

## **MEDIATION GUIDELINES & ENGAGEMENT**

Each party and each's respective Attorney signing this document has agreed to and does hereby retain JAMES E. HOLMES to be the Mediator in the dispute between the parties (Civil Action No. \_\_\_\_\_, Superior Court of \_\_\_\_\_ County). In doing so each agrees to the following terms and stipulations:

1. The purpose of mediation is to attempt in good faith to find a mutually acceptable resolution of the dispute. The Mediator, as the neutral, will conduct the discussions and negotiations and assist the parties and counsels in endeavoring that all parties understand the facts asserted and the contentions of all parties.

2. If there is to be a reasonable chance to be successful and reach that mutually acceptable resolution of your dispute, open and honest communication and negotiation is absolutely essential. Thus, all parties agree to and commit to making complete and accurate disclosure of all matters relevant to the dispute and its resolution, including but not being limited to all relevant information that would be available through the discovery process in a legal proceeding. All parties are hereby informed and acknowledge that the deliberate withholding of information or the purposeful supplying of incorrect information could result in any resolution reached being set aside.

3. All participants agree to conduct himself or herself so as not to disrupt or hinder the discussions or the negotiations; each participant shall treat all others with respect and acknowledges each's right to state fully and without interruption his/her facts and contentions. Additionally, any remarks asserting blame of another participant or making any personal attack will not be made during any joint session, being reserve for a private session (a caucus) with the Mediator.

4. All information gathered in the mediation session(s) is confidential and privileged but for one exception; all participants acknowledge and understand that this confidentiality and privileged clause does not excuse the Mediator's statutory duty to report any abuse revealed during the mediation process. This Mediator, the parties, the attorneys, and any other participants in the mediation specifically and expressly pledge to abide by this and to in fact treat all information gathered as confidential and privileged. If the Mediator decides to go into separate and private session with each side - referred to as a 'caucus' - confidential information disclosed in such a caucus will not be divulged to the other party without the consent of the party making the disclosure.

5. The parties and their attorneys agree NOT to call this Mediator or any person he has consulted with or engaged to assist him in the mediation process to testify as a witness in any proceeding or to subpoena or otherwise seek discovery of any written materials developed for or in the course of this mediation. And, in no event will this Mediator volunteer to testify or otherwise to provide evidence or assistance on behalf on any party.

6. All participants acknowledge and understand that the Mediator is not acting in the capacity of an attorney and does not offer any legal, tax, or financial advice; all parties have been informed of and have been encouraged to retain independent legal counsel. Additionally, each party has been informed of the right to and has been encouraged to have counsel and/or an accountant or financial advisor review any agreement reached prior to signing the final document.

7. The Mediator is acting as a facilitator/evaluator to assist the parties as best he can to resolve their dispute. It is agreed that absent misconduct, fraud, or gross negligence, the Mediator shall not be subject to liability to the parties as a result of his services as the Mediator.

8. The parties agree to compensate the Mediator at the current hourly rate of \$200.00 per hour. The Mediator shall be compensated for all time in the mediation session(s), for up to one hour preparing for the mediation when reviewing documents or other material relevant to the mediation or submitted by the participants, and for all time preparing any agreement reached as a result of the mediation. Unless otherwise specifically agreed, the fee will be divided equally between the parties, and payment shall be due at the end of each mediation session.

9. By signing this document, all parties, attorneys, and other involved persons agree to participate in this mediation IN and WITH GOOD FAITH and to work toward that mutually acceptable resolution of some or all of the disputed issues.

This \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

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James E. Holmes, Mediator