

In the Matter of:

\_\_\_\_\_, *Claimant(s) or Plaintiff(s)*

vs.

\_\_\_\_\_, *Respondent(s) or Defendant(s)*

Court / Tribunal: \_\_\_\_\_

Case No. \_\_\_\_\_

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STIPULATED AGREEMENT RE CONFIDENTIALITY OF DOCUMENTS AND OTHER  
INFORMATION EXCHANGED BETWEEN THE PARTIES FOR USE IN MEDIATION  
IN THIS MATTER

Upon stipulation and agreement between \_\_\_\_\_  
 (“\_\_\_\_\_”) and \_\_\_\_\_ (“\_\_\_\_\_”) (the  
 “Agreement”), the parties, through their respective counsel, agree as follows with regard to the  
 confidentiality of documents and other information that might hereafter be exchanged between  
 the parties for use in mediation in the above-referenced matter:

***1. Purpose and Limits of this Agreement***

1.1 The voluntary exchange of documents and other information in this matter may involve confidential, proprietary, trade secret, private, sensitive, or privileged information, the disclosure of which would qualify for protection from public disclosure and from use for any purpose other than this mediation. Such documents and information may also include documents and other information that the parties may specifically develop for use in mediation.

1.2 This Agreement does not confer blanket protections on all disclosures, documents or information that may be exchanged between the parties, and extends only to the specific materials entitled to confidential treatment under the applicable legal principles and/or the mediation confidentiality statutes, rules and case law applicable to this matter.

## 2. *Designating Protected Material*

2.1 “Confidential” Defined. “Confidential” shall mean documents, testimony, disclosures and information that contain confidential, proprietary, trade secret, private, sensitive, or privileged information, the disclosure of which would qualify for protection from public disclosure and for use for any purpose other than mediation in the above-referenced matter, including such information that, if disclosed outside of such mediation, could be detrimental to the conduct of a party’s or non-party’s business or that of their respective customers or clients. “Confidential” shall also mean documents and other information that the parties specifically develop for use in mediation in the above-referenced matter.

2.2 Designation. Any party as “Designator” may designate information or items for protection under this Agreement as “CONFIDENTIAL” by affixing the legend – “CONFIDENTIAL” – to each page that contains protected material; *provided, however,* that such materials must qualify for such protection under appropriate standards. To the extent practicable, only those parts of documents, items, or oral or written communications that require protection shall be designated. Mass, indiscriminate, or routinized designations are prohibited. Designation under this Agreement is allowed only if the designation is necessary to protect material that, if disclosed to persons not authorized to view it, would cause invasion of privacy, or competitive or other recognized harm. Material may not be designated if it has been made public or if designation is otherwise unnecessary to protect a confidentiality, secrecy or privacy interest.

2.3 Inadvertent Failure to Designate. An inadvertent failure to designate does not, standing alone, waive protection under this Agreement. Upon timely assertion or correction of a designation, all recipients must make reasonable efforts to ensure that material designated as “CONFIDENTIAL” is treated according to this Agreement.

### **3. *Challenges to Confidentiality Designations***

3.1 In the event a party disagrees with a designation, that party shall serve a written notice of objection on the Designator, which specifically identifies the designated material and/or information being challenged. Within ten (10) business days of the notice of objection, the parties are required to meet-and-confer in an effort to resolve the dispute. If the parties are unable to come to a resolution, the party seeking to retain the designation of “CONFIDENTIAL” shall seek an order from a court or other tribunal having jurisdiction over the parties and this dispute as to whether the designation should be retained or removed.

3.2 Until such time as an order is entered, the challenged materials and/or information shall be treated as designated.

### **4. *Access to Designated Material***

4.1 Basic Principles. A receiving party may use designated materials only for this mediation. Designated material may be disclosed only to the categories of persons and under the conditions described in this Agreement.

4.2 Disclosure of “CONFIDENTIAL” Material. Unless permitted in writing by the Designator or otherwise ordered by an order of a court or other tribunal having jurisdiction over the parties and this dispute, a receiving party may disclose any material designated as “CONFIDENTIAL” only to:

- a. the Mediator and the Mediator’s personnel;
- b. attorneys of record for any party and their paralegals, paraprofessional, clerical and secretarial staff employed by such attorneys;
- c. the parties, including their officers, directors, partners, members, and employees to whom disclosure is reasonably necessary for purposes of conducting and participating in mediation, and who have signed the Agreement to be Bound (Exhibit A);
- d. the author or recipient of a document containing the material, or a custodian or other person who otherwise possessed or knew the information; and

e. experts, consultants, and advisors employed or retained by counsel(s) of record for the parties to perform investigative work, research, analysis or other services related to conducting a mediation in this matter, and who have signed the Agreement to be Bound (Exhibit A);

**5. *Protected Material Subpoenaed or Ordered Produced in Another Action***

5.1 Subpoenas and Orders. This Agreement does not excuse non-compliance with a lawful subpoena or order issued by a court or other tribunal. The purpose of the duties described in this section is to alert the interested parties to the existence of this Agreement and to give the Designator an opportunity to protect its confidentiality, privacy and/or secrecy interests in the court or other tribunal where the subpoena or order has been issued.

5.2 Notification Requirement. If a party is served with a subpoena or an order issued in another matter that compels disclosure of any information or items designated in this matter as “CONFIDENTIAL,” that party must:

5.2.1 Promptly notify the Designator in writing. Such notification shall include a copy of the subpoena or order;

5.2.2 Promptly notify in writing the party who caused the subpoena or order to issue in the other action that some or all of the material covered by the subpoena or order is subject to this Agreement. Such notification shall include a copy of this Agreement; and

5.2.3 Cooperate with all reasonable procedures sought by the Designator whose material may be affected.

5.3 Wait for Resolution of Protective Order. If the Designator timely seeks a protective order, the party served with the subpoena or order shall not produce any information designated in this matter as “CONFIDENTIAL” before a determination by the court or other tribunal where the subpoena or order issued, unless the party has obtained the Designator’s written permission to do so. The Designator shall bear the burden and expense of seeking protection of its confidential material in the issuing court or tribunal.

**6. *Unauthorized Disclosure of Designated Material***

6.1 If a receiving party learns that by inadvertence or otherwise, it has disclosed designated material to any person or in any circumstance not authorized under this Agreement, it must immediately (a) notify in writing the Designator of the unauthorized disclosure(s), (b) use its best efforts to retrieve the unauthorized copies of the designated material, (c) inform the person or person to whom unauthorized disclosures were made of all terms of this Agreement, and (d) use reasonable efforts to have such person or persons execute the Agreement to be Bound (Exhibit A).

**7. *Final Disposition***

7.1 Subject to the exceptions set forth in paragraph 7.2, below, within thirty (30) after the close of the last day of mediation conducted in the above-referenced matter, each receiving party shall return all material designated as “CONFIDENTIAL” to the Designator or destroy such material, including all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any designated material. The receiving party must submit a written certification to the Designator by the 30-day deadline that (a) identifies all designated materials that were returned or destroyed, and (b) affirms that the receiving party has not retained any copies, abstracts, compilations, summaries, or any other format reproducing or capturing any of the designated material.

7.2 With regard to any material designated as “CONFIDENTIAL” that may be provided to the mediator(s) and made a part of the mediator’s personal files and working papers, the mediator(s) shall have no obligation to return such materials to the Designator, and may retain such materials as part of his / her / their archival files and working papers in this matter.

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

**EXHIBIT A**  
**AGREEMENT TO BE BOUND**

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the foregoing stipulated agreement in that certain matter pending before the \_\_\_\_\_, as Case No. \_\_\_\_\_. I agree to comply with and to be bound by all of the terms of the Agreement, and solemnly promise that I will not disclose in any manner any information or item that is subject to the Agreement to any person or entity except in strict compliance with said order.

I further agree to submit to the jurisdiction of the [court or other tribunal] in the above-referenced matter or any court of competent jurisdiction for the purpose of compliance with and enforcement of the Agreement, even if such proceedings occur after the conclusion or close of the above-referenced proceedings. I specifically agree, upon threat of penalty of contempt and other civil remedies, to be bound by the terms of the Agreement.

City and State where sworn and signed: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name