

MEDIATION AGREEMENT

Mediation Session: [Date]

Mediation Location: [Firm Name]
[Address]
[City, State Zip Code]
[Telephone]

Dispute: [Case Name and Case Number]

Parties: [Parties]

Parties Attorneys: [Individual Lawyer(s) Names and Firm Names and Telephone Numbers for Each Party]

Mediator: Brent Summers
Tarlow Naito & Summers LLP
(503) 688-1366
(503) 329-9669

The Parties agree to mediate their dispute and hereby retain Mediator to serve as a mediator as governed by ORS chapter 36 [or insert the mediation laws of the state or district where the mediation is taking place] on the following terms and conditions:

1. The Mediator is to act as a neutral. He will not provide legal counsel or advice. Mediator is not acting as a judge or arbitrator, and has no authority to enforce any agreement reached. The Parties are encouraged to consult with their Attorneys at any time before, during or after the mediation and before finalizing an agreement to resolve the dispute, in whole or in part.

2. The Parties recognize that all aspects of the Mediation, including the Mediation Session is confidential and each party representative attending the Mediation will have either signed this Agreement or signed a separate Confidentiality Agreement containing the following provisions:

A. All statements made during the course of the Mediation (including before and after the Mediation session) are privileged, are made without prejudice to any Party's legal position, and are non-discoverable and inadmissible for any purpose in any legal proceeding. The Parties agree to submit their responses to the Mediator's Requests for Mediation Statements in accordance with the outline set forth on the page immediately following the signature lines below.

B. The privileged character of any information is not altered by disclosure to the Mediator.

C. Disclosure of any records, reports, or other documents received or prepared by the Mediator cannot be compelled.

D. The Mediator shall not be compelled to disclose or testify in any proceedings as to (i) any records, reports, or other documents received or prepared by the Mediator or (ii) information disclosed or representations made in the course of the mediation or otherwise communicated to the Mediator in confidence. [Note: *Although all communications are privileged, a communication regarding child abuse or elder abuse is not subject to confidentiality if made to a person required by law to report such communication. Also a communication made during Mediation is not confidential if the Mediator or a party to the Mediation reasonably believes that disclosing the communication is necessary to prevent a party from committing a crime that is likely to result in death or substantial bodily injury to a specific person*].

E. No aspect of the Mediation shall be relied upon or introduced as evidence in any arbitral, judicial, or other proceeding.

F. Since the Parties are disclosing sensitive information in reliance upon this agreement of confidentiality, any breach of this agreement would cause irreparable injury for which monetary damages would be inadequate. Consequently, any Party may obtain an injunction to prevent disclosure for any such confidential information in violation of this Agreement.

G. Any Party breaching this Agreement shall be liable for and indemnify the non-breaching Parties and the Mediator for all costs, expenses, liabilities, and fees, including attorneys' fees, which may be incurred as a result of such breach.

3. It is understood that Mediator may meet with the Parties together or separately, before, or during, or after the Mediation. [Alternative A. If an agreement to settle the dispute in whole or in part is reached at the Mediation Session, the Parties and the Mediator will use their best efforts to immediately document the settlement before leaving the Mediation Session.] [Alternative B. Upon reaching a settlement of the dispute in whole or in part, all settling Parties shall remain until one of the following has been accomplished: (i) a final settlement agreement has been written and signed by all Parties; (ii) a binding term sheet or MOU containing all material terms has been written and signed by all Parties; or (iii) a tape recording of the oral recital of all material settlement terms has been made in the presence of all Parties, their counsel and the Mediator, and all Parties have acknowledged at the end of the recording that the recital is the binding settlement of the dispute. If the Parties choose to complete either alternative (ii) or (iii), the MOU or tape recording shall contain, as a material settlement term, the following: (a) the parties will nominate the initial drafter and then work together to enter a written final settlement agreement; and (b) if any disputes arise concerning the language to be used to memorialize the binding settlement terms set forth in the MOU or tape recording, the Mediator shall convene a summary proceeding, hear from all Parties, and then decide the language issue. The Mediator's decision under this so-called "Czar clause" is final and is not subject to any review, action, or appeal.]

4. Payment. The Parties and their Attorneys, jointly and severally agree to pay Mediator for his services as follows:

A. Charges. Mediation and arbitration services are charged at the rate of \$400 per hour for the Mediator's time expended before, during and after the Mediation Session including travel time. Lodging and per diem expenses apply if necessary. *The minimum charge for services is \$1,600 plus estimated expenses, cash in advance, nonrefundable.* The minimum deposit per party is each party's pro-rata share of the required advance, unless otherwise agreed. The hourly rate will apply against the minimum charge. [The \$400 per hour rate is for the Portland, Oregon market only. The hourly rate will be adjusted up or down in other markets based on comparing the Portland, Oregon rate to the rates charged by the Mediators' peers in each market].

B. Cancellation Fee. If the proceeding is cancelled within three (3) business days of the scheduled date for the Mediation Session, the Parties will be charged a cancellation fee of one-half of the nonrefundable cash advance required in the preceding paragraph. No cancellation fee will be charged if the proceeding is cancelled more than three (3) days before the scheduled date. In such circumstances, the entire cash advance will be returned to the Parties.

C. Division of charges. The charges will be divided equally among the Parties, unless otherwise agreed.

PARTIES:

PARTIES' ATTORNEYS:

ADDITIONAL PERSONS IN ATTENDANCE AT THE MEDIATION SESSION:

MEDIATOR'S REQUESTS FOR MEDIATION STATEMENTS

Each Party agrees to submit its confidential mediation statement to the Mediator, in accordance with the following outline, on or before [Date]:

1. The Party's legal position [theories and elements of claims or defenses];
2. The key factual and evidentiary points that support the Party's legal position;
3. The legal fees, expert fees and costs estimated: (a) to have been spent so far; and (b) the amount necessary to try or arbitrate the case;
4. The Party's settlement position: (a) previously communicated to the other Parties; and (b) at the start of the Mediation Session [if different]; and
5. Any other considerations that may affect the Mediator's efforts to resolve the dispute [i.e. client perspectives; timing issues; and financial condition, to name a few].

NOTE: Prior legal memoranda, settlement correspondence and other existing documentation may be included to save you time. You are *not* limited to three (3) pages.