

## Mediation Agreement

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**Designation of Neutral.** The undersigned have agreed to participate in a Mediation to be conducted by Jerome F. Rock, Esq. (the Neutral) for the purpose of compromising, settling or resolving disputed claims arising out of the matter herein referenced. The parties acknowledge that the Neutral is not acting as an attorney or advocate for any party and that any recommendations or statements by the Neutral do not constitute legal advice by the Neutral. The parties acknowledge that they have been advised to seek and are relying on the advice of their own counsel in connection with any settlement or other agreement. The parties therefore agree as follows:

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**Mediation Proceedings.** This is a voluntary, non-binding mediation. The purpose of the mediation is to attempt to compromise, settle or resolve disputed claims between and or among the parties. The Mediator's role is to act as a Neutral party for the purpose of assisting the parties to resolve these claims. Prior, during or after the course of the mediation, the Neutral is authorized to conduct joint and separate communications and / or meetings with the parties and / or their counsel; and at the Neutral's discretion, to provide an evaluation of each party's case, if requested, and to make recommendations for settlement.

**Option for Med-Arb Proceedings.** In the event these Mediation Proceedings do not result in a complete resolution of the dispute, the parties may desire to engage in binding resolution in order to bring finality to the litigation, using the same Neutral, or a different Neutral. If either party considers the Med-Arb process as a possible ADR strategy, the Neutral can submit a special Med-Arb Agreement for consideration at the beginning of these proceedings that enumerate a number of opt-in and opt-out decision points that facilitate the administration of the Med-Arb process.

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**Confidential Nature of Mediation/Facilitation Proceedings.** To encourage communications designed to facilitate settlement of disputed claims, the parties agree that all proceedings in connection with this mediation, including pre-hearing activities shall be subject to MCR 2.403(J)(4), 2.411, and 2.412 and Rule 408 of the Federal Rules of Evidence and Rule 408 of the Michigan Rules of Evidence. These rules generally provide and the parties agree that evidence of conduct, anything said, or of any admission made during mediation and/or settlement discussions, or in documents prepared for or introduced during mediation and/or settlement discussions, shall not be admissible in evidence or subject to discovery, and that disclosure of this evidence shall not be compelled in any civil action. The parties are encouraged to use the designation "**For Mediation Purposes Only**" on documents or information submitted in support of this mediation. This designation identifies materials as protected under this agreement and may not be used for any other purpose except as provided herein. Evidence that the parties have entered into a written settlement agreement during the mediation may be disclosed and is admissible to the extent necessary to enforce the settlement.

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**Confidential Communication with Mediator.** In connection with the mediation process, if either party has information that is considered too sensitive to present to the other side, you may agree to present this confidential information to the Neutral on a confidential "for mediator's eyes only" basis, until the time, if at all, that a party is prepared to

disclose the information. The Neutral may be able to use this information to facilitate settlement, without disclosing the information.



**Exclusion of Mediator Testimony and Limitation of Liability.** The Neutral shall not be subpoenaed or otherwise compelled to testify in any proceeding relating to the subject matter of the mediation and shall not be required to provide a declaration or finding as to any fact or issue relating to the mediation proceeding or the dispute which is the subject of the mediation proceedings. The Neutral, and any documents and information in his possession will not be subpoenaed in any proceeding and all parties will oppose any effort to have the Neutral or documents subpoenaed and will jointly and severally hold the Neutral harmless from costs associated with asserting this position. The Mediator shall not be liable to any party for any act or omission in connection with the mediation proceedings conducted pursuant to this Agreement.



**Neutral's Services and Compensation.** The parties will compensate the Neutral for the following services at the hourly billing rate of \$395.00:

**1. Neutral's Administrative & Pre-Hearing Services.** The Neutral's services include scheduling the mediation hearing, organizing and conducting the Mediation Pre-Hearing Conference, meetings or telephone calls with counsel, review of briefs and other written materials, and preparation for the mediation hearing, all of which will be billed on an hourly basis, and shared equally by the parties.

**a. Pre-Hearing Conference.** For complex matters, when the circumstances warrant and if practical, the Neutral prefers to meet with counsel and/or parties before the scheduled Mediation/Facilitation Hearing. This face to face meeting accomplishes several objectives:

i) The Neutral develops a sense of the party's position and can explore strategies and underlying needs or requirements that aid in conducting the Mediation Hearing (particularly important when lack of trust underlies the dispute);

ii) The Neutral can explore the techniques that are likely to be beneficial in conducting the Mediation Hearing, such as preference of each party to caucus, plenary session, facilitative or evaluative styles of the Neutral. This meeting can also explore interest in hybrid approaches to Mediation/Facilitation, such as Med-Arb, (Arbitration of unresolved issues after completion of Mediation/Facilitation), or open discussion on issues or remedies outside the scope of the current litigation;

iii) The Neutral uses a problem-solving approach to Mediation, and the Pre-Hearing meeting serves to explore the competing interests of the parties without the time constraints that exist on the day of the Hearing;

iv) The Neutral develops an important rapport with the client to convey the message that the Neutral's role is to assist each party in arriving at the decision that best serves their interests. This session is an important first step in establishing a relationship of trust and confidence that the Neutral will be diligent in assisting the parties as they arrive at the proper resolution to the dispute.

The time the Neutral spends with each party during the Pre-Hearing Conference may vary, but the effort benefits both parties in their efforts to resolve the dispute, and therefore the Neutral's fee will be shared equally by the parties unless otherwise provided.

**b. Agenda and Materials for Hearing.** Based on the Neutral's conversations or meetings with the parties and his understanding of the issues, the Neutral may prepare an Agenda for the Hearing which will be distributed to all parties in advance. Depending on the complexity of the matter, the Neutral may prepare supplemental materials, such as time lines, or summary tables that will be used during the Hearing. The services are billed at the same hourly rate and will be shared equally by the parties.

**2. Neutral's Hearing Services.** The Neutral's Services for attendance and participation at the mediation hearing or conference will be compensated on an Hourly Fee basis, and actual costs or expenses incurred, if approved in advance by the parties. **Minimum compensation** for Neutral's Hearing Services shall be five hours for each day of hearing, which will be shared equally by the parties.

The Neutral will promptly submit an accounting for services to each attorney of record, which shall be payable upon receipt of the invoice.

**3. Neutral's Post Hearing Services.** At the request of all parties, the Neutral will provide additional services to further the settlement of the matter. Unless otherwise agreed, the fees will be shared equally by the parties.



**Conflict of Interest; Disclosures; Waiver.** The parties and their counsel acknowledge and agree that in the Neutral's capacity, he is not acting as an attorney or advocate for any party in connection with the mediation. The parties and their counsel will disclose to the Neutral, and the Neutral will disclose to each of them all matters that each reasonably believes requires disclosure pursuant to MCR 2.411(B)(4) or other applicable rules.



**Mediation Status Report.** In accordance with MCR 2.411(C)(3), the Neutral will file the Mediation Status Report with the Circuit Court within 7 days of the Mediation/Facilitation hearing, or within 10 days for cases filed in Federal District Court.



**Counterpart Execution; Binding on Representatives.** This Agreement may be executed in any number of counterparts which when taken together shall constitute one fully executed Agreement. This Agreement when so executed shall inure to the benefit of and be binding on the undersigned parties as well as their lawyers, respective representatives or other persons they have caused to be present during these mediation proceedings.

Neutral Jerome F. Rock (P27317) _____ Date:
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UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MICHIGAN  TAPCO INTERNATIONAL CORPORATION, v ENGLAND LOGISTICS, INC., and C.R. ENGLAND, INC.,
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Attorney for Plaintiff:  _____ Date: _____  Client:  _____ Date: _____
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Attorney for Defendant:  _____ Date: _____  Client:  _____ Date: _____
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