

MEDIATION AND CONFIDENTIALITY AGREEMENT

PHYLLIS G. POLLACK, ESQ. has been retained by the parties to assist them in resolving their dispute. The undersigned parties acknowledge, understand and agree to the following:

1. **Role of the Mediator**: The Mediator is an impartial, neutral intermediary, whose role is to assist the participants in reaching a settlement by negotiation between or amongst themselves. The Mediator cannot impose a settlement but will assist the participants towards achieving their own settlement. The Mediator does not act as an attorney or advocate for or give legal, tax or other professional advice to any participants. In this regard, no professional-client or fiduciary relationship is created between any participant and the Mediator.
2. **Attorney Consultation**: The participants acknowledge that they are free to consult an attorney at any time during the Mediation process. In the event the dispute is settled, the participants should have the settlement agreement independently reviewed by their own counsel prior to signing it.
3. **Mediation Process**: The goal of mediation is to reach a mutually acceptable resolution of the issues involved and to take all other steps necessary to accomplish that resolution.

All issues should be negotiated in good faith. Therefore, it is essential that the parties share all pertinent information.

A series of meetings are held until resolution is reached on all issues. Most meetings are held with all of the clients - this is called joint session. However, any party or the Mediator, may request a private session - a session between the Mediator and each client individually. The contents of the private session remains confidential (see sections 4 and 5 below).

Unless the participants otherwise agree, the Mediator may in her sole discretion employ one or more of the following methods or techniques:

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| a) Use joint and private sessions | e) Propose solutions, in whole or part |
| b) Correct power imbalances | f) Offer settlement suggestions |
| c) Offer opinions | g) Facilitate interest based negotiations |
| d) Facilitate rights based negotiations | |

4. **Applicable Statutes/Confidentiality**: The Mediation is conducted pursuant to California Rules of Court Rules 3.850 through 3.878, and Code of Civil Procedure §1775 et seq. and California Evidence Code §§703.5, 1115-1128, 1152 and other sections or successor sections of the California Evidence Code, and other California statutory law or Rules of Court and any Federal law counterparts, including statutory law, case law, General Orders and Local Rules when and where applicable governing, among other things, the confidentiality of mediation proceedings. The Mediator may not testify in any proceedings pursuant to these statutes and the participants shall not seek to have the Mediator testify.

Subject to certain limited exceptions set forth in the Evidence Code and case law, statements made during the mediation are confidential, are generally not subject to discovery outside the mediation process, and are not admissible in any subsequent proceeding. However, written or oral agreements reached by the parties in the course of the mediation may, under certain circumstances, be admissible in a subsequent proceeding.

In this connection, the undersigned agree that this Mediation and Confidentiality Agreement and any written settlement or other agreement or memorandum of understanding resulting from this mediation are binding, enforceable, and admissible in any subsequent proceeding to enforce those agreements. This includes any written agreement signed by less than all of the mediation participants to resolve, clarify or establish the outcome of any issue that arises solely between them during the course of the mediation and also includes any communications, documents or writings (such as side agreements) transmitted or prepared and/or signed solely between a party and its respective counsel.

Unless the participants otherwise agree, whatever is discussed in a separate session shall remain confidential.

5. **Exceptions to Confidentiality:**

- a. The agreement to mediate and the final mediation agreement shall not be confidential unless marked "confidential" on their face. California Evidence Code §1120.
- b. Statements, documents and other materials subject to discovery that were not specifically prepared for use in the mediation are not confidential.
- c. Communication regarding a threat of substantially bodily injury or death is not confidential.

Post-Mediation communications between the Mediator and any participant related to the mediation shall remain confidential. However, the mediation shall be deemed concluded if no communications regarding settlement occur between the participants and among themselves and/or with the Mediator for a period of 180 days after the first mediation session. The participants agree that the Mediator may consult with colleagues about the matter and may describe this matter in writings or orally for educational purposes so long as the Mediator does not disclose the participants' names or any other information which would specifically identify the participants.

6. **Voluntary Participation:**

- a. Any party may terminate the mediation without cause. However, a party may only terminate the mediation during a mediation session. Thus, if a party decides to terminate mediation during a non-mediated time, that party agrees to return to the mediation to terminate the mediation.
- b. The Mediator may terminate the mediation if in her good faith determination a resolution is highly unlikely or the parties are not negotiating in good faith.

7. **Limited Liability, Release and Indemnification:** The participants hereby agree to release the Mediator from any and all claims arising out of their failure to reach an agreement or their decision

to enter into any agreement or any other aspect of the mediation process. The participants further hereby agree to release the Mediator from all claims and from all liability arising from the Mediator providing drafts of settlement agreements or of any provision(s) to be included in settlement agreements to the parties. Further, 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 shall be responsible to indemnify the Mediator for her time spent on the matter to be charged at her regular hourly rate of \$400, any expenses, loss or damage incurred, without limitation, attorney's fees and expenses incurred in connection with such claim, action or proceeding brought by such participant.

8. **Mediator Compensation: Mediator Compensation:** The compensation of the Mediator is \$275.00 per hour to be split equally among the parties unless otherwise agreed upon, and is due and payable at the end of each session. Each undersigned party and his/her/its/ own respective attorney(s) hereby further agree to be jointly and severally be liable to Ms. Pollack for all sums due representing that party's share of the mediation fees under this agreement.
9. **Potential Conflicts of Interest:** The Mediator is unaware of any actual or potential conflicts of interest which would amount to grounds for disqualification in accordance with California Code of Civil Procedure §170.1 (applicable to judges and by reference to mediators) except for the following which have been disclosed to the participants: _____

To the extent any actual or potential conflicts of interest exist, the Mediator does not believe same will affect her capacity to be impartial. By signing this Agreement, the participants expressly waive the conflicts and potential conflicts disclosed above. If any participant believes that the Mediator is not impartial, said participant should immediately terminate the mediation.

Dated: _____

Phyllis G. Pollack, Esq.
(Mediator)

(Signature of Mediator)

(Plaintiff)

(Signature of Plaintiff)

(Attorney for Plaintiff)

(Signature of Attorney)

(Defendant)

(Signature of Defendant)

(Attorney for Defendant)

(Signature of Attorney)