

MEDIATION OF A DISPUTE

BETWEEN

.

-and-

Plaintiff

Defendant

**AGREEMENT TO MEDIATE
AND
TERMS OF MEDIATION**

The parties, by their respective Counsel, agree to submit their dispute to a mediation conducted by William G. Horton as Mediator, and seek his assistance in resolving the differences between them.

The parties agree 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. The parties agree that they shall not hold the Mediator liable for any claim or loss whatsoever relating to or arising out of the mediation process, unless caused by his gross negligence, bad faith or willful misconduct, and they hereby release the Mediator from all such claims.
3. 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 all communications and documents shared, which are not otherwise discoverable, shall be shared on a without prejudice basis and shall be kept confidential as against the outside world, and shall not be used in discovery, cross examination, at trial or in any other way, in this or any other proceeding.
 - b) The Mediator will not reveal, outside the mediation process, the names of the parties or anything discussed in the Mediation except as required by law.
 - c) The Mediator may securely dispose of all material relating to this mediation after the mediation has been completed and is not required to retain any material from the mediation, including the record of any agreement reached between the parties.

4. 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.
5. Where an agreement is reached, the parties or their counsel will draft any Settlement Documentation or Minutes of Settlement and any releases. No agreement reached at the mediation is binding unless and until it is reduced to writing and signed by or on behalf of all parties to the agreement.
6. The parties shall make their own arrangements at their own expense, regarding the venue for the mediation.
7. The Mediator and the Parties have convened or shall convene an initial conference call or online meeting to organize the mediation. The items to be discussed are as follows:
 - a. the general nature and history of the dispute;
 - b. the documentary material that already exists and which may be of assistance to the Mediator;
 - c. documents that might be created to assist the Mediator and the mediation process;
 - d. schedule for delivery of documents and any pre-mediation communications between the parties and the Mediator;
 - e. date, venue and duration of the mediation;
 - f. financial terms including deposits;
 - g. persons who will participate in the mediation;
 - h. whether the mediation will be conducted in whole or in part as an online mediation;
 - i. any thoughts or suggestions of counsel as to mediation approach or procedure given the nature and history of the dispute (e.g. opening statements, mediator summary, caucusing etc);
 - j. whether the use of a med/arb process would be desirable;
 - k. any other items either side or the Mediator wishes to raise.
8. In the event the parties agree that the mediation shall be conducted in whole or in part on-line, the following additional matters will be discussed:
 - a. the platform to be used (Zoom is currently preferred due to breakout room capability);
 - b. whether use of a third party provider for technical support is needed;
 - c. security measures to be used;
 - d. rules for participation;
 - e. test session between Mediator and each side (can be combined with pre-mediation communications—see below);
 - f. contingency and back up plans/platforms;
 - g. how any settlement agreement will be documented;

- h. any other matters of concern.
9. The parties agree that, in preparation for the mediation, the Mediator may contact counsel for any party to obtain information or discuss matters that may be of assistance in the mediation. At the request of the Mediator or counsel, such communications may include a party or party representative(s). Any such communications should be treated in the same manner as caucuses of the Mediator with one side of the dispute and that the Mediator shall be under no obligation to disclose the contents of any such communication to the other side.
 10. The Mediator is not required to communicate any offer or other message from one party to another that the Mediator in his absolute discretion considers to be unconstructive or counterproductive to the settlement of the dispute.
 11. The Mediator may discontinue the Mediation at any time if he in his absolute discretion determines that further discussions at that time would be unproductive.
 12. The Mediator shall provide his services through William G. Horton corporation at a fee of \$900/hr. plus HST.
 13. Each party shall pay ___% of the account of William G. Horton Professional Corporation for the Mediator's fees, disbursements and administrative costs.
 14. The Mediator has estimated his fees for this mediation, including preparation and pre-mediation communication, at \$_____ including HST, which shall be the Total Deposit Requirement. The deposit is based on an estimate. The Mediators actual account will be based upon time spent and expenses, if any, incurred.
 15. Each party shall deliver a cheque for ___% (\$_____ per party) of the Total Deposit Requirement within 7 days of the signing of this Mediation Agreement..
 16. If the mediation is cancelled more than ten business days prior to its scheduled commencement, any deposit will be applied to fees and disbursements actually incurred to the time of cancellation and the balance will be refunded to the parties in proportion to the amounts actually contributed by them to the deposit. If the mediation is cancelled ten business days or less in advance of its scheduled commencement, the deposit will be treated as a minimum fee for the mediation.
 17. This agreement may be signed in counter parts and sent to the other parties by e-mail. The agreement only takes effect once the Mediator and Counsel for all parties have signed.

Date:

Date:

Mediator: _____

Date:

William G. Horton
William G. Horton Corporation