

IN THE MATTER OF THE ARBITRATION ACT S.O. 1991, c. 17 as amended

- and -

**the COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, as amended;
the ESTATES ACT, R.S.O. 1990, c. E.21, as amended;
the ESTATES ADMINISTRATION ACT, R.S.O. 1990, c. E.22, as amended;
the FAMILY LAW ACT, R.S.O. 1990, c. F3, as amended;
the RULES OF CIVIL PROCEDURE, R.R.O. 1990, Reg. 194, as amended;
the SUBSTITUTE DECISIONS ACT, 1992, S.O. 1992, c. 30, as amended;
the SUCCESSION LAW REFORM ACT, R.S.O. 1990, c. S.26, as amended;**

- and/or -

the TRUSTEE ACT, R.S.O. 1990, c. T.23, as amended

IN THE MATTER OF THE ESTATE OF [DECEASED], deceased.

B E T W E E N:

[PARTY 1]

("Party 1")

- and -

[PARTY 2]

("Party 2")

ESTATE ARBITRATION and LITIGATION MANAGEMENT AGREEMENT

[Party 1] and [Party 2] (the "**Parties**") agree to arbitrate the issues set out below in an effort to move their litigation forward while the Courts are not operating in normal fashion on account of the COVID-19 pandemic. The Parties have agreed to submit these issues to [NAME] as Arbitrator, who has confirmed [his/her] impartiality and independence from the Parties. Where any substantive issues to be submitted to arbitration pursuant to this Agreement affect the rights of persons under legal disability, or an unprotected charitable interest, the Parties confirm that they have provided notice of their intention to enter into this Agreement to the Public Guardian and Trustee and/or the Office of the Children's Lawyer, as applicable, and that they have been given an opportunity to become a party to the EALM Agreement.

SUBMISSION

1. This document constitutes a submission to arbitrate pursuant to the provisions of the *Arbitration Act*, S.O. 1991, c. 17 and may involve the application of, but not limited to, one or more of the following statutes: the *Courts of Justice Act*, R.S.O. 1990, c. C.43, the *Estates Act*, R.S.O. 1990, c. E.21, the *Estates Administration Act*, R.S.O. 1990, c. E.22, the *Family Law Act*, R.S.O. 1990, c. F3, the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, the *Substitute Decisions Act, 1992*, S.O. 1992, c. 30, the *Succession Law Reform Act*, R.S.O. 1990, c. S.26, and/or the *Trustee Act*, R.S.O. 1990, c. T.23, and amendments thereto.

ISSUES SUBMITTED TO ARBITRATION

2. The following issues are submitted for determination:
 - (a) specific issues regarding the scheduling of examinations and related directions;
 - (b) specific undertakings and refusals;
 - (c) specific issues regarding the scheduling of mediation and related directions;
 - (d) specific scheduling and time-tabling issues, including any variation or enforcement of the timetable as set out in the [DATE] Order Giving Directions of The Honourable Justice [NAME] (the "**Order Giving Directions**");
 - (e) the enforcement of specific disclosure obligations of the Parties, their consent to the disclosure of the records of third parties, and/or the authority of the Parties or any one of them to direct production of records held by third parties;
 - (f) any issues to be determined on an interim basis as set out in the Order Giving Directions;
 - (g) any relief sought on an interim basis, as set out in the Notice of Application, Statement of Claim, or otherwise agreed upon by the Parties;
 - (h) interim support under section 64 of the *Succession Law Reform Act*;
 - (i) stays of distribution of the assets of the estate of [DECEASED], including any assets passing outside of the estate to a designated beneficiary or joint tenant who is one of the Parties;
 - (j) the appointment of interim/temporary guardians of property and/or personal care, Litigation Guardians, and/or Section 3 Counsel, subject to the position of the Public Guardian and Trustee and approval of the Court;

- (k) the appointment of Estate Trustees During Litigation, subject to confirmation by Court Order;
- (l) the commencement of new proceedings or claims as between the Parties in relation to the estate of [DECEASED] and directions as to the related procedure and/or any of the issues set out above;
- (m) the extension of any deadline to commence a proceeding under the statutes cited above or the tolling of any applicable limitation period;
- (n) the procedure and costs of any motion in writing necessary to give effect to the terms of any decision or ruling made pursuant to this Agreement;
- (o) costs of this arbitral proceeding;
- (p) any other issues as may be agreed upon by the Parties and that the Arbitrator is agreeable to determining pursuant to this Agreement; and
- (q) any other issues that are ancillary or otherwise closely related to any of items (a) through (p) listed above, which must also be determined in order to determine an issue set out in any of items (a) through (p).

NO CONFIDENTIALITY

- 3. The proceedings and the record thereof are not confidential. Materials used in the arbitration process may be filed in Court.
- 4. The Parties shall consent to a motion in writing for any Court Order(s) necessary to give formal effect to the terms of decisions or rulings made pursuant to this Agreement, subject to the position of the Public Guardian and Trustee and/or Office of the Children's Lawyer when applicable.

WAIVER OF RIGHTS TO LITIGATE IN COURTS

- 5. By submitting the specific issues designated in paragraph 2 above to arbitration, the Parties hereby waive any right to litigate those specific issues in Court.
- 6. Nothing in this Agreement shall be interpreted as limiting in any manner the role that the Public Guardian and Trustee and/or Office of the Children's Lawyer may have in the determination of the issues identified at paragraph 2 above, their right to service of a motion filed in accordance with paragraph 4 above, their ability to oppose such a motion, and/or to otherwise make submissions to the Court.

DECISIONS/RULINGS & APPEALS

- 7. The Parties agree that all decisions and rulings issued pursuant to this Agreement will become a Consent Order of the Ontario Courts upon the Court resuming regular operations, and are not subject to appeal. The Arbitrator's decision or ruling shall be binding upon the Parties.

MEDIATION

8. The Parties agree that, if the Parties consent, the Arbitrator may mediate the issues set out above. If so, the participation of the Parties and/or their counsel and the Arbitrator in a mediation will not disqualify the Arbitrator from arbitrating the issues in dispute. The Parties waive the provisions of section 35 of the *Arbitration Act*, and agree that the arbitration may take place shortly after an attempted mediation, after taking a brief adjournment.
9. If the processes occur one after the other, to avoid confusion, the Arbitrator will clearly advise, in person and/or by way of email, when the mediation process has terminated, and the Arbitration process has commenced.

PROCEDURAL ISSUES IN RESPECT OF ARBITRATION HEARING

10. (1) **Time and Place:** The hearing shall take place either by teleconference or video conference as directed by the Arbitrator on advice from counsel. A hearing under this Litigation Management Mandate is expected to last no more than 1½ to 2 hours. On the consent of both/all Parties, the hearing may take place only in writing. The Parties agree that this form of hearing meets all the requirements of the Arbitration Act.

(2) **Applicable law:** The arbitration will be conducted in accordance with the law of Ontario, and the law of Canada as it applies in Ontario.
11. **Procedure on Hearing:** The procedure will be as summary as possible given the importance of the issues, as directed by the Arbitrator on advice from counsel. In determining procedural issues, the Arbitrator shall be guided by all usual rules for the admissibility of evidence in court proceedings will apply as will the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 and any applicable estate law statutes, including those cited above.
12. At least **three business days** before the scheduled date for arbitration, each party shall (by email) provide the other party and the Arbitrator with any sworn evidence and/or a Statement of Law or Position Statement of no more than ten (10) typewritten (double-spaced) pages setting out his/her position in respect of the above issues, including reference to all relevant documents and relevant case law.

By noon on the day before the Arbitration, each party shall provide (by email) the other party and the Arbitrator with any responding evidence and/or a Statement of Law or Position Statement of no more than five (5) typewritten (double-spaced) pages, including reference to all relevant document and relevant case law.
13. The Arbitrator may vary the timelines and procedures set out above, upon [his/her] own motion, or upon a motion of one of the Parties, where the circumstances so justify.

14. The arbitration proceedings shall not be transcribed.

REPORT OF ARBITRATOR FOLLOWING THE ARBITRATION HEARING

15. Within fourteen (14) days after the evidence has been received and submissions on the law have been made, or as soon as practicable thereafter, the Arbitrator shall deliver (by email) a decision or ruling in writing on all issues submitted for determination.

ARBITRATOR'S FEES AND DISBURSEMENTS

16. The Arbitrator's fees for this specific Litigation Management mandate shall be at a reduced rate of \$250.00 per hour for preparation, the hearing and preparing the decision or ruling, and any follow-up, plus disbursements and HST.
17. The Parties shall provide the Arbitrator with a total retainer of \$1,130.00, presumptively being \$565.00 each at least 4 business days before the arbitration is to be heard.

COSTS

18. The Arbitrator's discretion regarding costs shall include the power to require one party to pay more than one-half, or all of the Arbitrator's fees and disbursements.

WAIVER OF ARBITRATOR'S LIABILITY

19. The Parties hereby waive any claim or right of action against the Arbitrator arising out of these proceedings.

INDEPENDENT LEGAL ADVICE

20. Each of the Parties has received, or has been advised to and specifically declined to seek, independent advice as to the terms of this arbitration agreement: [NAME] from [NAME] and [NAME] from [NAME].
21. This Agreement may be signed electronically and in counterparts.

DATED:

Solicitor for

Solicitor for

INDEPENDENT LEGAL ADVICE

I, [NAME], confirm that I have received independent legal advice and have attached to this Agreement a copy of the certificate of independent legal advice that was provided to me.

- OR -

I, [NAME], confirm that I have been advised and provided with the opportunity to seek independent legal advice regarding the within Agreement and that I have specifically declined to do so.

Dated at Toronto, the _____ day of _____

[NAME]

INDEPENDENT LEGAL ADVICE

I, [NAME], confirm that I have received independent legal advice and have attached to this Agreement a copy of the certificate of independent legal advice that was provided to me.

- OR -

I, [NAME], confirm that I have been advised and provided with the opportunity to seek independent legal advice regarding the within Agreement and that I have specifically declined to do so.

Dated at Toronto, the _____ day of _____

[NAME]

SOLICITOR'S CERTIFICATE

I, [NAME], hereby certify

1. I am the solicitor for [NAME], one of the Parties to the attached Agreement.
2. I acknowledge that I explained the significant of this Agreement to [NAME].
3. In my judgement, I do verily believe that [NAME] understood the significance of the within Agreement and was under no incapacity of any nature when it was executed and explained to him/her/them.

Dated at _____, the _____ day of _____, 2020

Solicitor for [NAME]

SOLICITOR'S CERTIFICATE

I, [NAME], hereby certify

1. I am the solicitor for [NAME], one of the Parties to the attached Agreement.
2. I acknowledge that I explained the significant of this Agreement to [NAME].
3. In my judgement, I do verily believe that [NAME] understood the significance of the within Agreement and was under no incapacity of any nature when it was executed and explained to him/her/them.

Dated at _____, the _____ day of _____, 2020

Solicitor for [NAME]

ARBITRATOR'S CERTIFICATE

I, _____, confirm the following matters:

i. I will treat the Parties equally and fairly in the arbitration, as subsection 19 (1) of the *Arbitration Act, 1991* requires.

.....

(Signature of Arbitrator)