

## **MEDIATION AGREEMENT**

WHEREAS the Parties to this dispute, their counsel and the Mediator intend to conduct this mediation process in good faith and in a forthright manner and to make a serious attempt to resolve the issues in dispute between the Parties.

AND WHEREAS the Mediator will assist the Parties to isolate points of agreement and disagreement, to explore alternative solutions and to consider acceptable compromises or accommodations.

THE UNDERSIGNED HEREBY AGREE AS FOLLOWS:

1. a) **RETENTION OF MEDIATOR:** The Parties agree to retain John F. Scheulderman as Mediator in the above captioned matter. The mediation shall take place on\*\*\*\*\*  
commencing at 10:00 a.m. on \*\*\*\*\*
  
- b) The Parties have requested the use of the online dispute resolution technology known as Zoom Video Platform (“Zoom”) in the mediation. The Mediator shall host the mediation using his Zoom Pro account without additional cost to the parties. The following terms are agreed to with respect to the conduct of the mediation via Zoom:
  - i. The Parties agree that the mediation shall be a ‘mediation’ for the purposes of this agreement and all applicable legislation, regulations, and rules and shall be considered to be without prejudice settlement discussions.
  - ii. The Parties acknowledge that they have made their own inquiries as to the suitability and adequacy of Zoom for its proposed use in the mediation and of any risks in using Zoom, including any risks in relation to its security,

privacy or confidentiality and request the mediator to proceed with the use of Zoom.

- iii. The Parties agree that they will inform the Mediator and each other in advance of the mediation of the names of all persons attending, participating or who are able to hear any communications in the mediation 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 the Mediator
- iv. The Parties agree that they will not record or permit the recording of all or any part of the mediation without the consent of all Parties and the Mediator. The Parties will ensure that each additional attendee at the mediation for which that Party is responsible also acknowledges and agrees to this.
- v. The Parties and the Mediator acknowledge and agree for all purposes that their communications at the joint session of the mediation can be and will be listened to by each other. The Parties will ensure that each additional attendee at the hearing for which that Party is responsible also acknowledges and agrees to this.

2. The Parties acknowledge their understanding that mediation is a voluntary and informal process designed to be responsive to their joint needs. Each party will provide a Statement of Issues to the other party and the Mediator seven (7) days prior to the mediation and attach documents of central importance. Parties and their counsel will attend the mediation. Participation by the Parties is encouraged and is not intended to alter their existing rights and responsibilities unless expressly agreed. The Parties agree to bring to the mediation individuals that will be helpful in resolving the issues and the

key persons with necessary decision making authority will be in attendance or available by telephone throughout the mediation. The Parties agree to negotiate in good faith and to disclose material facts, information, and documents to each other and to the Mediator. The Mediator may suspend or terminate the session if requested by a party or if the Mediator determines that suspension or termination is appropriate.

3. The Parties further acknowledge their understanding that the Mediator is a neutral whose role is to facilitate communication between the Parties and assist them in reaching a mutually acceptable resolution of all or some of the issues in dispute. The Mediator will not impose any decision upon the Parties. Authority for decision-making rests with the Parties. The Mediator has no duty to ensure the enforceability or validity of any Minutes of Settlement that may be agreed to or to enforce this Agreement if one party alleges that another party has breached it.
4. Although the Mediator is a lawyer, he will not provide the Parties with legal advice, representation, or services. The Parties are encouraged to seek legal advice relating to mediation and, specifically, to receive legal advice before signing any Minutes of Settlement. The Parties recognize that Minutes of Settlement may contain binding legal obligations that are enforceable at law.
5. At least one representative of each Party in attendance must have the authority to bind the Parties to a full and final settlement.
6. Any information which is disclosed to the Mediator privately during the proceedings shall not be disclosed to another party by the Mediator during the proceedings unless the party disclosing the information specifically authorizes the Mediator to disclose same to assist in resolving the issues in dispute.
7. The Parties will respect and abide by any written settlement which is entered into by them as a result of the mediation proceedings. The terms of any such settlement will be carried out by the Parties and their representatives as soon as possible. The Mediator is not responsible for and will take no role in the drafting of any document reflecting the terms of settlement. There shall be no settlement unless or until the Parties execute written Minutes of Settlement.
8. The mediation process is conducted on a without prejudice basis. Any information, documents produced at the mediation and not otherwise the subject of litigation discovery, representations, admissions, suggestions, proposals, discussions, notes or the fact that a party had indicated a willingness to accept a proposal or recommendation for settlement, arising out of the mediation process shall not be subject to disclosure through discovery or any other process nor shall they be admissible into evidence in any other proceeding. All communications at a mediation session and the Mediator's notes and records shall be deemed to be without prejudice settlement discussions. The Parties agree that they will not voluntarily disclose any document, statements made and information provided through mediation unless required by law. The Parties further agree to keep the

terms of any Minutes of Settlement confidential unless disclosure is necessary to enforce the settlement.

9. The Parties shall not subpoena, nor otherwise compel, the Mediator to testify, either orally or by any written means, nor seek to compel production of written notes concerning matters that occurred at the mediation, in the subject litigation or any other proceeding.
10. The Parties and/or their counsel shall be responsible for payment of the Mediator's account and further have agreed that unless otherwise agreed during the mediation, they will equally share the cost for the Mediator's fees for time spent in preparation and attendance upon the Mediation at the agreed rate of \*\*\*\*\*. Board room and break out room rental, lunch and any other items agreed to by the Parties will be billed at cost.
11. The Mediator shall not be liable to the Parties for any act or omission in connection with the mediation session or the duties of the Mediator under this Mediation Agreement or otherwise, and shall have the same immunity from liability as a judge of a superior court in Canada. The Parties also agree to indemnify, on an equal basis between them, the Mediator for all legal costs and disbursements incurred in responding to any proceeding of any kind brought against or involving the Mediator arising out of the mediation contemplated by this Mediation Agreement.
12. If the Parties and the Mediator determine that the matter cannot be successfully resolved by way of mediation, the Mediator may, to assist in further settlement discussions, in his sole discretion and if jointly requested to do so by all the Parties, provide his oral assessment of the relative merits of the positions taken by each of the Parties with respect to the material issues in the action or dispute. The Parties may seek clarification from the Mediator during or immediately following such assessment but the Mediator's assessment will in no way be binding on any of the Parties.

DATED this \*\*th, day of \*\*\*\*\*, 2020.

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**JOHN F. SCHEULDERMAN**  
Mediator