

**BETWEEN:**

**AGREEMENT TO MEDIATE  
AND  
TERMS OF MEDIATION**

The parties agree to mediate with \_\_\_\_\_, an ADR Chambers mediator, to attempt to settle their dispute in relation to the above-noted matter.

The provisions of the Agreement are as follows:

1. The Mediator is a neutral facilitator who will assist the parties in reaching their own settlement. The Mediator will not make decisions for the parties on how the matter must or should be resolved.

2. All written and oral communications made in the course of the mediation will be treated as confidential and without prejudice. Therefore:

a) The parties to this agreement agree that communications and documents shared in this mediation will not be disclosed to anyone who is not a party to this mediation unless:

- i) the person has signed this Agreement to Mediate;
- ii) the information is otherwise public; or
- iii) the person to whom the information is disclosed is a legal or financial advisor to a party to this agreement

b) The parties to this agreement agree that all communications made and documents shared in this mediation, which are not otherwise discoverable, will be shared on a without prejudice basis and, and will not be used in discovery, cross

examination, at trial or in any other way, in this or any other proceeding

c) Everyone signing this document, whether or not a party to the litigation, agrees to be bound by the confidentiality provision of this agreement. Any individual signing on behalf of a corporation represents that he or she has authority to bind the corporation to the confidentiality provisions in this agreement.

3. The Mediator will not reveal the names of parties or anything discussed in Mediation except that the Mediator may disclose such information:

a) to the lawyers or other professionals retained on behalf of the parties as deemed appropriate or necessary by the mediator;

b) to non-parties consented to in writing by the parties, as deemed appropriate or necessary by the mediator;

c) for research or education purposes, on an anonymous basis;

d) where ordered to do so by a judicial authority or where required to do so by law;

e) where the information suggests that there will be actual or potential threat to human life or safety, or the commission of a crime in the future.

4. a) The parties agree that they will not at any time, before, during, or after mediation call the Mediator or anyone associated with ADR Chambers as a witness in any legal or administrative proceedings concerning this dispute. To the extent that they may have a right to call the Mediator or anyone associated with ADR Chambers as a witness, that right is hereby waived.

b) The parties agree not to subpoena or seek any Court Order or use any other legal process in an attempt to demand the production of any records, notes, work product or the like, of the Mediator in any legal or administrative proceedings concerning this dispute. To the extent that they may have the right to demand these documents, that right is hereby waived.

c) If, at any later time, either party decides to subpoena the Mediator, the Mediator may move to quash the subpoena. That party agrees to reimburse the Mediator for whatever expenses he or she incurs in such an action, including lawyer fees, plus the hourly rate of the Mediator for time that is taken by this matter.

d) Any party calling the Mediator as a witness, issuing a subpoena against the Mediator or seeking production from the Mediator waives his/her/its right to rely upon and enforce the confidentiality provisions of this agreement as against the Mediator.

e) If any of the foregoing provisions is found to be unenforceable, the parties seeking to call the Mediator or anyone else associated with ADR Chambers as a witness

agree to pay the then applicable hourly rate of the mediator for the time that the Mediator spends dealing with such issues.

f) Notwithstanding the above, this Agreement to Mediate and any written agreement made and signed by the parties as a result of mediation, may be used in any relevant proceeding, unless the parties make a written agreement not to do so.

5. The Mediator shall not be liable for anything done or omitted with respect to the Mediation and has the immunity granted to a Judge under the legislation in place in the Province.

6. While all parties intend to continue with mediation until a settlement agreement is reached, it is understood that any party may withdraw from mediation at any time.

7. If the Mediator determines that it is not practical or appropriate to continue the mediation, the mediator may terminate the process after conveying his or her unilateral decision to the parties to do so.

8. The parties or those representing them at the mediation have authority to settle the dispute.

9. The parties will have lawyers present at the mediation. The Mediator will not provide legal representation or legal advice to any party at any time, and has no duty to assert or protect the legal rights and responsibilities of any party, to raise any issue not raised by the parties themselves, or to determine who should participate in the mediation.

10. Where an agreement is reached, the parties or their counsel will draft any Settlement Documentation or Minutes of Settlement and any releases.

11. The Mediator's fees are \$[\_\_\_\_\_] per day/half day and \$[\_\_\_\_\_] per hour for time spent beyond [\_\_\_\_\_] p.m. The account of ADR Chambers for the Mediator's fees, disbursements and administrative costs will be:

a. shared fifty percent by the Plaintiff and fifty percent by the Defendant.

b. divided equally among the Defendants.

c. divided equally between both Defendants.

d. paid one hundred percent by the Plaintiff.

e. paid one hundred percent by the Defendant.

f. split evenly among all of the parties.

b) The parties and their lawyers hereby acknowledge that notwithstanding the above-noted direction as to the payment of the account, they remain jointly and severally liable for payment of the account pursuant to Rule 13(2) of the Mediation

Rules of ADR Chambers\*, except for matters set out in paragraphs 4 (a), (b), (c) and (d).

12. This agreement may be executed in counterparts.

\*Rule 13(2) of the Mediation Rules of ADR Chambers states: "The parties and their solicitors shall be jointly and severally responsible for the payment of the account rendered by ADR Chambers. When the parties execute the Agreement to Mediate, as required prior to the commencement of the mediation, they may agree between them as to how the account of ADR Chambers shall be paid but remain jointly and severally liable to ADR Chambers if the account is not paid in full."

I have read, understand and agree to the provisions of this Agreement signed this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

ON BEHALF OF [PLAINTIFF NAME]

I have the authority to bind the company.

\_\_\_\_\_  
(SIGNATURE)

\_\_\_\_\_  
(PRINT NAME)

ON BEHALF OF [DEFENDANT NAME]

I have the authority to bind the company.

\_\_\_\_\_  
(SIGNATURE)

\_\_\_\_\_  
(PRINT NAME)

\_\_\_\_\_  
[PLAINTIFF COUNSEL NAME, LAW FIRM]

\_\_\_\_\_  
[DEFENDANT COUNSEL NAME, LAW FIRM]

\_\_\_\_\_  
MEDIATOR: [MEDIATOR NAME] DATE