

Annex VI-A

**AGREEMENT TO MEDIATE
(Mediation First, Arbitration Next)**

Our Ref: _____
Date Received: _____
(For FDRC's Official Use Only)

THIS AGREEMENT IS MADE ON _____

BETWEEN THE FOLLOWING PERSONS (*in this Agreement called the 'Parties'*)

(Name of Party: Please Print)

(Name of Party: Please Print)

AND THE MEDIATOR (*called 'the Mediator'*)

(Name of Mediator: Please Print)

SUMMARY OF THE DISPUTE

The Parties agree to enter into Mediation with the intent of resolving issues in relation to the _____

("the Eligible Dispute").

Unless otherwise defined in this Agreement, capitalised terms in this Agreement have the meaning given to them in Paragraph 2 of the Terms of Reference of the Financial Dispute Resolution Centre ("FDRC") in relation to the Financial Dispute Resolution Scheme ("FDRS").

APPOINTMENT OF MEDIATOR

1. The Parties agree to accept the appointment of the Mediator by the FDRC to mediate the Eligible Dispute between them in accordance with the terms of this Agreement.

RULES AND CODE OF ETHICS FOR FDRC MEDIATOR

2. The Mediation shall proceed according to the terms of this Agreement, the *Terms of Reference* of the FDRC, in particular the *FDRS Mediation and Arbitration Rules* (the “Rules”) set out in Annex IV of the Terms of Reference and the *Ethics Code for FDRC Mediators* set out in Annex V of the Terms of Reference.

ROLE OF THE MEDIATOR

3. The Mediator will be impartial. The Mediator will assist the Parties to do any or all of the following:-
 - (a) identify the issues in dispute;
 - (b) explore and generate options;
 - (c) communicate with one another; and
 - (d) reach an agreement regarding the resolution of the whole, or part, of the Eligible Dispute.
4. The Mediator may meet with the Parties together or separately.
5. The Mediator will not adjudicate a dispute or any aspect of it or give legal or other professional advice to any Party.

CONFLICT OF INTEREST

6. The Mediator must, prior to the commencement of the Mediation, disclose to the Parties to the best of the Mediator’s knowledge any prior dealings with any of the Parties as well as any interest in the Eligible Dispute.
7. If in the course of the Mediation the Mediator becomes aware of any circumstances that might reasonably be considered to affect the Mediator’s capacity to act impartially, the Mediator must immediately inform the Parties of these circumstances. The Parties will then decide whether the Mediation will continue with that Mediator or with a new mediator appointed by the FDRC.

COOPERATION BY THE PARTIES

8. The Parties agree to cooperate in good faith with the Mediator and each other during the Mediation.

AUTHORITY TO SETTLE AND REPRESENTATION AT THE MEDIATION SESSION

9. The Parties agree to attend the Mediation with authority to settle within any range that can reasonably be anticipated.

10. At the Mediation session each Party may be accompanied by one or more persons who are not their legal representative, in-house or otherwise (unless it is an Extended Eligible Dispute or it is a claim under court proceedings), to assist and advise them. Such persons shall sign a separate *Confidentiality Agreement* in a form prescribed by the FDRC.

COMMUNICATION BETWEEN THE MEDIATOR AND THE PARTIES

11. Any information disclosed to a Mediator in private is to be treated as confidential by the Mediator unless the Party making the disclosure states otherwise.

CONFIDENTIALITY OF THE MEDIATION

12. (a) The Parties and the Mediator agree to send a copy of this Agreement and the *Mediated Settlement Agreement* in the form set out in Annex VIII of the Terms of Reference (if any) to the FDRC. The Parties and the Mediator further agree that the Mediator shall file a *Mediation Certificate* in the form set out in Annex IX of the Terms of Reference referred to in Clauses 23 and 25 with the FDRC.
- (b) Subject to Clause 12(a) and save as shall be required under any written law, regulation or an order of court, or as necessary to implement and enforce any settlement agreement, all persons involved in the Mediation shall keep confidential and not disclose or divulge (whether expressly or impliedly) to any third party: –
- (i) the matters that transpired in the course of the Mediation;
 - (ii) any views expressed, or suggestions or proposals for settlement made by any Party for the resolution of the dispute in the course of the Mediation;
 - (iii) any views expressed by the Mediators;
 - (iv) all materials made available and communication made during the Mediation; and/or
 - (v) all materials, information, correspondence (including emails), issues/matters discussed, proposals and counterproposals produced for or arising in relation to the Mediation including but not limited to any *Mediated Settlement Agreement* (and the substance and/or terms thereof) except as directly

necessary to implement and enforce any such settlement agreement.

- (c) Save as shall be required under any written law, regulations or an order of court, all materials made available, documents or other information produced for or arising in relation to the Mediation shall be privileged and shall not be admissible as evidence or discoverable in any proceedings connected with the Eligible Dispute, unless such documents would have in any event been admissible or discoverable in such proceedings.
 - (d) The Parties shall not call the Mediator or the FDRC (or any of its employee, officer or representative) as a witness, consultant, mediator, arbitrator or expert in any subsequent proceedings relating to the Eligible Dispute.
 - (e) The Parties' obligation of confidentiality is not affected by, and would continue with full force and effect after the conclusion of the Mediation.
 - (f) Where a Party is a corporate entity, it shall ensure that all its officers, representatives and/or agents comply with Clause 12.
 - (g) The fact that this Mediation has occurred, is continuing, or has concluded shall not be considered confidential.
13. Where a Party privately discloses to the Mediator any information in confidence before, during or after the Mediation, the Mediator will not disclose that information to any other Party or person without the consent of the Party disclosing it, unless required by law to make disclosure.
14. The Parties must not take any verbatim recording or notes of the Mediation.
15. The Parties acknowledge that, by entering into Mediation according to the terms of this Agreement, they agree and accept that information shall be used by the FDRC for research, evaluation or educational purposes without revealing, or being likely to reveal, directly or indirectly, the identity of the Parties.
16. The Parties further agree that the FDRC shall have the right to make observations, including the right to appoint observer(s) to attend and/or observe any Mediation conducted under the Rules. The Parties and the Mediator shall be notified in writing of any such observation. Observer(s) shall comply with Clauses 11-15 as if he is a Party

or Mediator to this Agreement and sign the *Confidentiality Agreement* set out in Annex VII of the Terms of Reference.

LANGUAGE OF THE MEDIATION

17. The language of Mediation shall be decided by the Mediator, taking into consideration the Parties' preferences as far as practicable. If translation service is required by any Party, the Party requiring such service shall bear its costs. If such service is jointly required, the Parties agreed to share the costs on an equal basis and the translator shall sign the *Confidentiality Agreement* set out in Annex VII of the Terms of Reference.

TERMINATION OF THE MEDIATION

18. The Mediator shall inform the Eligible Claimants of their right to withdraw from the Mediation.

19. If the Mediator believes that a Party is unable or unwilling to participate effectively in the mediation process, the Mediator can terminate the Mediation.

20. If it is the Mediator's opinion that the continuing of the Mediation is no longer practicable, the Mediator can terminate the Mediation.

21. If the Mediator believes that continuing the Mediation will raise ethical concerns, the Mediator can terminate the Mediation.

22. If the Mediator believes that there is insufficient information for the Mediation to proceed constructively, the Mediator can terminate the Mediation.

23. In the event the Mediation is terminated pursuant to Clauses 18-22, the Mediator shall file a *Mediation Certificate* set out in Annex IX of the Terms of Reference with the FDRC.

SETTLEMENT OF THE DISPUTE

24. No terms of settlement reached at the Mediation will be legally binding until set out in writing and signed by or on behalf of each of the Parties.

25. The Mediator shall file the *Mediation Certificate* with the FDRC at the conclusion of the Mediation regardless of whether a settlement was reached or the Mediation terminated.

EXCLUSION OF LIABILITY AND INDEMNITY

26. The Mediator and/or FDRC will not be liable to any Party for any act or omission by the Mediator in the performance or purported performance of the Mediator's obligations under this Agreement unless the act or omission is fraudulent.
27. Each Party indemnifies the Mediator and/or FDRC against all claims by that Party or anyone claiming under or through that Party, arising out of or in any way referable to any act or omission by the Mediator in the performance or purported performance of the Mediator's obligations under this agreement, unless the act or omission is fraudulent.
28. No statements or comments, whether written or oral, made or used by the Parties or their representatives or the Mediator within the mediation shall be relied upon to found or maintain any action for defamation, libel, slander or any related complaint, and this document may be pleaded as a bar to any such action.

COST OF THE MEDIATION

29. The Parties will be responsible for the fees and expenses of the Mediator in accordance with the FDRC's *Schedule of Fees*. Parties and the Mediator further agree that FDRC shall not be liable to the Mediator for the costs of the Mediation.

ARBITRATION AGREEMENT

30. Parties agree that any dispute, controversy or claim arising out of or relating to this Eligible Dispute which is unresolved by Mediation shall, upon written request from the Eligible Claimant with a Standard Eligible Dispute or the Claimant with an Extended Eligible Dispute, be resolved by arbitration administered by the FDRC in accordance with the Rules:-
- (a) the number of arbitrators shall be one only and this arbitrator shall be selected from the FDRC List of Arbitrators;
 - (b) where necessary, the FDRC shall act as the appointing authority, and shall appoint a single arbitrator from the FDRC List of Arbitrators which the Parties herewith agree as the basis for the appointment of the arbitrator;
 - (c) the place of Arbitration shall be in Hong Kong; and
 - (d) the Arbitration shall be conducted in such language(s) as the Arbitrator sees

fit.

GOVERNING LAW

31. This Agreement is governed by the law of the Hong Kong Special Administrative Region and the courts of the Hong Kong Special Administrative Region shall have exclusive jurisdiction to decide any matters arising out of or in connection with this Agreement and the Mediation.

SIGNING OF THE AGREEMENT TO MEDIATE

Date: _____

Name of Party (Please print and sign here)
(with Company Chop, if applicable)

Name of Party (Please print and sign here)
(with Company Chop, if applicable)

Name of Mediator (Please print and sign here)

Annex VI-B

AGREEMENT TO MEDIATE (Mediation Only)

Our Ref: _____

Date Received: _____

(For FDRC’s Official Use Only)

THIS AGREEMENT IS MADE ON _____

BETWEEN THE FOLLOWING PERSONS (*in this Agreement called the ‘Parties’*)

(Name of Party: Please Print)

(Name of Party: Please Print)

AND THE MEDIATOR (*called ‘the Mediator’*)

(Name of Mediator: Please Print)

SUMMARY OF THE DISPUTE

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 (“the Eligible Dispute”).

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- 2. The Mediation shall proceed according to the terms of this Agreement, the *Terms of Reference* of the FDRC, in particular the *FDRS Mediation and Arbitration Rules* (the “Rules”) set out in Annex IV of the Terms of Reference and the *Ethics Code for FDRC Mediators* set out in Annex V of the Terms of Reference.

ROLE OF THE MEDIATOR

3. The Mediator will be impartial. The Mediator will assist the Parties to do any or all of the following:-
 - (a) identify the issues in dispute;
 - (b) explore and generate options;
 - (c) communicate with one another; and
 - (d) reach an agreement regarding the resolution of the whole, or part, of the Eligible Dispute.
4. The Mediator may meet with the Parties together or separately.
5. The Mediator will not adjudicate a dispute or any aspect of it or give legal or other professional advice to any Party.

CONFLICT OF INTEREST

6. The Mediator must, prior to the commencement of the Mediation, disclose to the Parties to the best of the Mediator's knowledge any prior dealings with any of the Parties as well as any interest in the Eligible Dispute.
7. If in the course of the Mediation the Mediator becomes aware of any circumstances that might reasonably be considered to affect the Mediator's capacity to act impartially, the Mediator must immediately inform the Parties of these circumstances. The Parties will then decide whether the Mediation will continue with that Mediator or with a new mediator appointed by the FDRC.

COOPERATION BY THE PARTIES

8. The Parties agree to cooperate in good faith with the Mediator and each other during the Mediation.

AUTHORITY TO SETTLE AND REPRESENTATION AT THE MEDIATION SESSION

9. The Parties agree to attend the Mediation with authority to settle within any range that can reasonably be anticipated.
10. At the Mediation session each Party may be accompanied by one or more persons who may or may not be their legal representative, in-house or otherwise, to assist and advise them. Such persons shall sign a separate *Confidentiality Agreement* in a form prescribed by the FDRC.

COMMUNICATION BETWEEN THE MEDIATOR AND THE PARTIES

11. Any information disclosed to a Mediator in private is to be treated as confidential by the Mediator unless the Party making the disclosure states otherwise.

CONFIDENTIALITY OF THE MEDIATION

12. (a) The Parties and the Mediator agree to send a copy of this Agreement and the *Mediated Settlement Agreement* in the form set out in Annex VIII of the Terms of Reference (if any) to the FDRC. The Parties and the Mediator further agree that the Mediator shall file a *Mediation Certificate* in the form set out in Annex IX of the Terms of Reference referred to in Clauses 23 and 25 with the FDRC.

(b) Subject to Clause 12(a) and save as shall be required under any written law, regulation or an order of court, or as necessary to implement and enforce any settlement agreement, all persons involved in the Mediation shall keep confidential and not disclose or divulge (whether expressly or impliedly) to any third party: –

(i) the matters that transpired in the course of the Mediation;

(ii) any views expressed, or suggestions or proposals for settlement made by any Party for the resolution of the dispute in the course of the Mediation;

(iii) any views expressed by the Mediators;

(iv) all materials made available and communication made during the Mediation; and/or

(v) all materials, information, correspondence (including emails), issues/matters discussed, proposals and counterproposals produced for or arising in relation to the Mediation including but not limited to any *Mediated Settlement Agreement* (and the substance and/or terms thereof) except as directly necessary to implement and enforce any such settlement agreement.

(c) Save as shall be required under any written law, regulations or an order of court, all materials made available, documents or other information produced for or arising in relation to the Mediation shall be privileged and shall not be admissible as evidence or discoverable in any proceedings connected with the

Eligible Dispute, unless such documents would have in any event been admissible or discoverable in such proceedings.

- (d) The Parties shall not call the Mediator or the FDRC (or any of its employee, officer or representative) as a witness, consultant, mediator, arbitrator or expert in any subsequent proceedings relating to the Eligible Dispute.
 - (e) The Parties' obligation of confidentiality is not affected by, and would continue with full force and effect after the conclusion of the Mediation.
 - (f) Where a Party is a corporate entity, it shall ensure that all its officers, representatives and/or agents comply with Clause 12.
 - (g) The fact that this Mediation has occurred, is continuing, or has concluded shall not be considered confidential.
13. Where a Party privately discloses to the Mediator any information in confidence before, during or after the Mediation, the Mediator will not disclose that information to any other Party or person without the consent of the Party disclosing it, unless required by law to make disclosure.
14. The Parties must not take any verbatim recording or notes of the Mediation.
15. The Parties acknowledge that, by entering into Mediation according to the terms of this Agreement, they agree and accept that information shall be used by the FDRC for research, evaluation or educational purposes without revealing, or being likely to reveal, directly or indirectly, the identity of the Parties.
16. The Parties further agree that the FDRC shall have the right to make observations, including the right to appoint observer(s) to attend and/or observe any Mediation conducted under the Rules. The Parties and the Mediator shall be notified in writing of any such observation. Observer(s) shall comply with Clauses 11-15 as if he is a Party or Mediator to this Agreement and sign the *Confidentiality Agreement* set out in Annex VII of the Terms of Reference.

LANGUAGE OF THE MEDIATION

17. The language of Mediation shall be decided by the Mediator, taking into consideration the Parties' preferences as far as practicable. If translation service is required by any

Party, the Party requiring such service shall bear its costs. If such service is jointly required, the Parties agreed to share the costs on an equal basis and the translator shall sign the *Confidentiality Agreement* set out in Annex VII of the Terms of Reference.

TERMINATION OF THE MEDIATION

18. The Mediator shall inform the Eligible Claimants of their right to withdraw from the Mediation.
19. If the Mediator believes that a Party is unable or unwilling to participate effectively in the mediation process, the Mediator can terminate the Mediation.
20. If it is the Mediator's opinion that the continuing of the Mediation is no longer practicable, the Mediator can terminate the Mediation.
21. If the Mediator believes that continuing the Mediation will raise ethical concerns, the Mediator can terminate the Mediation.
22. If the Mediator believes that there is insufficient information for the Mediation to proceed constructively, the Mediator can terminate the Mediation.
23. In the event the Mediation is terminated pursuant to Clauses 18-22, the Mediator shall file a *Mediation Certificate* set out in Annex IX of the Terms of Reference with the FDRC.

SETTLEMENT OF THE DISPUTE

24. No terms of settlement reached at the Mediation will be legally binding until set out in writing and signed by or on behalf of each of the Parties.
25. The Mediator shall file the *Mediation Certificate* with the FDRC at the conclusion of the Mediation regardless of whether a settlement was reached or the Mediation terminated.

EXCLUSION OF LIABILITY AND INDEMNITY

26. The Mediator and/or FDRC will not be liable to any Party for any act or omission by the Mediator in the performance or purported performance of the Mediator's obligations under this Agreement unless the act or omission is fraudulent.
27. Each Party indemnifies the Mediator and/or FDRC against all claims by that Party or

anyone claiming under or through that Party, arising out of or in any way referable to any act or omission by the Mediator in the performance or purported performance of the Mediator's obligations under this agreement, unless the act or omission is fraudulent.

28. No statements or comments, whether written or oral, made or used by the Parties or their representatives or the Mediator within the mediation shall be relied upon to found or maintain any action for defamation, libel, slander or any related complaint, and this document may be pleaded as a bar to any such action.

COST OF THE MEDIATION

29. The Parties will be responsible for the fees and expenses of the Mediator in accordance with the FDRC's *Schedule of Fees*. Parties and the Mediator further agree that FDRC shall not be liable to the Mediator for the costs of the Mediation.

GOVERNING LAW

30. This Agreement is governed by the law of the Hong Kong Special Administrative Region and the courts of the Hong Kong Special Administrative Region shall have exclusive jurisdiction to decide any matters arising out of or in connection with this Agreement and the Mediation.

SIGNING OF THE AGREEMENT TO MEDIATE

Date: _____

Name of Party (Please print and sign here)
(with Company Chop, if applicable)

Name of Party (Please print and sign here)
(with Company Chop, if applicable)

Name of Mediator (Please print and sign here)

Annex VI-C

**ARBITRATION AGREEMENT
(Arbitration Only)**

Our Ref: _____

Date Received: _____

(For FDRC's Official Use Only)

THIS AGREEMENT IS MADE ON _____

BETWEEN THE FOLLOWING PERSONS (*in this Agreement called the 'Parties'*)

(Name of Party: Please Print)

(Name of Party: Please Print)

SUMMARY OF THE DISPUTE

The Parties agree to enter into Arbitration to resolve issues in relation to the _____ ("the Eligible Dispute").

Unless otherwise defined in this Agreement, capitalised terms in this Agreement have the meaning given to them in Paragraph 2 of the Terms of Reference of the Financial Dispute Resolution Centre ("FDRC") in relation to the Financial Dispute Resolution Scheme ("FDRS").

ARBITRATION AGREEMENT

1. Parties agree that any dispute, controversy or claim arising out of or relating to this Eligible Dispute shall be resolved by arbitration administered by the FDRC in accordance with the *FDRS Mediation and Arbitration Rules* :-
 - (a) the number of arbitrators shall be one only and this arbitrator shall be selected from the FDRC List of Arbitrators;
 - (b) where necessary, the FDRC shall act as the appointing authority, and shall appoint a single arbitrator from the FDRC List of Arbitrators which the Parties herewith agree as the basis for the appointment of the arbitrator;
 - (c) the place of Arbitration shall be in Hong Kong; and
 - (d) the Arbitration shall be conducted in such language(s) as the Arbitrator sees fit.

GOVERNING LAW

2. This Agreement is governed by the law of the Hong Kong Special Administrative Region and the courts of the Hong Kong Special Administrative Region shall have exclusive jurisdiction to decide any matters arising out of or in connection with this Agreement and the Arbitration.

SIGNING OF THE ARBITRATION AGREEMENT

Date: _____

Name of Party (Please print and sign here)
(with Company Chop, if applicable)

Name of Party (Please print and sign here)
(with Company Chop, if applicable)