



MEDIATIONSOPHILEX

**AGREEMENT DETERMINING THE CONDITIONS OF  
A MEDIATION/ARBITRATION**

BETWEEN:

AND:

hereafter referred to as “the Parties”

AND: **Me Dominique Bourcheix**  
Desaulniers Blvd., suite 315  
Saint-Lambert, Quebec  
J4P 1L3

hereafter referred to as “the mediator/arbitrator”

**WHEREAS** there is a dispute between the Parties in regards to \_\_\_\_\_;

**WHEREAS** the Parties wish to terminate their dispute in a final and expeditious manner;

**WHEREAS** the Parties wish to attempt to settle the dispute first through mediation and, in the event of a failure to do so, obtain a final ruling by arbitration;

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**THE PARTIES AND THE MEDIATOR/ARBITRATOR AGREE  
TO THE FOLLOWING:**

**1. Process**

The process of mediation/arbitration (hereafter referred to as “med/arb”) will be carried out in two phases if necessary. The parties will first engage in a process of mediation in an effort to arrive at a settlement. Mediation is a voluntary process in which the Parties agree to actively participate. This mediation will end either with a mediated Agreement or by an acknowledgment that the mediation has failed, which will trigger the start of the arbitration process, all of which will be conducted according to the rules stipulated hereafter.

**THE MEDIATION**

**2. The Role of the Mediator**

The mediator will act as a facilitator in order to foster proper communication between the Parties on the various aspects of the litigation and to enable them to explore all possibilities of resolving their conflict. The mediator shall work at sustaining the conditions, which facilitate such process namely, ensure:

- a full and efficient exchange of information between the Parties;
- communication, between the Parties, of their mutual expectations;
- a search for solutions in keeping with the expectations expressed;
- frank and efficient negotiations;
- the conclusion of a voluntary Agreement among the Parties, that is satisfactory to all.

The mediator acts at all times in a neutral and impartial fashion. He will not give any legal opinion or any feedback based on the exchanges made before him so as to preserve the integrity of his function as arbitrator.

**3. Attendance at the Mediation Session**

The Parties will attend the mediation sessions with their attorneys. Each Party must ensure that: 1) he is represented by a person fully authorized to conclude a settlement and 2) individuals with personal knowledge of relevant information to be discussed during the mediation will attend. Experts can be present.

#### **4. Caucusing in Mediation**

The mediator can and shall, if she deems it appropriate, hold caucuses with one or all of the Parties who can also, at their own discretion, request such caucuses in order to discuss privately with the mediator. No information communicated to the mediator during the caucuses shall be transmitted to the other Parties unless the mediator is expressly authorized to do so.

#### **5. Confidentiality**

The present Agreement and all documents or information exchanged during the process of mediation will be without prejudice, will remain confidential and will not be admissible as proof in any judicial process through the intermediary of the mediation.

However, nothing in said Agreement deprives the Parties in any way whatsoever of their right to present, in arbitration, any evidence or document that they could otherwise file according to the rules of law.

The mediator, the Parties and their attorneys, and any other person present, agree to preserve the confidentiality of the entire mediation process and of any information divulged or document exchanged during same.

The mediator cannot be summoned to testify in any judicial or other procedure as to what was discussed during the mediation portion of this med/arb process.

Any person signing this med/arb Agreement in a capacity other than a “Party”, does so with regards to his commitment to respect the confidentiality of the process.

#### **6. The Value of the Mediated Agreement**

In principle, it is not the role of the mediator to judge the value or the appropriateness of the Agreement, which must remain an expression of the will of the Parties.

Nevertheless, if she is of the opinion that continuing the mediation process carries a risk of serious prejudice to either of the Parties, or creates a situation that is clearly unjust to one Party, she must inform the Parties, and invite them, if possible, to take measures to remedy the situation or, if she deems it necessary for reasons of integrity, she may suspend or terminate the mediation process.

**7. Mediation Fees**

The Parties shall share on an equal basis, the mediation fees and expenses. Fees are based on an hourly rate of \$ \_\_\_\_\_ for preparation, the mediation sessions and any follow-ups agreed to by the Parties prior to arbitration.

The mediation fees will be subject to a separate invoice.

**THE ARBITRATION****8. Commitment to Arbitration**

All issues not settled in mediation shall be arbitrated by the mediator/arbitrator who will then act as sole arbitrator. Any arbitration decision rendered shall be final, without appeal and binding on the Parties. The Parties will not object to the ability of the arbitrator to act as such on the basis that she has served as mediator in the process.

**9. Beginning of Arbitration**

The mediator/arbitrator shall determine when it is appropriate and no later than \_\_\_\_\_ to formally declare the failure of the mediation. After this declaration, the arbitrator will establish with the Parties the list of admissions in fact and in law, which derive from the mediation on the one hand and, on the other, the list of questions of fact and law, which are to be the object of the arbitration hearing and the award. The Parties will debate the disputed questions of fact and law at the date established for the hearing as per section 15.

**10. Mandate of the Arbitrator**

The Parties agree that:

- a) The arbitrator must rule on the issues, as stated in the formal declaration of failure of the mediation, as per section 7 above and, in the absence of such agreement on:  
*To be completed*
- b) The arbitration will be governed by Articles 2638 to 2643 of the Code civil du Québec and by Articles 940 to 951 of the Code de procédure civile du Québec.

- c) The arbitrator must rule on the dispute according to the rules of law and evidence.
- d) The hearing will be held in a fashion similar to that of a case before a court of civil law. Any objection to the evidence will be handled according to the rules of evidence prevailing in a court of civil justice.
- e) The arbitrator will not consider any information, facts, documents, or comments of any type revealed during the mediation, caucuses or settlement process. The arbitrator will only consider facts and documents, which will be part of the list of admissions as per section 7 above. All other facts, documents or arguments will have to be presented by the Parties as part of their respective evidence and arguments.
- f) The arbitrator can, at her discretion, determine the proportion of arbitral costs to be assumed by the Parties, based on the arbitration award. *This clause can call for the determination of costs according to the original contract's arbitration clause.*
- 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 not invalidate any decision to be rendered subsequently, the 60-day period having been established to allow a Party to compel the arbitrator to render the award if the delay has not been respected.

## **11. Arbitration Fees**

Subject to the rights of the Parties, as per section 12 f), each Party commits jointly and severally to pay the arbitrator's hourly fees at a rate of \$\_\_\_\_\_, plus all 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)
- Parking
- Rental of conference room, if applicable
- Mileage

## 12. 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 advance funds requested by the arbitrator, according to the terms stipulated in the preceding paragraph.
- c) The arbitrator will regularly produce interim invoices to keep the Parties and their attorneys informed of the fees incurred. 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.

## 13. Transmission of the Arbitral Award

The Parties agree that 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. However, in the event that one Party fails to pay his share of the arbitral costs within the timeframe stipulated above and the other Party has advanced that Party's share, as per

section 12 e), the arbitrator shall transmit to the Party having advanced the funds, both copies of the arbitral award.

#### **14. 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.

#### **15. The Length of the Med/Arb Process**

The Parties agree to the following procedure and undertake to complete it, if possible, within a set period of time, in order to expect the med/arb process to end on \_\_\_\_\_:

- Signing of the present Agreement;
- Review of the file and preparation of the entire med/arb process;
- Mediation session on the \_\_\_\_\_ at the offices of Mediation Sophilex;
- Arbitration hearing on the \_\_\_\_\_ at the offices of Mediation Sophilex;
- Arbitration decision rendered within 60 days following the end of the arbitration.

#### **16. Immunity and Professional Services**

The Parties agree to indemnify and 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.

The Parties agree to retain the professional services of the mediator/arbitrator because of her knowledge of mediation, arbitration, law and procedure as well as her position as member of the Québec Bar.

**17. Interpretation**

Should any conflict arise between the terms of this med/arb Agreement and the contract signed \_\_\_\_\_, the terms of \_\_\_\_\_ shall prevail.

**18. Language clause**

This contract has been drafted in English at the express request of the Parties.

**IN WITNESS THEREOF, WE HAVE SIGNED**, at \_\_\_\_\_, on this \_\_\_ day of \_\_\_\_\_, 20\_\_.

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\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
**Me Dominique F. Bourcheix**  
Mediator/Arbitrator



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

- a) The mediator/arbitrator declares that she has read the arbitration mandate annexed to this agreement and commits to comply with all the obligations incumbent upon her by virtue of said mandate.
- b) The mediator/arbitrator declares that there exists no conflict of interest between her and the Parties.
- c) The mediator/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 mediator/arbitrator has signed at St. Lambert, Quebec, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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**Dominique F. Bourcheix**  
Mediator and Arbitrator