

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

Plaintiff

- and -

Defendant

**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 conference 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 conference;
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 conference;
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 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;
7. It is agreed that the mediation conference may be terminated at any time for any reason by any party, his or her counsel or the Mediator;
8. 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 conference. 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 conference.

9. 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.

10. 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)

Mediator