

# PVP Program Mediation Agreement

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## WHEREAS:

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- Under Article 8 of the “LLRW Agreement” a Property Value Protection (PVP) Program was to be established as part of the low-level radioactive waste management project taking place in the municipalities of Port Hope and Clarington, known as the Port Hope Area Initiative (PHAI);
- the PVP Program has been established and is administered by Canadian Nuclear Laboratories, in its capacity as the manager of the PHAI (PHAI);
- under the PVP Program, a claimant may submit to the PHAI a claim for any diminution of property value realized on the sale of property, loss of rental income and mortgage renewal difficulties attributable to the implementation of the PHAI;
- the Claimant submitted such a claim under the Standard Route and the PVP Program has made a decision with respect to the claim;
- the Claimant disagrees with the decision under the Standard Route and requests an opportunity to mediate a resolution between the Parties;
- the Claimant has submitted a mediation request and returned it to the PHAI within twenty (20) business days of receiving the PVP claim decision letter with respect to his or her PVP claim with the understanding that a mediation agreement must be signed within five business days of receipt of the document from the PHAI; and
- the mediation is to be conducted in accordance with the terms of this agreement and the PVP Program Claim Rules.

## 1 Terms of Mediation

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The Parties whose signatures appear below at the end of this agreement have agreed to enter into mediation in order to resolve issues between the Parties concerning the Claimant’s PVP claim in accordance with the terms set out herein.

## 2 Definitions

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### **Claimant**

The person or persons named on the signature line below as the “Claimant”.

### **Mediator**

The person named on the signature line below as the “Mediator”.

### **LLRW Agreement**

The agreement entitled “An Agreement for the Long Term Safe Management of the Low-Level Radioactive Waste Situated in the Town of Port Hope, the Township of Hope and the Municipality of Clarington” entered into by The Corporation of the Town of Port Hope, The Corporation of the Township of Hope, The Corporation of the Municipality of Clarington and Her Majesty the Queen in Right of Canada in 2001 together with amendments made in 2003, 2006 and 2009.

**Parties**

The Claimant and the PHAI; “Party” means one of them.

**PHAI**

The Port Hope Area Initiative as described in the “LLRW Agreement”.

**PHAI**

Canadian Nuclear Laboratories, in its capacity as the manager of the Port Hope Area Initiative

**PVP Program**

The Property Value Protection Program established under the “LLRW Agreement.”

### 3 Nature of Mediation

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The mediation is an informal, voluntary, agreement-reaching process in which the Mediator will assist the Parties to attempt to reach an agreement in a collaborative and consensual manner. The Parties understand that mediation is an interest-based process that will facilitate settlement. The Parties undertake to participate in good faith throughout the mediation and to use their best efforts to reach a mutually acceptable settlement agreement.

### 4 Selection of Mediator

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The Mediator shall be appointed by the PHAI and will be selected from a roster of independent, impartial mediators maintained by the PVP Program. They will be selected in the order of their position on the roster. Mediators shall be members of the ADR Institute of Canada (Ontario).

### 5 Conduct of Mediator

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Subject to the Terms of Mediation contained in this agreement, the Mediator shall conduct the mediation in a fair manner that appears most likely to assist the Parties to reach an agreement. Where the Mediator is also a lawyer, he or she will not provide either of the Parties with legal advice, representation, or services, and any statements by the Mediator will not constitute legal advice.

### 6 Time and Location

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A date and location for the mediation will be provided to the claimant within ten (10) days from the execution of this agreement by both parties. All reasonable efforts will be made by the Parties to agree on a date for the mediation to be held within a further 30 days.

### 7 Exchange of Information

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The Parties agree to an exchange of all information upon which they intend to rely in any oral or written presentation during the mediation. This exchange shall be complete no later than ten business days prior to the date set for the mediation. On request, PVP staff shall make documents and information contained in the PVP claim file that are relevant to the claim decision available to the Claimant for review at the HWP MO office, subject to the requirements of applicable information privacy legislation. The Claimant may request (at no charge) copies of such documents.

## 8 Mediation Briefs

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Each party, or their representative, will prepare a written mediation brief or submission that includes a summary of the facts; their view of the issues in dispute and reasoning; and other relevant information. The mediation brief shall not be longer than 5 typed double-spaced single-sided pages, excluding any of the appended documentation. The mediation brief may refer to the material submitted to the PHAI and/or contained in the claim file, but no further factual material may be submitted or referenced by either party. The complete mediation brief shall not exceed 50 single-sided pages. The Parties will deliver their briefs to the Mediator and to each other at least five business days prior to the date scheduled for the mediation.

## 9 Mediation Meeting

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The mediation shall take place in the municipality of Port Hope at a location selected by the PHAI and shall not continue for more than three (3) hours unless agreed to by both of the Parties.

## 10 Confidentiality

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All information pertaining to or relating to the mediation, both written and oral, whether made prior to, during the course of mediation session, or after the mediation, shall be regarded as “without prejudice” communications for the purpose of settlement negotiations, and shall be treated as private and confidential by the Parties and their representatives, unless otherwise required by law.

Neither Party shall use any information obtained in the mediation process for any purpose other than those of the mediation and, in the case of the Claimant, for the purpose of determining whether or not to proceed to arbitration if the mediation does not result in a settlement. However, evidence that is independently admissible or discoverable in future proceedings shall not be rendered inadmissible or non-discoverable by virtue of its use during the mediation.

## 11 Caucusing

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The Mediator is free to caucus with the Parties individually, as he or she sees fit, to improve the chances of a mediated settlement. Any information revealed to the Mediator by one Party during such caucusing may be disclosed to the other Party in the mediation, at the discretion of the Mediator, unless the Party providing the information/documentation specifically directs that it not be disclosed to the other party.

## 12 Prohibition Against Future Assistance

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It is agreed that the Mediator will neither represent nor testify on behalf of any of the Parties in any subsequent legal or other proceeding between the Parties or where they are opposed in interest. It is further agreed that the personal notes and written opinions of the Mediator (including, without limitation, the Mediator’s report referred to in section 14 below) made in relation to this mediation are confidential and may not be used in any subsequent proceeding between the Parties or where they are opposed in interest.

## 13 Termination

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Any Party, including the Mediator, may terminate the mediation at any time.

## 14 Mediator's Report

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At the completion of the mediation, the Mediator shall provide a report to the Parties, indicating the outcome of Mediation including any resolved issues and/or outstanding issues, within five days of the Mediation.

## 15 No New Steps

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During the course of the mediation, the Parties agree to take no new steps in any legal proceeding between them which concerns the same subject matter as is the subject of this mediation.

## 16 Liability

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The Parties agree that they will not make any claim against the Mediator for any error or omission in connection with the mediation and any right that they may have to assert such claim is hereby waived. The Parties agree to indemnify and save harmless the Mediator from and against any and all losses, claims, actions, causes of action, costs, and expenses that may arise directly or indirectly out of the mediation.

## 17 Costs

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- a) Mediation services: The fees and expenses for the mediation services provided by the Mediator will be paid by the PHAI.
- b) Claimant costs: The PHAI will pay the reasonable receipted costs (including, without limitation, legal and expert fees and disbursements) of the Claimant up to a maximum of \$700. Costs of the Claimant submitted for reimbursement beyond that amount will be disallowed. Claimants may obtain reimbursement for an amount above \$700 only in exceptional circumstances, and only after obtaining written pre-approval from the PHAI prior to the excess expenses being incurred. Exceptional circumstances means circumstances in which the Claimant is acting under a disability and lacks capacity under the Ontario Substitute Decisions Act, or is otherwise incapable of filing submissions and attending the mediation. The decision made by the PHAI on whether to provide additional funding in excess of \$700 is final. Payment of reimbursable expenses will be made within 30 days of the later of: (i) the date invoices/receipts substantiating the expenses are received by the PHAI; or (ii) the date of delivery of the Mediator's report.

**Accepted by the Parties:**

**Claimant**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

**Claimant**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

**Address for delivery of Documents to Claimant:**

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

**Address of Property Subject to PVP claim:**

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

**Canadian Nuclear Laboratories Ltd., in its capacity as manager of the Port Hope Area Initiative**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

I have the authority to bind the corporation.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

I have the authority to bind the corporation.

**Address for delivery of Documents:**

Att: PVP Coordinator

Historic Waste Program Management Office  
115 Toronto Road,  
Port Hope, ON  
L1A 3S4

**Mediator**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_