

IN THE MATTER OF:

Court File No.: [INSERT No.]

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

[INSERT PARTY NAME(S)]

Plaintiff(s)

and

[INSERT PARTY NAME(S)]

Defendant(s)

Mediation Agreement

This Agreement to Mediate is between the Parties and Counsel signing this Agreement (the "Parties") and Jean-Michel Fréchette (the "Mediator") whose services are provided through and by Fréchette Mediation.

The parties will participate in a mandatory court-connected mediation session to be conducted in accordance with Rule 24.1 of the *Rules of Civil Procedure*. The terms of this Agreement apply whether the mediation is conducted, in full or in part, in person, by telephone, by video or by other means as agreed by the Parties.

In consideration of the mutual covenants contained in this Agreement, the following is agreed to:

1. Good Faith and Voluntary Process

Mediation is a voluntary and informal settlement process where the Parties make best efforts to reach a resolution to a dispute keeping their interests in mind. The process may be terminated at any time, by any Party and for any reason.

The signing of this document is evidence that the Parties are willing and able to participate in the mediation process in an honest and forthright manner and to make a serious attempt to resolve all issues in relation to the dispute.

2. Online Mediations

In the event that the Parties have requested the use of the online dispute resolution technology, they agree to use the Zoom Video Platform ("Zoom"). The Mediator shall host the mediation using his Zoom account with no additional cost to the Parties.

The following terms are agreed to, specifically with respect to the conduct of the mediation by Zoom:

- a. The Parties agree that the mediation shall be a "mediation" for the purposes of all applicable legislation, regulations and rules.

- b. The Parties acknowledge that they have informed themselves about the uses and functions of Zoom. They have made their own enquiries as to the suitability and adequacy of Zoom for its proposed use in the mediation and of any risks with using Zoom, including any risks in relation to its security, privacy and confidentiality. They request that the Mediator proceed with the use of Zoom.
- c. The Parties agree that they will inform the Mediator, in advance of the mediation, of the names of all persons attending, participating or who will be able to hear any communications during the conduct of 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.
- d. The Parties and the Mediator agree that no one will record or permit the recording of all or any part of the mediation.

3. Attendance

The Parties and their Counsel shall attend at the mediation with such other individuals that may be helpful in resolving the dispute or issues in the dispute, insofar as notice of the participation of such individuals is provided to the other Parties and Mediator prior to the commencement of the mediation. No other persons will attend at the mediation without the consent of all Parties and the Mediator. The mediation shall commence at a time, date and location mutually convenient to the Parties, their Counsel and the Mediator.

4. Authority

The representatives of the Parties attending the mediation have full, unqualified authority to reach a negotiated settlement with regards to the dispute.

5. Exchange of Information

To facilitate an understanding of the dispute and issues to be mediated, the Parties will provide the Mediator with a Mediation Brief or Statement of Issues, not less than 3 business days prior to the scheduled mediation.

6. No Legal Advice or Liability

The Mediator is an experienced impartial facilitator who will assist the Parties to reach their own negotiated settlement. The parties acknowledge that Jean-Michel Fréchette is a lawyer but is only acting as a mediator in this matter and is not providing any legal advice.

7. Fees and Cancellation

The Mediator's fees are **[INSERT \$AMOUNT]**, plus HST and disbursements. These fees include case administration, pre-mediation preparation and consultation, mediation conference time (full day: 6 hours; half day: 3 hours) and reporting. Additional mediation preparation (in excess of 2 hours) and consultation or mediation time is charged at \$325.00 per hour. **The Parties shall pay the Mediator's fees and expenses, in relation to the mediation, equally.**

If this mediation is cancelled or postponed for any reason whatsoever, a cancellation charge, in accordance with the cancellation policy as shown on the Mediator's website shall be paid by the Party or Parties requesting the cancellation or postponement. The Mediator's account shall be rendered by Fréchette Mediation to the lawyers for the Parties shortly

following the mediation and shall be payable upon receipt.

8. No Summons or Subpoena

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 connection with the mediation including any records or notes of the Mediator. The Parties consent, by their signatures to this agreement, that if any Party decides to subpoena the Mediator, the Mediator will be able to rely on this provision to quash the subpoena. That Party, who decides to subpoena the Mediator, agrees to reimburse the Mediator for any expenses incurred in relation to quashing the subpoena, including legal fees, in addition to the hourly rate of the Mediator for time spent in relation to quashing the subpoena at issue.

The Parties agree that The Mediator is an officer or benefits from the same immunity conveyed to officers pursuant to section 82 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

9. Confidentiality and Non-Disclosure

Statements made by any persons and documents produced in the context of mediation and not otherwise discoverable shall not be subject to disclosure through discovery or any other discovery-type process and shall not be admissible into evidence in any context for any purpose including impeaching credibility.

The Parties and the Mediator hereby undertake to the Superior Court of Ontario that mediation communications (meaning statements, whether oral or in a record or verbal or nonverbal, that occur during a mediation or are made for purposes of considering, conducting, participating in, initiating, continuing, or reconvening a mediation or retaining a mediator) shall be kept confidential except to such extent: (a) as expressly agreed by the Parties and the Mediator, (b) as required by law; or (c) for purposes of enforcing any settlement agreement reached. Each Party and the Mediator acknowledges and agrees that breach of such undertaking may give rise to sanctions being imposed by the said Court including a finding of contempt of Court.

The Mediator will not voluntarily disclose, to anyone who is not a Party to the mediation, any mediation communications, except as enumerated in circumstances (a) through (c) above and where the information suggests an actual or potential threat to human life or safety.

10. Governing Law

This Agreement shall be made and construed in accordance with the laws of the Province of Ontario, Canada.

11. Execution and Signatures

This Agreement may be executed by the Parties and the Mediator 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. Counterparts may be signed electronically and exchanged via email or fax. This Agreement may be executed by Counsel on behalf of clients. This Agreement shall enure to the benefit of and be binding upon the Parties and the Mediator, their heirs, executors, administrators, successors and assigns.

EXECUTED by the Parties and the Mediator as of the date below.

DATE _____

[Counsel]
Lawyer for the Plaintiff(s)

[PARTY]
Plaintiff

[Counsel]
Lawyer for the Defendant(s)

[PARTY]
Defendant

[Counsel]
Lawyer for the Defendant(s)

[PARTY]
Defendant

Jean-Michel Fréchette
Fréchette Mediation