

## AGREEMENT TO MEDIATE

This Agreement is made on: (date) \_\_\_\_\_

Between the following persons (in this Agreement called the “Parties”)

- (name) \_\_\_\_\_ at (contact) \_\_\_\_\_
- (name) \_\_\_\_\_ at (contact) \_\_\_\_\_
- And St. John's Cathedral Counselling Service at 7/F, Wings Building, 110-116 Queen's Road Central Hong Kong (in this Agreement called the “Mediator”)

### APPOINTMENT OF MEDIATOR

1. The Parties appoint the Mediator to mediate the Dispute between them in accordance with the terms of this Agreement. The Mediator shall nominate a HK accredited mediator employed by or under contract with the Mediator to perform the mediation services. All references to “Mediator” include the aforesaid nominated person. The Mediator shall procure that the nominated mediator shall comply with the duties and obligations of the Mediator as set out in this Agreement.

### ROLE OF THE MEDIATOR

2. The Mediator will be neutral and impartial. The Mediator will assist the Parties to attempt to resolve the Dispute by helping them to:
  - a. systematically isolate the issues in dispute;
  - b. develop options for the resolution of these issues; and
  - c. explore the usefulness of these options to meet their interests and needs.
3. The Mediator may meet with the Parties together or separately.
4. The Mediator will not:
  - a. give legal or other professional advice to any Party; or
  - b. impose a result on any Party; or
  - c. (c) make decisions for any Party.

### CONFLICT OF INTEREST

5. 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 Dispute.
6. 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 Parties.

## COOPERATION BY THE PARTIES

7. 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

8. The Parties agree to attend the mediation with authority to settle within any range that can reasonably be anticipated.
9. At the mediation each Party may be accompanied by one or more persons, including legally qualified persons, to assist and advise them.

## COMMUNICATION BETWEEN THE MEDIATOR AND THE PARTIES

10. Any information disclosed to a Mediator in private is to be treated as confidential by the Mediator unless:
  - a. the Party making the disclosure states otherwise; or
  - b. compelled by law or public policy grounds; or
  - c. such information discloses an actual or potential to human life or safety; or
  - d. if a Party is being provided psychotherapy or other services by St. John's Cathedral Counselling Service (through other employees or contractors other than the mediator appointed to provide the mediation services hereunder), the mediator and psychotherapists appointed by the Mediator to serve that Party may share amongst themselves as a team any information divulged or resulting from the services provided by St. John's Cathedral Counselling Service.

## CONFIDENTIALITY OF THE MEDIATION

11. 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; 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 produced as evidence or disclosed to any judge, arbitrator or other decision-maker in any legal or other formal process, except where otherwise disclosable in law.
12. 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 it comes within the exceptions stated in clause 10 above.
13. The Parties will not call the Mediator as a witness, nor require the Mediator 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.

14. No verbatim recording or transcript of the mediation will be made in any form.

#### TERMINATION OF THE MEDIATION

15. A Party may terminate the mediation at any time after consultation with the Mediator.

16. The Mediator may terminate the mediation if, after consultation with the Parties, the Mediator feels unable to assist the Parties to achieve resolution of the Dispute.

#### SETTLEMENT OF THE DISPUTE

17. 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.

#### EXCLUSION OF LIABILITY AND INDEMNITY

18. The Mediator 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.

19. Each Party indemnifies the Mediator 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.

20. 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.

#### MEDIATION CODE

21. The mediation shall proceed according to the terms of this Agreement and the Hong Kong Mediation Code.

#### COST OF THE MEDIATION

22. The Parties will be responsible for the fees and expenses of the Mediator in accordance with the FEE SCHEDULE annexed hereto.

#### LEGAL STATUS AND EFFECT OF THE MEDIATION

23. Any contemplated or existing litigation or arbitration in relation to the Dispute may be started or continued despite the mediation, unless the Parties agree or a court orders otherwise.

24. 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.

**COUNTERPARTS AND SIGNIFYING AGREEMENT ELECTRONICALLY**

25. This Agreement may be signed and executed in one or more counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument.

26. This Agreement need not be signed physically on paper. Any Party can signify their consent and agreement to this Agreement via in email or other electronic means through texting in SMS, whatsapp, messenger or similar on-line texting applications.

**FULL DISCLOSURE (applicable to family & divorce mediation)**

- 27. (a) The Parties agree to fully and honestly disclose all relevant information as requested by the Mediator and by each other.
- (b) Any failure by either of the Parties to make full and frank disclosure may result in the setting aside of any agreement reached in mediation.

**SIGNATURES**

|   |                           |
|---|---------------------------|
| Party Name:<br>Signature:   | Party Name:<br>Signature: |
| The Mediator: St. John's Cathedral Counselling Service (Represented by Mathew Ho or Teresa kai)<br>Signature: |                           |

## FEE SCHEDULE

### Mediation Fees of St. John's Counselling Service (as of 1 Apr 2021)

#### 1. Mediation Session Fees

| Fees Per Hour   | HK\$        | HK\$             | HK\$         | HK\$          |
|---|-------------|------------------|--------------|---------------|
| 1 <sup>st</sup> Individual Session <i>(paid by attending party)</i> | 1,250       | 1,250            | 1,250        | 1,250         |
| Individual Sessions <i>(paid by attending party)</i>                | 1,250       | 1,500            | 1,800        | 1,800         |
| Joint Sessions <i>(apportioned between parties equally)</i>         | 2,000       | 2,600            | 3,000        | 3,000         |
| <b>If meet following financial criteria</b>                         | <b>if ↓</b> | <b>if ↓</b>      | <b>If ↓</b>  | <b>If ↓</b>   |
| The higher of :-  |             |                  |              |               |
| 1. Monthly Income * <i>Family (not individual)</i><br>or            | < 90K<br>or | 90K - 150K<br>or | > 150K<br>or | unknown<br>or |
| 2. Total Assets * <i>excluding self-use home</i>                    | < 10M       | 10M - 20M        | > 20M        | unknown       |

#### 2. Additional Fees

- a. For administration. Emailing, telephoning and texting for administration and appointment purposes will be charged at \$300 per \$15 minutes. This charge will be collected at termination of the mediation. A maximum charge will be 2 hours unless prior notice of additional time charge is given to clients.
- b. For drafting documents. A per page charge of \$1000 per A4 normal font single space page for initial drafting and subsequent substantial amendments. "Substantial amendment" means any change to the general principles or structure of the settlement or the amount of details required (excluding typing or grammar errors, or change in numbers or dates).

#### 3. Apportionment of Fees between the parties

- a. Each party is responsible for their Individual Session fees.
- b. The liability to pay for Joint Sessions and Additional Fees are apportioned equally between the parties, or in the manner as they may agree.

#### 4. Cancellation, Rescheduling & Refunds

- a. 24 hours prior written notice is required for any cancellation or rescheduling of any session; failing which full fees are charged to the requesting party (who shall also be responsible for the other parties' share of any joint session fees).
- b. No refund or reduction in fees for meetings ending earlier than the scheduled time duration.

## Companion Agreement and Undertaking

*(Add-on to Agreement to Mediate)*

I / WE, (companion name(s)) \_\_\_\_\_ the undersigned, accompanying (name of party) \_\_\_\_\_ to undergo the mediation under the Agreement to Mediate to which this Add-on is appended, HEREBY UNDERTAKE and AGREE to observe the following rules of confidentiality in consideration of being allowed to participate in any part of the mediation:

(a) I/we shall not disclose to any 3rd party, or make copies of, any information, document or communication disclosed during the mediation unless required by a Court to do so.

(b) All discussions and negotiations in mediation are confidential, privileged and without prejudice. Information/documents may be shared by the mediating parties with their lawyers, but cannot be used as evidence in any Court unless disclosed through the court process.

(c) I/we shall not tape, video-tape or record the mediation.

### **Signature(s) of the Companion(s)**

\_\_\_\_\_  
Name:  
HKID No (first 4 digits):

\_\_\_\_\_  
Name:  
HKID No (first 4 digits):