

Court File No. _____

MEDIATION AGREEMENT

Made this _____ day of _____, 200__

B E T W E E N:

Plaintiff
(“Claimant“)

- and -

Defendant
(“Respondent”)

- and -

DUNCAN W. GLAHOLT

Mediator

1. Whereas the Claimant and Respondent (together the “Parties”) are engaged in a dispute pleaded in Court File No. _____ (the “Dispute”) and wish to resolve their Dispute through non-binding mediation;
2. And whereas the Parties have agreed to retain the services of **Duncan W. Glaholt** of Toronto to mediate their Dispute on the terms set forth in this agreement;
3. Now therefore, in consideration of payment by the Parties hereto, each to the others, of the sum of \$1.00 and other good and valuable consideration, the receipt and sufficiency of which is hereby duly and irrevocably acknowledged, THE PARTIES HERETO AGREE AS FOLLOWS:

Guiding principles:

4. The Parties and their respective counsel agree that they will be guided by and will conduct themselves at all times during this mediation in accordance with the following principles:

- a. Commitment to the principle of early settlement**
- b. Candour in all communications**
- c. Confidentiality**

5. The Parties agree that if the Mediator perceives that either of the Parties or their counsel has departed from these guiding principles, he is free, in his sole and unfettered discretion, to bring the mediation session to an end.

6. The Parties agree that the Mediator will be guided at all times in this mediation by the following principles:

- a. Neutrality**
- b. Independence**
- c. Confidentiality**

7. The Parties agree that the Mediator is a neutral facilitator hired by the Parties to assist them in reaching their own settlement. Thus:

- a. the Mediator does not covenant, promise, agree, warrant or guarantee to the Parties or their counsel in any way that the Parties will settle their Dispute;
- b. the Mediator shall not be liable to the Parties or their respective counsel for any act or omission on his part in connection with the conduct of this mediation; and,
- c. the Mediator is not responsible to or liable to the Parties in any way whatsoever for the enforceability or enforcement of any settlement or other agreement reached in this mediation.

Warranty of authority to settle:

8. The Claimant represents and warrants to the Respondent that its representatives at the mediation shall have full and unrestricted authority to negotiate a settlement of the Dispute on any terms.

9. The Respondent represents and warrants to the Claimant that its representatives at the mediation shall have full and unrestricted authority to negotiate a settlement of the Dispute on any terms.

10. The Parties agree that if the Dispute does not settle by breach of clauses 8 or 9, above, the party in breach shall indemnify the party not in breach for all of that party's share of the Mediator's fees and associated costs of the mediation.

Mediation event

11. The Parties have agreed that this mediation will be conducted as follows:

a. Information exchange among Parties and Mediator:

On or before _____ the Parties will exchange written Mediation Briefs, and lists of attendees' names and titles. On the same date, each party will forward a hard copy of their Mediation Brief to the Mediator by hand delivery or prepaid over-night courier.

Each Mediation Brief will include:

- an overview statement;
- a fair chronology of relevant facts;
- a statement of core legal and factual issues;
- a list of attendees at the mediation session, with job titles; and,
- a statement as to whether or not a PowerPoint or similar presentation will or may be used during each Parties' opening remarks.

All documents referenced in the Mediation Brief should be copied and appended if time and resources permit.

b. Confidential Memorandum to Mediator:

When each party transmits its Mediation Brief to the Mediator it shall include as a separate document a "Memorandum to the Mediator" marked "Private and Confidential" addressing in some meaningful fashion the following questions:

- A best guess as to the total number of witnesses at trial/arbitration on all sides;
- The estimated date of trial/arbitration
- The likelihood of appeal following trial/arbitration
- An outline of Best Case/Worst Case/Most Likely Case scenarios including dollar values, and the possible effect on costs of offers to settle.

Each Parties' Memorandum to the Mediator is confidential and shall not be sent or delivered to the other party(s). It will not be brought to the mediation session by the Mediator.

c. Plenary session:

The mediation session will take place at _____.

The mediation will begin with a plenary session on ____ day, _____, 200_, commencing at 10:00 a.m. sharp. Parties should plan to arrive and get settled at 9:45 a.m. on each day of the mediation event.

There will be no set breaks. A light lunch will be arranged to be available at noon.

Unless special arrangements are made, our “Mediation Day(s)” will be from 10:00 to 5:00 p.m. each day. Each Mediation Day will conclude at 5:00 p.m..

Cell phones will be turned off during any plenary session.

In any plenary session speakers will speak when recognized by the Mediator and in the order that they are recognized by the Mediator. Interruptions are actively discouraged. Participation is actively encouraged.

Plenary sessions proceed as follows:

- Mediator’s opening remarks;
- Claimant’s uninterrupted opening, 30 minutes maximum;
- Respondent’s uninterrupted opening; 30 minutes maximum;
- Adjourn to caucus.

d. Caucus sessions:

The Mediator will meet with the Parties separately in an attempt to mediate a settlement of the Dispute.

The Mediator may disclose to any party, in caucus or in plenary session, any information provided by any other party, unless specifically instructed to the contrary.

The caucus session (and the mediation itself) will end either when a settlement agreement is reached, documented and signed by both Parties, or the time for mediation expires, whichever is sooner, or when brought to an end under paragraph 5, above.

Right to meet individually

12. The Parties and their counsel grant the Mediator the absolute right, to be exercised in the Mediator’s sole and unfettered discretion, to meet privately with clients or counsel,

or with any person or party whatsoever, at any time, and in any combination whatsoever, in order to pursue all opportunities for settlement.

Privilege and confidentiality

13. The Parties agree that nothing said, done, made, or delivered at, during, or for the purpose of the mediation will be admissible into evidence in any context, for any purpose, in any existing or future arbitration or court proceeding, including for the purpose of impeaching credibility.

14. The Mediator shall not be compellable as a witness in any proceeding with respect to anything said, done, made or delivered at, during, or for the exclusive purpose of the mediation, except:

- a. Where ordered to do so by a court of competent authority; or,
- b. To individuals employed by the Mediator's firm assisting him in this matter; or,
- c. Where the information can reasonably be said to involve a potential threat or danger to human life or safety.

15. As set out above, the Mediator may disclose to any party, in caucus or in plenary session, any information provided by any other party, unless specifically instructed to the contrary

16. The Parties agree that the Mediator may return or shred or destroy any documents or things relating to this mediation after the close of this mediation and whether or not a settlement has been reached.

Commercial Terms

17. The Parties have agreed that:

- a. Unless special arrangements are made, "Mediation Day" is agreed to be 10:00 a.m. to 5:00 p.m. on any given day;
- b. The Mediator shall be compensated at the rate of \$500.00 (Cdn.) per hour for preparation and \$5,000.00 per Mediation Day, plus G.S.T. in each case, the aggregate fee to be estimated and deposited by the Parties with the Mediator in advance of the Mediation Day(s);
- c. The Mediator shall be paid \$500 per hour for each hour of mediation before 10:00 a.m. or after 5:00 p.m. on any given Mediation Day.

- d. The time allowed by each party for the Mediator's preparation will be agreed by each party in advance. It is recommended, but not necessary, that equal time be allowed for preparation;
- e. The Parties will arrange and pay directly for all facilities and supplies required to conduct the mediation;
- f. Except for preparation time under clause 16 (b), all fees and expenses associated with the mediation will be shared equally by Claimant and Respondent.

18. Each Parties' share of the estimated mediation fee of \$_____ for _____ **Mediation Day(s), plus estimated preparation time of ___ hours, plus G.S.T., will be paid to "Glaholt LLP, In Trust" on or before _____, 200__ as a condition precedent to the mediation proceeding on _____, 200__.**

19. The Mediator will render one, final account and trust statement to both Parties on settlement, or on the cancellation, adjournment or conclusion of the mediation session whether a settlement is reached or not, itemizing all hours for preparation and transferring trust monies to the Mediator's general account to cover his account for mediation services.

20. If the mediation is cancelled or adjourned by either or both of the Parties after the exchange of Mediation Briefs, the Mediator will try to fill in the reserved time for the mediation with other billable work. To the extent that cancelled or adjourned hours cannot be billed to others, they will be billed to the Parties up to the daily maximum of \$5,000.

Settlement

21. Where settlement of all or part of the Dispute is reached, it shall be recorded in writing and signed by the Parties.

22. The Mediator may supervise, but the Parties are responsible for drafting their own Minutes of Settlement.

Report Back

23. In the event that this Mediation does not result in a settlement and if the Parties all agree, in writing, the Mediator shall provide the Parties with the "Mediator's Recommendation" as to settlement. This "Mediator's Recommendation" shall not contain reasons and shall not be binding on either party and shall not be producible or compellable in evidence in any ongoing or subsequent private or public dispute resolution process.

Administrative

24. Any and all communication with the Mediator, written or oral, shall be joint and, in writing, through legal counsel, unless counsel all agree otherwise in advance.

25. Communication between and among the Parties may be in electronic format, without mailed counterpart, as follows:

TO: Solicitor for the Claimant

Tel:
Fax:
email:
website:

AND TO: Solicitor for the Respondent:

Tel:
Fax:
email:
website:

AND TO THE MEDIATOR:

DUNCAN W. GLAHOLT
Glaholt LLP
Barristers & Solicitors
141 Adelaide Street West
Suite 800
Toronto, Ontario
M5H 3L5

Telephone: (416) 368-8280
Facsimile: (416) 368-3467
Email: dwg@glaholt.com

26. Any demand, notice or other communication given electronically shall be deemed to have been received on the day of transmittal if given during the normal business hours and on the business day if not given during normal business hours.

27. The division of this Mediation Agreement into sections and the insertion of headings are for convenience only and do not affect the construction or interpretation of this agreement.

28. Each and every sentence, paragraph and provision of this agreement is severable, and in the event any one or more of the same is declared invalid or unenforceable, the balance survive.

29. No amendment to this agreement will be valid or binding unless set forth in writing and duly executed by all Parties hereto.

30. No waiver or any breach of any provision of this agreement will be effective or binding unless made in writing and signed by the party purporting to give the same and, unless otherwise provided, will be limited to the specific breach waived.

31. This agreement is governed by and will be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

32. This agreement may be executed by the Parties and the Mediator in separate counterparts each of which when so executed and delivered will be an original, but all such counterparts will together constitute one and the same instrument.

IN WITNESS WHEREOF the Parties, by their counsel duly authorized on their behalf, have executed this Agreement on the _____ day of _____, 200__.

CLAIMANT	COUNSEL FOR CLAIMANT
Per: _____ Authorized Signing Officer	Per: _____

RESPONDENT	COUNSEL FOR RESPONDENT
Per: _____ Authorized Signing Officer	Per: _____

	MEDIATOR
	_____ DUNCAN W. GLAHOLT