

**AGREEMENT TO MEDIATE**

**AND**

**TERMS OF MEDIATION**

The parties agree to mediate with Pasquale C. Peloso to attempt to settle their dispute in relation to the above-noted matter.

The provisions of the Agreement are as follows:

1. The Mediator is a neutral facilitator who will assist the parties in reaching their own settlement. The Mediator will not make decisions for the parties on how the matter must or should be resolved.
2. All written and oral communications made in the course of the mediation will be treated as confidential and without prejudice. Therefore:
  - a. The parties to this agreement agree that communications and documents shared in this mediation will not be disclosed to anyone who is not a party to this mediation unless:
    - i. the person has signed this Agreement to Mediate;
    - ii. the information is otherwise public; or
    - iii. the person to whom the information is disclosed is a legal or financial advisor to a party to this agreement
  - b. The parties to this agreement agree that all communications made and documents shared in this mediation, which are not otherwise discoverable, will be shared on a without prejudice basis and, and will not be used in discovery, cross examination, at trial or in any other way, in this or any other proceeding
  - c. Everyone signing this document, whether or not a party to the litigation, agrees to be bound by the confidentiality provision of this agreement. Any individual signing on behalf of a corporation represents that he or she has authority to bind the corporation to the confidentiality provisions in this agreement.

3. The Mediator will not reveal the names of parties or anything discussed in Mediation except that the Mediator may disclose such information:
  - a. to the lawyers or other professionals retained on behalf of the parties as deemed appropriate or necessary by the mediator;
  - b. to non-parties consented to in writing by the parties, as deemed appropriate or necessary by the mediator;
  - c. for research or education purposes, on an anonymous basis;
  - d. where ordered to do so by a judicial authority or where required to do so by law;
  - e. where the information suggests that there will be actual or potential threat to human life or safety, or the commission of a crime in the future.
4. The parties agree that they will not at any time, before, during, or after mediation call the Mediator in any legal or administrative proceedings concerning this dispute. To the extent that they may have a right to call the Mediator as a witness, that right is hereby waived.
5. The parties agree not to subpoena or seek any Court Order or use any other legal process in an attempt to demand the production of any records, notes, work product or the like, of the Mediator in any legal or administrative proceedings concerning this dispute. To the extent that they may have the right to demand these documents, that right is hereby waived.
6. If, at any later time, either party decides to subpoena the Mediator, the Mediator may move to quash the subpoena. That party agrees to reimburse the Mediator for whatever expenses he or she incurs in such an action, including lawyer fees, plus the hourly rate of the Mediator for time that is taken by this matter.
7. Any party calling the Mediator as a witness, issuing a subpoena against the Mediator or seeking production from the Mediator waives his/her/its right to rely upon and enforce the confidentiality provisions of this agreement as against the Mediator.
8. If any of the foregoing provisions is found to be unenforceable, the parties seeking to call the Mediator as a witness agree to pay the then applicable hourly rate of the Mediator for the time that the Mediator spends dealing with such issues.
9. Notwithstanding the above, this Agreement to Mediate and any written agreement made and signed by the parties as a result of mediation, may be used in any relevant proceeding, unless the parties make a written agreement not to do so.

10. The Mediator shall not be liable for anything done or omitted with respect to the Mediation and has the immunity granted to a Judge under the legislation in place in the Province.
11. While all parties intend to continue with mediation until a settlement agreement is reached, it is understood that any party may withdraw from mediation at any time.
12. If the Mediator determines that it is not practical or appropriate to continue the mediation, the mediator may terminate the process after conveying his or her unilateral decision to the parties to do so.
13. The parties or those representing them at the mediation have authority to settle the dispute.
14. The parties will have lawyers present at the mediation. The Mediator will not provide legal representation or legal advice to any party at any time, and has no duty to assert or protect the legal rights and responsibilities of any party, to raise any issue not raised by the parties themselves, or to determine who should participate in the mediation.
15. Where an agreement is reached, the parties or their counsel will draft any Settlement Documentation or Minutes of Settlement and any releases.

## **FEE SCHEDULE**

\$2,000\* fee plus HST (minimum) for a 3-hour (half day) session, including reasonable preparation time plus reasonable disbursements, if any.

\$3,500\* fee plus HST (minimum) for a 6-hour (full day) session, including reasonable preparation time, plus reasonable disbursements, if any.

\$450 per hour plus HST for every hour or part hour over the set 3 or 6 hour time slot, as the case may be.

All above rates pertain to in-person (Ottawa) mediations/arbitrations or virtual appearances. Additional travel costs will apply for in-person mediations/arbitrations taking place out of the Ottawa region.

**\* Additional fees may apply for mediations involving four or more parties, multiple actions, or where complexity warrants.**

A handwritten signature in black ink that reads "Pat C. Peloso". The signature is fluid and cursive, with "Pat C." on the first line and "Peloso" on the second line.

**Pat C. Peloso**

Cavanagh LLP / Peloso Mediation

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