

[ONTARIO QUEBEC ALBERTA] - pick one, delete others
SUPERIOR COURT OF JUSTICE

BETWEEN:

[FULL NAME OF PLAINTIFF/S]

Plaintiff(s)

- and -

[FULL NAME OF DEFENDANT/S]

Defendant(s)

AGREEMENT TO MEDIATE

AND

TERMS OF MEDIATION

The parties agree to mediate with [*Name of Neutral*], an ADR Chambers mediator (the “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.

CONFIDENTIALITY

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;
 - iii) the person to whom the information is disclosed is a legal or financial advisor to a party to this agreement;
 - iv) required for purposes of enforcing or interpreting any agreement reached; ~~or~~
 - v) pursuant to an order of a court of competent jurisdiction or **the disclosure is required by law;** or
 - vi) **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.**
- 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, 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 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; or
 - 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.

AUTHORITY

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

TERMINATION OF MEDIATION

5. Any party may withdraw from mediation at any time.
6. 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.

DOCUMENT RETENTION

7. The Mediator and ADR Chambers may dispose of all documents relating to this matter after 60 days following a settlement in mediation or other termination of the matter. This period may be extended at the request of any party, provided the party making the request provides a deposit and reimburses ADR Chambers and the Mediator for the cost of storing the documents for the period of time requested. If a party initiates any court review of any aspect of the mediation, it shall notify the Mediator and ADR Chambers of having done so, and shall provide a deposit and reimburse the Mediator and ADR Chambers for the costs of storing any documents relating to the mediation, pending completion of such review.

MEDIATOR AS A WITNESS/RELEASE FROM LIABILITY

8. The parties fully release the Mediator and ADR Chambers from all claims and causes of action whatsoever relating to or arising from the mediation. No party will invoke any legal process, for the purpose of compelling the Mediator to produce any documents or to testify in any judicial forum, concerning anything whatsoever about the mediation proceeding, nor to give evidence touching any aspect of the proceeding. The Mediator shall not be liable for anything done or omitted with respect to the mediation. The Mediator shall be entitled to the same immunity from claims and legal proceedings as a judge under the legislation in place in the Province.
9. The parties agree that:
 - a) 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) If, at any time, either party decides to call the Mediator or anyone associated with ADR Chambers as a witness in any legal or administrative proceedings concerning this dispute, that party agrees to reimburse the Mediator for whatever expenses he or she incurs in such an action, including lawyer fees, plus the Mediator's hourly rate for time that is taken by this matter.
 - c) 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.
 - d) 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 Mediator's hourly rate for time that is taken by this matter.
 - e) 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.
 - f) 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.
 - g) 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.
10. The Mediator will not provide legal representation or legal advice to any party at any time. The Mediator 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.

FEES AND FINANCIAL TERMS

11. The Mediator's fees are \$ [fee] per day/half day and \$ [fee] per hour for time spent beyond [time] p.m.
- a) The account of ADR Chambers for the Mediator's fees, disbursements and administrative costs will be: (check one)
- ☐ shared fifty percent by the Plaintiff and fifty percent by the Defendant.
- ☐ divided equally among the Defendants.
- ☐ divided equally between both Defendants.
- ☐ paid one hundred percent by the Plaintiff.
- ☐ paid one hundred percent by the Defendant.
- ☐ 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 one or more counterparts, each of which shall be deemed an original, but all of which taken together constitute one and the same instrument.

***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, understood, and agree to the provisions of this Agreement, signed the _____ day of _____, 20__.

PLEASE SIGN ON THE LINE, AND PRINT YOUR NAME BELOW THE LINE

ON BEHALF OF [*Plaintiff Name*]
I have the authority to bind the
company.

(SIGNATURE)

(PRINT NAME)

[*Plaintiff Counsel Name, Firm Name*]

MEDIATOR: [*Mediator Name*]

ON BEHALF OF [*Defendant Name*]
I have the authority to bind the
company.

(SIGNATURE)

(PRINT NAME)

[*Defendant Counsel Name, Firm Name*]