

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

Plaintiff

- and -

Defendant

**VIDEOCONFERENCE
MEDIATION AGREEMENT AND
TERMS OF MEDIATION**

The above parties have agreed to mediate this matter through mediation services provided by Robert Besunder ("the Mediator") of Besunder Dispute Resolution, in accordance with the following terms:

1. The parties agree that the purpose of this mediation videoconference is to attempt to settle the outstanding issues in dispute between the parties;
2. This mediation process is a non-binding, without prejudice proceeding and it is hereby agreed that to the extent allowed by law, any admissions made or offers to settle will not be relied upon or admitted into evidence in any further litigation or arbitral proceedings;
3. It is understood and agreed that in order to have an effective mediation, the parties or their counsel should have full authority to settle this dispute at the mediation videoconference;
4. It is agreed that the Mediator is an independent contractor, who is neutral and will not be acting as legal counsel for, or providing legal advice to, either party during the mediation videoconference;
5. It is agreed that the Mediator may disclose to any party or to his or her counsel any information provided by the other party which the Mediator believes to be relevant to the issues being mediated, unless a party or his or her counsel has specifically requested the mediator to keep certain information confidential;
6. It is agreed that as the mediation is being conducted by videoconference, each counsel and party shall, to the extent possible, ensure that no other person(s) shall be present during the videoconference other than the person(s) named in this agreement;
7. It is understood and agreed by the parties to conduct this mediation by way of videoconference, with the knowledge and understanding that the technology employed to conduct the videoconference is not expressly or implicitly guaranteed to ensure 100% confidentiality and/or security, due to the risk, foreseen or not, of third-party access to the transmission of information, and the presence of non-intended person(s) without the knowledge of all parties to this agreement;
8. It is understood and agreed that the Mediator will not record the videoconference, and the parties to this agreement also agree not to record the videoconference, except with the prior written consent and agreement of all parties, including the Mediator;

9. It is agreed that where necessary, signatures on documents, including this Mediation Agreement, may be obtained in counterpart, and also by electronic means, including, but not limited to, services such as DocuSign;
10. It is agreed that the signature of documents, including this Mediation, if obtained remotely and electronically, shall be deemed to have been signed at the City of Toronto, in the Province of Ontario;
11. It is agreed and understood that the technology used to conduct the videoconference is dependent upon various factors outside of the control of the Mediator and the parties, either individually and/or collectively, including but not limited to the quality and availability of internet connectivity for all involved, the availability of internet bandwidth, and the quality of the hardware employed by any of the parties in accessing the videoconference. The parties to this agreement understand that technical difficulties and/or interruptions in the videoconference may arise through no fault of the Mediator and/or any party;
12. It is agreed that where a settlement is reached, the parties and their counsel will carry out the terms of the settlement as soon as possible and will sign appropriate Minutes of Settlement;
13. It is agreed that the mediation videoconference may be terminated at any time for any reason by any party, his or her counsel or the Mediator;
14. It is agreed that the parties and their counsel will indemnify and hold the Mediator harmless from any actions which may arise as a result of this mediation conference and the parties agree to fully indemnify him for any and all costs or damages which may arise as a result of the mediation videoconference. The Mediator shall have the immunity described in Section 82 of the Courts of Justice Act, with necessary modifications. Furthermore, the parties agree not to subpoena or otherwise require the Mediator to testify or produce records or notes in any subsequent litigation or arbitral proceedings. No transcripts or records will be kept of this mediation videoconference.
15. The fees for mediation services conducted will be on the following basis:

Half-day (3 hour) Mediation:

- \$1,200.00 plus HST for two parties
- \$1,275.00 plus HST for three parties
- \$1,350.00 plus HST for four parties
- \$1,425.00 plus HST for five parties or more

For each additional hour (or portion thereof) beyond three hours, an additional \$350.00 per hour plus HST.

Please note that for half-day mediations, fees are generally charged “per action” – if two or more separate actions are being mediated together, each separate action may incur a separate mediation fee. The fee will be confirmed at the time of booking.

Full-day Mediation:

- \$2,500.00 plus HST for two or three parties
- \$3,000.00 plus HST for four or more parties

The above fees are inclusive of all preparation and time spent in Mediation.

In addition, the parties will be invoiced for disbursements and administrative costs, including room fees at an examiner’s office or other similar mediation facility, and, if

requested, the cost of lunch being provided. The parties will also pay HST on the fees and any disbursements incurred. Unless there is an express agreement otherwise which is communicated to the Mediator, the costs of the mediation services will be split by the parties. The lawyers for the parties shall be responsible for paying his or her client's share of the unpaid account.

16. Cancellation Policy:

Mediations cancelled ten (10) days or less prior to the scheduled date will be subject to a cancellation fee of 100% of the Mediator's fee, plus any disbursements and administrative costs, plus applicable HST.

Mediations cancelled thirty (30) days or less, but more than eleven (11) days, prior to the scheduled date will be subject to a cancellation fee of 50% of the Mediator's fee, plus any disbursements and administrative costs, plus applicable HST.

Mediations cancelled thirty-one (31) days or more prior to the scheduled mediation will not attract any cancellation fee, save and except any third-party disbursements (i.e., room bookings) that may have an associated cancellation fee.

DATED AND SIGNED AT TORONTO, this day of , 20_____

Counsel on behalf of the Plaintiff

Counsel on behalf of the Defendant

Plaintiff

Defendant (Insurer)
per:

Mediator
Robert Besunder