



MEDIATIONSOPHILEX

**AGREEMENT DETERMINING THE CONDITIONS OF AN ARBITRATION
(SOLE ARBITRATOR)**

BETWEEN:

Plaintiff

AND:

Defendant

Hereafter referred to as “the Parties”

AND:

Me Dominique F. Bourcheix
6 Desaulniers Blvd., Suite 315
Saint-Lambert, Quebec
J4P 1L3

Hereafter referred to as “the Arbitrator”

1. The Litigation

A conflict exists between the Parties with regards to _____

2. Recourse to Arbitration

The Parties agree to resolve the litigation through an arbitration conducted by a sole arbitrator in conformity with section of the contract of _____ and/or pursuant to the judgment dated _____ rendered by the Honorable JCS who referred them to arbitration.

The Parties expressly agree that the arbitral award to be rendered in this matter shall be final, without appeal, and commit to comply with it.

The arbitrator shall not act as amiable compositeur.

3. The Arbitrator

The Parties retains the services of Me Dominique F. Bourcheix, as arbitrator (hereafter referred to as the “arbitrator”) of the present litigation in view of her knowledge of arbitration, law and procedure as well as her position as member of the Québec Bar.

4. Mandate of the Arbitrator

- a) The Parties agree that the arbitrator must rule on the issues described hereafter:
To be completed
- b) The arbitration will be governed by sections 940 to 951 inclusively of the Quebec Code of Civil Procedure as well as sections 2638 to 2643 of the Civil Code of Quebec.
- c) The arbitrator will be required to act according to the rule of law.
- d) The hearing shall take place in the same fashion as a civil case before the courts. Any objections to the evidence shall be ruled upon according the prevailing rules of civil evidence before the courts.
- e) The arbitration will take place on _____ at the offices of Mediation Sophilex at 6 Boulevard Desaulniers, suite 315, Saint-Lambert.
- f) The arbitrator will have discretion to determine the proportion of arbitral costs to be assumed by the Parties as a result of the arbitration award *or, the costs for the arbitration will be determined as per section _____ of the contract dated _____* .
- g) No later than 60 days after the Parties have presented their evidence and closing arguments, the arbitrator shall draft and sign the arbitral award. The arbitrator will transmit the award to the Parties’ attorneys according to the terms described hereafter.

- h) The expiration of the timeframe for rendering the arbitral award shall in no way invalidate any decision to be rendered subsequently, the 60-day delay having been established to allow a Party to compel the arbitrator to render the award if the delay has not been respected.

5. Fees

Subject to the rights of the Parties as per section 6f), each Party commits jointly and severally to pay the arbitrator her hourly fees at a rate of \$ _____ plus applicable taxes, for the time devoted to the study and preparation of the file, travel if any, hearing of the case, analysis and drafting of the award, and any other work carried out within the framework of this mandate, as well as for expenses incurred such as:

- Photocopies (\$0.25)
- Faxes (\$0.25/copy received)
- Rental of conference rooms and hotel, if applicable
- Parking
- Mileage

There will be no cancellation charge except for fees already incurred

6. Billing

The Parties agree:

- a) To remit, In Trust to the arbitrator the sum of \$ _____ each, for a total of \$ _____ to serve as advances on the fees and costs of the arbitration. The arbitration will be suspended if these advances are not paid. If a Party fails to pay such advances within the established timeframe, the other Party can advance this sum, subject to his rights to claim them from the Party in default.
- b) Once fees earned by the arbitrator amount to 80% of monies received as advances, the Parties agree to deposit additional advances requested by the arbitrator, according to the terms stipulated in the preceding paragraph. The arbitrator will provide interim invoices regularly.



- c) At the end of the arbitration, the arbitrator shall issue, to the Parties through their attorneys, a final invoice detailing all fees and expenses incurred, total advances received, and any outstanding balance.
- d) Should there be an outstanding balance, the Parties shall each assume 50% of said balance.
- e) Should one of the Parties fail to pay his share of any outstanding balance within thirty (30) days following receipt of the invoice, the other Party shall pay the outstanding balance in order to access to the arbitral award.
- f) The final determination of the arbitration costs between the Parties will be done according to the disposition of the arbitral award and any Party which will have paid less than its share of said costs as determined in the award, hereby agrees to reimburse the other Party for any additional costs incurred.

7. Transmission of the Arbitral Award

The Parties agree that:

- a) Copy of the arbitral award will be transmitted to their attorneys, once the arbitrator has received payment of each Party's half of the arbitration costs, except:
- b) In the event that one Party fails to pay his share of the arbitral costs and the other Party has advanced that Party's share as per section 6 e), the arbitrator shall transmit to the Party having advanced the funds, both copies of the arbitral award.

8. Confidentiality of the Arbitration

This Agreement is confidential and all that is said or written during the course of the arbitration, including the arbitrator's notes and any comments of the arbitrator, cannot be used as evidence in any judicial procedures or other situations with the exception of the arbitral award, which can be the object of judicial homologation or other judicial process. *This clause can differ and specify that the arbitration is not confidential.*

The arbitrator shall not be required to testify in any judicial or other procedure relating to the arbitration.

9. Immunity

The Parties agree to hold the arbitrator harmless from any claims, which could be made against her for any act made in good faith during the execution of the present arbitration mandate.

10. Interpretation

Should any conflict arise between the terms of this Agreement and the contract dated _____, the terms of _____ shall prevail.

IN WITNESS THEREOF, the Parties have signed _____, on this _____ day of _____ .

Plaintiff
Duly authorized representative

Attorney for the Plaintiff

Defendant
Duly authorized representative

Attorney for the Defendant

**INTERVENTION AND ACCEPTANCE
OF THE ARBITRATOR'S MANDATE**

- a) The arbitrator declares that she has read the arbitration Agreement annexed herein and commits to comply with all the obligations incumbent upon her by virtue of said mandate.
- b) The arbitrator declares that there exists no conflict of interest between her and the Parties.
- c) The undersigned arbitrator accepts the mandate she is being given and agrees to execute it in a diligent, independent, impartial and confidential manner.

IN WITNESS THEREOF, the arbitrator has signed at _____, on this ____ day of _____, 200 .

Dominique F. Bourcheix
Mediator and Arbitrator