



## Agreement to Mediate

We, the undersigned, agree to voluntarily enter the mediation process and understand and consent to the following:

### 1. The Mediation Process

- a) The process will include, at a minimum, an opportunity for all participating parties to be heard, the identification of issues to be resolved, the generation of alternatives for resolution, and if the parties so desire, the development of a Memorandum of Understanding or Agreement.
- b) The parties expressly understand and agree that any agreements reached as a result of mediation will be binding and should be reviewed by their legal counsel before finalization.
- c) If a settlement or partial settlement is reached in mediation, it is the responsibility of the parties or their legal counsel to draft settlement documents and releases.

### 2. Guidelines

- a) All discussions of substantive issues are to be held in the mediation session. Telephone calls prior to the mediation are for scheduling purposes only.
- b) The parties acknowledge that open and honest communication is necessary for the mediation process to work effectively. The parties agree to come to mediation with all relevant information and documents necessary to enable them to reach a fair, informed and complete settlement.
- c) The parties agree to bring to the mediation individuals who have full knowledge of issues and full authority to settle the dispute. This means the complete discretion to consider and decide, at the mediation, upon a range of monetary and other forms of resolution.
- d) The parties agree to furnish each other and the mediator with a list of those to attend the mediation. No one else may attend the mediation session without the permission of the mediator and the parties.
- e) Each party agrees to fully and honestly disclose all relevant information and writings as requested by the mediator and all information requested by any other party of the mediation if the mediator determines that the disclosure is relevant to the mediation discussions.
- f) The parties agree to refrain from pre-emptive maneuvers and adversarial legal proceedings (except in the case of an emergency necessitating such action) while actively engaged in the mediation process.
- g) The parties agree to arrange for and incur any costs of the physical space needed to conduct the mediation session. This space must consist of, at a minimum, a meeting room large enough to accommodate all participants and an equivalent or smaller space to be used for private caucus sessions. Both areas must have a full door to facilitate confidential communication. The parties may request the mediator rent appropriate space at the parties' expense.



### 3. Role of the Mediator

- a) The mediator will act as a neutral facilitator to guide the parties through the process.
- b) The mediator will help the parties communicate more effectively, gather and analyze information, define issues, generate options for resolution and evaluate alternatives.
- c) The mediator will assist the parties in assessing the strengths and weaknesses of their options.
- d) The mediator will not render judgments or make decisions. The mediator will propose options for settlement only on the request and with the consent of the participants.
- e) The mediator may provide legal information, but not legal advice. The parties are strongly encouraged to seek legal advice before commencing the mediation.
- f) The mediator shall be bound by the ADR Institute of Canada's Model Code of Conduct for Mediators.

### 4. Role of Legal Counsel

- a) Each party has the opportunity to have legal counsel present during mediation or to consult with legal counsel at anytime during mediation and is strongly encouraged to do so.
- b) Legal counsel may participate fully as an advocate for their clients during the mediation, bearing in mind that it may be appropriate and beneficial for the participants to speak directly to each other or to the mediator.

### 5. Confidentiality

- a) The parties, their legal counsel and the mediator agree that the mediation will take place on a confidential basis. None of them will voluntarily disclose to anyone who is not a party to the mediation session anything said or done during the mediation process, or any documents submitted during or for the process, without the written consent of all parties.
- b) The parties recognize that mediation proceedings are settlement negotiations and that all offers, promises, conduct and statements, whether written or oral, made in the course of the proceedings, are inadmissible in any arbitration or court proceeding. Nor shall written communications, draft resolutions, and any unsigned mediated agreements be admissible in any arbitration or court proceeding. However, in the event the parties do reach a settlement agreement, the terms of that settlement will be admissible in arbitration or court proceedings required to enforce it, unless the parties agree otherwise.
- c) No information or document provided during mediation or for the purpose of mediation shall be used for any other purpose, including discovery, cross-examination, in an affidavit or at an arbitration or trial, unless otherwise discoverable. Evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation session.
- d) The parties agree that any information disclosed to the mediator in private caucus may be used at the mediator's discretion to further settlement discussion, unless expressly prohibited by the party making the disclosure.
- e) The parties agree that they will not summons, subpoena, or seek access to any documents prepared for or during the mediation, including the notes and records of the mediator. The mediator shall not be called as a witness by either party in any proceeding. In the event any participant causes the mediator to be served with a subpoena or other process in violation of this clause, such participant shall pay the mediator's reasonable costs, expenses and fees at the rate quoted below, including legal counsel fees, related to the violation.



- f) The parties understand the mediator has a legal and ethical responsibility to break confidentiality if:
- i. ordered to so by a judicial authority;
  - ii. required to do so by law or
  - iii. where the information discloses an actual or potential threat to human life or safety.

## 6. Termination of Mediation

- a) Participation in the mediation process is voluntary. The mediation may be terminated at any time by:
- i. a declaration of the mediator that a settlement has been reached;
  - ii. a declaration of the mediator that further efforts at mediation are no longer considered to be worthwhile;
  - iii. a declaration of any party to the mediation that the proceeding must be terminated.

## 7. Fees

- a) The parties agree to pay the mediator \$\_\_\_\_\_ per hour plus GST, billed in fifteen minute increments, for time conducting the mediation session(s) and in six minute increments for the following services:
- i. telephone conversations with the parties or their legal counsel after the initial consultation,
  - ii. reading briefs sent by the parties prior to the session, and
  - iii. the drafting of reports or recommendations if requested or required.
- b) The parties agree to pay the mediator all disbursements expended for the matter including, but not limited to:
- i. mileage costs for travel outside the 416 area code at \$0.50 per kilometer,
  - ii. photocopies at \$0.25 per page copied,
  - iii. faxes at \$0.25 per page received and sent,
  - iv. postage as used,
  - v. couriers as used,
  - vi. rental of meeting space as incurred,
  - vii. parking as incurred, and
  - viii. long distance charges at \$0.25 per minute.
- c) A deposit payment of \$500 toward the mediator's fees and expenses shall be paid to the mediator along with the signing of this agreement. Any unearned amount of this deposit fee will be refunded to the parties.
- d) The cost of the mediation shall be split equally between the parties, unless they agree otherwise. In any event, the parties shall be held jointly and severally liable for the mediator's fees and expenses.
- e) The parties will be provided with an accounting of fees and expenses by the mediator. The payment of such fees and expenses is due to the mediator no later than 15 days following the date of such billing, unless otherwise agreed in writing. A 1.5% monthly service charge will be made for any payment of fees and expenses not so timely made.
- f) Should payment not be timely made, the mediator may stop all work on behalf of the parties, including the drafting and/or distribution of the parties' agreement, and withdraw from the mediation. If collection or court action is taken by the mediator to collect fees and/or expenses under this agreement, the prevailing party in any such action and upon any appeal there from shall be entitled to legal counsel fees and costs therein incurred.
- g) The parties understand that they shall be responsible for two hours of the mediator's time at the above stated rate for any appointment which they do not attend and do not provide at least 24 hours advance notice of the cancellation.



## 8. Liability

- a) The mediator is not civilly liable for any act or omission done or made while engaged in efforts to facilitate a mediation, unless that act or omission was done or made in bad faith, with malicious intent or in a manner exhibiting a willful, wanton disregard of the rights, safety or property of another.
- b) The parties release and indemnify the mediator from any claims arising out of any agreements made during or as consequence of the mediation.

**WE HAVE READ AND UNDERSTOOD THE TERMS OF THIS AGREEMENT  
TO MEDIATE AND HEREBY AGREE TO BE BOUND BY ITS TERMS.**

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 200 \_\_\_\_.

\_\_\_\_\_  
(Plaintiff)

\_\_\_\_\_  
(Counsel)

\_\_\_\_\_  
(Plaintiff)

\_\_\_\_\_  
(Counsel)

\_\_\_\_\_  
(Defendant)

\_\_\_\_\_  
(Counsel)

\_\_\_\_\_  
(Defendant)

\_\_\_\_\_  
(Counsel)

\_\_\_\_\_  
(Mediator)