

**MEDIATION SCHEDULING LETTER, AGREEMENT TO MEDIATE, and
MEMORANDUM OF UNDERSTANDING**

Samples

USUAL WARNING: The Institute *for* Conflict Management, Inc. does not practice law. These materials and the information presented orally are for general educational purposes only. They are meant to illustrate general concepts and are not to be relied upon as legal advice in any way. Please seek independent legal advice. Note: The confidentiality rules are different when dealing with an Oregon state agency and a federal matter. They also may be different when dealing with a non-state agency public body.

MEDIATION SCHEDULING LETTER

June 23, 2015

PARTY OR ATTORNEY

Address

Address

Email

Phone

PARTY OR ATTORNEY

Address

Address

Email

Phone

RE: _____ and _____
Mediation Communication

Greetings:

Thank you for selecting me to mediate this dispute. As you know, mediation is a voluntary process that affords all parties the best opportunity to explore a dispute in a confidential environment and reach agreement. I can personally attest to its success in cases ranging from “admiralty to zoning.” Pursuant to our agreement, this case is scheduled for:

Date: **Monday, July 31, 2015**
Time: **9:30am – Until Completion**
Location: _____

Enclosed please find our form Agreement to Mediate (*which will be signed at the mediation*). Our fee, plus expenses, is to be split evenly between the parties unless otherwise agreed in writing. **Please submit to me a deposit in the amount of \$X,XXX.00 by July 17, 2014.** (Our tax identification number is 93-XXXXXXX.)

Please be sure that each party, or as a less desirable option, a party representative with **complete authority** to fully resolve all issues is present. **Please notify me immediately if this is not possible.** We cannot proceed meaningfully without the actual decision makers at the table.

Please send me a **confidential case summary** (approximately 7 – 10 pages) in Microsoft Word to help me prepare for the mediation. My email address is SamImperati@ICMresolutions.com. Any exhibits can be scanned and sent separately.) This analysis should be sent to me **by July 24, 2015**, and should cover the following:

1. brief review of the procedural status of the case;
2. brief factual overview;
3. identification of the key factual and legal issues including a detailed “damages” analysis;
4. bullet-style list of your factual/legal strengths;
5. candid, bullet-style list of the other party's factual/legal strengths, along with your response;
6. underlying business or personal needs of *both* parties from a non-monetary perspective;
7. history of settlement discussions including the last proposals and “whose court you think the ball is in;”
8. your view as to the past and current barriers to settlement including your thoughts as to the other side’s realistic view of the case;
9. highlighted copies of the key documents; and
10. summary of any other information that will assist me in working with you.

I am confident we will be able to work together toward a satisfactory resolution and I look forward to assisting you in that process.

Sincerely,

Mediator

Attachments: Agreement to Mediate
General Memo of Understanding

AGREEMENT TO MEDIATE

A. Voluntary.

You make the decisions with your informed consent and you can end the mediation at any time, as can the mediator. The mediator will not force you to make a decision or make one for you.

B. Process.

Mediation services are designed to assist the participants in reaching a mutually acceptable resolution to controversies.

C. Your Role.

Mediation can assist parties reach a fair agreement when you: 1) participate fully; 2) listen without interruption; 3) speak honestly; 4) keep an open mind; 5) act respectfully, 6) explore workable options, 7) negotiate in good faith, 8) come with the authority to decide, and 9) do not electronically record or serve legal documents.

C. Mediator's Role.

I will tell you if I have some connection to the matter. I am not your attorney, judge, or counselor. I recommend you seek independent legal and other professional advice throughout the mediation process and before you sign any agreement. My role is to help you to have an open discussion, fully explore your concerns, and consider the possibilities. I use several approaches and I will discuss them with you. I am bound by the Oregon State Bar ORPC Rule 2.4 at <http://www.osbar.org/docs/rulesregs/orpc.pdf> and guided by the Oregon Mediation Association Standards of Mediation Practice at <http://www.omediate.org/pg61.cfm>. They are available from me, as is information about my training and experience. If you resolve this matter, I can help write an agreement.

D. Confidentiality.

This is very important because it encourages people to talk freely. Mediation communications are confidential (secret), non-discoverable (not available in court process), and inadmissible (as evidence). They included all verbal and written communications between me and any party, participant, or their representative, and between the parties/participants/representatives, until an agreement is reached or the mediation ends, unless it is agreed differently in writing. They also intend for the associated records to be confidential, non-discoverable, and inadmissible under ORS Chapter 36. If a public body or state agency is participating, they will tell us if their rules are different.

Oregon law applies except where inconsistent with this agreement, which applies retroactively. The confidentiality statute is at <http://www.leg.state.or.us/ors/036.html>. Confidentiality generally means:

1. Each party agrees not to communicate with anyone not present, except your spouse, attorney, doctor, therapist, or clergy, etc. (Those with legal privileges and they are not waived by mediating.)
2. You can communicate with others to get advice, but only if all parties agree, as noted here _____.

3. I can meet privately with you (caucus), but I will not share with the other party what is said unless you give your permission.
4. I will not communicate the mediation communications with third parties, and you agree not to ask me to testify or give out information even if one of the exceptions applies.
5. I have your permission to dispose of any mediation records.

E. Confidentiality Exceptions.

Some of them include:

1. This agreement, and any final settlement and its terms, are not confidential unless you agree, preferably in writing, that, all or part, are confidential. Agreements are enforceable in court unless you agree otherwise. Agreements along the way are confidential unless you agree that they are not. Mediation communications can be disclosed: a) in court if necessary to enforce, modify, or set aside the settlement, b) in any dispute between a party and the mediator, (Oregon law limits mediator liability), or c) if all parties agree in advance.
2. Information that was already known, or information that existed before the mediation, but was not prepared for it, and public records are not confidential.
3. I can: a) report in a court case if it is settled, b) provide information for statistical purposes, c) talk confidentially with others about what happened for advice and learning purposes, and d) tell appropriate persons information about child abuse or threats to cause injury to a person.

F. Other.

Here, my fee (\$XYZ/Hr.) will be paid by the parties equally unless otherwise agreed in writing. This is a binding agreement. Attorney fees and costs to prevailing party for its breach. Injunction available for protection of confidential information. I will finally decide any disputes over the meaning of this Agreement to Mediate.

G. Questions.

Please raise any questions or concerns before you begin discussing the facts.

We Agree. Date: _____, 2014 _____

 Institute for Conflict Management, Inc. (Mediator) by Sam Imperati, JD, President

**MEMORANDUM OF UNDERSTANDING:
ESSENTIAL TERMS AND CONDITIONS OF SETTLEMENT**

THIS MEDIATION BEING CONCLUDED, THE PARTIES AGREE AS FOLLOWS:

If any of the provisions do not apply, strike and initial the inapplicable language:

1) This is a final, binding, and enforceable agreement resolving all issues that were raised or could have been raised between the parties signing below that arise from or relate to the matters presented in this mediation described as _____. (“Dispute”), unless specifically noted herein.

2) Each party agrees to mutually release the other, their heirs, representatives, principals, successors, agents, employees, officers and directors, and attorneys of all claims, known or unknown, arising from or relating to the Dispute. Except as otherwise provided herein, each party will bear their own costs and expenses (including attorney fees) incurred up to and including the Effective Date as defined in Section 12, below.

3) All pending legal actions shall be promptly dismissed with prejudice and without attorney fees or costs to either side.

4) All terms of settlement shall be confidential except as otherwise provided under Oregon Law. The parties further agree not to initiate or cause to initiate any claim or investigation against any other party with any governmental agency or professional association.

5) Terms:

(a) _____ shall pay to _____
the sum of \$_____, on or before the ____ day of _____, time being
declared to be of the essence.

(b) _____ shall pay to _____
the sum of \$_____, on or before the ____ day of _____, time being
declared to be of the essence.

(c)

(d)

(e)

(f)

6) The parties agree that: **(Select only one)**

- A. This Memorandum shall act as the final settlement document between the parties and may be fully enforced as a complete settlement agreement in accordance with Oregon law. *Therefore, Sections 7 and 8 below do NOT apply.*

As a result, this settlement agreement contains the other standard settlement terms generally accepted in the legal community where the mediation is held for this type of dispute, including but not limited to the following: Oregon law applicability; Venue: _____; severability; survivability; binding effect; notice provisions; legal representation; actual authority to bind; no admissions; doubtful and disputed claims, each party responsible for own taxes, hold harmless, indemnification and defense, attorney fees to prevailing party, integration, merger, mutually written, number, gender caption, equitable and injunctive relief, execute necessary documents, etc.

Additional documents necessary to implement this settlement shall include:

- B. Final settlement documents will be draft by the parties or their respective legal counsel in accordance with the terms and conditions contained herein. *Therefore, Sections 7 and 8 below DO apply.*

7) The parties agree to complete and sign all final settlement documents on or before _____. However, inability to reach agreement on the final form or content of the documents will not invalidate this settlement according to the terms contained in this Memorandum, which may be fully enforced according to its terms.

8) If the parties cannot agree on the final form or content of the settlement documents, the matter will be resolved by: **(Select only one)**

- A. Final, binding, and non-appealable arbitration in lieu of trial by a jury or judge. The arbitration shall be conducted in accordance with ORS 36.300 ET. Seq. by the Mediator before whom this matter was mediated (hereinafter referred to as "the Arbitrator"). The Arbitrator shall be empowered to provide any additional language and terms necessary or appropriate to effectuate the settlement outlined in this Memorandum, based upon (a) all relevant information (confidential or otherwise) provided during the mediation, and (b) all other relevant information submitted to the Arbitrator by the parties. The format of the arbitration proceeding shall be within the sole discretion of the Arbitrator and may include "Mediation-Arbitration." The Arbitrator's fees shall be charged at the rate currently prevailing in the legal community in which the arbitration is held, and shall be divided equally between the parties and paid in advance. The Arbitrator shall not be held liable in an action or proceeding for damages alleged to have resulted from any act or omission in the performance of their roles as mediator, mediator-arbitrator, and/or arbitrator, and shall have all other immunities and protections provided under Oregon law.

- B. Submission to the court with jurisdiction in accordance with then existing law.

9) All parties agree that prior to signing they have thoroughly reviewed this Memorandum and

understand and agree with the terms and provisions contained herein. They further agree that in the completion of this Memorandum, the Mediator has acted solely as a scrivener, and not as a lawyer or advisor for either side. The parties represent that they have had a full and complete opportunity to consult with their respective legal counsel prior to signing, acknowledge that this Memorandum supersedes all prior agreements or negotiations, oral or written, and acknowledge that the mediator has recommend that they seek independent legal advice before signing this agreement.

10) The Mediator may authenticate this Memorandum and the signatures of the parties (if executed in his presence), but cannot otherwise be compelled to testify, produce, or give any other evidence in any proceeding. Signed counterparts and a copy of this Memorandum shall have the same force and effect as an original.

11) In the event suit, action, or arbitration is filed to enforce or interpret this Memorandum, the prevailing party shall have a right to recover from the losing party all costs and attorney fees in accordance with Oregon law.

12) Effective Date of this settlement: _____

IT IS SO AGREED:

_____/_____
Party Date

_____/_____
Party Date

APPROVED AS TO FORM:

_____/_____
Attorney for: Date

_____/_____
Attorney for: Date

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