

Lee Jay Berman

Mediator

The Mediation Alliance, Inc.

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**CONFIDENTIALITY AGREEMENT**

In order to promote communication among the parties and the mediator and to facilitate settlement of the dispute, all the undersigned parties agree that neither Lee Jay Berman nor The Mediation Alliance, Inc., (collectively the "Mediator") has liability for any act or omission in connection with the mediation of the dispute (the "Dispute") between the undersigned, and further agree as follows:

The Mediator is a neutral intermediary who may not act as an advocate for any party. For purposes hereof "Mediator" shall also include any third party engaged by The Mediation Alliance, Inc. for the specific purposes of mediating the Dispute.

All statements made during the course of the mediation are privileged settlement discussions, are made without prejudice to any party's legal position, and are non-discoverable and inadmissible for any purpose in any legal proceeding. The privileged character of any information is not altered by disclosure to the Mediator. Disclosure of any records, reports or other documents received or prepared by the Mediator cannot be compelled. The Mediator shall not be compelled to disclose or to testify in any proceeding as to (i) any records, reports, or other documents received or prepared by the Mediator or (ii) information disclosed or representations made in the course of the mediation or otherwise communicated to the Mediator in confidence.

No aspect of the mediation shall be relied upon or introduced as evidence in any arbitration, judicial or other proceeding, including but not limited to (a) Views expressed or suggestions made with respect to possible settlements, (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.

Since the parties are disclosing sensitive 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.

Any party breaching this agreement shall be liable for and shall indemnify, defend and hold harmless 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.

California Evidence Code § 703.5 and 1115 through 1128, and 1152.5 shall apply to this mediation. As required by subsection (c) thereof, a portion of the section is set out below.

(a) Subject to the conditions and exceptions provided in such section, when persons agree to conduct and participate in a mediation for the purpose of compromising, settling, or resolving a dispute:

(1) Evidence of anything said or of any admission made in the course of mediation is not admissible in evidence, and disclosure of any such evidence shall not be compelled, in any civil action in which, pursuant to law, testimony can be compelled to be given.

(2) Unless the document otherwise provides, no document prepared for the purpose of, in the course of, or pursuant to, the mediation, or copy thereof, is admissible in evidence, and disclosure of any such document shall not be compelled in any civil action in which, pursuant to law, testimony can be compelled.

(b) Subdivision (a) does not limit the admissibility of evidence if all persons who conducted or otherwise participated in the mediation consent to its disclosure.

By executing this Confidentiality Agreement, each of the undersigned agrees (i) to be bound by its terms and (ii) that the undersigned acknowledge that the Mediator would not agree to mediate the matter among the parties without the execution and delivery of the Agreement to the Mediator.

Participants: \_\_\_\_\_  
\_\_\_\_\_  
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**CONFIDENTIALITY AGREEMENT (Page 2)**

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