

## AGREEMENT TO MEDIATE

**Matter:** \_\_\_\_\_

Date of Mediation: \_\_\_\_\_

This **Agreement to Mediate** is made as of the above date between the Parties and Counsel signing this Agreement (the "Parties") and **Richard J. Weiler** (the "Mediator") and the "Observer", if any.

The Parties are involved in a dispute and, together with their Counsel, wish to attempt to resolve the dispute through mediation using the services of The Mediator.

NOW THEREFORE THIS AGREEMENT WITNESS that in consideration of the mutual covenants contained in this Agreement the following is agreed to:

1. Mediation is a voluntary and informal settlement process by which the Parties try to reach a solution that is responsive to their interests. The signing of this document is evidence of the agreement of the Parties to conduct this mediation process in an honest and forthright manner and to make a serious attempt to resolve the outstanding matters.
2. The Mediator agrees to serve as mediator in connection with this matter. The Mediator's fees are \$ \_\_\_\_\_, plus GST and disbursements. These fees include case administration, pre-mediation preparation and consultation, travel time, mediation conference time (full day: 6 hours - half day: 3 hours) and reporting. Additional mediation conference time is charged at \$450 per hour, or part thereof. **The Parties agree that the fees and expenses of the mediation shall be paid by the Parties equally.** If this mediation is cancelled or postponed for any reason within 10 business days of the date scheduled for the mediation a **cancellation charge** shown on the Mediator's website shall be paid by the Party or Parties requesting the cancellation or postponement. The Mediator's account shall be rendered to the solicitors for the Parties forthwith after the mediation conference and shall be payable upon delivery.
3. The Mediator is an impartial facilitator who will assist the Parties to reach their own settlement. The Mediator does not offer legal advice and has no duty to assert or protect the legal rights of any Party, to raise any issue not raised by the Parties themselves or to determine who should participate in the mediation. The Mediator has no duty to ensure the enforceability or validity of any agreement reached.
4. Each Party shall provide their Mediation Brief to The Mediator and the other Parties no later than one week prior to the scheduled commencement of the mediation event.
5. The mediation event shall be attended by the Parties and their legal counsel, and such other individuals as each of the parties may believe would be helpful in resolving this matter; provided that notice of such additional parties shall be provided to the other Parties prior to the commencement of the mediation event. The mediation shall commence at a time, date and location mutually convenient to the Parties and to be arranged by the Parties or their Counsel.
6. The representatives of the Parties attending the mediation have full, unqualified authority to reach a settlement in this matter.
7. The Parties agree that they will not call the Mediator or the Observer as a witness for any purpose whatsoever. No party will seek access to any documents prepared for or delivered to the Mediator in connection with the mediation including any records or notes of the Mediator. If, at any later time, either party decides to subpoena the Mediator, the Mediator will move to quash the subpoena. That party agrees to reimburse the Mediator for whatever expenses he incurs in such an action, including counsel fees, plus the hourly rate of the Mediator for time that is taken by this matter.

8. Statements made by any person and documents produced in the mediation and not otherwise discoverable shall not be subject to disclosure through discovery or any other process and shall not be admissible into evidence in any context for any purpose including impeaching credibility.
9. The Parties and the Mediator and the Observer each hereby undertake to the Superior Court of Ontario that mediation communications (meaning statements, whether oral or in a record or verbal or nonverbal, that occur during a mediation or are made for purposes of considering, conducting, participating in, initiating, continuing, or reconvening a mediation or retaining a mediator) shall be kept confidential except to such extent, (a) as expressly agreed by the Parties and the Mediator, (b) as required by law or (c) for purposes of enforcing any settlement agreement reached. Each Party and the Mediator and the Observer acknowledges and agrees that breach of such undertaking may give rise to sanctions being imposed by the said Court including a finding of contempt of Court.
10. The Mediator will not voluntarily disclose to anyone who is not a party to the mediation any mediation communications, except:
  - 10.1. to any person designated or retained by any party, as deemed appropriate or necessary by the Mediator;
  - 10.2. for research or educational purposes on an anonymous basis;
  - 10.3. where ordered to do so by judicial authority or where required to do so by law; or
  - 10.4. where the information suggests an actual or potential threat to human life or safety.
11. Mediation is a voluntary process and may be terminated by any Party to this Agreement at any time and for any reason.
12. This Agreement shall be made and construed in accordance with the laws of the Province of Ontario, CANADA.
13. This Agreement may be executed by the Parties and the Mediator and the Observer in separate counterparts each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. This Agreement shall enure to the benefit of and be binding upon the Parties and the Mediator and the Observer, their heirs, executors, administrators, successors and assigns.

EXECUTED by the Parties and the Mediator as of the date first written above.

|                            |                     |                  |
|----------------------------|---------------------|------------------|
| _____                      | _____               | _____            |
| <b>Name (Please print)</b> | <b>Representing</b> | <b>Signature</b> |
| _____                      | _____               | _____            |
| <b>Name (Please print)</b> | <b>Representing</b> | <b>Signature</b> |
| _____                      | _____               | _____            |
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| <b>Name (Please print)</b> | <b>Representing</b> | <b>Signature</b> |
| _____                      | _____               | _____            |
| <b>Richard J. Weiler</b>   | <b>Mediator</b>     | <b>Signature</b> |

Revised: May 2006