

## ARBITRATION AGREEMENT

**THIS AGREEMENT** made this    day of

**BETWEEN:**

(hereinafter called the "Claimant")

**AND:**

(hereinafter called the "Respondent")

**AND:**

**Peter J. MacKeigan, Q.C.**  
(hereinafter called the "Arbitrator")

**WHEREAS:** The Claimant and the Respondent (hereafter collectively referred to as the “Parties”) are in a dispute and wish to resolve the issues by arbitration (the “Arbitration”) in respect to

**THEREFORE** it is understood and agreed as follows:

### **Appointment of Arbitrator, Location of Hearing and Rules of Procedure**

- 1) The Parties appoint Peter J. MacKeigan, Q.C. to act as the sole arbitrator.
- 2) The Arbitration shall be pursuant to the \_\_\_\_\_ (the “Act”).
- 3) The Arbitration hearing is scheduled for \_\_\_\_\_ and to be held at commencing at 9:30 AM.
- 4) The burden rests in balance between the Parties.
- 5) There will be no filing of a claim or response.
- 6) Prehearing briefs are to be received by the Arbitrator on of before \_\_\_\_\_

### **Jurisdiction, Procedural Matters**

- 7) The Arbitrator has jurisdiction, on submission by the Parties, to deal with all matters relating to the dispute, including but not limited to:
  - a) Determining questions of law, fact or mixed fact and law in accordance with the applicable rules of evidence;

- b) Making procedural orders including orders relating to scheduling, the exchange and amendment of pleadings, the exchange of documents and order an adjournment of the proceedings from time to time;
  - c) Taking steps to protect confidentiality rights of the Parties or any third party, if necessary;
  - d) Issuing subpoenas to compel the attendance of any person at an examination for discovery or before the hearing of the Arbitrator;
  - e) Hearing any motions, such motions to be heard by the Arbitrator at a location selected by the Arbitrator and pursuant to schedules set by the Parties or, failing consent, set by the Arbitrator;
  - f) Making rulings, giving directions and generally dealing with any and all interlocutory matters relating to the dispute;
  - g) Where a party, without sufficient cause, fails to appear at an oral hearing or fails to produce documentary evidence, the arbitrator may continue the arbitration and the Arbitrator shall make an award based upon the evidence before the Arbitrator;
  - h) Where a party, without sufficient cause, fails to comply with any order or direction of the Arbitrator or any requirement under the Act or this Agreement, the Arbitrator may grant such relief as the Arbitrator deems appropriate, including costs
- 8) The Parties and Arbitrator may participate in motions which may be heard by teleconference.
- 9) The Parties are deemed to have consented to the authenticity of all documents contained in the document books to be provided, unless the Party gives notice of objection within two days of the oral hearing to the other Party and the Arbitrator.
- 10) The hearing shall be held in private. No person shall be present except the Parties or their representatives, Legal Counsel, witnesses and consultants, except with the consent of the Parties and subject to the discretion of the Arbitrator.
- 11) The Arbitrator may determine the manner in which witnesses are to be examined and may require a witness, other than a Party or the Party's representative, to leave the oral hearing during the testimony of another witness. The Arbitrator will, after hearing the evidence, hear submissions from the Legal Counsel for the Parties. The Parties may present their witness evidence orally or alternatively by affidavit subject to cross examination. The Parties have advised they do not intend to call witnesses who need to be qualified as an expert. This does not preclude the calling of witnesses who are not Parties as to matters of fact or practice.
- 12) The parties agree that the decision of the Arbitrator will be final and expressly waive all rights of appeal,

### **Provisions Where Mediation is Agreed to by the Parties**

- 13) The Parties may at any time agree to submit this dispute to mediation, before the Arbitrator who shall act as mediator.

- 14) Where the mediation is unsuccessful or if any Party withdraws from the mediation, the arbitration will continue as per the schedule set out above and the Arbitrator is not disqualified from acting as Arbitrator.
- 15) In the arbitration, the Arbitrator shall, except with the consent of the Parties, not consider or reply upon:
- a) Any views expressed, or suggestions made, by a Party in respect of a possible settlement of the dispute;
  - b) Any admissions made by a Party in the course of a mediation;
  - c) Any proposals or recommendations made by himself as the mediator; or
  - d) The fact that a Party has indicated a willingness to accept a proposal or recommendation for settlement made by the mediator.
- 16) The Parties shall not rely on nor introduce as evidence in any proceedings, including without limitation, the arbitration, whether or not such proceedings relate to the subject-matter of the mediation:
- a) Any views expressed, or suggestions made, by the other Party in respect of a possible settlement of the dispute;
  - b) Any admissions made by the other Party in the course of the mediation;
  - c) Any proposals or recommendations made by the mediator; or
  - d) The fact that the other Party had indicated a willingness to accept a proposal or recommendation for settlement made by the mediator.

### **Indemnity and Arbitrator as Witness**

- 17) The Parties shall indemnify and save harmless the Arbitrator from all costs or claims which they may now have or might have in the future, respecting or arising from the arbitration and this agreement.
- 18) The Arbitrator shall not be held liable to any of the Parties for any act or omission arising, directly or indirectly, in connection with the services provided pursuant to this agreement unless the Arbitrator is shown in connection with such act or omission to have acted in bad faith.
- 19) The Arbitrator shall not act as a representative or counsel of a Party in proceedings in respect of a dispute that is the subject-matter of this agreement, and the Arbitrator shall not be subpoenaed to give evidence as a witness in any such proceedings nor shall he voluntarily offer to give such evidence.

### **Fees, Disbursements, Cancellation and Rescheduling**

- 20) The Arbitrator will be paid as follow:

Fixed rate for a scheduled standard day (9:30 to 4:30) or part thereof. \$2,750

Hourly time charge out rate for all other matters. \$375

Disbursements such as airfare, accommodations, meals, and meeting room facilities are charged at cost. Automobile mileage charged at \$.45 per kilometer. For travel time to Cape Breton, NB, NFL, and PE add \$750.

Cancellation or rescheduling fees for all matters are in addition to fees for time charges or disbursements. These fees are the responsibility of all Parties, jointly and severally, and not just the Party who caused the cancellation or rescheduling and will apply regardless of the reason for the cancellation or rescheduling.

Where cancellation or rescheduling occurs more than 4 weeks prior to the prescribed day there is no charge.

Per scheduled day where cancellation or rescheduling occurs within 4 weeks but more than 1 week prior to the prescribed day. \$1,250

Per scheduled day where cancellation or rescheduling occurs within 1 week prior to the prescribed day. \$2,000

HST of 15% is added to all fees and expenses.

21) The fees and disbursements of the Arbitrator, including any cancellation/rescheduling fees, are to be borne, in equal shares by the Claimant and Respondent, subject to the final award as to costs. The Arbitrator may withhold his award until all outstanding accounts from all Parties are paid in full.

22) The Arbitrator will send invoices concurrently to the solicitors for the Parties. The Parties do hereby instruct their respective Legal Counsel to immediately pay such account, it being understood that the Arbitrator has undertakings from the respective Counsel to pay the Arbitrator's fees on behalf of their client as a personal obligation of Legal Counsel.

**IN WITNESS WHEREOF** the Parties hereto have executed and delivered this Agreement in counterparts and copies provide in PDF form which shall be considered as an original equivalent by:

Per: \_\_\_\_\_  
Signature of Legal Counsel on behalf of Claimant

Per: \_\_\_\_\_  
Signature of Legal Counsel on behalf of Respondent

\_\_\_\_\_  
Peter J. MacKeigan, Q.C.