

**Affidavit**

**IN THE FEDERAL COURT OF AUSTRALIA  
VICTORIA DISTRICT REGISTRY  
DIVISION: CORPORATIONS**

No. VID 562 of 2010

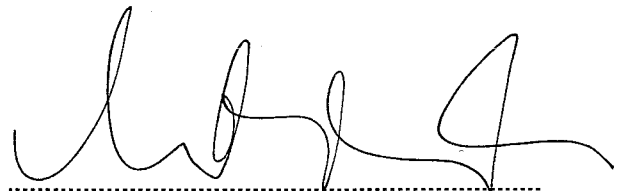
IN THE MATTER OF: SONRAY CAPITAL MARKETS PTY LTD  
(IN LIQUIDATION) ACN 104 482 993

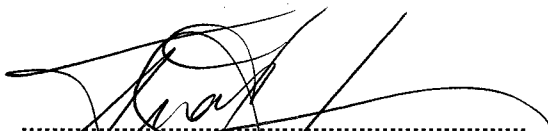
**RE AN APPLICATION BY GEORGE GEORGES & JOHN ROSS LINDHOLM  
IN THEIR CAPACITIES AS JOINT AND SEVERAL LIQUIDATORS OF  
SONRAY CAPITAL MARKETS PTY LTD (IN LIQUIDATION) ACN 104 482 993  
Plaintiffs**

On 27 January 2011, I, **David John Porter** of Level 15 485 Bourke Street Melbourne in the State of Victoria, lawyer, say on oath:

- 1 I refer to my affidavit sworn in this proceeding on 29 November 2010.
- 2 On 25 January 2011 I received an email from Tony.Troiani@mallesons.com. A copy of that email (together with the attachment referred to in the email) is exhibited and marked **DJP-2**.

**SWORN** by David John Porter at Melbourne in Victoria on 27 January 2011 before me:

)   
 )  
 Signature of David John Porter

  
 Signature of person taking affidavit

**JUDITH ANNE HISHON**  
RACV Tower, 485 Bourke Street  
Melbourne Victoria 3000  
An Australian Legal Practitioner  
within the meaning of the  
Legal Profession Act 2004.

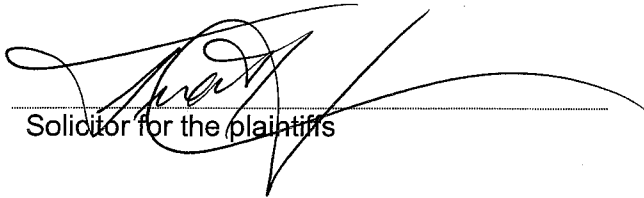
Filed on behalf of: The plaintiffs  
Prepared by:  
**Norton Rose Australia**  
RACV Tower, 485 Bourke Street  
MELBOURNE VIC 3000

Solicitor's Code: 370  
DX: 445 Melbourne  
Tel: (03) 8686 6000  
Fax: (03) 8686 6505  
Ref: 2698457  
Attention: Allan Kawalsky

**CERTIFICATE OF COMPLIANCE**

I *JUDITH ANNE HISHON* certify to the Court that the affidavit of David John Porter sworn on 27 January 2011 filed on behalf of the plaintiffs complies with Order 14, rule 2 of the Federal Court Rules.

Date: 27 January 2011

  
Solicitor for the plaintiffs

---

Filed on behalf of: The plaintiffs  
Prepared by:  
**Norton Rose Australia**  
RACV Tower, 485 Bourke Street  
MELBOURNE VIC 3000

Solicitor's Code: 370  
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**RE AN APPLICATION BY GEORGE GEORGES & JOHN ROSS LINDHOLM**  
IN THEIR CAPACITIES AS JOINT AND SEVERAL LIQUIDATORS OF  
SONRAY CAPITAL MARKETS PTY LTD (IN LIQUIDATION) ACN 104 482 993  
Plaintiffs

**EXHIBIT DJP-2**

This is the exhibit marked "DJP-2" produced and shown to **David Porter** at the time of swearing his affidavit on 27 January 2011.

Before me:



Signature of person taking affidavit

**JUDITH ANNE HISHON**  
RACV Tower, 485 Bourke Street  
Melbourne Victoria 3000  
An Australian Legal Practitioner  
within the meaning of the  
Legal Profession Act 2004.

---

Filed on behalf of: The plaintiffs  
Prepared by:  
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Tel: (03) 8686 6000  
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Ref: 2698457  
Attention: Allan Kawalsky

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**Porter, David**

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**From:** Troiani, Tony [Tony.Troiani@mallesons.com]  
**Sent:** Tuesday, 25 January 2011 11:08 AM  
**To:** Porter, David  
**Cc:** Palmer, Steven  
**Subject:** Sonray - Proposed Mediation  
**Attachments:** Sonray\_ Mediation Agreement - amended clause 7 (as at 12.1.11)(8584313\_1).DOC  
  
**Importance:** High

Confidential communication

Dear David,

I refer to previous communications in relation to the above matter.

I confirm that I am instructed that Saxo Bank would sign the Mediation Agreement in the form attached to this email subject, of course, to that form being acceptable to the Court.

I am happy for you to provide a copy of this email to the Court.

Kind Regards,

**Tony Troiani | Partner**  
**Mallesons Stephen Jaques**  
Bourke Place, 600 Bourke Street, Melbourne VIC 3000  
T +61 3 9643 4286 | M +61 417 764 470 | F +61 3 9643 5999  
[tony.troiani@mallesons.com](mailto:tony.troiani@mallesons.com) | [Partner profile](#) | [www.mallesons.com](http://www.mallesons.com)

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For more information please visit <http://www.messagelabs.com/email>

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# Mediation agreement

Dated

John Ross Lindholm

George Georges (collectively, the "**Liquidators**")

Sonray Capital Markets Pty Limited (in liquidation) ("**Sonray**")

Russell Johnson

Scott Murray (collectively, the "**Directors**")

Saxo Bank A/S ("**Saxo**")

Interactive Brokers LLC ("**IB**")

HLB Mann Judd ("**Auditor**")

PricewaterhouseCoopers ("**PWC**")

Mr Aristomenis (Manny) Garantziotis SC ("**Mediator**")

Deleted: Administrators

Deleted: administrators  
appointed

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## **Mallesons Stephen Jaques**

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Bourke Place

600 Bourke Street

Melbourne Vic 3000

Australia

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DX 101 Melbourne

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# Mediation agreement

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# Mediation agreement

## Details

Interpretation – definitions are at the end of the General terms

Parties	Parties and Mediator	
<b>Liquidators</b>	Name	<b>John Ross Lindholm</b>
	Address	Level 29, 600 Bourke Street Melbourne VIC 3000
	Telephone	(03) 9604 5106
	Fax	(03) 9642 5887
	Name	<b>George Georges</b>
	Address	Level 29, 600 Bourke Street Melbourne VIC 3000
	Fax	(03) 9600 4922
<b>Sonray</b>	Name	<b>Sonray Capital Markets Pty Ltd (in liquidation)</b>
	ACN	104 482 993
	Address	c/o Ferrier Hodgson Level 29, 600 Bourke Street Melbourne VIC 3000
<b>Directors</b>	Name	<b>Russell Johnson</b>
	Address	[insert]
	Telephone	[insert]
	Contact	[insert]
	Name	<b>Scott Murray</b>
	Address	[insert]
	Contact	[insert]
<b>Saxo</b>	Name	<b>Saxo Bank A/S</b>

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ARBN 109 605 610  
 Address c/- Saxo Capital Markets Pte Ltd  
 3 Church Street  
 #30-00 Samsung Hub  
 Singapore 049483  
 Telephone +65 6303 7602  
 Contact Mr Kazuaki Takabatake

**IB** Name **Interactive Brokers LLC**

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ABN/ACN/ARBN [insert]  
 Address [insert]  
 Telephone [insert]  
 Contact [insert]

**Auditor** Name **HLB Mann Judd**

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 Address [insert]  
 Telephone [insert]  
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**PWC** Name **PricewaterhouseCoopers**

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ABN/ACN/ARBN [insert]  
 Address [insert]  
 Telephone [insert]  
 Contact [insert]

**Mediator** Name Mr Aristomenis (Manny) Garantziotis SC

Address Room 1107  
 Douglas Menzies Chambers  
 180 William Street  
 Melbourne VIC 3000

Telephone (03) 9620 5776

Fax (03) 9620 5668

Email manny@vicbar.com.au

**Governing law** Victoria

<b>Date of agreement</b>	See signing page		
<b>Recitals</b>	A	On 22 June 2010, <u>the Liquidators</u> were appointed pursuant to Part 5.3A of the <u>Act</u> as voluntary administrators of Sonray.	<p><b>Deleted:</b> the Administrators</p> <p><b>Deleted:</b></p> <p><b>Deleted:</b> Corporations Act 2001</p> <p><b>Formatted:</b> Font: Not Italic</p> <p><b>Formatted:</b> Tabs: 1.35 cm, Left</p>
	B	On 27 October 2010 <u>the Liquidators</u> were appointed as liquidators of Sonray pursuant to section 499(2A) of the <u>Act</u> .	
	C	Since the appointment of the <u>Liquidators</u> on 22 June 2010, a number of clients of Sonray (collectively, the " <b>Sonray Client Claimants</b> ") have alleged claims against Sonray, Saxo, <u>IB</u> , the Directors and other parties in respect of losses suffered by those clients as a consequence of the administration of Sonray (" <b>Sonray Client Claims</b> "). A number of Sonray Client Claimants are represented by Arnold Bloch Leibler (" <b>ABL Group</b> "). Another group of Sonray Client Claimants are represented by Slater & Gordon (" <b>Slater &amp; Gordon Group</b> "). The ABL Group and the Slater & Gordon Group have expressed a desire to be involved in the Mediation.	<p><b>Formatted Table</b></p> <p><b>Deleted:</b> B</p> <p><b>Deleted:</b> Administrators</p> <p><b>Formatted:</b> Not Highlight</p> <p><b>Formatted:</b> Not Highlight</p>
	D	Saxo and <u>IB</u> hold security over cash and shares which were provided by Sonray to Saxo and <u>IB</u> respectively in respect of debts and other liabilities which Saxo and <u>IB</u> claim are owed to each of them respectively by Sonray.	<p><b>Deleted:</b> C</p> <p><b>Formatted:</b> Not Highlight</p> <p><b>Formatted:</b> Not Highlight</p> <p><b>Formatted:</b> Not Highlight</p>
	E	The <u>Liquidators</u> are investigating various claims which Sonray may have against Saxo and <u>IB</u> .	<p><b>Deleted:</b> D</p> <p><b>Deleted:</b> Administrator</p>
	E	The Administrators have alleged that Sonray has claims against the Directors in relation to their conduct as directors of Sonray for breach of trust, breach of directors' duty and pursuant to section 197 of the Corporations Act.	<p><b>Deleted:</b></p> <p><b>Formatted:</b> Not Highlight</p> <p><b>Formatted:</b> Not Highlight</p> <p><b>Formatted:</b> Not Highlight</p>
	G	The Administrators have alleged that Sonray has claims against the Auditor in relation to audits performed by the Auditor in respect of Sonray's accounts.	<p><b>Deleted:</b> F</p> <p><b>Formatted:</b> Not Highlight</p> <p><b>Formatted:</b> Not Highlight</p>
	H	The Administrators have alleged that Sonray has claims against PWC in relation the solvency reviews performed by PWC as at 30 June 2009 and March 2010.	<p><b>Deleted:</b> G</p> <p><b>Formatted:</b> Not Highlight</p> <p><b>Formatted:</b> Not Highlight</p>
	I	The Parties have agreed to attempt to negotiate a global resolution of the issues identified in paragraphs A to H above by way of the Mediation together with any other issues which become the subject of the Mediation.	<b>Deleted:</b> I
	J	The Parties have agreed to consult with the ABL Group and the Slater & Gordon Group as representatives of the Sonray Client Claimants as part of the Mediation.	

K The Parties have also agreed to explore in the Mediation what would be an appropriate mechanism for implementing any global resolution reached in the Mediation.

L Saxo and the Liquidators have entered into a Mediation Funding Deed on **[insert date]** pursuant to which Saxo has agreed to provide funding to the Liquidators in relation to the Mediation ("**Mediation Funding Deed**").

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M The Liquidators propose to seek directions, orders or declarations from the Court to clarify the rights of various parties and to seek orders pursuant to section 447A of the Corporations Act in relation to the Mediation Funding Deed.

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# Mediation agreement

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## General terms

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### 1 General principles and objectives

#### 1.1 Objectives

The objectives of this agreement are as follows:

- (a) To create a without prejudice and wholly confidential environment in which the Parties may discuss, and attempt to reach an “in principle” agreement in relation to, a global resolution of the Mediation Issues.
- (b) To elicit assistance from an experienced Mediator to facilitate identification, exploration and negotiation of the Mediation Issues.
- (c) To enable the Mediator to construct a flexible process for the Mediation so that the objective set out in paragraph 1.1(a) has the greatest prospect of being achieved.
- (d) To place the Liquidators in a position to be able to recommend any “in principle” agreement reached between the Parties in the Mediation to Sonray Client Claimants and the creditors of Sonray.
- (e) To facilitate the Parties exchanging information and ideas in relation to the mechanism by which any “in principle” agreement between the Parties in relation to a global resolution of the Mediation Issues may be implemented.

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#### 1.2 Principles governing the Mediation

The general principles governing the Mediation are as follows:

- (a) All discussions which take place in the Mediation are confidential.
- (b) This agreement sets out certain milestones in relation to the Mediation, but much of the detail as to the process of the Mediation is left for the Mediator to determine in consultation with the Parties.
- (c) The Mediator is provided with a broad discretion in relation to the conduct of the Mediation, including:
  - (i) the fair exchange of information and documents by the Parties which will allow the adequate exploration of the Mediation Issues;
  - (ii) the formulation of appropriate processes for the Mediation in consultation with the Parties, such as, how many meetings will take place in the Mediation and who will attend each meeting; and
  - (iii) whether the Mediator meets with any non-parties during the course of the Mediation.

(d) The Liquidators will represent the interests of Sonray Client Claimants and Sonray creditors at the Mediation but are not authorised to bind the Sonray Client Claimants or the Sonray creditors to any settlement without their approval.

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(e) The Investor Advisory Group is established so that the Liquidators and the Parties may consult with representatives of Sonray Client Claimants during the Mediation within an environment of confidentiality.

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### 1.3 Binding Agreement

This agreement is binding on each Party which executes it, whether or not all of the other possible Parties have executed it.

## 2 Appointment and costs

### 2.1 Appointment

The Parties appoint the Mediator, and the Mediator accepts the appointment, to mediate the Mediation Issues in accordance with the terms of this agreement.

### 2.2 Mediator's fees and disbursements

Each Party will share in, and will be severally liable to the Mediator for, the Mediator's fees and disbursements specified in Schedule 1, each such share to be calculated by reference to the total number of participating parties from time to time out of the following list:

- (a) Administrators;
- (b) Saxo;
- (c) IB;
- (d) Directors;
- (e) Auditor; and
- (f) PWC.

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### 2.3 Other Mediation costs

The Parties will share in, and will be severally liable for, the costs of room hire for, and catering at, the Mediation in the same proportions as are set out in clause 2.2 above.

### 2.4 Parties' costs

The Parties will bear their own costs of the Mediation.

## 3 Conflict of interests

### 3.1 Prior dealings

The Mediator confirms that he has had no prior dealings with any of the Parties in relation to the matters outlined in the Recitals.

**3.2 Mediator's impartiality**

If, during the course of the Mediation, the Mediator becomes aware of any circumstances that might reasonably be considered to affect his capacity to act impartially, he will immediately inform the Parties of those circumstances. The Mediator may then continue to participate in the Mediation if the Parties all agree.

---

**4 Functions of the Mediator**

**4.1 What the Mediator will do**

The Mediator will assist the Parties to achieve the Objectives.

**4.2 What the Mediator will not do**

The Mediator will not advise any Party. The Mediator will not make decisions for, or impose a solution on, the Parties.

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**5 Attendance and representation**

**5.1 Attendance**

Each Party must be represented at all meetings and conferences in the Mediation which that Party is required by the Mediator to attend. If required by the Mediator, any such meeting or conference must be attended by a person with full authority to settle the Mediation Issues.

**5.2 Representation**

Subject to Clause 7.3, each Party may also appoint one or more persons, including legally qualified persons, to assist and advise them in the Mediation, attend Mediation conferences and perform such role in the Mediation as the Party requires them to perform.

**5.3 Sonray Client Claimants**

The interests of Sonray Client Claimants will be represented by the Liquidators in the Mediation. However, the Parties acknowledge that the Liquidators are not authorised to bind Sonray Client Claimants to any "in principle" agreement which is reached by the Parties in the Mediation.

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**5.4 Investor Advisory Group**

On the basis of the matters set out in paragraph 5.3 above, the Parties agree that the Liquidators may establish an Investor Advisory Group of 3 – 5 investors in Sonray. Before establishing the Investor Advisory Group the Liquidators must first consult with the parties who have signed this Agreement at the date the Investor Advisory Group is established. Subject to clause 7.3, during the course of the Mediation, the Liquidators may consult with members of the Investor Advisory Group and may report to the Investor Advisory Group in relation to any of the matters referred to in the Mediation.

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## **6 Conduct of the Mediation**

### **6.1 Initial conference**

There will be an initial conference to be arranged by the Mediator as soon as convenient after execution of this agreement. All of the Parties will attend the initial conference through representatives as required by the Mediator.

### **6.2 Preliminary steps**

The Parties may make submissions to the Mediator and the other Parties as to the timing and scope of any preliminary steps in the Mediation (such as the exchange of position papers or statements of issues, facts and contentions). The Mediator will take all submissions from the Parties into account in determining what preliminary steps will take place in the Mediation and when any such preliminary steps will take place.

### **6.3 Mediation conferences**

The Mediation will include a series of meetings to be scheduled by the Mediator and to take place between the date of this agreement and the Completion Date including, but not limited to: -

- (a) the initial conference referred to in clause 6.1;
- (b) such further meetings as and when the Mediator requires;

The Mediator, in consultation with the Parties, will determine:

- (c) how many meetings take place in the Mediation;
- (d) which Parties or combination of Parties attend each meeting; and
- (e) how each meeting will be conducted.

### **6.4 Private discussions with the Mediator**

The Mediator may meet with and have private discussions with any Party or any non-party to the Mediation (subject to any non-party first signing the Confidentiality Undertaking) if the Mediator, in his absolute discretion, believes that such discussions will assist in achieving the Objectives. If the Mediator meets with a Party or a non-party privately, the Mediator must disclose to the other Parties that he has met privately with that Party or non-party, but need not disclose the substance of the discussion.

### **6.5 How the Mediation will otherwise be conducted**

The Mediation will otherwise be conducted in such manner as the Mediator considers appropriate having regard to the views of each Party.

### **6.6 Obtaining advice or opinion**

The Mediator will not, unless the Parties agree in writing, obtain from any independent person advice or an opinion about any aspect of the Mediation Issues. Any such advice or opinion will be obtained only from a person agreed to by the Parties.

## 6.7 Co-operation

The Parties will participate in the Mediation in good faith and will comply with reasonable requests made by the Mediator to promote the efficient and expeditious meeting of the Objectives. This clause 6.7 does not give rise to any binding obligation upon any Party.

## 6.8 Court applications

During the Mediation, the Liquidators may apply to Court for directions, orders or declarations as they see fit.

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The Liquidators agree that they will:

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- (a) consult with the Parties and the Mediator prior to making any such application; and
- (b) comply with clause 7.1 of this agreement in respect of any such application.

## 7 Confidentiality and privilege

### 7.1 Confidential information

Subject to clause 7.2, the Mediator and the Parties:

- (a) will maintain the confidentiality of all information and documents disclosed to each other during the Mediation or within the Investor Advisory Group and the terms of this agreement ("**Confidential Information**");
- (b) will not disclose Confidential Information to any other person unless:
  - (i) required by law to do so; or
  - (ii) with the written consent of the Party who disclosed the Confidential Information; or
  - (iii) the Confidential Information is or becomes generally available to the public other than as a result of a breach by a Party of any of its obligations under this Agreement; or
  - (iv) in the case of Saxo, IB, PWC or Auditor the disclosure is made confidentially to officers or employees of the corporation or a related body corporate or their insurers (if any); or
  - (v) the disclosure is to a legal adviser who has signed an undertaking in the form of the Confidentiality Undertaking and that signed Confidentiality Undertaking has been provided to the Mediator; and
- (c) will not use the Confidential Information for any purpose other than the Mediation.

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## 7.2 Participants to provide Confidentiality Undertaking

- (a) Each individual participant in the Mediation must sign the Confidentiality Undertaking and provide that document to the Mediator prior to that individual participating in the Mediation.
- (b) Each member of the Investor Advisory Group must sign the Confidentiality Undertaking and provide that document to the Mediator prior to that individual participating in the Mediation or the Investor Advisory Group.

## 7.3 Disclosure of information by one party to the Mediator

Any information disclosed in confidence to the Mediator by a Party may not be disclosed by the Mediator to any other Party or to a non-party to the Mediation without the consent of the disclosing Party.

## 7.4 "Without prejudice" communications

All communications made in the course of the Mediation will be made on a confidential and "without prejudice" basis, including (but not limited to):

- (a) any settlement proposal, whether made by a Party or the Mediator during the Mediation;
- (b) the willingness of a Party to consider any such proposal during the Mediation;
- (c) any admission or concession made by a Party at the Mediation; and
- (d) any statement made or document produced by the Mediator for the purposes of the Mediation.

## 7.5 Use of "without prejudice" communications

Despite their "without prejudice" status, a party may adduce evidence of any of the communications described in clause 7.5 for the purposes of enforcing any settlement agreement reached as a result of the Mediation.

## 7.6 Liquidators' use of Confidential Information

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The Parties agree and covenant that notwithstanding any of the matters set out in clause 7 above:

(a) The Liquidators have broad rights and powers to obtain documents and information that relate to the Examinable Affairs of Sonray pursuant to section 596A and section 596B of the Act;

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(b) No Party will seek to restrain, prohibit, enjoin, resist, prevent, impede or otherwise interfere with the Liquidators' power to:

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(i) Compel the production of documents;

(ii) Undertake the examination of a person; or

(iii) Ask any question of a person subject to an examination.

under section 596A or section 596B on the basis that the exercise of those powers is or was based on Confidential Information obtained by the Liquidators in the mediation;

- (c) No Party will seek to restrain, prohibit, enjoin, resist, impede or otherwise prevent the Liquidators or their solicitors from issuing proceedings against any person, such proceedings being based either in part or in whole on documents or information obtained by the Liquidators or their solicitors pursuant to the Liquidators' exercise of their powers under sections 596A and 596B of the Act, on the basis that that information or those documents also constitute or previously constituted Confidential Information; and
- (d) Any exercise of the Liquidators' powers under sections 596A or 596B of the Act or the issuing of proceedings by the Liquidators or their solicitors as contemplated by this clause 7.6 does not constitute a breach of this mediation agreement.

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### **7.7 Confidentiality survives termination**

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The confidentiality regime created by this clause 7 survives termination of this agreement under clause 8 or otherwise.

## **8 Termination of Mediation**

### **8.1 Termination by a Party**

A Party may, at any time, terminate their involvement in the Mediation by giving written notice to each other Party and to the Mediator. The remaining Parties may elect to continue the Mediation in relation to that portion of the Mediation Issues which does not relate to the departing Party. In those circumstances, the remaining Parties will remain bound by all of the terms of this agreement and the departing Party will not be liable under clause 2.2 in respect of any fees and disbursements incurred by the Mediator after the date of service of the notice on the Mediator.

### **8.2 Termination by Mediator**

If, after consultation with the Parties, the Mediator forms the view that he will be unable to further assist the Parties to meet the Objectives, the Mediator may terminate his appointment by giving written notice to the Parties.

Upon receipt of notice from the Mediator terminating his appointment, the Parties may appoint a new mediator or mediators.

### **8.3 No settlement by Completion Date**

The Parties agree that the Mediation will automatically terminate, unless otherwise agreed by some or all of the Parties, should the Parties not reach an "in principle" settlement agreement by the Completion Date. If not all of the Parties agree to continue the Mediation after the Completion Date, those Parties who do not agree to continue the Mediation will be deemed to have issued a termination notice for the purposes of clause 8.1.

**8.4 Written settlement required**

The Parties agree that no settlement of any of the Mediation Issues will exist unless and until a written settlement agreement has been signed by the relevant Parties.

**8.5 Termination by settlement agreement**

In the absence of termination by a Party (clause 8.1) or the Mediator (clause 8.2) or by the passage of time (clause 8.3), the Mediation will only be terminated by:

- (a) the Parties preparing and signing an "in principle" agreement in respect of the Mediation Issues or the further disposition of the Mediation Issues or other issues; and
- (b) the Parties agreeing on an appropriate mechanism to implement that "in principle" agreement;

in which case the "in principle" agreement may make allowance for the disposition of the Mediation, by way of termination or extension of it, or by way of modification of the terms of this agreement (including the addition of further parties as thought necessary).

**8.6 Communication with Mediator after termination**

Following termination of the Mediation, there will be no communication between the Mediator and the Parties about the Mediation Issues or the Mediation unless this is agreed to by all Parties.

---

**9 Subsequent proceedings**

The Mediator will not:

- (a) accept appointment as an arbitrator in any arbitral or judicial proceeding relating to the Mediation Issues; or
- (b) act as an advocate for, or provide advice to, any Party in relation to the Mediation Issues.

---

**10 Exclusion of liability****10.1 Liability of Mediator**

Except in the case of fraud by the Mediator, the Mediator will not be liable to a Party for any act or omission in the performance or purported performance of his obligations under this agreement.

**10.2 Defamation**

No statements or comments, whether written or oral, made or used by the Parties or their representatives or the Mediator during the Mediation may be relied upon to found or maintain any action for defamation or any related complaint. This agreement may be pleaded in bar to any such action.

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**11 Interpretation**

In this agreement:

“Act” means *Corporations Act 2001 (Cth)* as amended from time to time.

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“**Completion Date**” means 31 December 2010 or such later date as is agreed in writing by the Parties.

“**Confidential Information**” has the meaning given to it in paragraph 7.1 of this agreement.

“**Confidentiality Undertaking**” means the confidentiality undertaking which is contained in Schedule 2 to this agreement.

“**Corporations Act**” means the *Corporations Act 2001 (Cth)*.

“**Court**” means the Federal Court of Australia.

“**Examinable Affairs**” has the same meaning given to it in section 9 of the Act

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“**Mediation**” includes all steps taken by any Party or combination of Parties or the Mediator in furtherance of the Objectives.

“**Mediation Funding Deed**” has the meaning given to it in the recitals to this agreement.

“**Mediation Issues**” means the issues and alleged claims referred to in the recitals to this agreement and any other issues as agreed between the relevant Parties.

“**Objectives**” means the objectives of the Mediation as set out in clause 1.1 of this agreement.

“**Sonray Client Claimants**” has the meaning given in the recitals to this agreement.

“**Sonray Client Claims**” has the meaning given in the recitals to this agreement.

---

## 12 General provisions

### 12.1 Governing Law and Jurisdiction

The laws of Victoria govern this agreement and the parties submit to the non-exclusive jurisdiction of the courts of Victoria and the Commonwealth of Australia in relation to all disputes arising under this agreement.

### 12.2 Counterparts

This agreement may be executed in any number of counterparts. Each counterpart is an original but the counterparts together are one and the same instrument. The agreement is, pursuant to clause 1.3, binding on a Party upon that Party signing a counterpart of it and binding as between two or more Parties upon the last of those Parties signing.

**EXECUTED** as an agreement

21  
**Mediation agreement**

**Schedule 1 - Mediator's fees and disbursements**

**Fees**

Full day (9.30 am to 5.30 pm); \$6,000.00;

Half day (9.30 am to 1.30 pm, or 1.30 pm to 5.30 pm); \$3,600.00; and

\$600.00 per hour or part thereof for shorter sessions.

**Disbursements**

As reasonably incurred

# Mediation agreement

## Schedule 2 - Confidentiality Undertaking

To the Mediator and each of the Parties to the Mediation Agreement dated [*insert date*] (“the Agreement”)

### SONRAY MEDIATION Confidentiality Undertaking

I, ..... (insert name),  
representative of ..... (insert name of company),  
wish to participate in the Mediation conducted under, or the Investor Advisory Group referred to in, the Agreement. I acknowledge that all discussions which take place in the Mediation and within the Investor Advisory Group are confidential and “without prejudice” and I undertake that I will not disclose any Confidential Information, except to another person who has signed a Confidentiality Undertaking in this form or in the form set out in Schedule 3 of the Agreement, as appropriate, unless:

- (a) required by law to do so; or
- (b) with the written consent of the Parties to the Agreement; or
- (c) the Confidential Information is or becomes generally available to the public other than as a result of a breach by me of this undertaking or by a party of any of its obligations under the Agreement; or
- (d) in the case of representatives of Saxo, IB, PWC or the Auditor, the disclosure is made confidentially to officers or employees of the corporation or a related body corporate or their insurers (if any).

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I also undertake that I will not use the Confidential Information for any purpose other than the Mediation.

Words and phrases used in this undertaking which are defined in the Agreement, bear the same defined meaning in this undertaking.

Signed:.....

Date:.....

# Mediation agreement

## Signing page

DATED: \_\_\_\_\_

EXECUTED by JOHN ROSS )  
 LINDHOLM in the presence of: )  
 )  
 )  
 ..... )  
 Signature of witness )  
 )  
 ..... )  
 Name of witness (block letters) )

.....  
 Signature of JOHN ROSS  
 LINDHOLM

EXECUTED by GEORGE )  
 GEORGES in the presence of: )  
 )  
 )  
 ..... )  
 Signature of witness )  
 )  
 ..... )  
 Name of witness (block letters) )

.....  
 Signature of GEORGE GEORGES

EXECUTED by SONRAY CAPITAL )  
 MARKETS PTY LTD ACN 104 482 )  
 993 (in liquidation) by its joint and )  
 several liquidator in the presence of: )  
 )  
 ..... )  
 Signature of witness )  
 )  
 ..... )  
 Name of witness (block letters) )

.....  
Liquidator  
 .....  
 Name of Liquidator (block letters)

**Deleted:** Administrators  
 Appointed

**Deleted:** administrator

**Deleted:** Administrator

**Deleted:** Administrator

24

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EXECUTED by RUSSELL )  
 JOHNSON in the presence of: )  
 )  
 )  
 ..... )  
 Signature of witness )  
 )  
 ..... )  
 Name of witness (block letters) )

.....  
 Signature of RUSSELL JOHNSON

EXECUTED by SCOTT MURRAY )  
 in the presence of: )  
 )  
 )  
 ..... )  
 Signature of witness )  
 )  
 ..... )  
 Name of witness (block letters) )

.....  
 Signature of SCOTT MURRAY

EXECUTED by SAXO BANK A/S )  
 in accordance with section 127(1) of )  
 the Corporations Act 2001 (Cwlth) by )  
 authority of its directors: )  
 )  
 )  
 ..... )  
 Signature of director )  
 )  
 )  
 ..... )  
 Name of director (block letters) )

.....  
 Signature of director/company  
 secretary\*  
 \*delete whichever is not applicable  
 .....  
 Name of director/company secretary\*  
 (block letters)  
 \*delete whichever is not applicable



**EXECUTED by ARISTOMENIS** )  
**GARANTZIOTIS SC** in the )  
presence of: )  
) )  
) )  
..... )  
Signature of witness )  
) )  
..... )  
Name of witness (block letters) )

..... )  
Signature of ARISTOMENIS )  
GARANTZIOTIS SC )

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