



SILICON VALLEY MEDIATION GROUP

CONFIDENTIALITY AGREEMENT

Case Name: _____

Case No: _____

The parties (“Parties”) to this Confidentiality Agreement (“Agreement”) hereby acknowledge that they have submitted a conflict to mediation, a confidential process wherein a mediator member of the Silicon Valley Mediation Group will assist them in seeking a mutually acceptable solution to their dispute. In order to promote communication and to facilitate resolution of the dispute, the Parties agree that the process must occur in an atmosphere of confidentiality and by signing below agree as follows:

1. The provisions of California Evidence Code §1115 et seq. and 703.5, shall apply to all aspects of the mediation and any and all civil judicial or administrative proceedings. This mediation process is to be considered settlement negotiations for the purpose of all state and federal rules protecting disclosures made during such process from later discovery and/or use as evidence in any arbitral, judicial, or other proceeding.

2. All statements or documents made or prepared during the course of the mediation (including those made in post mediation follow-up until such time as a settlement agreement or impasse is reached) are privileged, made without prejudice to any party's legal position, and are non-discoverable and inadmissible for any purpose in any legal proceeding. The obligations contained in this Agreement shall not apply to any information which:

- (a) is available to the public through no breach of this Agreement by the non-disclosing Party; or
- (b) was in the possession of the non-disclosing Party prior to the mediation; or
- (c) is received independently from a third party free to disclose such information to the non-disclosing Party.

3. The privileged character of any information disclosed in mediation is not altered by the disclosure. 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, photographs, drawings, or other documents prepared for or in the course of the mediation, or 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.

4. Except as provided by law, the Parties agree that no aspect of the mediation shall be relied upon or introduced as evidence in any arbitral, judicial, or other proceeding.

5. The Parties agree that breach of this Agreement would cause irreparable injury and that monetary damages would be an inadequate remedy, since the Parties are relying upon this Agreement of confidentiality in disclosing sensitive business and/or personal information. Accordingly, the Parties agree and stipulate that any party to this Agreement may obtain an injunction to prevent disclosure of any such confidential information in violation of this Agreement.

6. Any party breaching this Agreement shall be liable for and shall indemnify 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.

7. Any written settlement agreement prepared during or at the conclusion of the mediation is subject to disclosure, binding, enforceable, and admissible to prove the existence of and/or to enforce the agreement under California Code of Civil Procedure §664.6, if applicable, or otherwise.

8. The Parties agree that the "Agreement to Mediate," notwithstanding provisions to the contrary, is excepted from the terms of this Agreement and may be offered as evidence at any hearing relating to the terms of the Agreement or the confidentiality of the mediation.

9. By initialing at the end of this paragraph the Parties agree that any agreement reached in the mediation and reduced to writing and signed by each of them shall be an exception to the confidentiality restrictions of Section 4 of this Agreement ("Settlement"), whether prepared at the time of the mediation or thereafter pursuant to Settlement shall be binding and enforceable and may be used as evidence of the specific terms of the agreement reached by the Parties.

Understood and Agreed: _____

Dated this ____ of _____, 20____ and intended by all Parties to be effective from the commencement of the first mediation related communications between the Parties and as between the Parties or a Party and the mediator, made in connection with the mediation by each of the persons whose signatures appear below.

Mediator

