



## **Mediation Confidentiality Agreement (8/23/2022)**

All mediations conducted through the SDNY Mediation Program are subject to the following confidentiality provisions. All participants in any mediation shall execute a confidentiality agreement containing the following provisions and provide copies to the mediator and to the other participants before mediation begins. Signed confidentiality agreements should be maintained by the participants themselves, not the Mediation Office. In addition, these confidentiality provisions incorporate the confidentiality protections afforded by [Rule 408](#) of the Federal Rules of Evidence, New York law, and the [Model Standards of Conduct for Mediators](#), promulgated by the American Bar Association, American Arbitration Association, and the Association for Conflict Resolution (September 2005).

- a. Any communications made exclusively during or for the mediation process shall be confidential except as expressly set forth herein. The mediator<sup>1</sup> shall not disclose any information about the mediation process, communications, or participants to anyone except for Mediation Office staff. Mediation Office staff must also maintain confidentiality. Administrative aspects of the mediation process, including the assignment of a mediator, scheduling and holding of sessions, and a final report that the case has concluded or not concluded through mediation, or that parties failed to participate, are not confidential and will appear on the docket of the case.
- b. The participants may not disclose discussions or other communications with the mediator unless (i) all parties agree, (ii) disclosure is required by law or by the [Rules of Professional Conduct](#), or (iii) otherwise confidential communications are relevant to a complaint against a mediator or the Mediation Program arising out of the mediation. The parties may agree to disclose information provided or obtained during mediation to the Court while engaged in further settlement negotiations with a District or Magistrate Judge. The parties may disclose to the Court the terms of settlement if either party seeks to enforce those terms.
- c. All mediation participants will inform the mediator, and each other, in advance of any mediation session of the names of all persons who will attend, participate, or observe any communications during or for the mediation. No person may attend, participate, or be allowed to observe or listen to the mediation without the prior consent of all parties and the mediator.
- d. Neither the mediator nor any participant may record or permit the recording of any part of a mediation session including audio, video, chat, closed-captions, or any other methods of communication whether the mediation session is conducted in person, or through telephone or video conference.
- e. Understanding that the security of any electronic or telephonic platform cannot be guaranteed, the mediator and all participants in a mediation conducted by telephone or video conference shall take reasonable and

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<sup>1</sup> As required by the context, 'mediator' includes co-mediator, mentor mediators, authorized observers, or on-boarding mediators.

appropriate security precautions, or disclose to the mediator and all participants that they are unable to do so in advance of any session. Such precautions must include taking steps so that only intended participants have access to the session, and may include using a secure WiFi/Ethernet connection for all communications related to the mediation session, using secure meeting access codes, enabling an electronic waiting room, or locking meetings once all participants have convened.

f. Documents and information otherwise discoverable under the Federal Rules of Civil Procedure are not shielded from discovery merely because they are submitted or referred to in the mediation.

g. The parties may not call the mediator as a witness or deponent, or compel the mediator to produce documents that the mediator received or prepared for mediation.

h. This Agreement may be signed via facsimile or pdf signature and each such signed copy may be deemed a duplicate original.

The undersigned have read and agree to comply with this agreement.

Dated:

Plaintiff(s):

Defendant(s):

Attorney(s) for Plaintiff(s):

Attorney(s) for Defendant(s):

Interpreter(s):

Observer(s):

Mediator(s):