

AGREEMENT TO MEDIATE

TERMS AND CONDITIONS OF MEDIATION

BETWEEN: _____ Plaintiff
 _____ Plaintiff Counsel
 _____ Defendant
 _____ Defendant Counsel
 Neil Donnelly, Mediator

RE: Court File _____

IT IS AGREED THAT:

1. The parties and their counsel have authority to settle this dispute at the mediation;
2. The parties agree that everything that is said and done in mediation is strictly confidential and privileged, and no reference will be made to anyone, other than the parties or their solicitors, of anything that is said or done during the process;
3. The mediator may disclose to any party to this agreement or to her/his counsel, any information provided by the other party which the mediator believes to be relevant to the issues being mediated, unless a party or party's counsel, has specifically requested the mediator to keep particular information confidential;
4. In the event that information is shared with the mediator that pertains to any crime or threat of harm that may constitute a crime or lead to a crime, the mediator will acknowledge such information and will not be bound by any terms of confidentiality as it pertains to that specific information;
5. The mediation may be terminated at any time by any party, her or his counsel, or the mediator for any reason;

Without Prejudice

6. Mediation sessions are settlement negotiations and as such are inadmissible in any further litigation or arbitral processes to the extent allowed by law. Neither parties nor their counsel will subpoena or otherwise require the mediator to testify or produce records, notes, or other documents in any further proceedings. No transactions or recordings will be kept of the mediation sessions;
7. Neither the parties nor their counsel shall rely on, or introduce as evidence, in any subsequent proceeding, any view expressed, or suggestion made by a party regarding the possible settlement of the dispute; any admission made by any other party in the course of

mediation; the fact that the other party had shown a willingness to accept a proposal or recommendation for settlement made during the mediation;

Immunity

8. In consideration of the neutral services provided by the mediator, the parties and their counsel agree that neither of them will make a claim against the mediator whether in contract or tort. The mediator shall have the immunity as a judge in s.82 of the Courts of Justice Act;

Confidentiality

9. The Parties and the Mediator 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 if any, acknowledges and agrees that breach of such undertakings may give rise to sanctions being imposed by said Court including a finding of contempt of Court.

10 Mediation Fees

Neil Donnelly will be paid directly by the parties for his services provided. Mr. Donnelly's fees will be in accordance with the attached Fee Schedule and Policy. The plaintiff and defendant will share equally the cost of mediation unless otherwise expressly agreed.

Cont'd

Dated at Ontario, on .

Plaintiff Counsel

Defendant

Plaintiff Counsel

Defendant Counsel

Mediator
