

ELROND CONSULTING

MEDIATION AGREEMENT

A dispute has arisen between the persons named in the Schedule to this Agreement as the Parties. They have agreed to mediate and agreed that James Torr, whose contact details appear in the Schedule, ("the Mediator") will help them resolve it at a meeting or series of meetings ("the Mediation").

1. PARTICIPANTS

- 1.1. A Party does not require legal representation at the Mediation.
- 1.2. Each Party shall notify the other Party and the Mediator of every person attending on its behalf, five days before the date of the mediation, and a complete list of individuals attending the Mediation shall be drawn up by the Mediator and entered in the Schedule annexed to this Agreement.
- 1.3. Each representative in signing this Agreement is deemed to be agreeing to the provisions of this Agreement on behalf of the Party he/she represents and all other persons present on that Party's behalf at the Mediation.
- 1.4. All those attending the Mediation will be required to sign the confidentiality undertaking in the Schedule.
- 1.5. The Mediator may be assisted by a Co-Mediator or Assistant Mediator. The presence of this person will not incur any additional cost for the Parties

2. MEDIATION PREPARATION

- 2.1. Prior to the Mediation, the Mediator may communicate with the Parties, jointly or separately, as the Mediator thinks appropriate, for the purposes of ensuring a proper understanding of each Party's position, that appropriate arrangements have been made for the Mediation itself and generally to ensure that the best use of the Mediation time is made.
- 2.2. Each Party is requested to prepare, prior to the Mediation, a concise summary of its position (hereafter referred to as a 'Position Statement') together with a file of documents it feels essential for the Mediator to read in conjunction with the Position Statement.
- 2.3. Each Party may also prepare a Confidential Note to be provided to the Mediator alone, or provide the Mediator with documents or other information not provided to the other Party. The Mediator will not disclose any such Confidential Note, document or other information to the other Party unless expressly authorised to do so.
- 2.4. The Mediator shall discuss with the Parties a suitable timetable for exchange of Position Statements and accompanying documents (and the provision of the Position Statements and accompanying documents to the Mediator).

3. THE MEDIATION

- 3.1. The Mediation will take place on _____ at _____
and is scheduled to last for no longer than _____ hours.

- 3.2. The mediator will decide the procedure, will act impartially and will not impose a solution.
- 3.3. During the Mediation, the Mediator may meet with each Party, or some, or all of their representatives, alone in private meetings, or together with the other Party (or some or all of its representatives) in joint meetings. The Mediator will meet in private meetings and joint meetings as frequently as the Mediator considers appropriate.
- 3.4. No transcript or other recording of the Mediation shall be made.
- 3.5. Any Party may terminate its involvement in the Mediation at any time, but only after discussing its intention with the Mediator and giving notice to the other Party.
- 3.6. Should at any time the Mediator conclude that continuing the Mediation is unlikely to be beneficial the Mediator may, after consultation with each Party, bring the Mediation to an end.
- 3.7. Should settlement be reached the Parties may agree to request a Court or Tribunal to make an Order to enforce the agreed terms.
- 3.8. Should settlement not be reached but the Parties and Mediator decide to continue to try and resolve the dispute by way of Mediation, the Mediation will be 'adjourned' by agreement to a date and venue convenient to the Parties and the Mediator.

4. CONFIDENTIALITY

- 4.1. Each Party to the Mediation and all persons attending the Mediation will be bound by the following confidentiality provisions.
- 4.2. Every person involved in the Mediation will keep confidential and not use for any collateral or ulterior purpose all information (whether given orally, in writing or otherwise) arising out of, or in connection with, the Mediation, excepting the fact of any settlement and its terms or in accordance with paragraph 4.3.
- 4.3. Each Party to the Mediation may disclose the fact of the mediation and all information arising out of, or in connection with, the Mediation to its professional advisers, regulators, insurers, reinsurers and/or as required by law.
- 4.4. All information (whether oral, in writing or otherwise) arising out of, or in connection with, the Mediation will be without prejudice, privileged and not admissible as evidence or disclosable in any current or subsequent litigation or other proceedings whatsoever, unless it would otherwise have been admissible and disclosable by either Party in any such litigation or proceedings.
- 4.5. The Mediator will not disclose to any other Party any information given to him by a Party in confidence (before or during the Mediation) without the express consent of that Party.
- 4.6. Paragraphs 4.2 to 4.5 shall not apply if, and to the extent that:
 - 4.6.1. All Parties consent to the disclosure; or
 - 4.6.2. The Mediator is required under the general law to make disclosure; or
 - 4.6.3. The Mediator reasonably considers that there is a serious risk of significant harm to the life or safety of any person if the information in question is not disclosed; or

4.6.4. The Mediator reasonably considers that there is a serious risk of his/her being subject to criminal proceedings unless the information in question is disclosed.

4.7. None of the Parties to the Mediation Agreement will call the Mediator as a witness, consultant, arbitrator or expert in any litigation or other proceedings whatsoever arising from, or in connection with, the matters in issue in the Mediation. The Mediator will not voluntarily act in any such capacity without the written agreement of all the Parties.

5. COSTS

5.1. The Mediator's fees and any other costs associated with the Mediation will be borne equally by the Parties. These costs include such items as room hire, travel and other out-of-pocket expenses relating to the organisation of the Mediation itself.

5.2. Subject thereto each Party will bear its own costs of the Mediation. This does not prevent the Parties reaching a different agreement as to the costs of the case (including the costs of the Mediation) at the Mediation, and is subject to any order the Court may make as to costs if a settlement is not agreed.

6. MEDIATION FEES

6.1. The current fee scale of ELROND Consulting is attached at Annex 1.

6.2. The fee for this Mediation is included in the Schedule to this Agreement, together with a description of what it includes and the payment terms.

6.3. If the Parties agree with the Mediator to extend the Mediation, additional fees will be calculated using Annex 1.

6.4. ELROND Consulting will issue invoices to the Parties, due for payment fourteen days before the date of the Mediation.

6.5. The fee for the mediation is set according to the value of the original claim and counter claim. If during the mediation it becomes apparent that the amount in dispute is higher than that originally stated by the Parties or if a counter claim or counter-counter claim presents itself, then the mediator is entitled to an increased fee based on the aggregate value.

7. EXCLUSION OF LIABILITY

7.1. The Mediator and ELROND Consulting shall not be liable to the Parties for any act or omission in connection with the services provided in, or in relation to, the Mediation, unless the act or omission is shown to be fraudulent or in bad faith.

7.2. The Parties shall save harmless and indemnify the Mediator and ELROND Consulting against all claims by third parties and in respect of this shall be jointly and severally liable.

8. LAW AND JURISDICTION

8.1. This Agreement shall be governed by, construed and take effect in accordance with, English law. The Courts of England and Wales shall have exclusive jurisdiction to

settle any claim, dispute or matter of difference which may arise out of, or in connection with this Agreement and the Mediation.

9. HUMAN RIGHTS

9.1. The referral of the dispute to Mediation does not affect any rights that may exist under Article 6 of the European Convention on Human Rights. If the dispute is not settled by the Mediation, the Parties' rights to a fair trial remain unaffected

10. GENERAL

10.1. ELROND Consulting requires feedback from the Mediator regarding the conduct of the Mediation as part of its quality management procedures and in order that any valuable lessons may be learnt and used to enhance the process in future mediations. The Parties agree that the Mediator may provide information to ELROND Consulting for the above purposes and for those purposes only. The Parties will not be identified except in generic terms (e.g. Claimant/Defendant, or Party 1 and Party 2) and the feedback will be provided in a way that does not breach the confidentiality clauses of this Agreement.

SCHEDULE

Agreed Fee

The fee payable to ELROND Consulting for this Mediation has been agreed at £

This fee covers a total of hours preparation time and travel time and attendance of the Mediator at the mediation for hours and has been calculated according to the Schedule of Costs, Terms and Conditions of Payment of ELROND Consulting as set out in Annex 1.

Brief description of the dispute: [including Case Number if relevant]

The Parties: [full names and addresses]

The Mediator:

James Torr
7 Lambcroft Way
Chalfont St Peter
Buckinghamshire
SL9 9AY

01753 888 023

James@ElrondConsulting.com

Signed by or on behalf of the First Party:

Name:

Date:

Signed by or on behalf of the Second Party:

Name:

Date:

Signed by or on behalf of the Third Party

Name:

Date:

Signed by or on behalf of the Fourth Party:

Name:

Date:

Signed by the Mediator:

Name: James Torr

Date:

Signed by the Co-Mediator or Assistant Mediator:

Name:

Date:

ANNEX 1

Cost of Mediation – Per Party

Monetary Value of Dispute	Length of Mediation		
	3 Hours	Half Day (4 hours)	One Day (8 Hours)
Claims up to £15,000	£350		
£15,000 to £50,000		£450	
£50,000 to £100,000		£750	£1,500
£100,000 to £500,000			£2,000
£500,000 to £1 million			£3,000
Claims above £1 million	Fee to be assessed on value and complexity of dispute		

The fee is based per Party on a two-party dispute. In cases involving three or more Parties, each Party shall pay the fee quoted in the table subject to a 15% reduction.

The fee is set according to the value of the original Claim and Counter Claim. If during the mediation it becomes apparent that the amount in dispute is higher than that originally stated by the Parties or if a Counter Claim or Counter-Counter Claim presents itself, then the mediator is entitled to an increased fee based on the aggregate value.

VAT will be added to all charges

Terms and Conditions of Payment

The Mediation Fees include:

- A total of 3 hours preparation and travel time, where the Total Fee is up to £3,000.
- A total of 4 hours preparation and travel time, where the Total Fee is £3,000 to £4,000.
- A total of 6 hours preparation and travel time, where the Total Fee is £4,000 to £6,000.
- A total of 10 hours preparation and travel time, where the Total Fee is greater than £6,000.
- Case Administration (including timetable, venue and document exchange)

The Mediation Fees do not include (and therefore payable by the Parties equally as extras in the absence of agreement to the contrary):

- The costs of the hire of the venue or accommodation, if required.
- Out of pocket expenses incurred by the Mediator including travel costs and subsistence.
- A charge for extra time required for travel and preparation exceeding the stated total: submitted with the prior consent of the Parties
- A charge for time spent over the stated length of the Mediation.

The duration of the Mediation may be extended with the agreement of the Parties and the Mediator. The time charge for each additional hour, or part thereof, shall be:-

- £100 per Party, where the original mediation was 3 hours.
- £125 per Party, where the original mediation was 4 hours and the value of the dispute did not exceed £50,000.
- 12.5% of the Mediation Fee for one day, per Party, where the value of the dispute exceeds £50,000.

Mediation fees are due for payment either when the Mediation Agreement has been signed or when the date of the Mediation has been agreed, whichever is earlier. Expenses and extra time charges will be paid within seven days of the date of invoice.

The fee for a Mediation that is adjourned or takes less time than the agreed duration will remain as the Agreed Fee stated in the Schedule.

Cancellation Charges

In the event that a Mediation is cancelled by either or both of the Parties, the Parties shall reimburse ELROND Consulting all expenses incurred in making arrangements for, or in connection with, the Mediation and shall pay ELROND Consulting a Cancellation Charge as follows:

- A minimum payment of £100 + VAT, if cancellation occurs any time after the mediation date has been agreed with both (all) Parties to the dispute
- £100 + VAT or 50% of the mediation fee (whichever is the greater) if the cancellation occurs less than five clear working days before the date agreed for the mediation
- The whole mediation fee will be charged if the cancellation occurs less than two clear working days before the date and time agreed for the mediation.

No cancellation fee will be charged if the mediation date simply has to be rescheduled to an alternative date, provided that the mediation takes place within 28 days of the original mediation date, failing which the mediation provider may treat the adjournment as if it were a cancellation in accordance with the above provisions.

If the mediation fee has already been paid by both/all Parties at the time the mediation is cancelled, the mediator/mediation organisation will refund the mediation fee less any cancellation charge.

The cancellation date will be determined by the date when the mediator/mediation organisation is contacted by one Party, or both or all Parties, by either email or telephone.

If the cancellation of the mediation is agreed by both/all Parties, the Parties shall equally share the applicable cancellation payment. However, if the decision is made unilaterally, the Party cancelling the mediation shall be liable for the whole cancellation payment.