

AGREEMENT TO MEDIATE

This agreement is made this __ day of _____, 2013, between the undersigned Participants, and Philip R. Diamond ("Mediator"), with respect to the matter entitled "ABC v. XYZ" as follows:

1. The parties agree to submit their dispute to mediation conducted by Mediator. Participants understand that mediation is entirely voluntary and any party may terminate it at any time. The Mediator has no power to decide issues or make decisions for the parties. Nor is the Mediator acting as a representative or advocate for any of the parties and therefore is not providing legal advice or counsel for any participant. The parties are advised and encouraged to obtain legal advice throughout the mediation process and before signing any settlement agreement. The mediator's role will be to assist in the negotiation by facilitating the parties' communication. No guarantee of a specific outcome is made.

2. Mediator may hold sessions/caucuses with only one party. Such caucuses are designed to improve the Mediator's understanding of the Participant's position and to explore options. Information gained by the Mediator during a caucus may be shared with other Participants unless the Participant requests that the information remain confidential.

3. All communications in connection with the mediation are confidential pursuant to California Evidence Code §§1115-1128. The undersigned parties and counsel agree that E.C. §1125(a)5 shall not apply and thus the mediation (for purposes of confidentiality) shall continue until a party notifies the other party(ies) that the mediation has ended. Thus, further communication with the mediator shall be confidential under the meaning of E.C. §1115-1128.

4. Participants agree that the Mediator (or any member of his staff) will not be called to testify regarding their dispute or to provide any materials from the mediation in any discovery or court proceedings. Upon conclusion of the mediation, Mediator's files may be destroyed.

5. For a two party mediation, Participants agree to pay the Mediator's fee for services rendered in the amount of \$450.00 per hour (\$225.00 per hour/party). Fees are charged for time spent in preparation for the mediation (including without limitation reviewing briefs and other file materials, site inspections, communications with counsel and others, etc.), the mediation session(s), preparation and review of emails and other correspondence, telephone calls, and travel time outside of Marin or San Francisco Counties. Unless the mediation is held in a facility provided by the parties, there is an administrative fee in the total amount of \$175/day/party. Fees are based on time expended by Mediator. Fees shall be shared equally by the Participants, unless a different arrangement is made. There is a four (4) hour minimum charge, and Participants agree to make an initial deposit in the amount of \$5,750.00 (\$2,875.00 per party) within ten days after Mediator's request therefor, or by no later than fourteen days in advance of the initial mediation session, whichever is earlier. If the matter is not fully resolved at the close of the initial mediation session and Participants request Mediator to continue with further settlement efforts, Participants agree to make further deposits as may be requested by Mediator (including without limitation a further deposit in the amount of \$5,750.00 (\$2,875.00 per party) at least fourteen days in advance of any further mediation session(s)). Mediation services will be considered concluded when at least one party clearly communicates to the Mediator and all other parties that the mediation process has concluded. Any balance remaining in the deposit upon conclusion of all mediation services will be refunded to the parties. The four-hour minimum charge is forfeited if the mediation is cancelled within forty-eight (48) hours prior to the mediation. Invoices are due and payable upon receipt. There shall be a 1.0% monthly late

payment charge on any amount unpaid for more than thirty (30) days. Counsel and the respective parties they represent in this matter are jointly and severally responsible for the payment of all fees and costs payable under this Agreement to Mediate.

6. This Agreement to Mediate may be executed in counterparts. Facsimile or electronic signatures shall have the same force and effect as originals.

PHILIP R. DIAMOND, Mediator

APPROVED AND AGREED:

John Doe, Esq.
Attorneys for Plaintiff ABC

Jane Roe, Esq.
Attorneys for Defendant XYZ