

# CARR & VENNER ADR\*

\*FRED CARR AND CHARLOTTE M. VENNER ARE INDIVIDUAL, SOLE MEDIATION PRACTITIONERS, AND ARE NOT A PARTNERSHIP OR OTHER FORM OF LEGAL ASSOCIATION.

## MEDIATION AND CONFIDENTIALITY AGREEMENT

CASE NAME: \_\_\_\_\_

FILE NO.: \_\_\_\_\_

The parties to this mediation, which includes the attorneys and all persons attending the mediation, and the Mediator, Charlotte M. Venner, agree to have mediation services provided in accordance with the following terms and conditions:

1. **Mediation Procedures:** This mediation is conducted and participated in for the purpose of compromising, settling, or resolving a dispute in whole or in part. The Mediator will administer the mediation. All parties recognize that mediation is a voluntary settlement negotiation and that the Mediator is not a judge or an arbitrator and she has no authority to force a settlement on the parties. The parties understand that the role of the Mediator is to assist them in reaching a voluntary agreement.
2. **Mediator:** The parties agree that Charlotte M. Venner will be the Mediator. The Mediator is a neutral intermediary who does not act as an advocate for any party. Any statements made by the Mediator do not constitute legal advice to any party. There is no attorney/client relationship between the Mediator and any party herein. The parties should consult an attorney if they have any questions about their legal rights. The parties further agree that the Mediator has no liability for any act or omission in connection with the mediation. The parties also agree that once the parties reach a settlement agreement, the Mediator may act as a scribe, drafting the terms as agreed upon by the parties. If there is uncertainty or ambiguity over any of the terms as so written, those should be directed to the parties and their legal counsel to be corrected or amended before the parties sign. If the parties decide to use all or part of a form settlement agreement and release provided by the Mediator, or to have the mediator act as a scribe to add, modify or change such a form or to otherwise act as a scribe of the terms agreed upon by the parties, all Parties and their respective counsel agree that this can in no way be construed as the Mediator providing legal advice on the appropriateness, legal effect or content of the provision of any such settlement agreement or release, or otherwise engaging in the practice of law. The parties and their counsel are encouraged to carefully proof read, to add to, to amend or to modify the language of any such document, as they believe is appropriate.
3. **Caucus:** When a party meets alone with the Mediator, he or she will clearly inform the Mediator what documents or statements will remain confidential, and what may be shared with the other party(s).
4. **Settlement Authority:** All parties agree to have an individual at the mediation with proper settlement authority. If that person is unavailable, that party will notify the other parties before the mediation convenes.
5. **Fees and Costs:** Each party participating in the mediation will share equally in the costs of the session and any preparation time required of the mediator reading any pre-mediation materials provided to the mediator, unless otherwise agreed by the parties and made known in writing to the Mediator. The respective law firms representing the parties shall be directly responsible for the fees and costs associated with the mediation. All Mediation Fees shall be paid within 30 days of the date of the Invoice for mediation services, regardless of whether or not the case settled. Fees and costs for the mediation will be charged per the Fee Schedule.
6. **Confidentiality:** Evidence Code Sections 1115 through 1128 and Section 703.5 and the cases interpreting those sections, shall govern this mediation and are incorporated into this agreement. The parties to this mediation recognize that mediation sessions are settlement negotiations and that settlement negotiations are inadmissible in any litigation or arbitration of their dispute to the extent

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allowed by law. All statements and communications made during the course of the mediation are confidential, are made without prejudice to any party's legal position, and are non-discoverable and are inadmissible for any purpose, including impeachment, in any pending or subsequent non-criminal legal proceeding. Disclosure of any records, reports, notes or other documents received or prepared by the Mediator or otherwise generated during the course of the mediation, or otherwise communicated to the Mediator in confidence, cannot be compelled in any arbitration, administrative adjudication, civil action or other non-criminal proceedings, subject to the limitations noted in the pertinent Evidence Code Sections and any applicable case law interpreting those sections. No aspect of the mediation shall be relied upon or introduced as evidence in any arbitration, judicial, or other non-criminal proceeding, including but not limited to (a) views expressed or made by any party with respect to a possible settlement of the dispute; (b) admissions made in the course of the mediation proceedings; and (c) proposals made or views expressed by the Mediator or the response of any party thereto. The confidentiality of any communication or statement is not limited to communications made during the formal mediation sessions, but also to any communication made to the Mediator, or the Mediator's staff, in order to retain the Mediator's services for a mediation, including but not limited to any contacts concerning whether to mediate, and contacts concerning initiation or recommencement of mediation. The privileged character of any information is not altered by disclosure to the Mediator. However, evidence that is otherwise admissible is not rendered inadmissible because of its use in mediation.

7. The confidentiality provisions of Evidence Code Section 1125(a) (5), pertaining to the lack of any communication between the Mediator and any of the parties, is extended to 180 days, notwithstanding any other writing further limiting or extending that time period.
8. Breach: The parties agree that the breach of this agreement would cause irreparable injury and that monetary damages would be an inadequate remedy, since the parties are relying upon this agreement of confidentiality in disclosing sensitive business and/or personal information. The participants stipulate that this Mediation and Confidentiality Agreement shall be admissible in evidence in any civil action or proceeding to enforce the terms of said agreement. The parties also agree and stipulate that any party to this agreement may obtain an injunction to prevent disclosure of any 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 attorneys' fees, which may be incurred as a result of such breach.

BY SIGNATURES BELOW EACH PARTY, either directly or through counsel, agrees with everything stated above herein.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2013, and signed before commencement of the mediation by each person whose signature appears below.

Charlotte M. Venner, Mediator