

PRIVATE MEDIATION AGREEMENT TEMPLATE

When asked to serve as mediator in a private, non-administered case, I require the parties (or their counsel on their behalf) to execute a private mediation agreement in substantially the following form.

Phil Cutler
Rev. June 2012

PRIVATE MEDIATION AGREEMENT

We do hereby confirm and ratify the appointment of ***Philip E. Cutler*** as mediator to mediate the dispute (“the Dispute”) between us:

- ☐ pending in Forum/Court: _____ under Cause/Docket Number _____; ***or***
- ☐ described generally in the attachment to this mediation agreement.

In connection therewith, we hereby agree as follows:

1. Neither Mr. Cutler nor his law firm, Cutler Nylander & Hayton, P.S., nor any person employed by or affiliated with his firm, shall be liable to us or any of us for any act or omission in connection with this mediation.
2. We will not commence any action or proceeding, in arbitration or otherwise, against Mr. Cutler, his law firm, or any person employed by or affiliated with his firm, concerning Mr. Cutler’s service as mediator.
3. We will not subpoena Mr. Cutler, his law firm, or any person employed by or affiliated with his firm, to testify in any action or proceeding arising out of or connected in any way with this mediation or Mr. Cutler’s service as mediator.
4. Mr. Cutler is not a necessary party in any judicial or arbitration proceedings relating to the Dispute or to the mediation.
5. We acknowledge that this mediation will be conducted under, and we agree to comport ourselves in compliance with, the confidentiality and other terms and

conditions of (a) the Uniform Mediation Act, RCW Chapter 7.07 and (b) if applicable, Rule 39.1, Local Rules for the Western District of Washington. We further agree that we will comport ourselves in compliance with all other statutes or rules that may apply to or govern this mediation.

6. We will pay for Mr. Cutler's service as mediator at the aggregate rate of \$400 per hour (including time spent in preparation for the mediation), plus normal costs and disbursements (*e.g.*, photocopying, long distance telephone, fax transmission and receipt, necessary travel) in excess of \$50 in the aggregate. Unless Mr. Cutler and we otherwise agree in writing, we agree that payment for Mr. Cutler's services and expenses is payable in equal shares by each separately represented party. If we cancel the mediation, we understand that we will nonetheless be obligated to pay for any time devoted by Mr. Cutler to our matter, or expenses incurred by him, prior to our notice of cancellation.
7. We will each deposit promptly with Cutler Nylander & Hayton, P.S. our proportionate share of the total anticipated mediator compensation and expenses. If any deposit is not made when required, Mr. Cutler may in his discretion suspend further proceedings in the mediation pending submission of the required deposit. If our deposits are insufficient to pay the charges for our mediation, we will promptly pay any additional billing from Cutler Nylander & Hayton, P.S.
8. This Agreement may be executed by counsel for any party on that party's behalf and, if so executed by counsel for a party, shall:
 - A. Constitute an express representation and warranty to all other parties and to Mr. Cutler and his firm that the attorney has full power and authority from his or her client(s) to enter into this agreement on the client's behalf and shall bind the attorney and the attorney's client(s) to the same extent as an agreement under CR 2A, Washington Civil Rules for Superior Court.
 - B. Constitute the attorney's agreement to defend, indemnify and hold completely harmless all other parties and Mr. Cutler and his firm from any claim that the signing attorney was not so authorized.
9. We further agree that (a) a faxed or PDF copy of this Agreement bearing a signature on behalf of a party shall be as valid and binding as one bearing an original ink signature and (b) this Agreement may be executed in counterparts, the whole of which together shall constitute one Agreement.

10. This Mediation Agreement will be governed by the laws of the State of Washington applicable to contracts to be fully performed in Washington.

In witness whereof, we have affixed our signatures below: