

MEDIATION AGREEMENT

THIS AGREEMENT IS MADE THE DAY OF

BETWEEN Anna K. C. Koo of Justice Chambers, 2901, Tower One, Lippo Centre, 89 Queensway, Admiralty, Hong Kong (hereinafter described as the Mediator)

AND

.....of

AND

.....of

(each a “party” and together the “parties”)

in relation to a mediation to be held

on

at.....

1. Introduction

- 1.1 The parties have a dispute (the “Dispute”) which they cannot themselves resolve.
- 1.2 The parties desire to achieve a resolution of the Dispute which is acceptable to each of them.
- 1.3 To reach their resolution, the parties wish to have the Dispute mediated and the Mediator to mediate the Dispute.

2. Appointment of the Mediator and Choice of the Mediation Rules

- 2.1 The parties together and individually request the Mediator to mediate the Dispute and the Mediator hereby agrees to do so.
- 2.2 The parties and the Mediator agree that the terms and conditions upon which the Mediator has agreed to mediate the Dispute are contained in this Agreement and in the current Rules for mediation published by the Hong Kong International Arbitration Centre (the “Rules”).
- 2.3 The parties agree with each other and the Mediator to be bound by the terms and conditions contained in this Agreement and for the mediation to be conducted in accordance with the Rules.

2.4 Expressions used in this Agreement are defined and have the meaning given to them in paragraph 11 of this Agreement. This Agreement is subject to the Rules and, in the event of any discrepancy, the Rules shall have precedence.

3. Conduct of the Mediation

3.1 The mediation, including all preliminary steps, joint sessions and individual sessions, shall be conducted in accordance with the Rules.

3.2 The Mediator may communicate with a party or the parties orally and/or in writing.

3.3 The parties agree to attend the mediation venue at the time and place prescribed by the Mediator from time to time and the parties shall comply with every reasonable request of the Mediator.

4. Role of the Mediator

4.1 The Mediator will facilitate communication and negotiation between the parties to assist them to reach a voluntary agreement regarding the resolution of the whole or part of the Dispute.

4.2 The Mediator will conduct the mediation in an impartial manner and avoid conduct that gives the appearance of favouritism, bias or prejudice toward or against any party.

4.3 The Mediator shall not have any pecuniary or other interest or be connected in any way with either of the parties or any of their properties.

4.4 The Mediator acknowledges that he has disclosed to the parties to the best of his knowledge any prior dealings he has had with either of the parties and any interest in the Dispute.

4.5 If, in the course of the mediation, the Mediator becomes aware of any circumstance that might reasonably be considered to affect his capacity to act impartially, he will immediately inform the parties of those circumstances. The parties will then confer and, if agreed, continue with the mediation.

4.6 The Mediator will not issue a decision of the Dispute or impose upon the parties a solution to the Dispute.

4.7 Although the parties acknowledge by signing this Agreement that they are aware that the Mediator has professional qualifications as a lawyer, the parties specifically acknowledge that it is no part of the function of the Mediator:

(a) to give professional advice to either of the parties; or

(b) to make decisions for or on behalf of a party to resolve the Dispute.

4.8 The Mediator may at any time upon giving of a 7-day written notice to the parties terminate this Agreement and abandon the mediation if in his judgement further efforts at mediation would not lead to a settlement of the Dispute. If this Agreement is so terminated, the Mediator shall be paid at the rate and in the manner set forth in clause 10 hereof up to the date of termination.

5. Role of the Parties

- 5.1 Each of the parties agrees that they came to the mediation voluntarily and that neither has exerted any pressure or influence over the other to participate in the mediation.
- 5.2 The parties confirm that they each have a desire, ability and authority to resolve the Dispute.
- 5.3 The parties agree that each of them is entitled to consult and retain lawyers for counsel and advice concerning their rights, interests and obligations in the Dispute and they may consult with their lawyer on these matters. By agreement, lawyers representing the parties may be present during the mediation.
- 5.4 The parties each acknowledge that they are not aware of any impediment to acknowledging and signing any terms of settlement reached at the mediation.

6. Confidentiality and Inadmissibility of Mediation Communications

- 6.1 The Mediator will not have any separate meeting or discussion with either party except:
 - (a) immediately prior to the mediation at the individual session to discuss and explain the purpose, function and parameters of the mediation; or
 - (b) with the knowledge of the other parties during the course of the mediation process.
- 6.2 The parties acknowledge that provided each such meeting is with the knowledge of the other parties, the Mediator may meet with either party alone as frequently and for such lengths of time as he in his absolute discretion thinks fit.
- 6.3 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.
- 6.4 The parties acknowledge and agree as between themselves and the Mediator that for a successful mediation, open and honest communications are essential. Accordingly, every person involved in the mediation:
 - (a) will keep confidential all information arising out of or in connection with the mediation, including the fact and terms of any settlement, but not including the fact that the mediation is to take place or has taken place or where disclosure is required by law to implement or to enforce terms of settlement or to notify their insurers, insurance brokers and/or accountants; and
 - (b) acknowledges that all such information passing between the parties and the Mediator, however communicated, is agreed to be without prejudice to any party's legal position and may not be admitted as evidence or disclosed to any judge, arbitrator or other decision-maker in any legal or other formal process, except where otherwise admissible or disclosable in law.

- 6.5 The parties will not call the Mediator as a witness, nor require him to produce in evidence any records or notes relating to the mediation, in any litigation, arbitration or other formal process arising from or in connection with the Dispute and the mediation; nor will the Mediator act or agree to act as a witness, expert, arbitrator or consultant in any such process. If any party does make such an application, that party will fully indemnify the Mediator in respect of any costs incurred in resisting and/or responding to such an application, including reimbursement at the Mediator's standard hourly rate for the Mediator's time spent in resisting and/or responding to such application.
- 6.6 The Mediator is not required to maintain notes or records of the mediation. The parties must not take any verbatim recording of the mediation. The parties may take notes during the mediation, but shall not retain any notes of the mediation.

7. Termination of Mediation

- 7.1 While it is hoped that the parties will reach a voluntary agreement regarding the resolution of the whole or part of the Dispute, either or all parties may, at any time, withdraw from the mediation.
- 7.2 If the Mediator determines that it is not possible to resolve the Dispute through mediation or for any other reason, the Mediator may in his discretion terminate the process.

8. Settlement of the Dispute

- 8.1 When the parties reached a voluntary agreement regarding the Dispute, the Mediator will assist the parties to set out the terms of settlement in writing. The parties can then agree to either:
- (a) sign the written settlement agreement and make it binding between them to the extent that the law may allow, including allowing it to be disclosed;
 - (b) accept it as a without prejudice memorandum of understanding upon which each party can consult their lawyer. The parties' lawyers shall thereafter be responsible for concluding binding terms of settlement between the parties, although a further meeting with the Mediator may be required.

9. Exclusion of Liability and Indemnity

- 9.1 Except in the case of fraud, the Mediator will not be liable to a party for any act or omission, whether negligent or misleading or otherwise, in the performance or purported performance of the Mediator's obligations under this Agreement.
- 9.2 Except in the case of fraud, the parties jointly and severally indemnify the Mediator against all claims, including all legal fees incurred by the Mediator, on an indemnity basis, arising out of or in any way referable to any act or omission by the Mediator in the performance or purported performance of his obligations under this Agreement.

10. Mediation Fees and Costs

- 10.1 The parties will pay the fees and expenses of the Mediator for conducting the mediation for the Dispute (the "Mediation Fees"). Each party agrees to share the Mediation Fees equally and also bear its own legal and other costs and expenses of preparing for and attending the mediation ("each Party's Legal Costs"). However, each party further agrees that any court or tribunal may treat both the Mediation Fees and each Party's Legal Costs as costs in the case in relation to any litigation or arbitration where the court or tribunal has power to assess or make orders as to costs, whether or not the mediation results in settlement of the Dispute.
- 10.2 The Mediation Fees shall include payment for all necessary work for the purpose and in the course of the mediation, including conferences and correspondence between the Mediator and the parties, preparation for the mediation by the Mediator, the expenses for using the venue of the mediation, joint sessions and individual sessions with the parties, telephone attendances, preparation of documents, travel time, and any disbursements incurred by the Mediator.
- 10.3 The Mediation Fees shall be HK\$2,500 per hour. A deposit of HK\$15,000 is due and payable upon the execution of this Agreement by the parties and shall be deposited with the Mediator.
- 10.4 There shall be refund of the deposit in accordance with the Rules after charging for disbursements and time spent at the hourly rate.
- 10.5 The Mediator may render bills for the Mediation Fees when the Mediator considers suitable and, in the event that they exceed the deposit, may require the parties to place on deposit a further sum to cover anticipated fees or expenses prior to proceeding with the mediation.
- 10.6 The Mediator shall maintain records of the time spent by him in connection with the provision of the mediation services and shall produce such records to the parties at all reasonable times on request.

11. Definitions and Interpretation

- 11.1 Unless otherwise provided in this Agreement, the following terms shall have the following meaning:
 - (a) joint session: meeting between the mediator and all parties.
 - (b) individual session: meeting between the mediator and a party.
- 11.2 Where appropriate the singular in the Agreement shall include the plural and vice versa, and the male shall include the female.

Signed

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Anna K. C. Koo
Mediator

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For and on behalf of

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For and on behalf of