

## **MEDIATION CONFIDENTIALITY AGREEMENT**

This Mediation Confidentiality Agreement (“Agreement”) is dated \_\_\_\_\_ and is entered into by and between the undersigned parties and Greg David Derin, who will serve as mediator pursuant to the terms of this Agreement. To promote communication among the parties and the mediator and to facilitate settlement of the subject dispute, all parties agree as follows:

1. **Role of the Mediator.** The parties are engaged in a dispute which they desire to resolve cooperatively through mediation. The parties have selected Greg David Derin to act as a mediator. The mediator is a neutral facilitator whose role is to improve communication and assist parties who desire voluntarily to resolve their disputes. The mediator will have broad authority to conduct the process in any manner intended to achieve a fair and impartial hearing. The mediator does not act as an attorney or advocate for or give legal, tax or other professional advice to any party. Participation in this process shall not be deemed to create, represent or imply the existence of any professional-client or fiduciary relationship between any party and the mediator. Parties are encouraged to consult with their own attorney and other advisors regarding their legal and other rights and responsibilities.

2. **Confidentiality.** This mediation is conducted pursuant to California Evidence Code §§703.5, 1115-1128, 1152 and/or Federal Rules of Evidence, Rule 408, and other sections or successor sections of the California Evidence Code and any Federal law counterparts, if applicable, governing among other things, the confidentiality of mediation proceedings. In addition, the parties and counsel agree not to disclose any conduct or statements made in connection with the mediation or any writings relating to the mediation to any other person or in the media. The mediator may not testify in any proceedings and the parties shall not seek to have the mediator testify or produce any records, reports, notes or other documents reviewed, received or prepared by him during the course of the mediation process.

Subject to certain limitations set forth in applicable statutory and case law, statements made during or in connection with the mediation are intended to be confidential, are intended to be privileged settlement communications, are made without prejudice to any party’s legal position, are not intended to be subject to discovery, and intended by the parties to be not admissible in any subsequent proceedings. However, written and oral agreements reached by the parties in the course of the mediation may, under certain circumstances, be admissible in a subsequent proceeding.

Pre-conference and post-conference communications between the mediator and any party or counsel related to the mediation shall be confidential to the same extent as if they had occurred at the mediation session. The mediator may consult with others about this matter and may describe this matter for educational purposes as long as he does not disclose the parties’ names or any other information which would specifically identify the parties.

Since the parties are disclosing confidential information in reliance upon this agreement of confidentiality, any breach of this Agreement would cause irreparable injury for which monetary damages would be inadequate. Consequently, any party to this Agreement may obtain an injunction to prevent disclosure of any such confidential information in violation of this Agreement.

3. **Release and Indemnity.** The mediator shall have no liability for any act or omission in connection with the mediation or the mediation process. The parties hereby release the mediator from any and all claims arising out of their failure to reach agreement or their decision to enter into any agreement, the terms of any agreement reached, or any other aspect of the mediation process. The mediator makes no representation that the participants will reach an agreement on any of the issues, disputes or controversies discussed in the mediation. Any party who brings any claim, action or proceeding of any nature against the mediator or who seeks to have the mediator testify or produce records shall be responsible to indemnify the mediator for any costs, expenses, liabilities, losses or damages incurred, including but not limited to attorneys' fees and expenses incurred.

4. **Potential Conflicts of Interest.** The mediator is not aware of any actual or potential conflicts of interest which would affect his ability to be impartial. The parties acknowledge that the mediator may have served as a mediator or as counsel in connection with other disputes in which one or more of the parties was a participant, or counsel for the litigants in this dispute acted as counsel. By signing this Agreement, the parties expressly waive any actual and potential conflicts which may exist.

5. **Admissibility of Agreement.** Notwithstanding the terms of Paragraph 2 above, this Agreement shall be admissible in any subsequent proceeding to prove the existence of the Agreement and/or to enforce its terms. It is the intention of the parties that any written settlement agreement prepared in the course of or pursuant to this mediation, and signed by the parties, be binding upon the parties and admissible as provided in California Evidence Code Section 1123 and enforceable by motion under Code of Civil Procedure §664.6 or by any other procedure permitted by law.

This Agreement is signed before the commencement of the mediation by each of the persons whose signature appears below.

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Greg David Derin, Mediator

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