# Appendix H-7: Sample Agreement to Mediate – Referred Mediation

## Agreement to mediate

1. **Desire to mediate**

We, the undersigned mediation parties agree to participate in this mediation in order to try to resolve our differences and reach a mutually acceptable agreement on the issue referred to this mediation by the Minister of the Environment relating to the Environmental Assessment (EA) for Project Name. We are choosing to participate in this mediation voluntarily and understand that we are free to pursue our rights under the *Environmental Assessment Act*, if we are not satisfied with the results of this mediation process. If we are satisfied with the results of this process, we will enter into an agreement that will be reported by the mediator to the Minister and will be considered by the Minister in making a decision on this EA. Each of the undersigned acknowledges that he or she has read this agreement and agrees to proceed with this mediation on the terms set out in this agreement.

1. **Impartiality of mediator**

The other parties all understand that the fees and reasonable expenses of the mediator are being paid by the proponent, Proponent Name, as required by section 8(10) of the *Environmental Assessment Act*. Notwithstanding this, it is understood that the mediator has been hired to be a neutral mediator to assist the parties to resolve their differences in a non-partisan fashion. We all understand that the mediator will assist us to communicate and to negotiate but will remain impartial. We understand that the primary responsibility for resolving our differences rests with us and not with the mediator. The mediator is responsible for assisting us with the dispute resolution process, for assisting us to formulate any agreement that we may reach and for submitting a mediator’s report to the Minister.

1. **Independent legal representation**

We, the undersigned, understand that the mediator will not give any of us legal advice. Should any of us feel the need for independent legal advice, we understand that we are free to seek it at any time from a lawyer of our choice. We acknowledge that we have been advised by the mediator to this effect.

1. **Mediation sessions**

The resolution of the issue(s) that have been referred to this mediation will be addressed in a series of mediation sessions to be structured and scheduled with the parties. We agree to abide by reasonable rules of conduct to ensure that these sessions will be conducted in a civil, respectful and open-minded fashion. Generally, the mediator will meet with all parties in joint sessions. However, at times through the process, the mediator may wish to meet with one or more of us individually or in subgroups. Such a meeting is known as a caucus. We understand that no information communicated by a party to the mediator in a caucus will be disclosed by the mediator, without the consent of that party. We understand that each of us has the right to withdraw from the mediation process at any time, on notice to the mediator. The mediator has the right to suspend or terminate the mediation process at any time where, in the mediator’s opinion, continuation of the process would result in harm or prejudice to one or more of the parties.

1. **Confidentiality**

The mediator will not voluntarily disclose to anyone who is not a party to the mediation any oral or written communication that has taken place during the mediation process. The only exception to this understanding will include where ordered to do so by an appropriate judicial authority or where required to do so by law.

We agree that any evidence of anything said or of any admission or communication made in the course of this mediation is not admissible in any legal proceeding, nor will the mediator be called as a witness by or on behalf of any of us in any legal proceeding. We further agree that the mediator shall not be required by any of us, in any legal proceeding, to give any opinion or to disclose any admission or communication made to him/her in the course of this mediation.

We understand that the mediator will prepare a report to the Minister of the Environment at the conclusion of this mediation. That report will form part of the public record and will detail the nature of the mediation process followed and any agreement reached. In the event that no agreement on any issues is reached, the mediator will prepare a report to advise the Minister of the mediation process that was followed and that no agreement has been reached.

We further agree with each other that each of us will participate in this mediation in good faith and with the understating that all written or oral communications among us are and will remain confidential and without prejudice to any position that any of us may wish to take later, should the mediation process not result in an agreement. We agree not to disclose to any third party, including the media, any communications made to each other during the course of this mediation process, during or after the mediation process is over, without the agreement of all of us.

1. **Authority to make binding commitments**

Each of the undersigned persons who are representing a group, whether incorporated or not, has the authority of the group to participate in this mediation and to make decisions that will be binding on the group. Alternatively, if the group that an undersigned person represents will need to endorse any agreement that may be reached in this mediation, the undersigned representative is the person who is responsible for making recommendations to the group regarding this matter and undertakes to recommend that the group endorse any agreement that is reached.

1. **Advisors and resource persons**

Each of the undersigned persons who is not a party to the mediation, but is attending this mediation as an advisor to a party or as a person who has been invited by the parties to attend this mediation to assist the parties and the mediator to understand technical or other issues acknowledges that he or she has read this agreement and agrees to be bound by its provisions, including in particular, the confidentiality provisions of this agreement.

Dated at municipality, Ontario this dd day of month, 20YY.

Mediator's name

Mediator’s Name and Signature

Name

Organization

Signature

Name

Organization

Signature

Name

Organization

Signature

Name

Organization

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Organization

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