

**MEDIATION RULES AND AGREEMENT
FOR
EXPEDITED CIVIL MEDIATION AT ADR CHAMBERS**

1. AGREEMENT OF THE PARTIES

- 1.1. These Rules, and all amendments to them, shall be deemed to have been made a part of any agreement which provides for mediation with ADR Chambers.
- 1.2. Subject to approval by ADR Chambers, these Rules may be varied at any time by agreement.
- 1.3. By scheduling a mediation with ADR Chambers under this program, the parties are deemed to have given their consent to these rules and agree to be bound by them. These Rules shall form the Agreement to Mediate between the parties and ADR Chambers.

2. DEFINITION OF MEDIATION

- 2.1. Mediation shall be defined as *a collaborative, interest-based negotiation between parties to a dispute, facilitated by an unbiased, independent third-party Mediator for the purposes of reaching a consensual agreement resolving the matter(s) at issue.*

3. INITIATING MEDIATION

- 3.1. Any party seeking to engage ADR Chambers for the purposes of mediating their dispute can commence the process by logging onto ADR Chambers Expedited Mediation booking system and completing the online forms.

4. CONFIDENTIALITY

- 4.1. All written and oral communications made in the course of the mediation will be treated as confidential and without prejudice. Therefore:

- a) The parties agree that communications and documents shared in this mediation will not be disclosed to anyone who is not a party to this mediation unless:
 - i) the person has agreed to be bound by these Rules as they relate to this matter;
 - ii) the information is otherwise public; or
 - iii) the person to whom the information is disclosed is a legal or financial advisor to a party to this agreement.
- b) The parties agree that all communications made and documents shared in this mediation, which are not otherwise discoverable, will be shared on a without prejudice basis and, will not be used in discovery, cross-examination, at trial or in any other way, in this or any other proceeding.
- c) The parties, Mediator and ADR Chambers staff agree to be bound by the confidentiality provision of these Rules. Any individual agreeing to these Rules on behalf of a corporation represents that he or she has authority to bind the corporation to the confidentiality provisions herein.

4.2. The Mediator will not reveal the names of parties or anything discussed in mediation except that the Mediator may disclose such information:

- a) to the lawyers or other professionals retained on behalf of the parties as deemed appropriate or necessary by the Mediator;
- b) to non-parties consented to in writing by the parties, as deemed appropriate or necessary by the Mediator;
- c) for research or education purposes, on an anonymous basis;
- d) where ordered to do so by a judicial authority or where required to do so by law; or
- e) where the information suggests that there will be actual or potential threat to human life or safety, or the commission of a crime in the future.

5. AUTHORITY

5.1. The parties or those representing them at the mediation shall have authority to settle the dispute.

6. SCHEDULING OF MEDIATION

6.1. Mediation hearings will be scheduled based on availability of the parties, their agent(s) or representative(s) and the Mediator. The parties shall jointly select a date for the mediation through the ADR Chambers Expedited Mediation booking system.

6.2. The mediation may be conducted by video-conference, teleconference or in person.

6.3. Parties may request to reschedule or cancel their mediation provided sufficient notice is given to the other party and to ADR Chambers, with the terms as follows:

- a) Any unilateral cancellation within ten (10) business days of the scheduled mediation will be subject to full payment of the \$500.00 fee (plus HST) payable by the cancelling party.
- b) Any joint cancellation request within ten (10) business days of the scheduled mediation will be subject to full payment of the \$500.00 fee (plus HST) divided between the parties in accordance with any split to which they have agreed.
- c) Any rescheduling request within ten (10) business days of the scheduled mediation will result in \$50.00 (plus HST) rescheduling fee payable by each party.
- d) Any rescheduling request made within twenty-four (24) hours of the scheduled mediation will be treated as a cancellation and the full fee of \$500.00 (plus HST) will be payable by the parties in accordance with any split to which they have agreed. In order to schedule a new mediation under these circumstances, a new \$500.00 fee (plus HST) will be applied.

7. STATEMENT OF ISSUES

- 7.1. The parties must provide the Mediator and the other parties to the dispute with a Statement of Issues which shall be uploaded via the ADR Chambers Expedited Mediation booking system. The Statement of Issues shall identify the issues in dispute and the parties' positions and interests and shall be provided at least seven (7) days before the mediation. The supporting documents must be attached to the Statement of Issues. The Plaintiff must also provide the mediator with a copy of the pleadings, if any.
- 7.2. The parties shall use the ADR Chambers Expedited Mediation booking system to exchange these documents.
- 7.3. Failure by a party to provide the Statement of Issues and relevant supporting documents prior to the seven (7) day deadline outlined above shall result in mediation being cancelled and fees applied accordingly.

8. ASSIGNMENT OF MEDIATOR

- 8.1. ADR Chambers maintains sole discretion over the assignment of Mediators in this program.
- 8.2. The parties will be provided with contact details for their assigned Mediator in advance of their scheduled mediation by email. Any changes to mediation assignments will be communicated as early as is practicable in the circumstances.

9. PARTICIPATION AT MEDIATION

- 9.1. It is expected that the parties themselves will be available to participate in the mediation session along with any agent(s) they may have appointed. While it is not always necessary for represented parties to be active in discussions at all times, their availability to address issues raised, consider settlement proposals and provide instructions to their agents is essential. Therefore, the availability of the parties to participate in good faith is a requirement for mediation to proceed. Failure of a party to be available for the mediation will result in mediation being terminated,

with the unilateral cancellation policy being applied in accordance with the scheduling provisions of these rules.

10. MEDIATION

- 10.1. Mediation will typically be scheduled for ninety (90) minutes by way of video-conference or teleconference. Additional time may be added as necessary at the discretion of the Mediator. As such, a single mediation session may be extended, or in the alternative, reconvened at a future date that is mutually agreeable to all parties. Additional time will be subject to additional fees in accordance with the Fees and Financial Terms provisions of these Rules.
- 10.2. The Mediator has full authority and discretion over the conduct of the mediation proceedings and may set and enforce certain ground-rules around the form of the discussion (e.g. the parties will take turns and agree not to interrupt one another). The Mediator will advise the parties of the ground rules and enforce them as required.
- 10.3. Each party should be prepared to make a brief opening statement explaining that party's perspective on the dispute. The Mediator may caucus privately with any party during the mediation. Any party may request a private caucus with the Mediator.

11. SETTLEMENT OF AN ISSUE

- 11.1. If an issue settles prior to mediation, the parties should advise the Mediator prior to the commencement of the mediation.

12. TERMINATION OF THE MEDIATION

- 12.1. The mediation will end:
- a) by agreement between the parties;
 - b) if a settlement is reached by the parties;
 - c) if the Mediator is of the view that the mediation ought to be terminated; or

- d) at the end of the scheduled time, except where the parties and Mediator agree to extend the time for mediation.

12.2 If the Mediator determines that it is not practical or appropriate to continue the mediation, the Mediator may terminate the process after conveying his or her unilateral decision to the parties to do so.

13. REPORT OF MEDIATOR

13.1. ADR Chambers will issue a report indicating the parties' participation at mediation.

14. DOCUMENT RETENTION

14.1. The Mediator and ADR Chambers may dispose of all documents relating to this matter after sixty (60) days following a settlement in mediation or other termination of the matter. This period may be extended at the request of any party, provided the party making the request provides a deposit and reimburses ADR Chambers for the cost of storing the documents for the period of time requested. If a party initiates any court review of any aspect of the mediation, it shall notify ADR Chambers of having done so, and shall provide a deposit and reimburse ADR Chambers for the costs of storing any documents relating to the mediation, pending completion of such review.

15. MEDIATOR AS A WITNESS/RELEASE FROM LIABILITY

15.1. The parties fully release the Mediator and ADR Chambers from all claims and causes of action whatsoever relating to or arising from the mediation. No party will invoke any legal process, for the purpose of compelling the Mediator to produce any documents or to testify in any judicial forum, concerning anything whatsoever about the mediation proceeding, nor to give evidence touching any aspect of the proceeding. The Mediator shall not be liable for anything done or omitted with respect to the mediation. The Mediator shall be entitled to the same immunity from claims and legal proceedings as a judge under the legislation in place in the Province.

15.2. The parties agree that:

- a) They will not at any time, before, during, or after mediation call the Mediator or anyone associated with ADR Chambers as a witness in any legal or administrative proceedings concerning this dispute. To the extent that they may have a right to call the Mediator or anyone associated with ADR Chambers as a witness, that right is hereby waived.
- b) If, at any time, either party decides to call the Mediator or anyone associated with ADR Chambers as a witness in any legal or administrative proceedings concerning this dispute, that party agrees to reimburse ADR Chambers for whatever expenses are incurred in such an action, including lawyer fees, plus the Mediator's hourly rate for time that is taken by this matter.
- c) 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.
- d) 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 ADR Chambers for whatever expenses are incurred in such an action, including lawyer fees, plus the Mediator's hourly rate for time that is taken by this matter.
- e) 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.
- f) If any of the foregoing provisions is found to be unenforceable, the parties seeking to call the Mediator or anyone else associated with ADR Chambers as a witness agree to pay the then applicable hourly rate of the Mediator for the time that the Mediator spends dealing with such issues.

g) 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.

15.3. The Mediator will not provide legal representation or legal advice to any party at any time. The Mediator 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.

16. FEES AND FINANCIAL TERMS

16.1. The fee for mediation in the Expedited Mediation Program is \$500.00 (plus HST), payable by the parties at the time of scheduling their Mediation. A valid payment method must be provided to ADR Chambers through the ADR Chambers Expedited Mediation booking system

16.2. Additional time will be subject to a rate of \$250.00 per hour (plus HST).

16.3. The parties are jointly and severally responsible to pay the applicable fees unless otherwise ordered by the Court. The parties may agree to an alternate arrangement between them as to the payment of fees, however they remain jointly and severally responsible for any unpaid fees.