

Terms of Reference

for

Financial Dispute Resolution Centre (FDRC)

in relation to the

Financial Dispute Resolution Scheme
(FDRS)

January 2018

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 the 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 (“**EC**”) 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 or entity making or who had made an Application to the FDRC;
 - ‘Application’ means an application to the FDRC for assessing whether a Customer Claim, FI Claim or FI Counterclaim may be accepted as an Eligible Dispute under the FDRS in accordance with these Terms of Reference and the Intake Criteria;
 - ‘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 EC;
 - ‘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 Intake Criteria;

- ‘Claim’ means a Customer Claim, FI Claim or FI Counterclaim which the FDRC may accept for dispute resolution pursuant to the FDRS;
- ‘Claimant’ means a Party to an Arbitration, who may be an EC or FI, who, as the context requires, is in submission of a Claim in the Notice to Arbitrate;
- ‘Court’ refers to the courts of the Hong Kong Special Administrative Region;
- ‘Customer Claim’ means a claim related to the Written Complaint against an FI by its customer(s), which the FDRC may accept for dispute resolution pursuant to the FDRS. An FI, with signed consent by its customer(s) (in the form set out at Annex X), may bring such Customer Claim before the FDRC for dispute resolution;
- ‘EC’ refers to the person or entity described in Paragraph 13 of these Terms of Reference as an Eligible Claimant;
- ‘Effective Date’ means the date that these Terms of Reference come into effect on 1 January 2018, except for the implementation of the terms in relation to Small Enterprises (SE), which is effective from 1 July 2018;
- ‘Eligible Dispute’ refers to a dispute that fulfils the conditions set out in Paragraph 12 of these Terms of Reference;
- ‘Extended Eligible Dispute’ refers to a dispute that has the meaning described in Paragraph 12.1.2 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 its customer(s) which accepts the Written Complaint (and where appropriate offers redress), offers redress without accepting the Written Complaint or rejects the Written 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);
- ‘FI Claim’ means a claim by an FI against its customer in relation to a Financial Service to which the customer may consent (in the form set out at Annex X) and which the FDRC may

accept for dispute resolution pursuant to the FDRS;

- ‘FI Counterclaim’ means a counterclaim made by an FI against a Customer Claim which has been or was accepted for dispute resolution pursuant to the FDRS to which the EC may consent (in the form set out at Annex X) and which the FDRC may accept for dispute resolution pursuant to the FDRS and it may or may not arise from the same occurrence, transaction, or subject matter as the individual claim from the customer;
- ‘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;
- ‘ICB’ means the Insurance Complaints Bureau;
- ‘Intake Criteria’ means the *FDRS Guidelines on Intake Criteria of Cases* set out in Annexes II-A and II-B;
- ‘Limitation Period’ means the time limit for a Customer Claim to be made to the FDRC within 24 calendar months from the date of the purchase of the Financial Services, or the date on which the EC first had knowledge that he suffered monetary loss arising out of the Financial Services, whichever is the later. An EC’s knowledge includes knowledge which he might reasonably have been expected to acquire from facts observable or ascertainable by him;
- ‘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*;
- ‘Maximum Claimable Amount’ means the maximum amount to be claimed for a Customer Claim not exceeding HK\$1,000,000 (including any interest on any amount alleged to be a loss) or the foreign currency equivalent;
- ‘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 a 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 EC 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 EC or supervised the dealing with the EC 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;
- ‘Respondent’ means the Party to an Arbitration, who may be an EC or FI or, who, as the context requires, is in receipt of a Claim;
- ‘Rule’ means a term and/or condition set out in the *FDRS Mediation and Arbitration Rules*;
- ‘SE’ means a small enterprise which is a limited company or a partnership, and in accordance with its latest financial year end statement has:
 - (1) an annual turnover not exceeding HK\$50 million; and
 - (2) gross assets not exceeding HK\$50 million; and
 - (3) not more than 50 employees in Hong Kong.

If a limited company is a subsidiary company or a holding company (in accordance with the definitions used in the Companies Ordinance (Cap. 622)) within a group, the group’s consolidated figures will be used. For overseas incorporated enterprises, same criteria apply;

- ‘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;
- ‘Specified Mediation Time’ means the 4 hours allocated for the substantive mediation meeting under these Terms of Reference;
- ‘Standard Eligible Dispute’ refers to a dispute that has the meaning described in Paragraph 12.1.1 of these Terms of Reference;
- ‘Terms of Reference’ means these Terms of Reference *for the FDRC in relation to the FDRS (January 2018)*; and
- ‘Written Complaint’ refers to a written complaint raised by its customer(s) to the FI before a Customer Claim is lodged with the FDRC.

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 and Applicability

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.

3.3 FDRC may amend the Annexes as and when required. In the event of inconsistency between the main body of these Terms of Reference and the Annexes, these Terms of Reference prevail.

3.4 These Terms of Reference apply to all Claims in which the date of first knowledge of loss by the EC or the FI, where applicable, falls on or after the Effective Date.

3.5 The Terms of Reference (February 2014) apply to all claims in which the date of first knowledge of loss by the EC falls before the Effective Date.

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 Intake Criteria 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 Applicants, ECs 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 EC 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 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 funded the set-up costs and the operational costs of the FDRC since 1 January 2012.
- 8.2 It is intended that with effect from a date to be determined (“New Funding Date”), 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 the New Funding Date 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 Claims, where possible, at an early stage.
- 8.4 The FDRC shall proceed to work out the funding formula to apply from the New Funding Date at a reasonable period prior to the New Funding Date based on its 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 the New Funding Date.

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 EC so wishes, and
 - (b) the Standard 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 Written Complaint advising the relevant

customer of his choice to refer the matter to the FDRC if the Written Complaint was not resolved. The Final Written Reply should include the relevant contact details such as the hotline number, address and website 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;
- (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 ECs 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 the following disputes that fulfil all of the conditions of Paragraph 12.1.1 or Paragraph 12.1.2 (collectively known as “Eligible Disputes”) –

12.1.1 Standard Eligible Dispute

- (a) the dispute must be an individual Customer Claim brought by an EC or an FI with signed consent by the Parties (in the form set out at Annex X);
- (b) an EC has filed a Written 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 Written 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;
- (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 Maximum Claimable Amount (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 EC 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 EC where the FI acted as an agent.

12.1.2 Extended Eligible Dispute

- (a) the dispute must be brought in the following situations and with signed consent by the Parties (in the form set out at Annex X):
 - (i) where an individual Customer Claim, subject to Paragraph 12.1.1 (b), which exceeds the Maximum Claimable Amount and/or is beyond the Limitation Period, is brought by an EC or an FI; or
 - (ii) where an individual FI Claim or an individual FI Counterclaim is brought by an FI.

For the avoidance of doubt, the FDRC shall have the sole discretion to ascertain what constitutes an individual Customer Claim, FI Claim or FI Counterclaim.

- (b) the financial services provider involved in the dispute must be an FI;
- (c) 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’); and

- (d) the dispute must arise out of a contract between the EC 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 EC where the FI acted as an agent.

13. Definition of Eligible Claimant

13.1 The following persons or entities (known as 'ECs') may bring a Claim –

- (a) an individual having or who had a customer relationship with an FI or who has been provided with a Financial Service;
- (b) a sole proprietor having or who had a customer relationship with an FI or who has been provided with a Financial Service; or
- (c) an SE (including an FI that qualifies as an SE) 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 Intake Criteria at Annex II.

14.2 All disputes which have not first been raised by an EC 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 EC lodges a complaint against the FI with the ICB or one of the Parties commences legal proceedings against the other Party while the Claim is being processed by the FDRC unless the court has ordered a stay of the proceedings or has been provided with proper notifications for mediation and/or arbitration. There is an ongoing obligation on the part of the Parties to inform the FDRC whether any such complaint or legal proceedings 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

Part I – Initial Process

15. Initial requirements

- 15.1 For a Customer Claim, an EC should have already filed his Written Complaint 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 EC should only file an Application with the FDRC if –
- (a) he has filed a Written Complaint to the relevant FI and received a Final Written Reply to the Written Complaint issued by the FI; or
 - (b) it has been more than 60 days from the date he filed the Written Complaint with the relevant FI and has not received a Final Written Reply from the relevant FI.
- 15.3 An FI should only file an Application with the FDRC if its relevant EC consents.

16. Initial enquiries

- 16.1 Initial enquiries can be made by members of the FDRS and 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 Party. 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 EC or FI in accordance with the Intake Criteria set out in Annex II.
- 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 Party, 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 Applicant must comply with the request within the timeframe specified by the FDRC.

18.2.2 The Case Officer shall consider, having regard to the Intake Criteria set out in Annex II and with due reference to the definitions of Eligible Disputes, ECs and FIs, 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 Intake Criteria 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 written 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 Applicant or the other party.

18.4 Acceptance of cases

18.4.1 A Claim shall be referred to Mediation and/or Arbitration, where appropriate, upon acceptance by the FDRC and the Parties shall be notified in due course. For a Claim which is accepted by the FDRC as a Standard Eligible Dispute, it shall proceed in accordance with the sequence "Mediation First, Arbitration Next". For a Claim which is accepted by the FDRC as an Extended Eligible Dispute, it may be referred either to "Mediation First, Arbitration Next", "Mediation Only" or "Arbitration Only", provided that the Parties have given their signed consent (in the form set out at Annex X).

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/or Arbitration. This may include requiring a Party to an Eligible Dispute to attend a pre-mediation session, provide a translator at his own cost 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 to claim legal professional privilege.

18.4.3 A Party to an Eligible Dispute must comply with such a request under Paragraph 18.4.2 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.

Part II – Dispute Resolution Process

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* set out in Annexes IV and V respectively.

19.1.2 The ECs 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, the substantive mediation meeting 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, 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 shall send a copy of the *Agreement to Mediate* to the FDRC.

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* 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 Mediator 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 to claim 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 admission and renewal to the List of Mediators on a continuing basis.

19.7 Responsibilities of FIs and ECs

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 in a timely manner.

19.8 Termination of Mediation

19.8.1 An EC may, at any time after the Mediation has started, submit a written notification to the Mediator to terminate the Mediation.

19.8.2 The Mediator, after consultation with the Parties, may give a written advice to terminate the Mediation 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* 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* set out in Annex IX. The Parties agree that a copy of the form shall be kept by the FDRC.

19.9 Extended Mediation Time

19.9.1 The Mediator may conclude the Mediation after completion of the Specified Mediation Time, regardless of 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 shall send a copy of the *Mediated Settlement Agreement* to the FDRC, 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 those 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 For “Mediation First, Arbitration Next” and “Arbitration Only”, the Parties agree that any dispute, controversy or claim arising out of or relating to an Eligible Dispute shall, upon written request from the 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 For “Mediation First, Arbitration Next”, the Claimant shall file the written request for Arbitration with FDRC within 60 days from the date of the *Mediation Certificate* if it is unresolved by Mediation. Upon receipt of the written request, the FDRC should inform the Respondent 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* 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 at his sole discretion 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 set out in the *Schedule of Fees* in Annex I.
- 20.2.3 The contents of the Arbitration Ordinance (Chapter 609) provide the legislative support for the Arbitration procedures under the FDRS. The Appointment of an Arbitrator and the Arbitration procedures 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* 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 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.

20.4 Power and jurisdiction of Arbitrator

20.4.1 The Arbitrator 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 Arbitrator shall have the power:-

- (a) to make monetary awards –
 - (i) subject to the Maximum Claimable Amount for each individual claim which has been accepted as a Standard Eligible Dispute;
 - (ii) subject to the amount of each individual claim (inclusive of interest) which has been accepted as an Extended Eligible Dispute;
 - (iii) with order as to costs in relation to Arbitrations where each individual claim has been accepted as an Extended Eligible Dispute;
 - (iv) with no order as to costs in relation to Arbitrations where each individual claim has been accepted as a Standard Eligible Dispute and the Parties shall bear their own costs;
- (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 Arbitrator that –
 - (i) to provide the information would breach a Court order;
 - (ii) 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;
 - (iii) 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;
 - (iv) the information does not exist or no longer exists or is not within the Party's reasonable possession or control; or

- (v) 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 to claim 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/or
- (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 independent and 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 admission and renewal to the List of Arbitrators on a continuing basis.

20.6 Responsibilities of FI and EC

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

20.7 Termination of Arbitration

- 20.7.1 The Claimant may at any time after the Arbitration has started, submit a written notification to the Arbitrator via the FDRC to terminate the Arbitration.
- 20.7.2 The Arbitrator via the FDRC, after consultation with the Parties, may give a written advice to terminate the Arbitration 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 Claimant by an Arbitrator, the

determination may include a monetary award against the Respondent of such amount as the Arbitrator considers fair compensation for any monetary loss suffered by the Claimant, and shall not include punitive or aggravated damages.

- 20.8.3 The maximum total monetary value (excluding costs) of the award for a Claim must not –
- (a) exceed the Maximum Claimable Amount for each individual claim of a Standard Eligible Dispute; or
 - (b) exceed the claimable amount (inclusive of interest) for each individual claim of an Extended Eligible Dispute.
- 20.8.4 For the purposes of awards made by the Arbitrator, monetary loss may include consequential loss.
- 20.8.5 A monetary award rendered 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 Parties 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 shall send a copy of the Arbitral Award to the FDRC.
- 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. The Regulators may request the FDRC to provide information that is reasonably required for discharging their statutory functions. The FDRC would provide the Regulators monthly reports, on an anonymous basis, about the number and types of disputes handled by the FDRC.

23. Confidentiality

- 23.1 The *FDRC Application Form* shall be kept by the FDRC.
- 23.2 A copy of the following documents in a Mediation shall be kept by the FDRC:-
- (a) the *Agreement to Mediate* set out in Annex VI;
 - (b) the *Confidentiality Agreement* (if any) set out in Annex VII;
 - (c) the *Mediated Settlement Agreement* (if any) in the form set out in Annex VIII;
 - (d) the *Mediation Certificate* in the form set out in Annex IX;
- 23.3 A copy of the following documents in an Arbitration shall be kept by the FDRC:-
- (a) the Notice to Arbitrate; and
 - (b) the Arbitral Award.
- 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 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;
 - (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;

- (c) any views expressed by the Mediators and/or Arbitrators;
- (d) all materials made available and communication made during the Mediation and/or Arbitration; 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, 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), guidelines or requests. The fact that the Mediation and/or Arbitration 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 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 employees, officers or representatives) 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.
- 23.9 The Parties 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 with immediate effect.

24. Disclaimer

24.1 Applicants, ECs, 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, ECs, 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 ECs or by FIs;
- (d) the Claims made by ECs or FIs;
- (e) the Applications made by the Applicants;
- (f) any settlements entered into between the ECs and/or their representatives and FIs and/or any Representatives;
- (g) any settlement agreements executed by the ECs and/or their representatives and the FIs and/or any Representatives;
- (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 Parties 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

Table A: Fee Scale (For cases of Standard Eligible Dispute)		
	Applicant/ Eligible Claimant (EC)	Financial Institution (FI)
Making Enquiries	Free of charge	Free of charge
Filing an Application Form*	\$200	Not Applicable
Mediation Specified Mediation Time (4 hours) Amount of claim: <ul style="list-style-type: none"> • Less than \$200,000 • Between \$200,000 and \$1,000,000 	Per Case \$1,000 \$2,000	Per Case \$5,000 \$10,000
Extended Mediation Time Amount of claim: <ul style="list-style-type: none"> • Less than \$200,000 • Between \$200,000 and \$1,000,000 	Per hour or part thereof \$750 \$1,500	Per hour or part thereof \$750 \$1,500
<p><i>Notes</i></p> <p>1. Total mediation costs (including Extended Mediation Time costs to be shared equally by the Parties) are capped at \$20,000.</p> <p>2. A small FI qualifying as Small Enterprise (SE) may file claim as EC, but the mediation /arbitration fee will be shared equally by the SE and the other FI.</p>		
Arbitration Documents-only <ul style="list-style-type: none"> • Up to \$1,000,000 In-person hearing (in addition to the fees payable for documents-only Arbitration) <ul style="list-style-type: none"> • Up to \$1,000,000 	Per Case \$5,000 \$12,500	Per Case \$20,000 \$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.

Table B : Fee Scale (For cases of Extended Eligible Dispute)		
	Applicant/ Eligible Claimant (EC)	Financial Institution (FI)
Making Enquiries	Free of charge	Free of charge
Filing an Application Form*	\$200	\$200
Mediation Specified Mediation Time (4 hours) Amount of claim/counterclaim (in total):	Per Case	Per Case
<ul style="list-style-type: none"> • Less than \$200,000 • Between \$200,000 and \$1,000,000 • Between \$1,000,001 and \$2,000,000 • Between \$2,000,001 and \$3,000,000 • Between \$3,000,001 and \$5,000,000 • Between \$5,000,001 and \$10,000,000 	<ul style="list-style-type: none"> \$1,000 \$2,000 \$2,500 \$3,000 \$3,500 \$4,000 	<ul style="list-style-type: none"> \$5,000 \$10,000 \$12,500 \$15,000 \$17,500 \$20,000
Extended Mediation Time Amount of claim/counterclaim (in total):	Per hour or part thereof	Per hour or part thereof
<ul style="list-style-type: none"> • Less than \$200,000 • Between \$200,000 and \$10,000,000 	<ul style="list-style-type: none"> \$750 \$1,500 	<ul style="list-style-type: none"> \$750 \$1,500
<i>Notes:</i>		
<ol style="list-style-type: none"> 1. Total mediation costs (including Extended Mediation Time costs to be shared equally by the Parties) are capped at \$20,000 for cases up to \$1,000,000 and at \$30,000 for cases up to \$10,000,000. 2. Fees for cases above \$10,000,000 to be agreed amongst the Parties, the Mediator and the FDRC. 3. Claim and counterclaim amount on a combined case will be aggregated for fee calculation purpose. 4. The FDRC will deduct administrative fee of \$1,000, \$1,500, \$2,000 and \$2,500 respectively from the total fee payable to the Mediator, for the monetary bands over \$1,000,000. 5. A small FI qualifying as Small Enterprise (SE) may file claim as EC, but the mediation fee will be shared equally by the SE and the other FI. 		

Arbitration	Per Case	Per Case
Documents-only		
• Up to \$1,000,000	\$5,000	\$20,000
• Between \$1,000,001 and \$2,000,000	\$7,000	\$28,000
• Between \$2,000,001 and \$3,000,000	\$9,000	\$36,000
• Between \$3,000,001 and \$10,000,000	\$9,000 + 0.10% of claimable amount over \$3,000,000	\$36,000 + 0.40% of claimable amount over \$3,000,000
In-person hearing (in addition to the fees payable for documents-only Arbitration)		
• Up to \$1,000,000	\$12,500	\$12,500
• Between \$1,000,001 and \$2,000,000	\$15,000	\$15,000
• Between \$2,000,001 and \$3,000,000	\$17,500	\$17,500
• Between \$3,000,001 and \$10,000,000	\$17,500 + 0.5% of claimable amount over \$3,000,000	\$17,500 + 0.5% of claimable amount over \$3,000,000
<i>Notes:</i>		
1. Fees for cases above \$10,000,000 to be agreed amongst the Parties, the Arbitrator and the FDRC.		
2. Claim and counterclaim amount on a combined case will be aggregated for fee calculation purpose.		
3. The FDRC will deduct administrative fee of \$3,000, \$4,000 and \$5,000 respectively from the total fee payable to the Arbitrators, for the monetary bands over \$1,000,000.		
4. A small FI qualifying as SE may file claim as EC, but the arbitration fee will be shared equally by the SE and the other FI.		

***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.

FDRS Guidelines on Intake Criteria of Cases (Standard Eligible Dispute)

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 of an individual Customer Claim is brought by an EC or an FI with signed consent by the Parties (in the form set out at Annex X);
- (2) an EC has filed a Written 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 Written 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;
- (4) the claim must be of a monetary nature;
- (5) the amount for each individual claim does not exceed HK\$1,000,000 (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 EC 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 EC where the FI acted as an agent.

(B) Subject to the fulfillment of all the conditions in (A), hereinunder are situations where Case Officers should reject an application –

- (1) the claim is not related to a Financial Service ; or
- (2) the claimant has not suffered (or is unlikely to suffer) actual monetary loss, or cannot provide evidence to substantiate his actual monetary loss; or
- (3) the claim is without substance or is frivolous or vexatious; or

- (4) the claim is the subject of a complaint lodged with the Insurance Complaints Bureau (ICB) which is currently under the ICB's consideration; or

Note: If the claimant lodged a complaint against the FI with the ICB 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 Parties to inform the FDRC whether any such complaint against the FI with the ICB in respect of the subject matter of the Eligible Dispute has been initiated.

- (5) the subject matter of the claim has previously been considered or excluded by the FDRC; or
- (6) the claim has been the subject of court proceedings where there has been a decided judgment on the same claim; or the claim is the subject of current court proceedings (civil or criminal, including the proceedings under the Small Claims Tribunal) unless (i) the court has ordered a stay of the proceedings or (ii) the court has been provided with proper notifications of mediation and/or arbitration and accompanied by documentary proof¹ within 21 days from the date of the Application or any other period reasonably extended by the FDRC; or

Note: If a Party commences legal proceedings against the other Party while the case is being processed by the FDRC and the FDRC is informed, the FDRC will forthwith discontinue the Application. There is an ongoing obligation on the part of the Parties to inform the FDRC whether any such legal proceedings against the other Party in respect of the subject matter of the Eligible Dispute have been initiated while the claim is being handled by the FDRC.

- (7) the claim is about employment matters from an employee or employees of an FI; or
- (8) 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
- (9) 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

¹ Documentary proof may include but not limited to a copy of the court order or note of the judge or master or acknowledge receipt of the notification to the court.

- (10) 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
- (11) 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
- (12) the claim involves (or might involve) more than one EC who jointly own an account; and has been referred to the FDRC without the consent of the other claimant or claimants; or
- (13) the claim is made more than 24 calendar months from the date of the purchase of the Financial Services, or the date on which the EC 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.

FDRS Guidelines on Intake Criteria of Cases (Extended Eligible Dispute)

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 of a Claim must be brought in either of the following situations and with signed consent by the Parties (in the form set out at Annex X):
 - (a) where a Customer Claim (provided that an EC has filed a Written 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 Written Complaint with the relevant FI and has not received the Final Written Reply from the relevant FI) is brought by an EC or an FI, which:
 - (i) exceeds HK\$1,000,000 (including any interest on any amount alleged to be a loss) or the foreign currency equivalent; and/or
 - (ii) is more than 24 calendar months from the date of the purchase of the Financial Services, or the date on which the EC 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;
 - (b) where an FI Claim or FI Counterclaim is brought by an FI.
- (2) the relevant financial services provider must be an FI;
- (3) the claim must be of a monetary nature; and
- (4) the dispute must arise out of a contract between the EC 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 EC where the FI acted as an agent.

(B) Subject to the fulfillment of all the conditions in (A), hereinunder are situations where Case Officers should reject an application –

- (1) the claim is not related to a Financial Service ; or
- (2) the claimant has not suffered (or is unlikely to suffer) actual monetary loss, or cannot provide evidence to substantiate his actual monetary loss; or
- (3) the claim is without substance or is frivolous or vexatious; or
- (4) the claim is the subject of a complaint lodged with the Insurance Complaints Bureau (ICB) which is currently under the ICB's consideration; or

Note: If the claimant lodged a complaint against the FI with the ICB 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 Parties to inform the FDRC whether any such complaint against the FI with the ICB in respect of the subject matter of the Eligible Dispute has been initiated.

- (5) the subject matter of the claim has previously been considered or excluded by the FDRC; or
- (6) the claim has been the subject of court proceedings where there has been a decided judgment on the same claim; or the claim is the subject of current court proceedings (civil or criminal, including the proceedings under the Small Claims Tribunal) unless (i) the court has ordered a stay of the proceedings or (ii) the court has been provided with proper notifications of mediation and/or arbitration and accompanied by documentary proof² within 21 days from the date of the Application or any other period reasonably extended by the FDRC; or

Note: If a Party commences legal proceedings against the other Party while the case is being processed by the FDRC and the FDRC is informed, the FDRC will forthwith discontinue the Application. There is an ongoing obligation on the part of the Parties to inform the FDRC whether any such legal proceedings against the other Party in respect of the subject matter of the Eligible Dispute have been initiated while the claim is being handled by the FDRC.

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

² Documentary proof may include but not limited to a copy of the court order or note of the judge or master or acknowledge receipt of the notification to the court.

- (8) 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
- (9) 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
- (10) 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
- (11) 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
- (12) the claim involves (or might involve) more than one EC who jointly own an account; and has been referred to the FDRC without the consent of the other claimant or claimants.

FDRS Application Form (Individuals / Sole Proprietors)

**Financial Dispute Resolution Centre (FDRC)
Financial Dispute Resolution Scheme (FDRS)
Application Form (For Individuals / Sole Proprietors)**

Our Ref: _____
Date Received:
(For FDRC's 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 (FI)

1	Name of 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 (1)]	
5	Date of knowledge about monetary loss [See Note (1)]	
6	Amount claimed [See Note (1)]	<input type="checkbox"/> HK\$
		<input type="checkbox"/> Other currencies:
<p><i>[Note (1): The FDRC may reject the Application if the claim is made more than 24 months from the date of purchase of the financial product / service or first knowledge of loss and/or the amount exceeds HK\$1 million (including any interest on any amount alleged to be a loss) or the foreign currency equivalent, unless both Parties agree to submit Application for the consideration of FDRC under Intake Criteria for Extended Eligible Dispute.]</i></p>		

V. Actions taken in respect of the Dispute

1	Have you lodged a written complaint with the FI? [See Note (2)]	<input type="checkbox"/> Yes. The date: Please describe the complaint you have lodged:
		<input type="checkbox"/> No
<p><i>[Note (2): FDRC does not have jurisdiction to deal with a claim which has not been first handled by the relevant FI.]</i></p>		
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? [See Note (3)]	<input type="checkbox"/> Yes. The court file ref.:
		<input type="checkbox"/> Stay of the court proceedings
		<input type="checkbox"/> Proper notification to the court
		<input type="checkbox"/> Decided judgment
		<input type="checkbox"/> No

[Note(3): FDRC does not have jurisdiction to handle a claim where there has been a decided judgment in court proceedings; or the court has not ordered a stay of the proceedings or has not been provided with proper notification.]

5	Have you lodged a complaint with the Insurance Complaints Bureau (ICB)? <i>[See Note (4)]</i>	<input type="checkbox"/> Yes. The file ref.:
		<input type="checkbox"/> No

[Note(4): FDRC does not have jurisdiction to handle a claim which is currently under the ICB's consideration.]

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. Supporting Documents
(copy only)**

<input type="checkbox"/> Yes (_____ set of documents, _____ pages)	<input type="checkbox"/> No
---	-----------------------------

VII. 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

VIII. Application Fee

HK\$200.- (Non-refundable)	<input type="checkbox"/> By cash
	<input type="checkbox"/> By cheque payable to “Financial Dispute Resolution Centre”
	<input type="checkbox"/> By Bank Transfer/Telegraphic Transfer (<i>all bank charges are to be borne by the remitting party</i>) Account No: 848-218731-838 Name: Financial Dispute Resolution Centre Bank: The Hongkong and Shanghai Banking Corporation Ltd, 1 Queen’s Road Central, Hong Kong Swift Code: HSBC HK HHH KH <i>Please notify us once payment has been made with proof of transfer/ remittance by email fdrc@fdrc.org.hk or by fax +852 2565 8662.</i>

IX. Notice to the Gathering of Personal Data

The personal data provided by the Applicant under this Form is for the purpose of processing the dispute 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.

X. Declaration

1.	<input type="checkbox"/> I/We agree <input type="checkbox"/> I/We do not agree to give consent to the FDRC to provide the information in this Form to the FI.	
2.	I/We know that the application fee (HK\$200.-) is non-refundable even if my/our Application is not successful.	
3.	I/We 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 FDRS 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/our Application.	
4.	I/We agree that the information and personal data I/we have voluntarily provided in this Form is for the purpose of processing my/our 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/our identity(ies).	
5.	I/We am/are aware that I/we have the right to request access to and correction of my/our personal data submitted for this Application and for processing the dispute under the FDRS. 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/our Application is rejected or until the end of the 6th calendar year after the dispute has been processed by FDRC through Mediation, Arbitration or otherwise.	
6.	I/We agree to inform the FDRC if, after this Application has been made, a claim against the FI has been lodged with the ICB and/or legal proceedings against the FI have been commenced.	
7.	I/We agree to abide by the Terms of Reference of the FDRC.	
8.	I/We confirm that the information provided in this Application Form is true, complete and accurate.	
Signature(s)		
Name		
	(Applicant 1)	(Applicant 2- For joint-account only)

Annex III-B

FDRS Application Form (Small Enterprises)

Financial Dispute Resolution Centre (FDRC) Financial Dispute Resolution Scheme (FDRS) Application Form (For Small Enterprises (SE))

Our Ref: _____

Date Received: _____

(For FDRC's Official Use Only)

Please put a "√" in where appropriate.

I. **Date of Application:** _____ (dd/mm/yyyy)

II. Particulars of Applicant

1	Business Name [See Note (1)]										
2	Business Registration No. [See Note (1)]										
3	Form of Business [See Note (1)]	<input type="checkbox"/> Partnership <input type="checkbox"/> Limited Company									
4	Please indicate if it is within a group	<input type="checkbox"/> Yes, it is <input type="checkbox"/> Subsidiary of a group <input type="checkbox"/> Parent company of a group <input type="checkbox"/> No									
<i>See Note (1) at the end of this Application Form</i>											
5	Contact Details	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%;">Telephone No.</td> <td style="width: 5%;">:</td> <td style="width: 80%;"></td> </tr> <tr> <td>Fax No.</td> <td>:</td> <td></td> </tr> <tr> <td>Email Address</td> <td>:</td> <td></td> </tr> </table>	Telephone No.	:		Fax No.	:		Email Address	:	
Telephone No.	:										
Fax No.	:										
Email Address	:										
6	Name of the Contact Person (* Delete where appropriate)	*Mr/Ms/Mrs/Miss									
7	Title of the Contact Person										
8	Correspondence Address										

III. Particulars of the Financial Institution (FI)

1	Name of 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 (2)]	
5	Date of knowledge about monetary loss [See Note (2)]	
6	Amount claimed [See Note (2)]	<input type="checkbox"/> HK\$
		<input type="checkbox"/> Other currencies:
<p>[Note (2): The FDRC may reject the Application if the claim is made more than 24 months from the date of purchase of the financial product / service or first knowledge of loss and/or the amount exceeds HK\$1 million (including any interest on any amount alleged to be a loss) or the foreign currency equivalent, unless both Parties agree to submit Application for the consideration of FDRC under Intake Criteria for Extended Eligible Dispute.]</p>		

V. Actions taken in respect of the Dispute

1	Have you lodged a written complaint with the FI? [See Note (3)]	<input type="checkbox"/> Yes. The date: Please describe the complaint you have lodged:
		<input type="checkbox"/> No
<p>[Note (3): FDRC does not have jurisdiction to deal with a claim which has not been first handled by the relevant FI.]</p>		
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? [See Note (4)]	<input type="checkbox"/> Yes. The court file ref.:
		<input type="checkbox"/> Stay of the court proceedings
		<input type="checkbox"/> Proper notification to the court
		<input type="checkbox"/> Decided judgment
		<input type="checkbox"/> No

[Note (4): FDRC does not have jurisdiction to handle a claim where there has been a decided judgment in court proceedings; or the court has not ordered a stay of the proceedings or has not been provided with proper notification.]

5	Have you lodged a complaint with the Insurance Complaints Bureau (ICB)? [See Note (5)]	<input type="checkbox"/> Yes. The file ref.:
		<input type="checkbox"/> No

[Note (5): FDRC does not have jurisdiction to handle a claim which is currently under the ICB's consideration.]

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. Supporting Documents (copy only)

<input type="checkbox"/> Yes (_____ set of documents, _____ pages)	<input type="checkbox"/> No
<i>Note (6): Please refer to Note (1) at the end of this Application Form and provide the relevant documents for FDRC to verify the SE qualification.</i>	

VII. 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

VIII. Application Fee

HK\$200.- (Non-refundable)	<input type="checkbox"/> By cash
	<input type="checkbox"/> By cheque payable to “Financial Dispute Resolution Centre”
	<input type="checkbox"/> By Bank Transfer/Telegraphic Transfer (<i>all bank charges are to be borne by the remitting party</i>) Account No: 848-218731-838 Name: Financial Dispute Resolution Centre Bank: The Hongkong and Shanghai Banking Corporation Ltd, 1 Queen’s Road Central, Hong Kong Swift Code: HSBC HK HHH KH <i>Please notify us once payment has been made with proof of transfer/ remittance by email fdrc@fdrc.org.hk or by fax +852 2565 8662.</i>

IX. Notice to the Gathering of Personal Data

The personal data provided by the Applicant and its representatives (collectively known as “We” in the **Declaration** below) under this Form is for the purpose of processing the dispute 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.

X. Declaration

1.	<input type="checkbox"/> We agree <input type="checkbox"/> We do not agree to give consent to the FDRC to provide the information in this Form to the FI.
2.	We know that the application fee (HK\$200.-) is non-refundable even if our Application is not successful.
3.	We declare that we are a Small Enterprise as defined under the Terms of Reference of the FDRC. We authorise FDRC to verify with the relevant FI for our Small Enterprise qualification and also authorise the FI to provide information to the FDRC with or without request by the FDRC as to our Small Enterprise qualifications. We agree that the decision by the FDRC as to whether we are a Small Enterprise is final and conclusive and the FDRC does not need to provide explanation.
4.	We acknowledge that the FDRC reserves the right at its full discretion, to discontinue considering the Application or the FDRC procedures with immediate effect if it comes to the knowledge of the FDRC anytime that the Applicant or Eligible Claimant is not a Small Enterprise as defined under the Terms of Reference of the FDRC.
5.	We 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 FDRS 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 our Application.
6.	We agree that the information and personal data we have voluntarily provided in this Form is for the purpose of processing our 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, our identities.
7.	We are aware that we have the right to request access to and correction of our personal data submitted for this Application and for processing the dispute under the FDRS. 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 our Application is rejected or until the end of the 6th calendar year after the dispute has been processed by FDRC through Mediation, Arbitration or otherwise.
8.	We agree to inform the FDRC if, after this Application has been made, a claim against the FI has been lodged with the ICB and/or legal proceedings against the FI have been commenced.
9.	We agree to abide by the Terms of Reference of the FDRC.
10.	We confirm that the information provided in this Application Form is true, complete and accurate.

XI. Consent to disclosure by FI

<p>To: FI</p> <p>We agree that the FI may provide information relating to our entity or persons connected to our entity to the FDRC in relation to this Application (including, without limitation, our Small Enterprise qualifications) and the FDRC dispute resolution.</p>	
<p>(Please provide the name and title of the person who signs in Block Letters)</p>	<p>_____</p> <p>(Name and Title) (Name and Title)</p> <p>_____</p>
<p>Signature (s) for and on behalf of the Applicant (stamped with company chop)</p>	<p>_____</p> <p>(Signature) (Signature)</p> <p>_____</p>

[Note (1):- ‘SE’ means a Small Enterprise, being a limited company or a partnership, whose status are as follows according to its latest financial year end statement:

- (i) an annual turnover not exceeding HK\$50 million;
- (ii) gross assets not exceeding HK\$50 million; and
- (iii) not more than 50 employees in Hong Kong.

If a limited company is a subsidiary company or a holding company (in accordance with the definitions used in the Companies Ordinance (Cap. 622)) within a group, the group’s consolidated figures will be used.

Group means any 2 or more bodies corporate one of which is the holding company of the other or others. (Cap. 622 Companies Ordinance)

For limited companies, please provide the following:

- (i) certified true copy of Business Registration Certificate and NARI form of the Company Registry;
- (ii) certified true copy of MPF or employee insurance statement;
- (iii) audited financial statement; and
- (iv) other information as deemed appropriate by the Applicant.

For partnerships, please also provide:

- (i) certified true copy of Business Registration Certificate and Business Registration Form of the Inland Revenue Department;
- (ii) certified true copy of MPF or employee insurance statement;
- (iii) audited or certified financial statement; and
- (iv) other information as deemed appropriate by the Applicant.

For overseas companies and other variations, documents of equivalent effect and/or professional certifications to prove the meeting of the criteria are required to be submitted.]

Annex III-C

FDRS Application Form (Financial Institutions)

Financial Dispute Resolution Centre (FDRC)

Financial Dispute Resolution Scheme (FDRS)

Application Form (For Financial Institution (“FI”) Claim / FI Counterclaim and/or a Claim of its Customers)

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

Please put a “√” in where appropriate.

I. Date of Application: (dd/mm/yyyy)

II. Particulars of Applicant (FI)

1	Business Name		
2	Contact Details	Contact Person 1	Contact Person 2 (if any)
	Name of Contact Person (* Delete where appropriate)	*Mr/Ms/Mrs/Miss	*Mr/Ms/Mrs/Miss
	Title of Contact Person		
	Telephone No.		
	Fax No.		
	Email Address		
	Correspondence Address		

III. Particulars of the customer(s) with consent

[See Note (1)]

signed consent by the customer attached (Annex X)

		(1)	(2) (For joint-account only)
1	Name of the customer(s) (* Delete where appropriate)	*Mr/Ms/Mrs/Miss or a company	*Mr/Ms/Mrs/Miss or a company
2	Contact Person (if the customer is a company)		
3	Telephone No. of the Contact Person		
4	Correspondence Address		

IV. Details of the Dispute

1	Nature of claim and amount in dispute <i>(Please provide separate form for each claim.)</i> [See Note (1)]	<input type="checkbox"/> (a) Claim of a customer against FI	<input type="checkbox"/> (b) FI claim against its customer	<input type="checkbox"/> (c) FI counterclaim in relation to a claim by its customer
	Amount claimed	<input type="checkbox"/> HK\$		
		<input type="checkbox"/> Other currencies		
<p><i>[Note (1): Please note that a claim of a customer of an FI, an FI claim or an FI counterclaim (provided that the FI counterclaim is lodged in relation to a claim by its customer, which has been or was accepted by the FDRC, and it may or may not arise from the same occurrence, transaction, or subject matter as the individual claim from the customer) can be brought by an FI with signed consent by the Parties pursuant to the Terms of Reference of the FDRC.]</i></p>				
2	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)			
3	Name of the financial product(s) involved			
4	Reference or Account No.			
5	Date of purchase of the financial product or rendering of the service/ advice			
6	Date of knowledge about monetary loss			

V. Actions taken in respect of the Dispute

(a) Claim of a customer against FI (To fill in if applicable)	
1	Application Form signed by the customer attached: <input type="checkbox"/> FDRS Application Form (For Individuals / Sole Proprietors) (Annex III-A of the Terms of Reference) <input type="checkbox"/> FDRS Application Form (For Small Enterprises(SE)) (Annex III-B of the Terms of Reference)

(b) FI claim against its customer (To fill in if applicable)				
1	Have FI lodged a claim request to its customer?	<input type="checkbox"/> No <input type="checkbox"/> Yes. The date: The amount in dispute: Please describe in separate sheet(s) or attach a copy of documents related to the complaint.		
2	Has the customer responded to FI's request?	<input type="checkbox"/> No <input type="checkbox"/> Yes. The date: Please describe in separate sheet(s) or attach a copy of the response.		
(c) FI counterclaim against its customer (To fill in if applicable)				
1	Have FI lodged a counterclaim request to its customer?	<input type="checkbox"/> No <input type="checkbox"/> Yes. The date: The amount in dispute: Please describe in separate sheet(s) or attach a copy of documents related to the complaint.		
2	Has the customer responded to FI's request?	<input type="checkbox"/> No <input type="checkbox"/> Yes. The date: Please describe in separate sheet(s) or attach a copy of the response.		
Court action(s) , if any, for the above claim(s) <input type="checkbox"/> No <input type="checkbox"/> Yes, please fill in below.				
	If court action has been taken, please provide information. [See Note (2)]	(a) Claim of a customer against FI	(b) FI claim against its customer	(c) FI counterclaim in relation to a claim by its customer
1	The court file ref.:			
2	(i) Stay of the court proceedings; or (ii) Proper notification to the court; or (iii) Decided judgment	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
<i>[Note (2): FDRC does not have jurisdiction to handle a claim where there has been a decided judgment in court proceedings; or the court has not ordered a stay of the proceedings or has not been provided with proper notification.]</i>				
Insurance Complaints Bureau (ICB)		<input type="checkbox"/> Yes. The file ref.:		
Have the customer lodged a complaint with the ICB? [See Note (3)]		<input type="checkbox"/> No		
<i>[Note(3): FDRC does not have jurisdiction to handle a claim which is currently under the ICB's consideration.]</i>				

VI. Supporting Documents
(copy only)

<input type="checkbox"/> Yes (_____ set of documents, _____ pages)	<input type="checkbox"/> No
---	-----------------------------

VII. 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

VIII. Application Fee

HK\$200.- (Non-refundable)	<input type="checkbox"/> By cash
	<input type="checkbox"/> By cheque payable to “Financial Dispute Resolution Centre”
	<input type="checkbox"/> By Bank Transfer/Telegraphic Transfer (<i>all bank charges are to be borne by the remitting party</i>) Account No: 848-218731-838 Name: Financial Dispute Resolution Centre Bank: The Hongkong and Shanghai Banking Corporation Ltd, 1 Queen’s Road Central, Hong Kong Swift Code: HSBC HK HHH KH <i>Please notify us once payment has been made with proof of transfer/ remittance by email fdrc@fdrc.org.hk or by fax +852 2565 8662.</i>

IX. Notice to the Gathering of Personal Data

The personal data provided by the Applicant and its representatives (collectively known as “We” in the **Declaration** below) under this Form is for the purpose of processing the dispute 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.

X. Declaration

1.	<input type="checkbox"/> We agree <input type="checkbox"/> We do not agree to give consent to the FDRC to provide the information in this Form to the customer.
2.	We know that the application fee (HK\$200.-) is non-refundable even if our Application is not successful.

3.	We acknowledge that the FDRC reserves the right at its full discretion, to discontinue considering the Application or the FDRC procedures with immediate effect if it comes to the knowledge of the FDRC anytime that the customer is not an Eligible Claimant as defined under the Terms of Reference of the FDRC.
4.	We 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 FDRS 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 our Application.
5.	We agree that the information and personal data we have voluntarily provided in this Form is for the purpose of processing our 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, our identities.
6.	We are aware that we have the right to request access to and correction of our personal data submitted for this application and for processing the dispute under the FDRS. 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 our Application is rejected or until the end of the 6th calendar year after the dispute has been processed by FDRC through Mediation, Arbitration or otherwise.
7.	We agree to inform the FDRC if, after this Application has been made, a claim has been lodged with the ICB and/or legal proceedings have been commenced..
8.	We agree to abide by the Terms of Reference of the FDRC.
9.	We confirm that the information provided in this Application Form is true, complete and accurate.
(Please provide the name and title of the person who signs in Block Letters)	<hr/> <p style="text-align: center;">(Name and Title)</p>
Signature (s) for and on behalf of the Applicant (stamped with company chop)	<hr/> <p style="text-align: center;">(Signature)</p>

FDRS Mediation and Arbitration Rules

Financial Dispute Resolution Scheme (FDRS) Mediation and Arbitration Rules

1. Definitions

Unless otherwise stated, these Rules adopt the definitions used in the Terms of Reference of the FDRC.

2. Mediation

(Rule 2 applies to both “Mediation First, Arbitration Next” and “Mediation Only”.)

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\$200,000 as stated in *Schedule of Fees* set out in Annex I, the FDRC shall assign the case to an in-house Mediator or a Mediator from the List of Mediators; or

(b) is beyond the prescribed level of HK\$200,000 as stated in *Schedule of Fees* set out in Annex I, 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. The FDRC shall transfer all relevant data, information and materials relating to and necessary for the Mediation from the Parties to the Mediator,

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 Procedures*

- 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 Unless it is an Extended Eligible Dispute or it is a claim under court proceedings, 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 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* set out in Annex V of the Terms of Reference; or
- (c) upon written notification by the EC 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* set out in Annex IX of the Terms of Reference.

2.5 Confidentiality

2.5.1 The *FDRS Application Form* shall be kept by the FDRC.

2.5.2 A copy of the following documents shall be kept by the FDRC:-

- (a) the *Agreement to Mediate* 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 A copy of the *Confidentiality Agreement* (if any) set out in Annex VII shall be kept by the FDRC.

- 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 shall keep confidential and not disclose or divulge (whether expressly or impliedly) to any third party: –
- (a) the matters that transpired in the course of the Mediation;
 - (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;
 - (c) any views expressed by the Mediators;
 - (d) all materials made available and communication made during the Mediation; and/or
 - (e) 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), guidelines or requests. 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.
- 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 Parties 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*

(Rule 3 applies to both "Mediation First, Arbitration Next" and "Arbitration Only".)

3.1 *Applicability of the Rules*

3.1.1 These Rules apply to any Eligible Dispute between the Parties 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 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. (Rule 3.2.1 only applies to "Mediation First, Arbitration Next".)

3.2.2 The Arbitration may be commenced on a "documents-only" basis by the 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 Respondent 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;
- (g) a proposal on the appointment of Arbitrator and the language of Arbitration; and
- (h) authorised signature with date.

- 3.2.4 The FDRC shall then notify Claimant of the receipt of the Notice to Arbitrate and the date of such receipt, and transmit to the Respondent 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 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 shall be kept by the FDRC.
- 3.2.8 Unless otherwise indicated by the FDRC, the Respondent shall, within 21 days of the service of the Notice to Arbitrate, send to the 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 Claimant. 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 Claimant and the FDRC.
- 3.2.9 The response to the Notice to Arbitrate shall include:
- (a) the name and contact details of the Respondent;
 - (b) any response to the information set forth in the Notice to Arbitrate pursuant to Rule 3.2.3;
 - (c) a proposal on the appointment of Arbitrator and the language of Arbitration; and
 - (d) authorised signature with date.
- 3.2.10 The FDRC shall notify the Respondent of the receipt of the response to the Notice to Arbitrate and the date of such receipt, and transmit to the 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 Respondent'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 Respondent 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 Claimant's final submissions (if any) on the Claim shall be provided to the Respondent via the FDRC within 21 days after receipt of the Respondent's response, submissions and documents.
- 3.2.14 The FDRC shall then notify the Claimant of the receipt of the final submissions and the date of such receipt, and transmit to the Respondent 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 Claimant;
 - (b) documents were not properly signed and/or dated;

- (c) the names and particulars of the Parties were not provided; and
 - (d) the Claimant did not file the correct number of copies of the Notice to Arbitrate, and/or supporting documents for service on the Respondent 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 Claimant and the Respondent 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 Claimant or the Respondent may request the FDRC to appoint the Arbitrator. The FDRC shall transfer all relevant data, information and materials relating to and necessary for the Arbitration from the Parties to 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, independent

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, independent 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, independent 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. If the Arbitrator is replaced, the Arbitration shall resume at the stage where the Arbitrator was replaced or ceased to perform his functions, unless the substitute Arbitrator decides otherwise.

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 Procedures*

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 reasonable 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 via the FDRC.
- 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 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
 - (i) subject to the Maximum Claimable Amount for each Customer Claim which has been accepted as a Standard Eligible Dispute;
 - (ii) subject to the amount of each individual claim (inclusive of interest) which has been accepted as an Extended Eligible Dispute;
 - (iii) with order as to costs in relation to Arbitrations where each individual claim has been accepted as an Extended Eligible Dispute;
 - (iv) with no order as to costs in relation to Arbitrations where each individual claim has been accepted as a Standard Eligible Dispute and the Parties shall bear their own costs;
 - (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 Arbitrator that –

- (i) to provide the information would breach a Court order;
- (ii) 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;
- (iii) 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;
- (iv) the information does not exist or no longer exists or is not within the Party's reasonable possession or control; or
- (v) 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 to claim 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 Parties 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 shall be kept by the FDRC.

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 *Schedule of Fees*, 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 for Standard Eligible Disputes and to be determined by the Arbitrator for Extended Eligible Disputes.

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 Claimant or the Respondent provided for under the procedure shall be made by the preferred means stated by the Claimant or the Respondent respectively, or in the absence of such specification, by facsimile transmission, with a confirmation of transmission; or by postal or courier service, with a delivery confirmation; 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 A copy of the Notice to Arbitrate and the Arbitral Award shall be kept by 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 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 for Standard Eligible Disputes.

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

4.1 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 in the *Schedule of Fees* set out in Annex I of the Terms of Reference. All fees and charges paid to the FDRC are non-refundable.

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 CODES FOR FDRC MEDIATORS AND ARBITRATORS

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 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.]

Annex VI-A

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

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

THIS AGREEMENT IS MADE ON _____

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

(Name of Party: Please Print)

(Name of Party: Please Print)

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

(Name of Mediator: Please Print)

SUMMARY OF THE DISPUTE

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

("the Eligible Dispute").

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

APPOINTMENT OF MEDIATOR

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

RULES AND CODE OF ETHICS FOR FDRC MEDIATOR

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

ROLE OF THE MEDIATOR

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

CONFLICT OF INTEREST

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

COOPERATION BY THE PARTIES

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

AUTHORITY TO SETTLE AND REPRESENTATION AT THE MEDIATION SESSION

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

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

COMMUNICATION BETWEEN THE MEDIATOR AND THE PARTIES

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

CONFIDENTIALITY OF THE MEDIATION

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

necessary to implement and enforce any such settlement agreement.

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

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

LANGUAGE OF THE MEDIATION

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

TERMINATION OF THE MEDIATION

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

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

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

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

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

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

SETTLEMENT OF THE DISPUTE

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

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

EXCLUSION OF LIABILITY AND INDEMNITY

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

COST OF THE MEDIATION

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

ARBITRATION AGREEMENT

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

fit.

GOVERNING LAW

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

SIGNING OF THE AGREEMENT TO MEDIATE

Date: _____

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

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

Name of Mediator (Please print and sign here)

Annex VI-B

AGREEMENT TO MEDIATE (Mediation Only)

Our Ref: _____

Date Received: _____

(For FDRC’s Official Use Only)

THIS AGREEMENT IS MADE ON _____

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

(Name of Party: Please Print)

(Name of Party: Please Print)

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

(Name of Mediator: Please Print)

SUMMARY OF THE DISPUTE

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

 (“the Eligible Dispute”).

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

APPOINTMENT OF MEDIATOR

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

RULES AND CODE OF ETHICS FOR FDRC MEDIATOR

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

ROLE OF THE MEDIATOR

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

CONFLICT OF INTEREST

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

COOPERATION BY THE PARTIES

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

AUTHORITY TO SETTLE AND REPRESENTATION AT THE MEDIATION SESSION

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

COMMUNICATION BETWEEN THE MEDIATOR AND THE PARTIES

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

CONFIDENTIALITY OF THE MEDIATION

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

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

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

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

(iii) any views expressed by the Mediators;

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

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

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

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

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

LANGUAGE OF THE MEDIATION

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

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

TERMINATION OF THE MEDIATION

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

SETTLEMENT OF THE DISPUTE

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

EXCLUSION OF LIABILITY AND INDEMNITY

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

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

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

COST OF THE MEDIATION

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

GOVERNING LAW

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

SIGNING OF THE AGREEMENT TO MEDIATE

Date: _____

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

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

Name of Mediator (Please print and sign here)

Annex VI-C

**ARBITRATION AGREEMENT
(Arbitration Only)**

Our Ref: _____

Date Received: _____

(For FDRC's Official Use Only)

THIS AGREEMENT IS MADE ON _____

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

(Name of Party: Please Print)

(Name of Party: Please Print)

SUMMARY OF THE DISPUTE

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

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

ARBITRATION AGREEMENT

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

GOVERNING LAW

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

SIGNING OF THE ARBITRATION AGREEMENT

Date: _____

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

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

CONFIDENTIALITY AGREEMENT

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

(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. The Parties and the Mediator further agree that the Mediator shall file a Mediation Certificate in the form set out in Annex IX of the Terms of Reference referred to in Clauses 23 and 25 with the FDRC.

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

- (i) the matters that transpired in the course of the Mediation;*
 - (ii) any views expressed, or suggestions or proposals for settlement made by any Party for the resolution of the dispute in the course of the Mediation;*
 - (iii) any views expressed by the Mediators;*
 - (iv) all materials made available and communication made during the Mediation; and/or*
 - (v) all materials, information, correspondence (including emails), issues/matters discussed, proposals and counterproposals produced for or arising in relation to the Mediation including but not limited to any Mediated Settlement Agreement (and the substance and/or terms thereof) except as directly necessary to implement and enforce any such settlement agreement.*
- (c) Save as shall be required under any written law, regulations or an order of court, all materials made available, documents or other information produced for or arising in relation to the Mediation shall be privileged and shall not be admissible as evidence or discoverable in any proceedings connected with the Eligible Dispute, unless such documents would have in any event been admissible or discoverable in such proceedings.*
- (d) The Parties shall not call the Mediator or the FDRC (or any of its employee, officer or representative) as a witness, consultant, mediator, arbitrator or expert in any subsequent proceedings relating to the Eligible Dispute.*
- (e) The Parties' obligation of confidentiality is not affected by, and would continue with full force and effect after the conclusion of the Mediation.*
- (f) Where a Party is a corporate entity, it shall ensure that all its officers, representatives and/or agents comply with Clause 12.*
- (g) The fact that this Mediation has occurred, is continuing, or has concluded shall not be considered confidential.*

13. *Where a Party privately discloses to the Mediator any information in confidence before, during or after the Mediation, the Mediator will not disclose that information to any other Party or person without the consent of the Party disclosing it, unless required by law to make disclosure.*
14. *The Parties must not take any verbatim recording or notes of the Mediation.*
15. *The Parties acknowledge that, by entering into Mediation according to the terms of this Agreement, they agree and accept that information shall be used by the FDRC for research, evaluation or educational purposes without revealing, or being likely to reveal, directly or indirectly, the identity of the Parties.*
16. *The Parties further agree that the FDRC shall have the right to make observations, including the right to appoint observer(s) to attend and/or observe any Mediation conducted under the Rules. The Parties and the Mediator shall be notified in writing of any such observation. Observer(s) shall comply with Clauses 11-15 as if he is a Party or Mediator to this Agreement and sign the Confidentiality Agreement set out in Annex VII of the Terms of Reference.”*

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)

(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.
3. This Agreement shall be construed under the Laws of Hong Kong Special Administrative Region.

SIGNING OF THE SETTLEMENT AGREEMENT

Date: _____

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

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

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

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

Please put a "√" in where appropriate.

This is to certify that the Mediation took place between (Eligible Claimant)
_____ and (Financial Institution)
_____ on _____

Date	From (Time)	To (Time)

has been:-

- concluded with the following outcome:
 - Full and final settlement reached, settlement agreement duly signed.
 - Partial settlement reached, partial 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 of Mediator (in print): _____

**Joint Consent to Submission of Claim(s) under
the Financial Dispute Resolution Scheme (“FDRS”)**

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

Please put a “√” in where appropriate.

We, (name of the Financial Institution (“FI”)) _____ and
(name of customer of the FI) _____

agree and consent that the below stated claim and choice of dispute resolution process shall be handled under the FDRS in accordance with the *FDRS Mediation and Arbitration Rules*, and subject to the attached *Informed Consent Form* signed by the customer:

I. Type of claim:

- 1. a claim of customer against FI brought by the FI (which will only proceed in Mediation First, Arbitration Next if it is a Standard Eligible Dispute).
- 2. a claim of customer against FI brought by FI or its customer which exceeds Maximum Claimable Amount and/or is beyond the Limitation Period (as defined under Paragraph 2 of Terms of Reference of the FDRC).
- 3. an FI counterclaim against the customer brought by FI to be handled individually or alongside with claim of customer against the FI.
- 4. an FI claim brought by FI against the customer.

II. Choice of dispute resolution process is (not applicable to Standard Eligible Dispute):

- Mediation First, Arbitration Next Mediation Only Arbitration Only.

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

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

Date:

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

Informed Consent Form

I/We am/are the customer(s) of the _____.
(name of the Financial Institution)

I/We have made enquiry with the Financial Dispute Resolution Centre (FDRC) or attended the FDRC information session on the Financial Dispute Resolution Scheme (FDRS) services

at _____ on _____.
(Time) (Date)

Declaration

1. I/We acknowledge that the FDRC has explained the FDRS services and understand the services.
2. I/We fully understand that I/we may solicit independent legal advice or expert opinion on the dispute resolution process at the FDRC and my/our consent given under ***Joint Consent to Submission of Claim(s) under the FDRS*** and its implications.

Name of customer 1 (*Please print and sign here*) (*with Company Chop, if applicable*)

Name of customer 2 (For joint-account)
(*Please print and sign here*) (*with Company Chop, if applicable*)

Date: