

B E T W E E N:

Party A

Plaintiffs

- and -

Party B

Defendant

Court File No:

AGREEMENT TO MEDIATE

The parties agree to mediate with Paul Godin (The Mediator) to attempt to resolve their dispute in good faith as set out in the terms of this agreement. The parties and signatories below agree:

MEDIATOR'S ROLE

1. The Mediator is an impartial facilitator who will assist the parties to negotiate their own resolution.
2. The Mediator does not offer legal advice, and will not make decisions about how the matter should be resolved. It is recommended that each party retain their own lawyer in order to receive proper legal advice.
3. 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 of Ontario, Canada or in the location of the mediation, whichever is greater.
4. If, in the Mediator's opinion, it is not possible to resolve the issues through mediation, the Mediator may terminate the process.

CONFIDENTIALITY

5. The mediation is a confidential and without prejudice settlement process and that subject to the exceptions set out below, all information disclosed, exchanged, and created in the course of the mediation, including the mediator's notes and records, shall remain confidential, and all communications and negotiations at the mediation will remain confidential and without prejudice except:

(a) to the lawyers or other professionals retained on behalf of the parties; or

- (b) as consented to by all parties; or
 - (c) where otherwise discoverable.
6. The mediator will not disclose to anyone who is not a party to the mediation anything said or any material submitted to the mediator, except:
- (a) to the lawyers or other professionals retained on behalf of the parties;
 - (b) as consented to in writing by all parties, as deemed necessary and appropriate by the mediator;
 - (c) for educational, scholarly, or research purposes on an anonymous basis;
 - (d) where the information is already in the public domain;
 - (e) where ordered to do so by judicial authority, or where required to do so by law; or
 - (f) where the information suggests that there is a reasonable apprehension of actual or potential threat to human life or safety, or the commission of a crime in the future.
7. No party may call the mediator or any other person to testify as a witness as to any communication made during the mediation process. The mediator will not be required to provide any form of evidence in any proceeding related to this dispute. The parties agree not to summons or subpoena the mediator in any proceeding related to this dispute or seek access to any document prepared for or in connection with the mediation, including but not limited to, any of the mediator's notes or records (other than this agreement and any fully executed Minutes of Settlement resulting from the mediation).
- a) 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.
 - b) 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 action, including lawyer fees, plus the hourly rate of the Mediator for time that is taken by this matter.
 - c) 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.
 - d) 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.

- e) Everyone signing this document, whether or not a party to the proceeding, agrees to be bound by the confidentiality provisions 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.

PROCESS

- 8. The parties or those representing them at the mediation will have full, unqualified authority to settle the dispute.
- 9. To facilitate an understanding of the dispute and the issues to be mediated, the parties will provide the mediator with a Statement of Issues (Mediation Brief) not less than 3 business days prior to the mediation session and, if this is a court-connected mediation, otherwise in accordance with the applicable court rules
- 10. The parties may have their own lawyers present at the mediation or seek outside legal advice prior to or during the mediation. The mediator will not provide legal advice or representation to any party 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.
- 11. Where an agreement is reached, the parties or their counsel will draft any Settlement Documentation or Minutes of Settlement and any releases.
- 12. Each party's participation in the mediation is voluntary, unless otherwise prescribed by law. While each party intends to participate in the mediation in a good faith attempt to reach a settlement, any party or the mediator may withdraw from the mediation at any time for any reason.

FEES

- 13. This Agreement to Mediate and the mediation process are governed by the laws of British Columbia, Canada. In the event of a dispute arising out of this mediation agreement, the venue for the hearing of any dispute will be appropriate court in British Columbia.
 - a) The Mediator's fees, disbursements and administrative costs will be split evenly among all parties (multiple plaintiffs or defendants represented by single law firm will count as a single party for this clause).
 - 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.
 - c) All fees are in Canadian dollars.

14. The Mediator's fee is \$4000 per day plus applicable taxes, and includes 2 hours of preparation time per day and 7 hours of mediation per day. The mediator's travel time is payable at half of the applicable daily or hourly rate. The parties are responsible for the mediator's travel and lodging expenses. If the mediation and preparation goes beyond the included time, the fee for any additional time is \$500 per hour plus applicable taxes.

I have read, understand and agree to the terms of this Agreement signed on _____,
201____.

PLEASE SIGN ON THE APPROPRIATE LINE

Plaintiff

Representative of Plaintiff

Counsel for Plaintiff

Defendant

Representative of Defendant

Counsel for Defendant

Paul D. Godin (MEDIATOR)