

MEDIATION-ARBITRATION (Med-Arb) AGREEMENT

Short Style of Cause:

This Med-Arb Agreement is made between the parties signing this Agreement (or by their Counsel who are authorized to sign on behalf of the parties) (the "Parties") and Rick Weiler ("Weiler") whose services are provided through and by Weiler ADR Inc., a corporation incorporated pursuant to the laws of the Province of Ontario.

The Parties are involved in a dispute (the "Dispute") and wish to attempt to resolve the Dispute through the combined process of mediation and then arbitration ("Med-Arb") using the services of Weiler (sometimes herein referred to as the "Mediator-Arbitrator").

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

1. *Mediation-Arbitration*

- 1.1. The Parties agree to submit the Dispute to the Mediator-Arbitrator, subject to and upon the terms of this Agreement
- 1.2. Any part of the Dispute not settled during the mediation phase shall be arbitrated by the Mediator-Arbitrator or, at the option of any of the Parties or Weiler, by another arbitrator appointed pursuant to the Opt-Out provision in this Agreement.
- 1.3. Any award of the Mediator-Arbitrator shall be final and binding and not subject to appeal on any question of fact, law or mixed fact and law.
- 1.4. Weiler is not aware of any circumstances that might give rise to a conflict of interest or reasonable apprehension of bias. He considers that he can act impartially and independently.
- 1.5. The Parties are not aware of any circumstances that would disqualify Weiler from acting as the Mediator-Arbitrator of their dispute. The parties confirm that they do not object to, and are not aware of any grounds upon which to object to, the appointment of Weiler.

- 1.6. Weiler agrees to serve as Mediator-Arbitrator in connection with the Dispute.
- 1.7. The Parties agree and acknowledge that this Med-Arb Agreement is a submission to Arbitration under the Arbitration Act, 1991.

2. Mediation Phase

- 2.1. Mediation is a voluntary and informal settlement process by which the Parties try to reach a solution that is responsive to their interests. The Parties agree to conduct the mediation phase in an honest and forthright manner and to make a good faith effort to resolve the issues
- 2.2. The Mediator-Arbitrator (sometimes in this part 2 referred to as the “Mediator”) is a neutral facilitator who will assist the Parties to reach their own resolution of the Dispute, in whole or in part. 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.
- 2.3. The Mediator has no duty to ensure the enforceability or validity of any agreement reached.
- 2.4. Each Party shall provide a mediation brief summarizing their perspective on the dispute to Weiler and the other Parties no later than 5:00 p.m. ET on the fifth calendar day prior to the scheduled commencement of the mediation.
- 2.5. The mediation shall be attended by the Parties and their legal counsel and shall occur at a mutually agreed date and time.
- 2.6. The representatives of the Parties participating in the mediation shall have full, unqualified authority to reach a final and binding settlement in this matter unless any qualifications on such authority have been communicated to the other Parties and the Mediator prior to the mediation.
- 2.7. The Parties agree that they will not call the Mediator as a witness for any purpose whatsoever. No Party will seek access to any documents prepared for or delivered to the Mediator in

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connection with the mediation including any records or notes of the Mediator

- 2.8. 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.
- 2.9. Other than what is stated above, the mediation is a confidential process and the Parties agree to keep all communications and information forming part of this mediation in confidence. The only exception to this is disclosure for purposes of enforcing any settlement agreement reached. The Mediator will not voluntarily disclose to anyone who is not a Party to the mediation anything said or done or any materials submitted to the Mediator, except:
 - 2.9.1. to any person designated or retained by any Party, as deemed appropriate or necessary by the Mediator;
 - 2.9.2. for research or educational purposes on an anonymous basis;
 - 2.9.3. where ordered to do so by judicial authority or where required to do so by law; or
 - 2.9.4. where the information suggests an actual or potential threat to human life or safety.
- 2.10. Mediation is a voluntary process and may be terminated by any Party or the Mediator at any time and for any reason; provided that the Parties agree that upon the termination of the mediation phase of this process the Arbitration phase shall commence.
- 2.11. **Exclusion of S. 35 of the Arbitration Act 1991 (Ontario) (the “Act”)**: In accordance with S. 3 of the Act, the Parties specifically exclude the operation of S. 35 of the Act which prevents an arbitrator, once appointed, from mediating a dispute. Further, the Parties agree that Weiler may act as Mediator in this matter and that Weiler is not disqualified from

determining or adjudicating any or all issues because he has acted as Mediator to assist the Parties in resolving the Dispute. They further agree that, by arbitrating one or more issues, Weiler shall not be precluded from continuing with the mediation of the remaining issues with the consent of the Parties.

- 2.12. **Private Meetings:** Weiler is hereby authorized to meet with the Parties together or separately during the Mediation phase of the Med-Arb.

3. *Transition Phase*

- 3.1. When it appears that no further issues can be resolved in the mediation phase, the Med-Arbitrator will commence the transition process from the mediation phase to the arbitration phase of the Med-Arb process.
- 3.2. In preparing for transition, the Mediator-Arbitrator will meet separately with each Party, to ascertain what information obtained or disclosed during caucus is to remain confidential and what portion can be disclosed to the other Party in preparing for the arbitration phase.
- 3.3. The Mediator-Arbitrator will then meet jointly with the Parties or their counsel to:
- 3.3.1. share information which has been released from caucus,
 - 3.3.2. confirm what issues have been resolved and are to be included in minutes of settlement and/or consent Award, and
 - 3.3.3. confirm list of all unresolved, outstanding issues, for submission to arbitration.
- 3.4. If the Parties are not able to agree as to which unresolved, outstanding issues are to be submitted to arbitration, then the Mediator-Arbitrator will make that determination.
- 3.5. Upon completion of the transition meetings, the Mediator-Arbitrator will announce the termination of the mediation phase, advise the Parties in writing that the Med-Arb process is

proceeding to the arbitration phase, and schedule a date for the pre-arbitration conference.

4. Opt-Out Provision

- 4.1. While the Parties intend that Weiler shall act as mediator and if necessary, arbitrator of their dispute, each of the Parties and the Mediator-Arbitrator shall have the option at the end of the meditation phase to opt out of him continuing on as arbitrator.
- 4.2. If either Party or the Mediator-Arbitrator exercises the option to opt out of his acting as mediator and arbitrator, the parties appoint ** as the substitute arbitrator and will continue the arbitration process as set out in this Agreement.
- 4.3. If either Party or the Mediator-Arbitrator exercise the option to opt out of his acting as mediator and arbitrator, the parties will each provide him with a list of three names of individuals who would be acceptable as the substitute arbitrator. If one name is on both lists, then the Mediator-Arbitrator shall select that person as the substitute arbitrator. If there are no common names on the lists, The Mediator-Arbitrator shall chose one name from the lists as the substitute arbitrator and subject to that person accepting appointment as arbitrator, the arbitration process shall proceed as set out in this Agreement or as modified in conjunction with the substitute arbitrator.
- 4.4. The Parties deciding to exercise the opt out provision above shall not relieve them from their obligation to continue with the process as set out in this Agreement.

5. Arbitration Phase

- 5.1. The Arbitration phase of this process shall be conducted in accordance with the Act and any other agreement of the Parties applicable to the conduct of the proceedings.
- 5.2. The seat of the Arbitration shall be the City of Ottawa in the Province of Ontario.
- 5.3. The Mediator-Arbitrator (sometimes in this part 5 of this Agreement referred to as the “Arbitrator”) shall have authority to give such directions as to the procedural matters as may be

fair, just and convenient, including directions with respect to adjournments, exclusion of witnesses, disclosure of documents from Parties, amendments to claims and defences and admissibility of evidence.

- 5.4. As soon as practicable following the commencement of the Arbitration phase the Arbitrator shall convene a preliminary case conference to establish a timetable for the Arbitration phase.
- 5.5. The Arbitrator may award the costs of the arbitration phase.
- 5.6. Unless otherwise provided by the Parties, all information received by the Arbitrator and disclosed by or on behalf of the Parties during the arbitration shall be deemed to be confidential information and shall not be disclosed by the arbitrator.

6. Use of Zoom Video Technology

- 6.1. The Parties and Weiler have agreed to use the Zoom Video Platform (“Zoom”) to conduct the Med-Arb. Weiler shall host the process using his Zoom account without additional cost to the Parties. The following terms are agreed to with respect to the conduct of the Med-Arb process via Zoom:
 - 6.1.1. The Parties acknowledge that they have made their own enquiries as to the suitability and adequacy of Zoom for its proposed use in the Med-Arb and of any risks in using Zoom, including any risks in relation to its security, privacy or confidentiality, and request Weiler to proceed with the use of Zoom.
 - 6.1.2. The Parties and Weiler agree that each will inform all others in advance of the mediation of the names of all persons attending, participating or who are able to hear any communications in the Med-Arb using Zoom and agree that no persons will attend, participate or be allowed to listen in on the hearing without the prior consent of all Parties and Weiler.
 - 6.1.3. The Parties and Weiler agree that they will not record or permit the recording of all or any part of the Med-Arb

without the consent of all Parties and Weiler. The Parties will ensure that each additional attendee at the mediation for which that Party is responsible also acknowledges and agrees to this.

7. Financial Terms

- 7.1. The Mediator-Arbitrator shall be paid at the rate of \$500.00 per hour plus HST for his time devoted to the Med-Arb including preparation, hearing time and preparation of reasons (the "Fees").
- 7.2. The accounts of Weiler ADR Inc. will be paid equally by each Party to the Arbitration unless otherwise agreed. However, the Parties are jointly and severally liable to Weiler ADR Inc. for the payment of the full amounts of those accounts for the Arbitration phase only.
- 7.3. The Parties and their counsel agree that in consideration of the Arbitrator not requiring the posting of advance deposits towards fees and disbursements that accounts will be addressed to the law firms representing the Parties and that said firms shall also be responsible for payment of such accounts.
- 7.4. The Mediator-Arbitrator may decline to take further steps in the Med-Arb, and to withhold any award should the financial obligations of the Parties not be met.
- 7.5. With the agreement of, and on terms acceptable to, the Parties, the Mediator-Arbitrator may retain expert, administrative or legal assistance, and such assistance will be paid for by the Parties in accordance with those terms.
- 7.6. The Parties agree to be bound by the cancellation fee policy of Weiler which is set out at <http://www.rickweiler.com/fees>.

8. General Provisions

- 8.1. All notices, briefs, statements and other written communications between Parties and between the Parties and the Mediator-Arbitrator shall be served by email.
- 8.2. This Agreement shall be made and construed in accordance with the laws of the Province of Ontario.

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8.3. This Agreement may be executed by the Parties and Weiler via Weiler's DocuSign account or 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 Weiler their heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF the Parties have signed this Med-Arb Agreement as of the date shown opposite their signatures below

[Claimant]

By: _____
Signature

Name:

Title:

Email Address:

Date:

[Respondent]

By: _____
Signature

Name:

Email Address:

Date:

Mediator-Arbitrator

By: _____
Signature

Name: Rick Weiler

Email Address: rick@rickweiler.com

Date: