

**Terms of Reference**  
**for**  
**Financial Dispute Resolution Centre (FDRC)**  
**in relation to the**  
**Financial Dispute Resolution Scheme**  
**(FDRS)**

**February 2014**

**FDRC is a company limited by guarantee under the Companies Ordinance (Cap. 622)**

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## Section A: Preliminary

### 1. Purpose and Scope of Terms of Reference

1.1 These Terms of Reference including its Annexes set out who is eligible to lodge a dispute at the Financial Dispute Resolution Centre (“**FDRC**”), the types of disputes that the FDRC can consider, how the FDRC resolves disputes, services that the FDRC provides and other related matters. For the avoidance of doubt, the interpretation accorded to these Terms of Reference by the FDRC shall be final and conclusive.

1.2 These Terms of Reference are binding upon the following classes of persons and entities as defined in paragraph 2 below:

- the financial institutions (“FI”);
- Applicants;
- Eligible Claimants whose claims have been accepted by the FDRC;
- Mediators; and
- Arbitrators.

### 2. Definitions

2.1 The following words have the following meanings where they appear in these Terms of Reference –

- ‘Applicant’ means a person making or who had made an Application to the FDRC;
- ‘Application’ means an application to the FDRC for assessing whether a Claim may be accepted under the FDRS in accordance with these Terms of Reference and the *FDRS Guidelines on Intake Criteria of Cases*;
- ‘Arbitration’ means the process of arbitration of an Eligible Dispute under the FDRS;

- ‘Arbitral Award’ means an arbitral award rendered by the Arbitrator which is final and binding on the FI and the Eligible Claimant;
- ‘Arbitrator’ means a person who is suitably qualified and experienced in arbitration and is appointed by the FDRC to act as an arbitrator;
- ‘Board’ means the board of directors which is the governing body of the FDRC;
- ‘Case Officer’ means any person employed by the FDRC who acts as a case manager responsible for addressing enquiries, gathering information and vetting applications to decide whether an application should be accepted under the FDRS in accordance with these Terms of Reference and the *FDRS Guidelines on Intake Criteria of Cases*;
- ‘Claim’ means a claim against an FI, which the FDRC may accept for Mediation and, failing which and if the Eligible Claimant so wishes, Arbitration;
- ‘Complaint’ refers to a written complaint raised by the Applicant to the FI before a Claim is lodged with the FDRC;
- ‘Court’ refers to the courts of the Hong Kong Special Administrative Region;
- ‘Eligible Claimant’ refers to an individual or a sole proprietor having or who had a customer relationship with an FI, or an individual or a sole proprietor who has been provided with a Financial Service;
- ‘Eligible Dispute’ refers to a dispute that fulfils the conditions set out in Paragraph 12 of these Terms of Reference;
- ‘Extended Mediation Time’ means any duration beyond the Specified Mediation Time which the Parties, the Mediator and the FDRC have agreed to continue with an adjourned Mediation;
- ‘FDRC’ means the Financial Dispute Resolution Centre, a company limited by guarantee under the Companies Ordinance (Cap. 622);
- ‘FDRS’ means the Financial Dispute Resolution Scheme for managing and resolving Eligible Disputes administered by the FDRC;

- ‘Financial Service’ means a financial product, service or advice about a financial product or service provided by or via an FI;
- ‘Final Written Reply’ means a written response from the FI to an Applicant which accepts the Complaint (and where appropriate offers redress), offers redress without accepting the Complaint or rejects the Complaint;
- ‘FI’ means a financial institution or a financial services provider authorized by the HKMA or licensed by the SFC, but excludes those financial institutions which only carry on Type 10 regulated activity (i.e. provision of credit rating services) under the Securities and Futures Ordinance (Chapter 571);
- ‘Government’ means the Government of the Hong Kong Special Administrative Region;
- ‘HKMA’ means the Monetary Authority appointed under section 5A of the Exchange Fund Ordinance, Chapter 66 of the Laws of Hong Kong;
- ‘Hong Kong’ means the Hong Kong Special Administrative Region;
- ‘ICCB’ means the Insurance Claims Complaints Bureau;
- ‘List of Arbitrators’ means the FDRC’s list of arbitrators for arbitration under these Terms of Reference and the *FDRS Mediation and Arbitration Rules*;
- ‘List of Mediators’ means the FDRC’s list of mediators for mediation under these Terms of Reference and the *FDRS Mediation and Arbitration Rules*;
- ‘Mediation’ is the process of mediation of an Eligible Dispute under FDRS;
- ‘Mediated Settlement Agreement’ means a written agreement setting out the terms Parties have agreed in Mediation to resolve the Eligible Dispute;
- ‘Mediator’ means a person who is suitably qualified and experienced in mediation and is appointed by the FDRC to act as a mediator;
- ‘Notice to Arbitrate’ means a written notice sent by an Eligible Claimant to the FDRC to request for the initiation of Arbitration;

- ‘Paragraph’ means a term and/or condition set out in paragraphs in these Terms of Reference, excluding the Annexes;
- ‘Parties’ mean an Eligible Claimant and the relevant FI;
- ‘Regulators’ mean the regulators of financial services in Hong Kong such as the SFC and the HKMA;
- ‘Representative’ means the representative of an FI at the Mediation and/or Arbitration conducted under the FDRS, and may include any individual who dealt with the Eligible Claimant or supervised the dealing with the Eligible Claimant in the provision of the Financial Service that gave rise to the Eligible Dispute, and the individual is an employee, agent or third party contractor of the FI;
- ‘Rule’ means a term and/or condition set out in the *FDRS Mediation and Arbitration Rules*;
- ‘Specified Mediation Time’ means the 4 hours allocated for Mediation under these Terms of Reference;
- ‘SFC’ means the Securities and Futures Commission referred to in section 3 of Securities and Futures Ordinance, Chapter 571 of the Laws of Hong Kong; and
- ‘Terms of Reference’ means these terms of reference of the FDRC in relation to the FDRS.

2.2 References to the provision of Financial Service include, where the context admits, references to its non-provision.

2.3 References to the male gender include, where the context admits, the female gender and vice versa and references to the singular number include, where the context admits, the plural number and vice versa.

2.4 References to days mean calendar days.

2.5 References to month mean calendar month.

### **3. Amendment**

- 3.1 The Board shall, at all times, have power to amend these Terms of Reference following consultation with the Government. Relevant stakeholders, including the relevant industry bodies, will be consulted where appropriate.
- 3.2 The FDRC may issue guidelines from time to time to address points relating to the operation of these Terms of Reference in order to take into account industry product and policy developments and any other changes. Such guidelines and any updates to these Terms of Reference will take effect on a date to be published by FDRC on its web site.

## Section B: Power and Functions of the FDRC

### 4. Objectives and Power of the FDRC

- 4.1 The objective of setting up the FDRC is to provide FIs and their customers with an independent and affordable avenue, as an alternative to litigation, for resolving monetary disputes.
- 4.2 The FDRC shall at all times be independent and impartial and shall not act as an advocate for any Party in an Eligible Dispute.
- 4.3 The FDRC shall have the power to –
- (a) accept and reject Applications in accordance with the *FDRS Guidelines on Intake Criteria of Cases* set out in Annex II;
  - (b) request for information that is necessary for and relevant to the handling of Claims and/or Eligible Disputes;
  - (c) provide guidance for the conduct of its Mediators and Arbitrators, including but not limited to the setting out of rules, ethical codes and guidance notes from time to time;
  - (d) publish data about Eligible Disputes for research, evaluation or educational purposes. The nature and format of publication may include summary of statistics by sectors or nature of cases without revealing, or being likely to reveal, directly or indirectly, the identity of the Parties;
  - (e) notify and/or to submit such information within its knowledge relating to systemic issues (which relate to issues that have affected or have the potential to affect other customers of the relevant FI or members of the public) and/or suspected serious misconduct to the relevant Regulator(s);
  - (f) collect the relevant fees from the Applicant, Eligible Claimants and the FIs in accordance with the *Schedule of Fees* set out in Annex 1;
  - (g) issue letters or notices to the FIs, and/or informing the relevant Regulator(s) in case the FIs fail to fulfil any of their obligations under these Terms of Reference; and



- (h) take any such other actions and initiatives as deemed appropriate to put into effect the objectives of the FDRC.

4.4 The FDRC has the full and sole authority to:

- (a) maintain a List of Mediators and a List of Arbitrators;
- (b) decide the entry and exit of Mediators and Arbitrators on the above lists; and
- (c) appoint Mediators and Arbitrators in case the Parties could not reach an agreement.

## 5. Principles and Functions of the FDRC

5.1 The FDRC is established on the following guiding principles:

- (a) **Independence** – the resolution procedures should be independent;
- (b) **Impartiality** – the process of the FDRC should ensure that both Parties are treated in an impartial way;
- (c) **Accessibility** – the FDRC should be accessible and user friendly. The dispute resolution procedures should be straight forward, clear and easy to understand;
- (d) **Efficiency** – the Eligible Disputes should be settled in a timely and efficient manner; and
- (e) **Transparency** – in dealing with the Eligible Disputes, the FDRC should be as transparent as possible, whilst also acting in accordance with its confidentiality and privacy obligations under the laws of Hong Kong.

5.2 The FDRC is set up to administer the FDRS by way of primarily Mediation and, failing which and if the Eligible Claimant so wishes, Arbitration.

## **6. Set-up of the FDRC**

- 6.1 The FDRC is set up as a non-profit making company limited by guarantee under the Companies Ordinance (Cap. 622). Its memorandum and articles of association have been formulated to define the objectives, scope and governance of the FDRC.

## **7. Governance of the FDRC**

- 7.1 The FDRC is governed by a Board (comprising seven to fifteen members, including the Chairman). The Board is responsible for formulating the overall policy of the FDRC, overseeing its operations and ensuring the independence and impartiality of its dispute resolution procedures. The Board shall not interfere with the conduct and outcomes of Mediation and Arbitration.
- 7.2 The Board is broadly based and comprises persons from the financial services industries and persons who are well-regarded in the community and who have good knowledge of financial services-related matters and consumer protection issues. The Board includes the Chief Executive Officer of the FDRC, and persons appointed by the Government and the Regulators.
- 7.3 The Board may delegate any of its powers to a committee/sub-committee or committees/sub-committees consisting of members who may or may not be directors of the Board, upon such terms and conditions as the Board may see fit. A committee/sub-committee to which any powers have been delegated must exercise those powers in accordance with the directions of the Board.

## **8. Funding arrangements for the FDRC**

- 8.1 The Government, the HKMA and the SFC shall fund the set-up costs and the operational costs of the FDRC in the first three years, i.e. from 1 January 2012 to 31 December 2014.
- 8.2 With effect from 1 January 2015, the FDRC shall be funded by the FIs as part of the financial industry's commitment to the general public to resolve disputes in a fair and efficient manner.
- 8.3 The cost of funding the FDRC from 1 January 2015 shall be borne by the FIs in a

fair and equitable manner, taking into account the level of usage of the FDRC's resources. The underlying principles for the funding arrangements are –

- (a) to be as fair as possible between the FIs;
- (b) to be efficient and administratively simple to operate and collect;
- (c) to provide the FDRC and the FIs with an appropriate degree of certainty and flexibility for timely budget planning and financial management purposes; and
- (d) to provide the FIs an incentive to resolve Complaints, where possible, at an early stage.

8.4 The FDRC shall proceed to work out the funding formula after the first year of operational experience. It shall consult with the Government, the Regulators, and the relevant stakeholders, including the relevant industry bodies. The FIs shall provide the FDRC with information that is necessary in working out the funding formula.

8.5 Once the funding formula for the FDRC is approved by the Government, HKMA and the SFC, the FIs agree to abide by its terms to ensure the continuity of FDRC's operations as from 1 January 2015.

## **9. Membership of the FDRS**

9.1 Under the licensing conditions imposed on financial institutions authorized by the HKMA, or the Code of Conduct for Persons Licensed by or Registered with the SFC, FIs are to be members of the FDRS operated by the FDRC.

9.2 The FIs agree to abide by these Terms of Reference and to follow the procedures and processes prescribed by the FDRC for the FDRS. The FIs will enter into Mediation and/or Arbitration with the aim to resolving an Eligible Dispute if –

- (a) the Eligible Claimant so wishes, and
- (b) the Eligible Dispute was not resolved directly between the Parties prior to the Applicant making an Application.

9.3 The FIs shall follow the procedures prescribed by the FDRC for the FDRS, including, but not limited to the following:

- (a) issue a Final Written Reply in respect of a Complaint advising the relevant claimant of his choice to refer the matter to the FDRC if the Complaint was not resolved. The Final Written Reply should include the relevant contact details of the FDRC;
- (b) respond to the requests for relevant information from the FDRC within the timeframe specified by the FDRC;
- (c) provide the Representative at the Mediation with the requisite authority to settle any individual claim of up to HK\$500,000 or its foreign currency equivalent;
- (d) enter into the Mediation and/or Arbitration as provided under Paragraph 9.2;
- (e) participate in the Mediation and/or Arbitration in good faith;
- (f) fulfil the terms of *Mediated Settlement Agreement* set out in Annex VIII and/or Arbitral Award; and
- (g) pay promptly to the FDRC the Mediation and/or Arbitration fees in accordance with the *Schedule of Fees* set out in Annex I and any other costs and charges.

## **10. Undertaking to comply by the FIs and implications of breach**

10.1 The FIs agree to comply with and be bound by these Terms of Reference at all times, including any and all such amendments, modifications and/or updates that may be made from time to time by the FDRC following consultation with the Government. Relevant stakeholders, including the relevant industry bodies, will be consulted where appropriate.

10.2 The FDRC shall issue a non-compliance letter/notice to the FIs, with a copy to the Regulators for follow-up actions, where necessary, if the FIs fail to fulfil any of their obligations under these Terms of Reference.

## 11. Fee structure

- 11.1 The service of the FDRC is offered at a fee to both Eligible Claimants and the FIs in accordance with the *Schedule of Fees* set out in Annex I. All fees and charges paid to the FDRC are non-refundable.
- 11.2 An Applicant shall pay to the FDRC the application fee when submitting the *FDRS Application Form*. The application fee paid to the FDRC by the Applicant is not refundable even if an Application is later rejected by the FDRC.
- 11.3 The Parties shall pay the fees for Mediation and Arbitration to the FDRC before the commencement of the Mediation and Arbitration processes respectively. The fees paid to the FDRC by the Parties are not refundable even if the mediation or arbitration is later terminated by the Mediator or Arbitrator.
- 11.4 The FDRC shall review the fee structure from time to time and any changes to the fee structure in the *Schedule of Fees* set out in Annex I will be subject to approval by the Board, after consulting with the Government. Relevant stakeholders, including the relevant industry bodies, will be consulted where appropriate.

## **Section C: Scope of the FDRC**

### **12. Disputes that can be brought before the FDRC**

12.1 Subject to Paragraph 14.1, the FDRC will only handle disputes that fulfil all of the following conditions (known as ‘Eligible Disputes’) –

- (a) the dispute must be brought by an Eligible Claimant (as defined under Paragraph 13);
- (b) an Eligible Claimant has filed a Complaint to the relevant FI and received a Final Written Reply issued by the FI; or it has been more than 60 days from the date he filed the Complaint with the relevant FI and has not received a Final Written Reply from the relevant FI;
- (c) the financial services provider involved in the dispute must be an FI (as defined under Paragraphs 2 and 9);
- (d) the dispute must be of a monetary nature (For the avoidance of doubt, the FDRC shall have the sole discretion to decide what is ‘monetary nature’);
- (e) the amount for each individual claim does not exceed HK\$500,000 (including any interest on any amount alleged to be a loss) or the foreign currency equivalent (For the avoidance of doubt, the FDRC shall have the sole discretion to ascertain what constitutes an ‘individual claim’); and
- (f) the dispute must arise out of a contract between the Eligible Claimant and the FI that was entered into or arose in Hong Kong, or any act or omission of the FI in connection with the provision of a Financial Service to an Eligible Claimant where the FI acted as an agent.

### **13. Definition of Eligible Claimant**

13.1 The following persons (known as ‘Eligible Claimants’) may bring a Claim before the FDRC –

- (a) individuals having or who had a customer relationship with an FI or who has been provided with a Financial Service; or

- (b) sole proprietors having or who had a customer relationship with an FI or who has been provided with a Financial Service.

#### **14. Cases outside the purview of the FDRC**

- 14.1 Situations where Case Officers shall reject an application are set out in the *FDRS Guidelines on Intake Criteria of Cases* at Annex II.
- 14.2 All disputes which have not first been raised by an Eligible Claimant with the relevant FI so as to give the FI an opportunity to resolve it directly, if submitted to the FDRC, shall be rejected.
- 14.3 The FDRC shall discontinue handling a Claim if, after the Application is lodged with the FDRC, the Eligible Claimant lodges a complaint against the FI with the ICCB or commences legal proceedings against the FI while the Claim is being processed by the FDRC. There is an ongoing obligation on the part of the Eligible Claimant to inform the FDRC whether any such complaint or legal proceedings against the FI in respect of the subject matter of the Eligible Dispute has been initiated.
- 14.4 The FDRC shall discontinue handling a Claim if, after the Application is lodged with the FDRC, it comes to the knowledge of the FDRC that the Claim has been the subject of court proceedings where there is a decided judgment.

## **Section D: Process of the FDRS**

### **15. Initial process**

- 15.1 An Eligible Claimant should have already filed his Complaint directly with the relevant FI in the first instance to give the FI an opportunity to resolve any disputes directly with him before going to the FDRC.
- 15.2 An Eligible Claimant should only file an Application with the FDRC if -
- (a) he has filed a Complaint to the relevant FI and received a Final Written Reply to the Complaint issued by the FI; or
  - (b) it has been more than 60 days from the date he filed the Complaint with the relevant FI and has not received a Final Written Reply from the relevant FI.

### **16. Initial enquiries**

- 16.1 Initial enquiries can be made by members of the public to the FDRC in person, by phone, fax, letter or email. FDRC staff will assist with the enquiries, explain the scope of the FDRS, and provide information on available channels for taking forward their enquiries.

### **17. Filing of applications**

#### ***17.1 Submission of FDRS Application Form***

- 17.1.1 To submit an Application, an Applicant should fill in the *FDRS Application Form* set out in Annex III, clearly listing out the issues in dispute and the amount of monetary loss suffered, as well as attaching the relevant correspondence with the relevant FI. The *FDRS Application Form* may be amended by the FDRC as and when required.
- 17.1.2 An Application to the FDRC can only be made by the Eligible Claimant within 12 calendar months from the date of purchase of the Financial Service or the date on which the Eligible Claimant first had knowledge (including the knowledge which he might reasonably have been expected to acquire from facts observable or ascertainable by him) that he has suffered monetary loss, whichever is later.



- 17.1.3 An Applicant shall pay an application fee to the FDRC upon submission of the *FDRS Application Form*.
- 17.1.4 The Applicant may give consent to the FDRC for the information provided in the *FDRS Application Form* to be shared with the relevant FI, the Government and the Regulators, and for the FDRC to use the information for research, evaluation or educational purposes without revealing, or being likely to reveal, directly or indirectly, the identity of the Applicant.

## **18. Role of the Case Officers**

### ***18.1 Acknowledgement of receipt***

- 18.1.1 Upon receipt of the *FDRS Application Form* and the application fee, the FDRC shall issue an acknowledgement of receipt to the Applicant.

### ***18.2 Vetting by Case Officers***

- 18.2.1 The Case Officer assigned may require an Applicant to provide further information that is considered necessary to assess whether the application fulfils the conditions as an Eligible Dispute. The Party must comply with the request within the timeframe specified by the FDRC.
- 18.2.2 The Case Officer shall consider, having regard to the *FDRS Guidelines on Intake Criteria of Cases* set out in Annex II and with due reference to the definitions of Eligible Disputes and Eligible Claimants under Paragraphs 12 and 13 respectively, whether to accept or reject the application.

### ***18.3 Procedures for accepting or rejecting an application***

- 18.3.1 If the Case Officer decides to accept or reject an application based on Paragraphs 12 to 14 and the *FDRS Guidelines on Intake Criteria of Cases* set out in Annex II, he will advise the Applicant and the FI, and where appropriate, any other parties that are involved in and have been informed about the Application.
- 18.3.2 If the Applicant objects to the decision made by the Case Officer, the Applicant can make representations to the FDRC within 21 days from the date of receipt of the

Case Officer's decision.

18.3.3 A senior staff member within the FDRC shall review the decision of the Case Officer to accept or reject any Application where necessary.

18.3.4 For the avoidance of doubt, all decisions made by the senior staff member shall be final and conclusive and shall not be challenged by the Applicants or the FIs.

#### **18.4 Acceptance of Cases**

18.4.1 A Claim shall be referred to mediation upon acceptance by the FDRC and the relevant FI shall be notified in due course.

18.4.2 Upon acceptance of an Application, the FDRC may require a Party to an Eligible Dispute to do anything else that the FDRC consider may assist the conduct of Mediation and Arbitration. This may include requiring a Party to an Eligible Dispute to attend a pre-mediation session, provide a translator or provide further information except where the Party satisfies the FDRC that –

- (a) to provide the information would breach a Court order;
- (b) to provide the information would breach a duty of confidentiality to a third party and, despite all reasonable endeavours, the third party's consent to the disclosure of the information has not been obtained;
- (c) to provide the information would prejudice an ongoing investigation by the police, the Regulators or other law enforcement agencies, and, despite all reasonable endeavours, the consent to the disclosure of the information has not been obtained;
- (d) the information does not exist or no longer exists or is not within the Party's reasonable possession or control; or
- (e) the information is irrelevant to the Eligible Dispute.

Notwithstanding the aforesaid, nothing in these Terms of Reference shall prejudice any Party's right against self-incrimination or legal professional privilege.

- 18.4.3 A Party to an Eligible Dispute must comply with such a request within the timeframe specified by the FDRC.
- 18.4.4 Nothing in these Terms of Reference or elsewhere restricts the FDRC's ability to give any Party an extension of time to comply with its obligations under Paragraph 18.4.2 (even if the original period, or the period as extended, has ended) should the FDRC consider this appropriate.

## **19. Mediation**

### **19.1 General**

- 19.1.1 FDRC shall be the sole authority to set up and maintain a List of Mediators for the provision of mediation services under the FDRS and shall have the power to remove at its sole discretion any Mediator from the List of Mediators who fails to adhere to these Terms of Reference and/or the *FDRS Mediation and Arbitration Rules* and/or *Ethics Codes for FDRC Mediators and Arbitrators* as set out in Annexes IV and V respectively.
- 19.1.2 The Eligible Claimants and the FIs shall pay to the FDRC the fees so prescribed in Annex I before commencement of Mediation.
- 19.1.3 Subject to Paragraph 19.9, each Mediation session shall not, unless otherwise agreed by the Parties, the Mediator and the FDRC, exceed the Specified Mediation Time.

### **19.2 Mediation Rules**

- 19.2.1 Rules relating to the appointment of Mediators, roles of Mediators and the Parties, Mediation process, termination of Mediation, confidentiality and language of mediation, are set out in Rule 2 of the *FDRS Mediation and Arbitration Rules* in Annex IV.

### **19.3 Agreement to Mediate**

- 19.3.1 The Mediator shall ensure that the Parties sign an *Agreement to Mediate* prior to the substantive mediation session between the Parties. The *Agreement to Mediate* between the Mediator and the Parties shall be in the form prescribed in Annex VI.

19.3.2 The Mediator and/or the Parties shall send a copy of the *Agreement to Mediate* to the FDRC, the HKMA and/or the SFC.

#### ***19.4 Duties and obligation of Mediators***

19.4.1 The Mediator shall assist the Parties to the Eligible Dispute to do any or all of the following –

- (a) identify the issues in dispute;
- (b) explore each Party's needs and interests;
- (c) explore and generate options;
- (d) communicate with one another;
- (e) reach an agreement regarding the resolution of the whole, or part, of the Eligible Dispute;
- (f) draw up a valid agreement setting out what the Parties have agreed to resolve the Eligible Dispute; and
- (g) abide by the *FDRS Mediation and Arbitration Rules* as set out in Annex IV and practice notes issued by the FDRC from time to time.

19.4.2 The Mediator shall commence the mediation session within 21 days from the date of his appointment, unless otherwise directed by the FDRC in writing.

#### ***19.5 Power and jurisdiction of Mediators***

19.5.1 The Mediator may request the Parties to provide all relevant data, information and materials relating to and necessary for the Mediations, except where the Party satisfies the FDRC that –

- (a) to provide the information would breach a Court order;
- (b) to provide the information would breach a duty of confidentiality to a third party and, despite all reasonable endeavours, the third party's consent to the disclosure of the information has not been obtained;

- (c) to provide the information would prejudice an ongoing investigation by the police, the Regulators or other law enforcement agencies, and, despite all reasonable endeavours, the consent to the disclosure of the information has not been obtained;
- (d) the information does not exist or no longer exists or is not within the Party's reasonable possession or control; or
- (e) the information is irrelevant to the Eligible Dispute.

Notwithstanding the aforesaid, nothing in these Terms of Reference shall prejudice any Party's right against self-incrimination or legal professional privilege.

- 19.5.2 The Mediator shall have no power to adjudicate or make any binding decisions on the substance of the dispute.
- 19.5.3 The Mediator may only mediate the Eligible Dispute with a view to reaching a settlement between the Parties. The Mediator has no power to make any monetary awards or impose any penalties on the Parties.

### ***19.6 Training and qualifications of Mediators***

- 19.6.1 The Mediator should be impartial and have the necessary knowledge to enable him to deal with financial disputes.
- 19.6.2 Training on knowledge and skills to handle financial disputes are required of a Mediator.
- 19.6.3 The FDRC has the authority to decide what training, attributes and qualifications are required for its Mediators upon appointment and on a continuing basis.

### ***19.7 Responsibilities of FIs and Eligible Claimants***

- 19.7.1 The Parties shall participate in the Mediation in good faith and give full cooperation and assistance to the Mediator to enable the Mediation to proceed and be concluded within the Specified Mediation Time.

### ***19.8 Termination of Mediation process***

- 19.8.1 An Eligible Claimant may, at any time after the Mediation has started, submit a written notification to the Mediator to terminate the Mediation process.
- 19.8.2 The Mediator, after consultation with the Parties, may give a written advice to terminate the Mediation process if it is in the Mediator's opinion that further attempts to resolve the disputes by Mediation are no longer practicable according to the *Ethics Codes for FDRC Mediators and Arbitrators* as set out in Annex V.
- 19.8.3 In the event the Mediation is terminated, the Mediator shall report the termination to FDRC in the form of a *Mediation Certificate* as set out in Annex IX. The Parties agree that the form may be provided to the HKMA and/or the SFC by the FDRC.

### ***19.9 Extended Mediation Time***

- 19.9.1 The Mediator may conclude the Mediation process after completion of the Specified Mediation Time, regardless whether or not any *Mediated Settlement Agreement* has been reached.
- 19.9.2 Subject to the agreement by the Parties, the Mediator and the FDRC, the Specified Mediation Time may be extended to any such duration as may be necessary for the resolution of the Eligible Dispute. Any extra charges shall be calculated on the basis set out in the *Schedule of Fees* in Annex I and must be paid to the FDRC before the subsequent mediation session.

### ***19.10 Mediation settlement***

- 19.10.1 A sample of a *Mediated Settlement Agreement* is provided at Annex VIII. Parties may add terms which are not inconsistent with the existing clauses of the sample *Mediated Settlement Agreement* and shall not delete any clause from the same.
- 19.10.2 The Mediator and/or the Parties shall send a copy of the *Mediated Settlement Agreement* to the FDRC, the HKMA and/or the SFC, otherwise it should be kept confidential and should not be disclosed to any third party. Subject to Paragraph 19.10.3, Mediators and/or the Parties shall not use the information contained in the *Mediated Settlement Agreement* for purposes other than necessary for the enforcement of the terms therein.

19.10.3 All information contained in the *Mediated Settlement Agreement* may only 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 involved.

19.10.4 Upon conclusion of the Mediation, with or without a *Mediated Settlement Agreement*, the Mediator shall report the outcome of the Mediation to the FDRC in the form of a *Mediation Certificate* set out in Annex IX.

19.10.5 For the avoidance of doubt, the outcome of the Mediation, whether or not recorded in a *Mediated Settlement Agreement*, shall not be used to establish liability or fault of any kind against the Parties beyond the enforcement value of the *Mediated Settlement Agreement*.

### **19.11 Referral to arbitration**

19.11.1 Parties agree that any dispute, controversy or claim arising out of or relating to an Eligible Dispute which is unresolved by Mediation shall, upon written request from the Eligible Claimant, 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.

19.11.2 The Eligible Claimant shall file the written request for Arbitration with FDRC within 60 days from the date of the *Mediation Certificate*. Upon receipt of the written request, the FDRC should inform the relevant FI to prepare for the Arbitration. Late request will not be accepted.

## **20 Arbitration**

### ***20.1 General***

20.1.1 FDRC shall be the sole authority to set up and maintain a List of Arbitrators for the provision of arbitration services under the FDRS and shall have the power to remove at its sole discretion any Arbitrator who fails to adhere to these Terms of Reference and/or the *FDRS Mediation and Arbitration Rules* and/or *Ethics Codes for FDRC Mediators and Arbitrators* as set out in Annexes IV and V respectively from the List of Arbitrators.

20.1.2 The Parties shall pay to the FDRC the fees so prescribed in Annex I before commencement of the Arbitration.

### ***20.2 Arbitration Rules***

20.2.1 Arbitration should commence on a “documents-only” basis in which the Arbitrator should decide the Eligible Dispute on the basis of documents submitted and evidence provided. Where necessary, the Arbitrator may seek further information or clarification from the Parties.

20.2.2 Under exceptional circumstances, the Arbitrator can call for in-person formal hearings if the Arbitrator determines that such hearings are necessary for deciding the award and both Parties are willing to take on and agree to pay the related expenses and fees. Such extra expenses and fees incurred shall be shared equally between the Parties as set out in the *Schedule of Fees* in Annex I.

20.2.3 The contents of the Arbitration Ordinance (Chapter 609), provides the legislative support for the Arbitration procedures under the FDRS. The Appointment of an Arbitrator and the Arbitration Process are set out in detail under Rule 3 of the *FDRS Mediation and Arbitration Rules* in Annex IV.

### ***20.3 Duties and obligation of Arbitrator***

20.3.1 The Arbitrator shall –

- (a) facilitate a fair and speedy resolution of the Eligible Dispute without incurring unnecessary expenses;
- (b) act fairly and impartially;



- (c) give both Parties a reasonable opportunity to present their cases;
- (d) adopt a procedure appropriate to the circumstances of a particular case to avoid unnecessary delay and expense;
- (e) abide by the *FDRS Mediation and Arbitration Rules* as well as the *Ethics Codes for FDRC Mediators and Arbitrators* as set out in Annexes IV and V respectively; and
- (f) conduct the Arbitration in accordance with the Arbitration Ordinance (Chapter 609) other than sections 32 and 33.

20.3.2 Arbitrator shall, unless otherwise reasonably extended by the Arbitrator, with the consent of the FDRC or the Parties, render an Arbitral Award within one month of the receipt of the last document in case of documents-only arbitration, or the holding of the in-person hearing whichever is later.

#### **20.4 Power and jurisdiction of Arbitrator**

20.4.1 The Arbitrators shall apply the governing law of the contract to determine the substantive issues in a contract claim and make an award in accordance with the Arbitration Ordinance (Chapter 609) other than sections 32 and 33.

20.4.2 The Arbitrators shall have the power:-

- (a) to make monetary awards, subject to the maximum claimable amount set out in Paragraph 12.1(e);
- (b) to conduct such enquiries as may appear to the Arbitrator to be necessary or expedient;
- (c) to order the Parties to make any property or thing available for inspection, in their presence, by the Arbitrator;
- (d) to order any Party to produce to the Arbitrator, and to the other Parties for inspection, and to supply copies of any documents or classes of documents in their possession, custody or power, except where the Party satisfies the FDRC that –

- to provide the information would breach a Court order;
- to provide the information would breach a duty of confidentiality to a third party and, despite all reasonable endeavours, the third party's consent to the disclosure of the information has not been obtained;
- to provide the information would prejudice an ongoing investigation by the police, the Regulators or other law enforcement agencies, and, despite all reasonable endeavours, the consent to the disclosure of the information has not been obtained;
- the information does not exist or no longer exists or is not within the Party's reasonable possession or control; or
- the information is irrelevant to the Eligible Dispute.

Notwithstanding the aforesaid, nothing in these Terms of Reference shall prejudice any Party's right against self-incrimination or legal professional privilege;

- (e) to receive and take into account such written or oral evidence as he shall determine to be relevant and shall not be bound by the rules of evidence; and
- (f) to proceed with the Arbitration and make an award notwithstanding the failure or refusal of any of the Parties to comply with these Terms of Reference or with the *FDRS Mediation and Arbitration Rules* or with the Arbitrator's written orders or written directions, or to exercise its right to present its case, but only after giving the Parties written notice that he intends to do so.

## **20.5 Training and qualifications of Arbitrator**

- 20.5.1 The Arbitrator should be impartial and have the necessary knowledge to enable him to deal with financial disputes.
- 20.5.2 Training on knowledge and skills to handle financial disputes are required as a pre-condition of an Arbitrator.
- 20.5.3 The FDRC has the authority to decide what training, attributes and qualifications are required for its Arbitrators upon appointment and on a continual basis.

## **20.6 *Responsibilities of FI and Eligible Claimant***

20.6.1 The Parties shall give full cooperation and assistance to the Arbitrators to enable the Arbitration to proceed and be concluded within the timeframe specified in Paragraph 20.3.2.

## **20.7 *Termination of Arbitration process***

20.7.1 The Eligible Claimant may at any time after the Arbitration has started, submit a written notification to the Arbitrator to terminate the Arbitration process.

20.7.2 The Arbitrator, after consultation with the FI and the Eligible Claimant, may give a written advice to terminate the Arbitration process if the Arbitrator's opinion is that further attempt to resolve the dispute by Arbitration is no longer practicable.

## **20.8 *Arbitral Awards***

20.8.1 Subject to Rule 3.12.1 of the *FDRS Mediation and Arbitration Rules* set out in Annex IV, the Arbitral Award shall be final and binding on the Parties, and not subject to review other than on point of law.

20.8.2 If the Eligible Dispute is determined in favour of the Eligible Claimant by an Arbitrator, the determination may include a monetary award against the FI of such amount as the Arbitrator considers fair compensation for any monetary loss suffered by the Eligible Claimant, and shall not include punitive or aggravated damages.

20.8.3 The maximum total monetary value of the award for a Claim must not exceed HK\$500,000, inclusive of interest, being the maximum claimable value as specified in Paragraph 12.1(e).

20.8.4 For the purposes of awards made by the Arbitrator, monetary loss may include consequential loss.

20.8.5 A monetary award registered in accordance with this Paragraph can be recovered or enforced through the Courts as a contractual debt.

20.8.6 Where the Arbitrator makes an award with respect to the Eligible Dispute, the FI and the Eligible Claimant are bound by such award. If there are any disputes as to the terms of the award, the Arbitrator's decision shall be final and conclusive.

20.8.7 The Arbitrator and/or the Parties shall send a copy of the Arbitral Award to the FDRC, the HKMA and/or the SFC.

20.8.8 The Arbitration proceedings are private and confidential and therefore, the Arbitrator's decision is not a binding legal precedent.

## **Section E: Miscellaneous**

### **21 Register, use and publication of data**

- 21.1 The FDRC may publish data about Eligible Disputes for research, evaluation or educational purposes. The nature and format of publication may include summary of statistics by sectors or nature of cases and any synopsis of individual cases without revealing, or being likely to reveal, directly or indirectly, the identity of the Parties.

### **22 Reporting to Regulators**

- 22.1 The FDRC shall notify and/or submit such information within its knowledge relating to systemic issues (which relate to issues that have affected or have the potential to affect other customers of the relevant FI or members of the public) and/or suspected serious misconduct to the Regulators in accordance with the Memorandum of Understanding signed between the FDRC and the Regulators.

### **23 Confidentiality**

- 23.1 The *FDRS Application Form* may be sent to the HKMA and/or SFC by the FDRC if the Applicant consents.
- 23.2 A copy of the following documents shall be sent to the HKMA and/or the SFC by the FDRC on behalf of the Parties and the Mediator :-
- (a) the *Agreement to Mediate* as set out in Annex VI;
  - (b) the *Mediated Settlement Agreement* (if any) in the form set out in Annex VIII;
  - (c) the *Mediation Certificate* in the form set out in Annex IX;

Where the documents are sent by the FDRC on behalf of the FIs, the relevant FI shall be notified.

- 23.3 A copy of the following documents in an Arbitration shall be sent to the HKMA and/or the SFC by the FDRC on behalf of the Parties and the Arbitrator:-

- (a) the Notice to Arbitrate; and
- (b) the Arbitral Award.

Where the documents are sent by the FDRC on behalf of the FIs, the relevant FI shall be notified.

23.4 Subject to Paragraphs 23.1, 23.2 and 23.3 and save as shall be required under any written law, regulations, or an order of court, or as necessary to implement and enforce any *Mediated Settlement Agreement* or Arbitral Award, all persons involved in the Mediation and/or Arbitration process shall keep confidential and shall not disclose or divulge (whether expressly or impliedly) to any third party:-

- (a) the matters that transpired in the course of the Mediation and/or Arbitration process;
- (b) 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 and/or Arbitration process;
- (c) proposals suggested by the Mediators and/or Arbitrators;
- (d) all materials made available and communication made during the Mediation and/or Arbitration process; and/or
- (e) all materials, information, correspondence (including emails), issues/matters discussed, proposals and counterproposals produced for or arising in relation to the Mediation and/or Arbitration process, including but not limited to any *Mediated Settlement Agreement* (and the substance and/or terms thereof) or Arbitral Award, except as directly necessary to implement and enforce any such settlement agreement or award.

Nothing in this Paragraph shall prevent an FI from disclosing any such information to the Regulators or law enforcement agencies in compliance with any regulatory or statutory requirement(s). The fact that the Mediation and/or Arbitration process has occurred, is continuing or has concluded shall not be considered confidential.

23.5 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 and/or Arbitration process 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.

- 23.6 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 these Terms of Reference. The Parties and the Mediator shall be notified in writing of any such observation. Observer(s) shall comply with Rule 2.5 of the *FDRS Mediation and Arbitration Rules* as if he was a Party or a Mediator to the Mediation and sign the *Confidentiality Agreement* set out in Annex VII of the Terms of Reference.
- 23.7 The Parties shall not call the Mediator, Arbitrator or the FDRC (or any of its employee, officer or representative) as a witness, consultant, mediator, arbitrator or expert in any legal or any subsequent proceedings relating to the Eligible Dispute.
- 23.8 The Parties' obligation of confidentiality is not affected by, and would continue with full force and effect after the conclusion of the Mediation and/or Arbitration processes.
- 23.9 The FI shall ensure that all its officers, representatives and/or agents comply with Paragraph 23.
- 23.10 The Parties hereby expressly acknowledge and agree that any breach and/or contravention of this confidentiality rule constitutes a loss which cannot be reasonably or adequately compensated in damages. The Parties expressly agree that in the event of any such breach and/or contravention, the FDRC and/or the innocent Party shall be entitled to the remedy of injunction in addition to any other remedy available at law or in equity. The FDRC and/or the innocent Party shall also be entitled to recovery of legal costs on a full indemnity basis from the Party in breach. Additionally, the FDRC reserves the right at its full discretion, to discontinue the Mediation/Arbitration process with immediate effect.

## **24 Disclaimer**

- 24.1 Applicants, Eligible Claimants, FIs and their Representatives agree that the Arbitrators, Mediators, Case Officers and such other officers, employees and representatives of the FDRC shall not be liable for any act or omission in connection

with the services provided in the course of carrying out their respective functions under these Terms of Reference, unless the act or omission is fraudulent or dishonest.

## **25 No Claim**

25.1 Applicants, Eligible Claimants, FIs and their Representatives shall not make any claim whatsoever against the FDRC, its officers, employees and representatives, Mediators or Arbitrators (save for the consequences of fraud or dishonesty), including but not limited to any claim for any matter in connection with or in relation to –

- (a) any and all the services provided by the FDRC (or any of its officers, employees or representatives);
- (b) any Mediation, Arbitration or other processes of the FDRC;
- (c) the Eligible Disputes lodged by the Eligible Claimants;
- (d) the Claims made by the Eligible Claimants;
- (e) the Applications made by the Applicants;
- (f) any settlements entered into between the Eligible Claimants and FIs and/or any Representative of the FIs;
- (g) any settlement agreements executed by the Eligible Claimants and the FIs and/or any Representative of the FIs;
- (h) any act done in order to comply with such legal or regulatory requirement imposed by the HKMA and the SFC or any other Government agency; and/or
- (i) any act done in compliance with any provision of any written law of Hong Kong.

25.2 The FIs hereby expressly acknowledge and agree that any claim or claims (save for the consequences of fraud or dishonesty) made in contravention of this Paragraph constitutes a loss which cannot be reasonably or adequately compensated in damages. The FIs expressly agree that in the event of any such claim and/or breach



and/or contravention, the FDRC or its officers, employees, agents and/or representatives and/or the Mediators/ Arbitrators shall be entitled to the remedy of injunction in addition to any other remedy available at law or in equity. The FDRC or its officers, employees, agents and/or representatives and/or the Mediators/ Arbitrators shall also be entitled to recovery of legal costs on a full indemnity basis from the FI and/or its Representatives who have acted in breach of this Paragraph.

- 25.3 The FI shall ensure that all its officers, representatives and/or agents comply with this Paragraph 25.

## **26 Indemnity**

- 26.1 Where a claim is brought against the FDRC and/or any of its employees, officers, agents or representatives or the Mediators/Arbitrators by any FI or its Representative, the FIs shall provide the FDRC and/or any of its employees, officers, agents or representatives or the Mediators/Arbitrators with a full indemnity against any loss that the FDRC and/or any of its employees, officers, agents or representatives or the Mediators/Arbitrators may suffer as a consequence of such a claim, including a reimbursement of all costs incurred in defending against such a claim.

## Schedule of Fees

	<b>Applicant/ Eligible Claimant</b>	<b>FI</b>
Making enquiries	Nil	Not Applicable
Filing a FDRS Application Form*	\$200	Not Applicable
<b>Mediation</b>	<b>Per case</b>	<b>Per case</b>
- <b>Specified Mediation Time</b> Amount of claim		
- less than \$100,000	\$1,000	\$5,000
- between \$100,000 and \$500,000	\$2,000	\$10,000
- <b>Extended Mediation Time</b> Amount of claim		
- less than \$100,000	\$750/hour or part thereof	\$750/hour or part thereof
- between \$100,000 and \$500,000	\$1,500/hour or part thereof	\$1,500/hour or part thereof
<b>Arbitration</b> (amount of claim up to \$500,000)	<b>Per case</b>	<b>Per case</b>
- Documents-only	\$5,000	\$20,000
- In-person hearing (in addition to the fees payable for documents-only Arbitration)	\$12,500	\$12,500

**\*The application fee of \$200 is not refundable even if the Application is later rejected by the FDRC.**

**All fees in Hong Kong dollars and are not refundable after payments are made to the FDRC.**

**FDRS Guidelines on Intake Criteria of Cases**

Unless otherwise stated, this Guideline adopts the definitions used in the Terms of Reference of the FDRC.

**(A) FDRC has jurisdiction to accept an application that fulfils all of the following conditions –**

- (1) the application is brought by an Eligible Claimant as defined under Paragraph 13 of the Terms of Reference;
- (2) an Eligible Claimant has filed a Complaint to the relevant FI and received a Final Written Reply issued by the FI; or it has been more than 60 days from the date he filed the Complaint with the relevant FI and has not received the Final Written Reply from the relevant FI;
- (3) the relevant financial services provider must be an FI as defined under Paragraphs 2 and 9 of the Terms of Reference;
- (4) the claim must be of a monetary nature;
- (5) the amount for each individual claim does not exceed HK\$500,000 (including any interest on any amount alleged to be a loss) or the foreign currency equivalent; and
- (6) the dispute must arise out of a contract between the Eligible Claimant and the FI that was entered into or arose in Hong Kong, or any act or omission of the FI in connection with the provision of a Financial Service to an Eligible Claimant where the FI acted as an agent.

**(B) Notwithstanding the foregoing, hereinunder are situations where Case Officers should reject an application –**

- (1) the claim is over HK\$500,000 (including any interest on any amount alleged to be a loss) or the foreign currency equivalent; or
- (2) the claim is not related to a Financial Service ; or

- (3) the claimant is not an individual or sole proprietor having or who had an individual customer relationship with the FI; or
- (4) the claimant has not been provided with a Financial Service by the FI; or
- (5) the claimant has not suffered (or is unlikely to suffer) actual monetary loss, or cannot provide evidence to substantiate his actual monetary loss; or
- (6) the claim is without substance or is frivolous or vexatious; or
- (7) the claimant has not filed a Complaint to the relevant FI ; or
- (8) the claimant has filed a Complaint to the relevant FI and he has not received a Final Written Reply within 60 days from the date the Complaint was filed with the FI; or
- (9) the claim is the subject of a complaint lodged with the Insurance Claims Complaints Bureau (ICCB) which is currently under the ICCB's consideration; or

***Note: If the claimant lodged a complaint against the FI with the ICCB while the case is being processed by the FDRC and the FDRC is informed, the case will be discontinued. There is an ongoing obligation on the part of the Eligible Claimant to inform the FDRC whether any such complaint against the FI with the ICCB in respect of the subject matter of the Eligible Dispute has been initiated.***

- (10) the subject matter of the claim has previously been considered or excluded by the FDRC; or
- (11) the claim is the subject of current court proceedings (civil or criminal, including the proceedings under the Small Claims Tribunal) or has been the subject of court proceedings where there has been a decided judgment; or

***Note: If the claimant commences legal proceedings against the FI while the case is being processed by the FDRC and the FDRC is informed, the case will be discontinued. There is an ongoing obligation on the part of the Eligible Claimant to inform the FDRC whether any such legal proceedings against the FI in respect of the subject matter of the Eligible Dispute has been initiated.***

- (12) the claim is about employment matters from an employee or employees of an FI; or

- (13) the claim is about policies and practices, fees, premiums, charges or interest rates charged by an FI, except a dispute concerning an alleged non-disclosure, inadequate disclosure, misrepresentation, incorrect application, breach of any legal obligation or duty or maladministration or regulatory requirement; or
- (14) the claim is about investment performance, except a dispute concerning an alleged non-disclosure, inadequate disclosure, or misrepresentation, or negligence or breach of fiduciary duty; or
- (15) the claim is about an FI's decision when exercising a discretion under a will or private trust, except a dispute concerning alleged negligence or breach of fiduciary duty; or
- (16) the claim is about an FI's failure to consult beneficiaries before exercising a discretion under a will or private trust, where there is no legal obligation to consult; or
- (17) the claim:
- involves (or might involve) more than one Eligible Claimant who jointly own an account; and
  - has been referred to the FDRC without the consent of the other claimant or claimants; or
- (18) the claim is made more than 12 calendar months from the date of the purchase of the Financial Services, or the date on which the Eligible Claimant first had knowledge that he suffered monetary loss arising out of the Financial Services, whichever is the later. A claimant's knowledge includes knowledge which he might reasonably have been expected to acquire from facts observable or ascertainable by him.

## Annex III

### Financial Dispute Resolution Centre (FDRC) Financial Dispute Resolution Scheme Application Form

Our Ref: _____
Date Received: (for official use only)

Please put a “√” in  where appropriate

**I. Date of Application:**

\_\_\_\_\_

(dd/mm/yyyy)

**II. Particulars of Applicant(s)**

		(1)	(2) (For joint-account only)
1	Name <i>(* Delete where appropriate)</i>	*Mr/Ms/Mrs/Miss	*Mr/Ms/Mrs/Miss
2	Identity Document No. <i>(* Delete where appropriate)</i>	* HKID/Passport/Others (Please specify)	* HKID/Passport/Others (Please specify)
3	Telephone No.		
	<input type="checkbox"/> Home		
	<input type="checkbox"/> Office		
	<input type="checkbox"/> Mobile		
4	Fax No. (if any)		
5	Email Address (if any)		
6	Correspondence Address		
7	Business Name (if applicable)		
8	Business Registration Number (if applicable)		

**III. Particulars of the Financial Institution**

1	Name of Financial Institution ("FI")	
2	Contact Person	
3	Telephone No. of the Contact Person	
4	Address	

#### IV. Details of the Dispute

1	Nature of the financial service from which the dispute arises (e.g. financial product, service or advice about a financial product or service provided by or via an FI)	
2	Name of the financial product(s) involved	
3	Reference or Account No.	
4	Date of purchase of the financial product or rendering of the service/advice (*See Note)	
5	Date of knowledge about monetary loss (*See Note)	
6	Amount claimed	<input type="checkbox"/> HK\$
		<input type="checkbox"/> Other currencies:
7	A copy of all supporting documents is provided (DO NOT SUBMIT ORIGINALS OF DOCUMENTS)	<input type="checkbox"/> Yes <input type="checkbox"/> No

[\*Note: The claim is made within 12 months from the date of purchase of the financial product / service or first knowledge of loss.]

#### V. Actions taken in respect of the Dispute

1	Have you lodged a written complaint with the FI?	<input type="checkbox"/> Yes. (a) The date: (b) Please describe the complaint you have lodged:
		<input type="checkbox"/> No
<i>[Note: FDRC does not have jurisdiction to deal with a claim which has not been first handled by the relevant FI.]</i>		
2	Has the FI responded to your complaint in writing?	<input type="checkbox"/> Yes. The date:
		<input type="checkbox"/> No
3	Has the FI offered any settlement / redress?	<input type="checkbox"/> Yes. The details:
		<input type="checkbox"/> No
4	Any court action has been taken?	<input type="checkbox"/> Yes. The court file ref.:
		<input type="checkbox"/> No
<i>[Note: FDRC does not have jurisdiction to handle a claim which is or has been a subject of court proceedings]</i>		
5	Have you lodged a complaint with the Insurance Claims Complaints Bureau (ICCB)?	<input type="checkbox"/> Yes. The file ref.:
		<input type="checkbox"/> No

[Note: FDRC does not have jurisdiction to handle a claim which is or has been filed with the ICCB]

6	Have you lodged a complaint with the Hong Kong Monetary Authority (HKMA) / Securities and Futures Commission (SFC)?	<input type="checkbox"/> Yes. The complaint file ref.:
		<input type="checkbox"/> No

**VI. Language Preferences**

1	Written communication	<input type="checkbox"/> Chinese <input type="checkbox"/> English
2	Mediation	<input type="checkbox"/> Cantonese <input type="checkbox"/> English <input type="checkbox"/> Putonghua

**VII. Application Fee**

HK\$200.- (Non-refundable)	<input type="checkbox"/> By cash
	<input type="checkbox"/> By cheque payable to “Financial Dispute Resolution Centre”

**VIII. Notice to the Gathering of Personal Data**

The personal data provided by the Applicant under this Form is for the purpose of processing the claim in the procedures as prescribed in the Terms of Reference of the FDRC. The personal data so provided will be handled by or revealed to the personnel of the FDRC.

**IX. Declaration**

1	<input type="checkbox"/> I agree <input type="checkbox"/> I do not agree to give consent to the FDRC to provide the information in this form to regulators such as the HKMA and the SFC.
2	<input type="checkbox"/> I agree <input type="checkbox"/> I do not agree to give consent to the FDRC to provide the information in this form to the FI.
3	I know that the application fee (HK\$200.-) is non-refundable even if my application is not successful.
4	I agree to cooperate with the personnel of the FDRC by providing all relevant documents and information, when requested, including information that may be personal data, for the FDRC to assess whether the application may be accepted under the Financial Dispute Resolution Scheme administered by the FDRC. The consequence of not providing some or all of the requested personal data may be that FDRC is unable to process my application.



5	I agree that the personal data I have voluntarily provided in this form is for the purpose of processing my application under the Terms of Reference of the FDRC. The information and personal data provided will be handled by or revealed to the personnel of the FDRC and may be used for research, evaluation and educational purposes, provided that the FDRC shall not use information which reveals, or is likely to reveal, directly or indirectly, my identity.	
6.	I am aware that I have the right to request access to and correction of my personal data submitted for this application. Formal requests under the Personal Data (Privacy) Ordinance should be submitted in writing to the Data Protection Officer at the FDRC at Unit 3701-4, 37/F, Sunlight Tower, 248 Queen's Road East, Wan Chai, Hong Kong. Such personal data will be retained until the end of the following calendar year after my Application is rejected or until the end of the 6th calendar year after my claim has been processed by FDRC through Mediation, Arbitration or otherwise.	
7.	I agree to inform the FDRC if, after this Application has been made, a claim against the FI has been lodged with the ICCB and/or legal proceedings against the FI have been commenced.	
8.	I agree to abide by the Terms of Reference of the FDRC.	
9	I confirm that the information provided in this Application Form is true, complete and accurate.	
Signature(s)		
Name		
Date		

**Financial Dispute Resolution Scheme (FDRS)  
Mediation and Arbitration Rules**

**1. Definitions**

- ‘Applicant’ means a person making or who had made an Application to the FDRC;
- ‘Application’ means an application to the FDRC for assessing whether a Claim may be accepted under the FDRS in accordance with the Terms of Reference and the *FDRS Guidelines on Intake Criteria of Cases*;
- ‘Arbitration’ means the process of arbitration of an Eligible Dispute under the FDRS;
- ‘Arbitral Award’ means an arbitral award rendered by the Arbitrator which is final and binding on the FI and the Eligible Claimant;
- ‘Arbitrator’ means a person who is suitably qualified and experienced in arbitration and is appointed by the FDRC to act as an arbitrator;
- ‘Board’ means the board of directors which is the governing body of the FDRC;
- ‘Case Officer’ means any person employed by the FDRC who acts as a case manager responsible for addressing enquiries, gathering information and vetting applications to decide whether an application should be accepted under the FDRS in accordance with the Terms of Reference and the *FDRS Guidelines on Intake Criteria of Cases*;
- ‘Claim’ means a claim against an FI, which the FDRC may accept for Mediation and, failing which and if the Eligible Claimant so wishes, Arbitration;
- ‘Complaint’ refers to a written complaint raised by the Applicant to the FI before a Claim is lodged with the FDRC;
- ‘Court’ refers to the courts of the Hong Kong Special Administrative Region;

- ‘Eligible Claimant’ refers to an individual or a sole proprietor having or who had a customer relationship with an FI, or an individual or a sole proprietor who has been provided with a Financial Service;
- ‘Eligible Dispute’ refers to a dispute that fulfils the conditions set out in Paragraph 12 of the Terms of Reference;
- ‘Extended Mediation Time’ means any duration beyond the Specified Mediation Time which the Parties, the Mediator and the FDRC have agreed to continue with an adjourned Mediation;
- ‘FDRC’ means the Financial Dispute Resolution Centre, a company limited by guarantee under the Companies Ordinance (Cap. 622);
- ‘FDRS’ means the Financial Dispute Resolution Scheme for managing and resolving Eligible Disputes administered by the FDRC;
- ‘Financial Service’ means a financial product, service or advice about a financial product or service provided by or via an FI;
- ‘Final Written Reply’ means a written response from the FI to an Applicant which accepts the Complaint (and where appropriate offers redress), offers redress without accepting the Complaint or rejects the Complaint;
- ‘FI’ means a financial institution or a financial services provider authorized by the HKMA or licensed by the SFC, but excludes those financial institutions which only carry on Type 10 regulated activity (i.e. provision of credit rating services) under the Securities and Futures Ordinance (Chapter 571);
- ‘Government’ means the Government of the Hong Kong Special Administrative Region;
- ‘HKMA’ means the Monetary Authority appointed under section 5A of the Exchange Fund Ordinance, Chapter 66 of the Laws of Hong Kong;
- ‘Hong Kong’ means the Hong Kong Special Administrative Region;
- ‘ICCB’ means the Insurance Claims Complaints Bureau;

- ‘List of Arbitrators’ means the FDRC’s list of arbitrators for arbitration under the Terms of Reference and these Rules;
- ‘List of Mediators’ means the FDRC’s list of mediators for mediation under the Terms of Reference and these Rules;
- ‘Mediation’ is the process of mediation of an Eligible Dispute under the FDRS;
- ‘Mediated Settlement Agreement’ means a written agreement setting out the terms Parties have agreed in Mediation to resolve the Eligible Dispute;
- ‘Mediator’ means a person who is suitably qualified and experienced in mediation and is appointed by the FDRC to act as a mediator;
- ‘Notice to Arbitrate’ means a written notice sent by an Eligible Claimant to the FDRC to request for the initiation of Arbitration;
- ‘Paragraph’ means a term and/or condition set out in paragraphs in the Terms of Reference, excluding the annexes;
- ‘Parties’ mean an Eligible Claimant and the relevant FI;
- ‘Regulators’ mean the regulators of financial services in Hong Kong such as the SFC and the HKMA;
- ‘Representative’ means the representative of an FI at the Mediation and Arbitration conducted under the FDRS, and may include any individual who dealt with the Eligible Claimant or supervised the dealing with the Eligible Claimant in the provision of the Financial Service that gave rise to the Eligible Dispute, and the individual is an employee, agent or third party contractor of the FI;
- ‘Rule’ means a term and/or condition set out in these Rules;
- ‘Specified Mediation Time’ means the 4 hours allocated for Mediation under the Terms of Reference;
- ‘SFC’ means the Securities and Futures Commission referred to in section 3 of Securities and Futures Ordinance, Chapter 571 of the Laws of Hong Kong; and

- ‘Terms of Reference’ means the terms of reference of the FDRC.

1.1 References to the provision of Financial Service include, where the context admits, references to its non-provision.

1.2 References to the male gender include, where the context admits, the female gender and vice versa and references to the singular number include, where the context admits, the plural number and vice versa.

1.3 References to days mean calendar days.

1.4 References to month mean calendar month.

## **2. Mediation**

### **2.1 Appointment of Mediator**

2.1.1 Upon acceptance of an Eligible Dispute, if the amount of claims involved –

(a) is within the prescribed level of HK\$100,000 as stated in Rule 5.1 below, the FDRC shall normally assign the case to an in-house Mediator; or

(b) is beyond the prescribed level of HK\$100,000 as stated in Rule 5.1 below, the Parties may agree on the appointment of the Mediator from the List of Mediators. If the Parties fail to agree on the appointment of the Mediator, the FDRC will be required to appoint the Mediator. The FDRC shall appoint a Mediator from the List of Mediators as soon as practicable, taking into account the Parties’ preference so far as practicable.

2.1.2 The appointment of the Mediator takes effect upon confirmation in writing by the FDRC, notwithstanding the Parties and the Mediator have not yet entered into an *Agreement to Mediate* pursuant to Paragraph 19.3 of the Terms of Reference.

### **2.2 Roles of Mediator and the Parties**

2.2.1 The Mediator appointed under Rule 2.1 above will conduct the Mediation with due care and skill and in such manner, as he considers appropriate, taking into account

the circumstances of the case, the wishes of the Parties and the need for a speedy settlement of the dispute.

2.2.2 The Mediator may communicate with the Parties together or with any Party separately, including private meetings and each Party shall cooperate with the Mediator. A Party may request a private meeting with the Mediator at any reasonable time. The Parties shall give the Mediator full assistance to enable the Mediation to proceed and be concluded within the time specified in Rule 2.3.2 below.

2.2.3 The Mediator appointed under these Rules shall be and remain at all times impartial and independent in exercising his duties in the Mediation. The Mediator shall confirm in writing that there is no conflict of interest in relation to his appointment as the Mediator to the Eligible Dispute.

### **2.3 The Mediation Process**

2.3.1 The Mediator shall ensure that the Parties sign an *Agreement to Mediate* prior to the substantive mediation session between the Parties.

2.3.2 The Mediator shall commence and conduct the Mediation as soon as possible after his appointment. The Mediator shall commence the Mediation session within 21 days of his appointment, unless otherwise directed by the FDRC in writing. Subject to Paragraph 19.9 of the Terms of Reference which provides for the Extended Mediation Time, Mediation under FDRS shall not exceed the Specified Mediation Time.

2.3.3 No legal representative, including in-house lawyer, is allowed to act on behalf of either Party in the Mediation. However, each Party may seek legal advice or expert opinion or be accompanied by one or more persons who are not their legal representative, in-house or otherwise, to assist and advise them during Mediation. Any such legal advisors, experts or any persons attending Mediation who are not a Party shall sign a separate *Confidentiality Agreement* in a form prescribed by the FDRC in Annex VII of the Terms of Reference.

2.3.4 The Mediator shall file the *Mediation Certificate* set out in Annex IX of the Terms of Reference with the FDRC at the conclusion of the Mediation regardless of whether a settlement was reached or the Mediation terminated.

## **2.4 Termination of the Mediation**

2.4.1 The Mediation process shall come to an end:

(a) upon the signing of a *Mediated Settlement Agreement* in the form set out in Annex VIII of the Terms of Reference by the Parties settling all or part of an Eligible Dispute; or

(b) upon the written advice of the Mediator after consultation with the Parties that in the Mediator's opinion further attempts to resolve the dispute by Mediation are no longer practicable according to the *Ethics Code for FDRC Mediators* as set out in Annex V of the Terms of Reference; or

(c) upon written notification by the Eligible Claimant at any time to the Mediator and the other Party that the Mediation is terminated.

2.4.2 In the event the Mediation is terminated, the Mediator shall report the termination to FDRC in the form of a *Mediation Certificate* as set out in Annex IX of the Terms of Reference. The Parties agree that the form may be provided to the HKMA and/or SFC by the FDRC.

## **2.5 Confidentiality**

2.5.1 The *FDRS Application Form* may be sent to the HKMA and/or SFC by the FDRC if the Applicant consents.

2.5.2 A copy of the following documents shall be sent to the HKMA and/or the SFC by the FDRC on behalf of the Parties and the Mediator:-

(a) the *Agreement to Mediate* as set out in Annex VI;

(b) the *Mediated Settlement Agreement* (if any) in the form set out in Annex VIII;  
and

(c) the *Mediation Certificate* in the form set out in Annex IX.

2.5.3 Where the documents are sent on behalf of the FIs, the relevant FI shall be notified.

- 2.5.4 Subject to Rules 2.5.1, 2.5.2 and 2.5.3 and save as shall be required under any written law, regulation or an order of court, or as necessary to implement and enforce any *Mediated Settlement Agreement*, all persons involved in the Mediation process 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) proposals suggested 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.

Nothing in this Rule shall prevent an FI from disclosing any such information to the Regulators or law enforcement agencies in compliance with any regulatory or statutory requirement(s). The fact that the Mediation has occurred, is continuing or has concluded shall not be considered confidential.

- 2.5.5 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.
- 2.5.6 The Parties shall not call the Mediator or the FDRC (or any of its employees, officers or representatives) as a witness, consultant, mediator, arbitrator or expert in any subsequent proceedings relating to the Eligible Dispute.



- 2.5.7 The Parties' obligation of confidentiality is not affected by, and would continue with full force and effect after the conclusion of the Mediation.
- 2.5.8 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.
- 2.5.9 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 these Rules. The Parties and the Mediator shall be notified in writing of any such observation. Observer(s) shall comply with Rule 2.5 as if he was a Party or a Mediator to the Mediation and sign the *Confidentiality Agreement* set out in Annex VII of the Terms of Reference.
- 2.5.10 The Parties acknowledge that, by entering into Mediation according to the terms of the *Agreement to Mediate*, 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.
- 2.5.11 The FI shall ensure that all its officers, representatives and/or agents comply with this confidentiality rule.

## **2.6 Language of the Mediation**

- 2.6.1 The language of Mediation shall be decided by the Mediator, taking into consideration the Parties' preferences as far as practicable. The FDRC does not provide translation services for the Parties and/or the Mediator.

## **2.7 Mediator's Role in Subsequent Proceedings**

- 2.7.1 The Parties undertake that the Mediator shall not be appointed as arbitrator, representative, counsel or expert witness of any Party in any subsequent arbitration or judicial proceedings in connection with the same dispute. No Party shall be entitled to call the Mediator as a witness in any subsequent arbitration or judicial proceedings arising out of the same dispute.

### **3. Arbitration**

#### **3.1 Applicability of the Rules**

These Rules apply to any Eligible Dispute between an Eligible Claimant and an FI that is submitted to documents-only Arbitration under the Terms of Reference. Upon submission of the Eligible Dispute to Arbitration, these Rules are incorporated by reference into the Parties' arbitration agreement.

#### **3.2 Arbitration under the Rules**

3.2.1 Provided that the Mediation is terminated in accordance with Rules 2.4.1(b) and (c), the Eligible Claimant may request for Arbitration of the Eligible Dispute under these Rules within 60 days from the date of the *Mediation Certificate*. Late request will not be accepted.

3.2.2 The Arbitration may be commenced on a "documents-only" basis by the Eligible Claimant giving to the FDRC a Notice to Arbitrate in written form together with all written submissions and copies of supporting documents. The Notice to Arbitrate shall be filed in a number of copies sufficient to provide one copy for the Arbitrator, for the FI and for the FDRC.

3.2.3 The Notice to Arbitrate shall include the following:

- (a) a request that the Eligible Dispute be referred to Arbitration;
- (b) the names and contact details of the Parties;
- (c) identification of the arbitration agreement that is invoked;
- (d) identification of any contract or other legal instrument out of or in relation to which the Eligible Dispute arises or, in the absence of such contract or instrument, a brief description of the relevant relationship;
- (e) a brief description of the Claim and an indication of the amount involved;
- (f) the relief or remedy sought; and

- (g) a proposal on the appointment of Arbitrator and the language of Arbitration.
- 3.2.4 The FDRC shall then notify the Eligible Claimant of the receipt of the Notice to Arbitrate and the date of such receipt, and transmit to the FI a copy of the Notice to Arbitrate including the date of receipt, together with an invitation to submit a response to the Notice to Arbitrate.
- 3.2.5 The appointment of the Arbitrator shall not be hindered by any controversy with respect to the sufficiency of the Notice to Arbitrate, which shall be finally resolved by the Arbitrator. The Eligible Claimant shall rectify any non-compliance in the Notice to Arbitrate upon request by the FDRC within 7 days of the receipt of such request.
- 3.2.6 The Arbitration shall be deemed to commence on the date on which the Notice to Arbitrate is received by the FDRC.
- 3.2.7 A copy of the Notice to Arbitrate will be sent to the HKMA and/or SFC on behalf of the Parties and the Arbitrator.
- 3.2.8 Unless otherwise indicated by the FDRC, the FI shall, within 21 days of the service of the Notice to Arbitrate, send to the Eligible Claimant via the FDRC a response to the Notice to Arbitrate, their written submissions together with copies of the documents relied on additional to those already provided by the Eligible Claimants. The response to the Notice to Arbitrate shall be filed with the FDRC in a number of copies sufficient to provide one copy for the Arbitrator, the Eligible Claimant and the FDRC.
- 3.2.9 The response to the Notice to Arbitrate shall include:
- (a) the name and contact details of the FI;
  - (b) any response to the information set forth in the Notice to Arbitrate pursuant to Rule 3.2.3; and
  - (c) a proposal on the appointment of Arbitrator and the language of Arbitration.
- 3.2.10 The FDRC shall notify the FI of the receipt of the response to the Notice to Arbitrate and the date of such receipt, and transmit to the Eligible Claimant a copy of the response to the Notice to Arbitrate, including the date of receipt, together

with an invitation to make a final submission.

- 3.2.11 Upon receipt of the Notice to Arbitrate and the relevant response from the Parties, a single Arbitrator will be appointed pursuant to Rule 3.4 who shall resolve any dispute or controversy, if any, in connection with the language of the Arbitration and/or the sufficiency of the Notice to Arbitrate and/or the relevant response.
- 3.2.12 The appointment of the Arbitrator shall not be hindered by any controversy with respect to the FI's failure to communicate a response to the Notice to Arbitrate, or an incomplete or late response to the Notice to Arbitrate which shall be finally resolved by the Arbitrator. The FI shall rectify any non-compliance in the response to the Notice to Arbitrate upon request by the FDRC within 7 days of the receipt of such request.
- 3.2.13 The Eligible Claimant's final submissions (if any) on the Claim shall be provided to the FI via the FDRC within 21 days after receipt of the FI's response, submissions and documents. The final submissions shall be filed in a number of copies sufficient to provide one copy for the Arbitrator, for the FI and for the FDRC.
- 3.2.14 The FDRC shall then notify the Eligible Claimant of the receipt of the final submissions and the date of such receipt, and transmit to the FI a copy of the final submissions including the date of receipt.
- 3.2.15 The Arbitrator shall give notice to the Parties of his intention to proceed with the rendering of Arbitral Award and will so proceed unless either Party within 7 days requests, and is thereafter granted, leave to serve further submissions.

### **3.3 Deficient Claims**

- 3.3.1 The FDRC shall review the Notice to Arbitrate, response to the Notice to Arbitrate, submissions and documents received for administrative compliance review and shall proceed with the appointment of Arbitrator, if all in compliance.
- 3.3.2 The FDRC will not serve any Notice to Arbitrate, and/or the relevant response nor proceed with appointing an Arbitrator if the Claim is deficient. The reasons for deficiency include but are not limited to the following:
- (a) the Claim was not filed by the relevant Eligible Claimant;

- (b) documents were not properly signed and/or dated;
- (c) the names and particulars of the Parties were not provided; and
- (d) the Eligible Claimant did not file the correct number of copies of the Notice to Arbitrate, and/or supporting documents for service on FI and/or for the Arbitrator.

3.3.3 The FDRC will notify the relevant Party in writing if the Claim is deficient. Unless otherwise extended by the FDRC, if all deficiencies are not corrected within 7 days, the FDRC may close the case without serving the Notice to Arbitrate, and/or the relevant response.

### **3.4 Appointment of Arbitrator**

3.4.1 The Eligible Claimant and the FI may agree on the appointment of the Arbitrator from the List of Arbitrators. If the Parties fail to agree on the appointment of the Arbitrator, the Eligible Claimant or the FI may request the FDRC to appoint the Arbitrator.

3.4.2 Notwithstanding Rule 3.4.1 above, upon receipt of the Notice to Arbitrate, response to the Notice to Arbitrate, submissions and documents from the Parties, the FDRC shall appoint a single Arbitrator from the List of Arbitrators as soon as practicable, taking into account the Parties' preference so far as practicable and shall confirm in writing to the Parties the appointment of the Arbitrator.

3.4.3 The appointment of the Arbitrator takes effect upon confirmation in writing by the FDRC.

### **3.5 Disclosures Required of Arbitrators**

3.5.1 The Arbitrator appointed under these Rules shall be and remain at all times impartial and independent in exercising his duties in the Arbitration.

3.5.2 Before appointing an Arbitrator, the FDRC will notify the potential Arbitrator(s) of the nature of the dispute and the identities of the Parties. Each potential Arbitrator must make a reasonable effort to learn of, and must disclose to the FDRC, any circumstances which might preclude the potential Arbitrator from rendering an objective and impartial determination in the proceeding, such as:

- (a) Any direct or indirect financial or personal interest in the outcome of the Arbitration;
  - (b) Any existing or past financial, business, professional, family, social, or other relationships or circumstances with any Party, or anyone who the potential Arbitrator is told may be providing a witness statement and/or an expert statement in the Arbitration, that are likely to affect impartiality or might reasonably create an appearance of partiality or bias; or
  - (c) Any such relationship or circumstances involving members of the potential Arbitrator's family or the potential Arbitrator's current employers, partners, or business associates.
- 3.5.3 The obligation under Rule 3.5.2 to disclose interests, relationships, or circumstances that might preclude a potential Arbitrator from rendering an objective and impartial determination is a continuing duty that requires an Arbitrator who accepts appointment to an arbitration proceeding to disclose, at any stage of the proceeding, any such interests, relationships, or circumstances that arise, or are recalled or discovered.
- 3.5.4 The FDRC will inform the Parties of any information disclosed to the FDRC under Rules 3.5.2 and 3.5.3 by the potential Arbitrator and/or the Arbitrator unless the potential Arbitrator declines appointment or voluntarily withdraws from the Arbitration as soon as the Arbitrator learns of any interest, relationship or circumstance that might preclude the Arbitrator from rendering an objective and impartial determination in the proceeding, or the FDRC removes the Arbitrator.
- 3.5.5 Subject to Rules 3.5.2 and 3.5.3, the Arbitrator shall confirm in writing that there is no conflict of interest in relation to his appointment as the Arbitrator to the Eligible Dispute.
- 3.5.6 The appointment of the Arbitrator takes effect upon confirmation in writing to the Parties by the FDRC.
- 3.6 Removal of Arbitrator by the FDRC**
- 3.6.1 The FDRC may remove an Arbitrator for conflict of interest or bias, either upon request of a Party or on the FDRC's own initiative.

3.6.2 The FDRC will grant a Party's request to remove an Arbitrator if it is reasonable to infer, based on information known at the time of the request, that the Arbitrator is biased, lacks impartiality, or has a direct or indirect interest in the outcome of the arbitration. The interest or bias must be definite and capable of reasonable demonstration, rather than remote or speculative.

3.6.3 The FDRC must first notify the Parties in writing before removing an Arbitrator on its own initiative. The FDRC may not remove the Arbitrator if the parties agree in writing to retain the Arbitrator within 7 days of receiving notice of the FDRC's intent to remove the Arbitrator.

### **3.7 Jurisdiction of the Arbitrator to Interpret these Rules**

3.7.1 In the conduct of Arbitration proceedings, the Arbitrator shall have the authority to interpret and determine the applicability of all provisions under these Rules. Such interpretations are final and binding upon the parties.

### **3.8 The Arbitration Process**

3.8.1 The Arbitrator shall conduct and decide the Eligible Dispute on the basis of the documents submitted and evidence provided. Each Party shall bear the burden of proof for its own case.

3.8.2 In all cases, the Arbitrator shall ensure that the Parties are treated impartially and that each Party is given a fair opportunity to present its case, give its reasons and provide evidence.

3.8.3 Where the Arbitration is by "documents-only",

- (a) no hearing will be held;
- (b) no initial prehearing conference or other prehearing conference will be held, and the Arbitrator will render an Arbitral Award based on the submissions and other materials submitted by the Parties; and
- (c) no legal representatives, including in-house lawyers, are allowed to act on behalf of either Party in the Arbitration.

- 3.8.4 The Arbitrator may request in his sole discretion, further information, statements or documents from either of the Parties.
- 3.8.5 The Parties may request documents and other information from each other. Unless otherwise specified by the FDRC, all requests for the production of documents and other information must be served on the other Party via the FDRC within 14 days from the date of the Eligible Claimant's final submissions. Any response or objection to a discovery request must be served on the other Party via the FDRC within 7 days of the receipt of the requests. The Arbitrator will resolve any discovery disputes.
- 3.8.6 Without prejudice to the above and with regard to the Arbitration, the Arbitrator shall have the power and/or jurisdiction to:
- (a) make monetary awards, subject to the maximum claimable amount set out in Paragraph 12.1(e) of the Terms of Reference;
  - (b) conduct such enquiries as may appear to the Arbitrator to be necessary or expedient;
  - (c) order the Parties to make any property or thing available for inspection, in their presence, by the Arbitrator;
  - (d) order any Party to produce to the Arbitrator, and to the other Parties for inspection, and to supply copies of any documents or classes of documents in their possession, custody or power, except where the Party satisfies the FDRC that –
    - to provide the information would breach a Court order;
    - to provide the information would breach a duty of confidentiality to a third party and, despite all reasonable endeavours, the third party's consent to the disclosure of the information has not been obtained;
    - to provide the information would prejudice an ongoing investigation by the police, the Regulators or other law enforcement agencies, and, despite all reasonable endeavours, the consent to the disclosure of the information has not been obtained;



- the information does not exist or no longer exists or is not within the Party's reasonable possession or control; or
- the information is irrelevant to the Eligible Dispute.

Notwithstanding the aforesaid, nothing in the Terms of Reference shall prejudice any Party's right against self-incrimination or legal professional privilege;

- (e) receive and take into account such written or oral evidence as he shall determine to be relevant and shall not be bound by the rules of evidence; and/or
- (f) proceed with the Arbitration and make an Arbitral Award notwithstanding the failure or refusal of any of the Parties to comply with the Terms of Reference or these Rules or with the Arbitrator's written orders or written directions, or to exercise its right to present its case, but only after giving the Parties written notice that he intends to do so.

3.8.7 At any stage of the Arbitration, where the Arbitrator is aware and considers that it would be more suitable for the subject matter of the Eligible Dispute to be dealt with by a court, the Arbitrator may terminate the Arbitration if both Parties agree and advise the Eligible Claimant the appropriate steps to take.

3.8.8 In any case the Arbitrator shall, unless otherwise reasonably extended by the Arbitrator, with the consent of the FDRC or the Parties, render an Arbitral Award within one month of the receipt of the last document in case of documents-only arbitration, or the holding of the in-person hearing whichever is later.

3.8.9 Within 7 days of receiving the Arbitral Award, a Party may by written notice to the FDRC and the other Party request the Arbitrator to correct in the Arbitral Award any clerical or typographical errors or any errors of a similar nature. Any such corrections shall be given in writing to the Parties and shall become part of the Arbitral Award within 7 days of the written notice.

3.8.10 A copy of the Arbitral Award will be sent to the HKMA and/or SFC on behalf of the Parties and the Arbitrator.

### **3.9 In-Person Hearing**

- 3.9.1 Unless the Arbitrator determines, in his sole discretion, that an in-person hearing is necessary for deciding the Claim, and the Parties are further willing to take on and pay to the FDRC such fees as prescribed in Rule 5.1 below, there shall be no in-person hearings (including hearings by videoconference and any other form).
- 3.9.2 Where the Parties have so agreed on having in-person hearings and the Arbitrator has also so determined, upon application of either Party or at the initiation of the Arbitrator, the Arbitrator is entitled to allow legal representation in the further proceeding of the Arbitration and the Arbitrator may make directions on the further conduct of the Arbitration, including adopting the HKIAC Administered Arbitration Rules or other rules, and may amend any such rules as the Arbitrator considers appropriate. In any event the recoverable legal costs of an in-person hearing are limited to HK\$25,000.

### **3.10 Communication between the Parties and the Arbitrator**

- 3.10.1 A Party shall not communicate with the Arbitrator directly. All communications between any of the Parties and the Arbitrator must be in writing via the FDRC and shall be in the language of the Arbitration. Copies of all communications between the Parties and between a Party and the Arbitrator must be copied to the other Party via the FDRC. Any written communication to the Eligible Claimant or FI provided for under the procedure shall be made by the preferred means stated by the Eligible Claimant or the FI respectively, or in the absence of such specification, by facsimile transmission, with a confirmation of transmission; or by postal or courier service, postage pre-paid and return receipt requested; or electronically via the Internet, provided a record of its transmission is available.

### **3.11 Confidentiality**

- 3.11.1 Subject to Rule 3.11.2, the Parties and the Arbitrator agree not to disclose, transmit, introduce or otherwise use any documents, communications, opinions, suggestions, proposals, offers, or admissions, or other information obtained or disclosed during the Arbitration by the Parties or the Arbitrator as evidence in any judicial proceedings, other arbitrations or proceedings, unless agreed in writing by the Arbitrator and the Parties to the Arbitration or compelled by law. The fact that

Arbitration has occurred, is continuing, or has concluded shall not be considered confidential.

- 3.11.2 The Arbitrator shall send a copy of the Notice to Arbitrate, and the Arbitral Award to the HKMA and/or SFC via the FDRC. The Parties acknowledge that, by agreeing to arbitrate under these Rules, they agree and accept that information relating to the Arbitration shall be used by the FDRC for purposes of study and promotion of arbitration provided that the Parties' identity and any reference that may lead to their identity being made known shall be omitted or obliterated from such information.

### **3.12 Appeal on point of law**

- 3.12.1 Unless otherwise agreed by the Parties, sections 3, 4, 5, 6 and 7 of Schedule 2 of the Arbitration Ordinance (Chapter 609) providing for appeal against Arbitral Award on question of law shall apply.

- 3.12.2 In the event of an appeal against the Arbitral Award in the Arbitration is brought by a Party, that appealing Party agrees the recoverable legal costs incurred in, arising out of and/or resulting from such an appeal shall be limited to HK\$25,000.

### **3.13 Issues not covered by these Rules**

- 3.13.1 For matters which are not covered by these Rules, the Arbitrator may adopt such measures as he deems appropriate, consistent with the need for a speedy and efficient resolution of the Eligible Dispute, provided the Parties shall be given reasonable opportunities to address their concern with the Arbitrator.

## **4. Exclusion of Liability**

The Parties jointly and severally release, discharge and indemnify the FDRC, its staff members and representatives, the Mediator and the Arbitrator in respect of all liability whatsoever, whether involving negligence or not, from any act or omission in connection with or arising out of or relating in any way to any Mediation and/or Arbitration conducted under the Rules, save for the consequences of fraud or dishonesty.

## 5. Fees and Costs

5.1 The fees for the Mediation and/or Arbitration are specified as follows:-

	<b>Applicant/ Eligible Claimant</b>	<b>FI</b>
<b>Making enquiries</b>	Nil	Not Applicable
<b>Filing a FDRS Application Form*</b>	\$200	Not Applicable
<b>Mediation</b>	<b>Per case</b>	<b>Per case</b>
- <b>Specified Mediation Time</b> Amount of claim		
- less than \$100,000	\$1,000	\$5,000
- between \$100,000 and \$500,000	\$2,000	\$10,000
- <b>Extended Mediation Time</b> Amount of claim		
- less than \$100,000	\$750/hour or part thereof	\$750/hour or part thereof
- between \$100,000 and \$500,000	\$1,500/hour or part thereof	\$1,500/hour or part thereof
<b>Arbitration</b> (amount of claim up to \$500,000)	<b>Per case</b>	<b>Per case</b>
- Documents-only	\$5,000	\$20,000
- In-person hearing (in addition to the fees payable for documents-only arbitration)	\$12,500	\$12,500

**\*The application fee of \$200 is not refundable even if the Application is later rejected by the FDRC.**

**All fees are in Hong Kong dollars and are not refundable after payments are made to the FDRC.**

5.2 The FDRC may provide the venue for conducting the Mediation and/or the Arbitration. Parties may have to bear the cost of a venue for conducting the Mediation and/or Arbitration if the rooms at FDRC are fully occupied or otherwise unavailable.

5.3 The FDRC may, at its sole discretion, require the Parties to make advance payment of fees, costs and expenses. The FDRC may require payments for deposits and security.

5.4 The FDRC shall review the above fee structure regularly and any changes to the fee structure will be subject to approval by the Board, after consulting with Government. Relevant stakeholders, including the relevant industry bodies, will be consulted where appropriate.

## ETHICS CODE FOR FDRC MEDIATORS

### General Responsibilities

1. The Mediator shall act fairly in dealing with the Parties to the Mediation, have no personal interest in the terms of any *Mediated Settlement Agreement*, show no bias towards the Parties, be reasonably available as requested by the Parties, and be certain that the Parties have been informed about the mediation process.

### Responsibilities to the Parties

#### 2. Impartiality/Conflict of Interest

The Mediator shall be impartial. The Mediator shall disclose to the Parties any affiliations/interests which the Mediator may have or had with any Party or in relation to the Mediation and in such situation obtain the prior written consent of all the Parties before proceeding with the Mediation.

#### 3. Informed Consent

- (a) The Mediator shall explain to all Parties the nature of the mediation process, the procedures to be utilised and the role of the Mediator.
- (b) The Mediator shall ensure the Parties sign an *Agreement to Mediate* set out in Annex VI of the Terms of Reference prior to the substantive negotiations between the Parties.

#### 4. Confidentiality

- (a) The Mediator shall keep confidential all information, arising out of or in connection with the Mediation, unless and to the extent compelled by law or public policy grounds.
- (b) Any information disclosed in confidence to the Mediator by one of the Parties shall not be disclosed to the other Party without prior permission.
- (c) Paragraphs 4(a) and 4(b) shall not apply if there are reasonable grounds to

believe that the disclosure is necessary to prevent or minimize the danger of injury to a person or of serious harm to the well-being of a child.

- (d) The Mediator shall inform the Parties of the degree to which communications connected with the mediation process shall be confidential, including any special confidentiality which attaches to private meeting.
- (e) The Mediator shall ensure all legal advisors, experts and attendees who are not Parties to the Eligible Dispute sign a separate *Confidentiality Agreement* in the form prescribed by the FDRC in Annex VII of the Terms of Reference.

## 5. **Termination of Mediation**

- (a) The Mediator shall inform the Eligible Claimants of their right to withdraw from the Mediation.
- (b) If the Mediator's opinion is that the continuing of the Mediation is no longer practicable, the Mediator can terminate the Mediation.
- (c) If the Mediator believes that a Party is unable or unwilling to participate effectively in the mediation process, the Mediator can terminate the Mediation.
- (d) If the Mediator believes that continuing the Mediation will raise ethical concerns, the Mediator can terminate the Mediation.
- (e) If the Mediator believes that there is insufficient information for the Mediation to proceed constructively, the Mediator can terminate the Mediation.

## 6. **Insurance**

The Mediator shall consider whether it is appropriate to be covered by professional indemnity insurance and if so, shall ensure that he is adequately covered.

## **Defining the Process**

### 7. **Independent Advice and Information**

The Mediator shall consider whether to encourage the Party to obtain legal advice or relevant expert opinion where appropriate.

8. **Conflicts of Interest**

A Mediator shall disclose all actual and potential conflicts of interest reasonably known to the Mediator as soon as possible. After disclosure, the Mediator shall decline to mediate unless all Parties choose to retain the Mediator.

9. **Fees**

The Mediator shall charge according to the *Schedule of Fees* set out in Annex I of the Terms of Reference of the FDRC in relation to the FDRS.

10. **Additional Representation or Roles**

A Mediator shall not engage in any additional representative or non-mediation role in relation to the subject matter of a mediated dispute.

**Responsibilities to the Mediation Process and the Public**

11. **Competence**

The Mediator shall be competent and knowledgeable in the process of mediation. Relevant factors shall include training, specialist training and continuous education, having regard to the relevant standards and/or accreditation scheme to which the Mediator is accredited.

12. **Appointment**

Before accepting an appointment, the Mediator must be satisfied that he has time available to ensure that the mediation can proceed in an expeditious manner.

13. **Advertising/promotion of the Mediator's services**

A Mediator who is a Board or staff member may use the name and/or logo of the FDRC to promote the FDRC and its service. Subject to the above, a Mediator may not use the name and/or the logo of the FDRC or the fact that he is on the List of Mediators maintained by the FDRC to promote his private practice.



## **ETHICS CODE FOR FDRC ARBITRATORS**

The Oxford English Dictionary defines 'ethics' as "moral principles or rules of conduct". A Code of Ethics provides a set of moral principles according to which one can conduct one's affairs.

The purpose of adopting a code of ethics for Arbitrators is not only to serve as a guide to the conduct of Arbitrators, but also to serve as a point of reference for users of the Arbitration process and to promote public confidence in Arbitration as a suitable forum for resolving disputes. The Code itself is not a rigid set of rules but is a reflection of internationally acceptable norms.

In some instances the ethics set down herein may be repeated in legislation governing the arbitration, case law or rules which parties adopt. In many instances, Arbitrators will also be bound by other codes of practice or conduct imposed upon them by virtue of membership of primary professional organisations.

### **Rule One**

An Arbitrator has an overriding obligation to act fairly and impartially as between the parties, at all stages of the proceedings.

### **Rule Two**

An Arbitrator shall be free from bias and shall disclose any interest in the Arbitration or relationship with any party likely to affect his impartiality or which might reasonably create an appearance of partiality or bias. An Arbitrator in such situation shall obtain the prior written consent of all parties before proceeding with the Arbitration. This is an ongoing duty and does not cease until the Arbitration has concluded. Failure to make such disclosure itself may create an appearance of bias, and may be a ground for disqualification.

An Arbitrator shall not permit outside pressure, fear of criticism or any form of self-interest to affect his decisions. An Arbitrator shall decide all the issues submitted for determination after careful deliberation and the exercise of his own impartial judgment.

An Arbitrator in communicating with the parties shall avoid impropriety or the appearance of impropriety. There shall be no private communications between an Arbitrator and any party, regarding substantive issues in the case. All communications, other than proceedings at a hearing, should be in writing. Any correspondence shall remain private and confidential and shall not be copied to anyone other than the parties to the dispute, without the agreement of the parties.

An Arbitrator shall not accept any gift or substantial hospitality, directly or indirectly, from any party to the Arbitration, except in the presence of the other parties and/or with their consent.

### **Rule Three**

An Arbitrator shall only accept an appointment if he has suitable experience and ability for the case and available time to proceed with the Arbitration.

### **Rule Four**

An Arbitrator shall be faithful to the relationship of trust and confidentiality inherent in that office.

### **Rule Five**

An Arbitrator shall charge according to the *Schedule of Fees* of the FDRC in Annex I of the Terms of Reference of the FDRC.

### **Rule Six**

An Arbitrator who is a Board or staff member may use the name and/or logo of the FDRC to promote the FDRC and its service. Subject to the above, an Arbitrator may not use the name and/or the logo of the FDRC or the fact that he is on the List of Arbitrators maintained by the FDRC to promote his private practice.

### **Rule Seven**

An Arbitrator shall consider whether it is appropriate to be covered by professional indemnity insurance and if so, shall ensure that he is adequately covered.

*[NOTE: The Code has been formulated by the Chartered Institute of Arbitrators (“CI Arb”) as a guide to independent dispute resolvers as to their conduct and that the CI Arb has consented to the Financial Dispute Resolution Centre (“FDRC”) adopting the Code for its own scheme. The Chartered Institute of Arbitrators gives no warranty representation or assurance that the Code is suitable for use or adoption by the FDRC for its scheme.]*

**AGREEMENT TO MEDIATE**

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*)

\_\_\_\_\_  
(*Contact Telephone Number*)

\_\_\_\_\_  
(*Contact Telephone Number*)

\_\_\_\_\_  
\_\_\_\_\_  
(*Address*)

\_\_\_\_\_  
\_\_\_\_\_  
(*Address*)

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

\_\_\_\_\_  
(*Name of Mediator: Please Print*)

\_\_\_\_\_  
(*Contact Telephone Number*)

\_\_\_\_\_  
\_\_\_\_\_  
(*Address*)

**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, capitalized 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, 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 and the HKMA and/or SFC. 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 process 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) proposals suggested 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 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. The Parties agree that the *Mediation Certificate* may be provided to the



HKMA and/or SFC by 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, 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**

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)*

\_\_\_\_\_  
*Name of Party (Please print and sign here)*

\_\_\_\_\_  
*Name of Mediator (Please print and sign here)*

## CONFIDENTIALITY AGREEMENT

(Adapted from the Law Society's Sample Confidentiality Agreement)

In consideration of my being permitted to attend / give advice or opinion for the Mediation between \_\_\_\_\_ (Party A) and \_\_\_\_\_ (Party B), I agree to be personally bound by the confidentiality provisions (Clauses 11-16) of the *Agreement to Mediate* signed by the Parties on \_\_\_\_\_ (Date) as if I was a Party to the Mediation and undertake to the Parties and the Mediator that I will not disclose or use any information relating to the Mediation nor act as a witness in any subsequent proceedings.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name and Capacity (in print): \_\_\_\_\_

---

\*Clauses 11-16 of the *Agreement to Mediate* provide as follows:-

*"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.*

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 and the HKMA and/or SFC. 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 process 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) proposals suggested 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, regulation 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.”*

# Financial Dispute Resolution Scheme

*Administered by the Financial Dispute Resolution Centre*

## MEDIATED SETTLEMENT AGREEMENT

THIS AGREEMENT IS MADE ON \_\_\_\_\_ (date)

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

\_\_\_\_\_  
(Name of Party A: Please Print)

\_\_\_\_\_  
(Name of Party B: Please Print)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Address)

(Address)

(Collectively called 'the Parties')

### BACKGROUND

The Parties agreed to enter into mediation with the intent of resolving issues in relation to the \_\_\_\_\_ (the "Eligible Dispute") pursuant to the *Agreement to Mediate* made on \_\_\_\_\_ (date) following the *FDRS Mediation and Arbitration Rules* under the *Terms of Reference* of the Financial Dispute Resolution Centre ("FDRC") in relation to the Financial Dispute Resolution Scheme ("FDRS").

The Parties have reached agreement in the mediation on the terms necessary to settle the Eligible Dispute.

## **TERMS**

The Parties agree as follows:

(Insert Terms here)

1. This Agreement shall be binding upon all Parties to the Agreement upon execution.
2. The Parties agree that a copy of this Agreement is to be sent to the FDRC, the Monetary Authority and/or the Securities and Futures Commission.
3. This Agreement shall be construed under the Laws of Hong Kong Special Administrative Region.

## **SIGNING OF THE SETTLEMENT AGREEMENT**

Date: \_\_\_\_\_

\_\_\_\_\_  
*(Name of Party A or Representative*

*Please print and sign here)*

\_\_\_\_\_  
*(Name of Party B or Representative*

*Please print and sign here)*

**Annex IX**

# Financial Dispute Resolution Scheme

*Administered by the Financial Dispute Resolution Centre*

(Filed pursuant to Paragraph 19.8.3 /19.10.4 of the Terms of Reference  
of Financial Dispute Resolution Scheme)

## Mediation Certificate

This is to certify that the mediation took place on \_\_\_\_\_(date) from  
\_\_\_\_\_(am/pm) to \_\_\_\_\_(am/pm) (time) between  
\_\_\_\_\_(Eligible Claimant) and \_\_\_\_\_ (FI) has been:-

concluded with the following outcome:

- Full and final settlement reached, settlement agreement duly signed.
- No settlement reached.

terminated:

- by the Eligible Claimant.
- by the Mediator, pursuant to paragraph 5(b) of the Ethics Code for FDRC Mediators.
- by the Mediator, pursuant to paragraph 5(c) of the Ethics Code for FDRC Mediators.
- by the Mediator, pursuant to paragraph 5(d) of the Ethics Code for FDRC Mediators.
- by the Mediator, pursuant to paragraph 5(e) of the Ethics Code for FDRC Mediators.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Name and Capacity (in print): \_\_\_\_\_ (Mediator)

For Official Use Only  
Reference Number:

\_\_\_\_\_