Email: _____

Email: _____

Client's Attorney: _____

Client's Attorney: _____

Attorney Signature: _____

Attorney Signature: _____

Please Initial: _____

Evidence Code Sections 1115-1128

1115

For Purpose of this chapter:

- (a) “Mediation” means a process in which a neutral person or persons facilitate communication between the disputants to assist them in reaching a mutually acceptable agreement.
- (b) “Mediator” means a neutral person who conducts a mediation. “Mediator” includes any person designated by a mediator either to assist in the mediation or to communicate with the participants in preparation for a mediation.
- (c) “Mediation consultation” means a communication between a person and a mediator for the purpose of initiating, considering, or reconvening a mediation or retaining the mediator.

1116

- (a) Nothing in this chapter expands or limits a court’s authority to order participation in a dispute resolution proceeding. Nothing in this chapter authorizes or affects the enforceability of a contract clause in which parties agree to the use of mediation.
- (b) Nothing in this chapter makes admissible evidence that is inadmissible under Section 1152 or any other statute.

1117

- (a) Except as provided in subdivision (b), this chapter applies to a mediation as defined in Section 1115.
- (b) This chapter does not apply to either of the following:
 - 1. A Proceeding under Part I (commencing with Section 1800) of Division 5 of the Family Code or Chapter 11 (Commencing with Section 3160) of Part 2 of Division 8 of the Family Code.
 - 2. A settlement conference pursuant to Rule 222 of the California Rules of Court.

Please Initial: _____

1118

An oral agreement “in accordance with Section 1118” means an oral agreement that satisfies all of the following conditions:

- (a) The oral agreement is recorded by a court reporter, tape recorder, or other reliable means of sound recording.
- (b) The terms of the oral agreement are recited on the record in the presence of the parties and the mediator, and the parties express on the record that they agree to the terms recited.
- (c) The parties to the oral agreement expressly state on the record that the agreement is enforceable or binding or words to that effect.
- (d) The recording is reduced to writing and the writing is signed by the parties within 72 hours after it is recorded.

1119

Except as otherwise provided in this chapter:

- (a) No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, a mediation or a mediation consultation is admissible or subject to discovery, and disclosure of the evidence shall not be compelled, in any arbitration, administrative adjudication, civil action, or other noncriminal proceeding in which, pursuant to law, testimony can be compelled to be given.
- (b) No writing, as defined in Section 250, that is prepared for the purpose of, in the course of, or pursuant to, a mediation or a mediation consultation, is admissible or subject to discovery, and disclosure of the writing shall not be compelled, in any arbitration, administrative adjudication, civil action, or other noncriminal proceeding in which, pursuant to law, testimony can be compelled to be given.
- (c) All Communications, negotiations, or settlement discussions by and between participants in the course of a mediation or a mediation consultation shall remain confidential.

1120

- (a) Evidence otherwise admissible or subject to discovery outside of a mediation or a mediation consultation shall not be or become admissible or protected from disclosure solely by reason of its introduction or use in a mediation or a mediation consultation.

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(b) This chapter does not limit any of the following:

1. The admissibility of an agreement to mediate a dispute.
2. The effect of an agreement not to take a default or an agreement to extend the time within which to act or refrain from acting in a pending Civil action.
3. Disclosure of the mere fact that a mediator has served, is serving, will serve, or was contacted about serving as a mediator in a dispute.

1121

Neither a mediator nor anyone else may submit to a court or other adjudicative body, and a court or other adjudicative body may not consider, any report, assessment, evaluation, recommendation, or finding of any kind by the mediator concerning a mediation conducted by the mediator, other than a report that is mandated by court rule unless all parties to the mediation expressly agree otherwise in writing, or orally in accordance with Section 1118.

1122

- (a) A communication or a writing, as defined in Section 250, that is made or prepared for the purpose of, or in the course of, or pursuant to, a mediation or a mediation consultation, is not made inadmissible, or protected from disclosure, by provisions of this chapter if either of the following conditions is satisfied:
1. All persons who conduct or otherwise participate in the mediation expressly agree in writing, or orally in accordance with Section 1118, to disclosure of the communication, document, or writing.
 2. The communication, document, or writing was prepared by or on behalf of fewer than all the mediation participants, those participants expressly agree in writing, or orally in accordance with Section 1118, to its disclosure, and the communications, document, or writing does not disclose anything said or done or any admission made in the course of the mediation.
- (b) For purposes of subdivision (a), if the neutral person who conducts a mediation expressly agrees to disclosure, that agreement also binds any other person described in subdivision (b) of Section 1115.

1123

A written settlement agreement prepared in the course of or pursuant to, a mediation, is not made inadmissible, or protected from disclosure, by provisions of this chapter if the agreement is signed by the settling parties and any of the following conditions are satisfied:

Please Initial: _____

- (a) The agreement provides that it is admissible or subject to disclosure, or words to that effect.
- (b) The agreement provides that it is enforceable or binding or words to that effect.
- (c) All parties to the agreement expressly agree in writing, or orally in accordance with Section 1118, to its disclosure.
- (d) The agreement is used to show fraud, duress, or illegality that is relevant to an issue in dispute.

1124

An oral agreement made in the course of, or pursuant to, a mediation is not made inadmissible, or protected from disclosure, by the provisions of this chapter if any of the following conditions are satisfied:

- (a) The agreement is in accordance with Section 1118.
- (b) The agreement is in accordance with subdivisions (a), (b) and (d) of Section 1118, and all parties to the agreement expressly agree, in writing or orally in accordance with Section 1118, to disclosure of the agreement.
- (c) The agreement is in accordance with subdivisions (a), (b) and (d) of Section 1118, and the agreement is used to show fraud, duress, or illegality that is relevant to an issue in dispute.

1125

- (a) For purposes of confidentiality under this chapter, a mediation ends when any one of the following conditions is satisfied:
 - 1. The parties execute a written settlement agreement that fully resolves the dispute.
 - 2. An oral agreement that fully resolves the dispute is reached in accordance with Section 1118.
 - 3. The mediator provides the mediation participants with a writing signed by the mediator that states that the mediation is terminated, or words to that effect, which shall be consistent with Section 1121.

Please Initial: _____

4. A party provides the mediator and the other mediation participants with a writing stating that the mediation is terminated or words to that effect, which shall be consistent with Section 1121. In a mediation involving more than two parties, the mediation may continue as to the remaining parties or be terminated in accordance with this section.
 5. For 10 calendar days, there is no communication between the mediator and any of the parties to the mediation relating to the dispute. The mediator and the parties may shorten or extend this time by agreement.
- (b) For purposes of confidentiality under this chapter, if a mediation partially resolves a dispute, mediation ends when either of the following conditions is satisfied:
1. The parties execute a written settlement agreement that partially resolves the dispute.
 2. An oral agreement that partially resolves the dispute is reached in accordance with Section 1118.
- (c) This section does not preclude a party from ending a mediation without reaching an agreement. This section does not otherwise affect the extent to which a party may terminate a mediation.

1126

Anything said, any admission made, or any writing that is inadmissible, protected from disclosure, and confidential under this chapter before a mediation ends, shall remain inadmissible, protected from disclosure, and confidential to the same extent after the mediation ends.

1127

If a person subpoenas or otherwise seeks to compel a mediator to testify or produce a writing, as defined in Section 250, and the court or other adjudicative body determines that the testimony or writing is inadmissible under this chapter, or protected from disclosure under this chapter, the court or adjudicative body making the determination shall award reasonable attorney's fees and costs to the mediator against the person seeking the testimony or writing.

1128

Any reference to a mediation during any subsequent trial is an irregularity in the proceedings of the trial for the purposes of §657 of the Code of Civil Procedure. Any reference to a mediation during any other subsequent noncriminal proceeding is grounds for vacating or modifying the decision in that proceeding, in part of the issues, if the reference materially affected the substantial rights of the party requesting relief.

Please Initial: _____