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Penta Arbitration Rules

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Introduction

These Rules have been adopted by the Tribunal of Penta Arbitration for use by Parties who seek the formality and convenience of an administered arbitration.

Application

These Rules apply to any dispute between a Claimant and a Respondent that is submitted to Arbitration under these Rules. Upon submission of the Notice of Arbitration, these Rules are incorporated by reference into the Parties' arbitration agreement.

These Rules may be adopted in an arbitration agreement or by an agreement in writing at any time before or after a dispute has arisen. Provisions regarding the scope of application of these Rules are set out in Article 1.

Effectiveness

These Rules have been adopted to take effect from 13th August 2014, in accordance with the provisions of Article 1 of the Rules.

Suggested Clauses

1. The following model clause may be adopted by the Parties to a contract who wish to have any future disputes referred to arbitration in accordance with these Rules:

"Any dispute or difference arising out of or in connection with this contract shall be referred to and determined by arbitration at the Tribunal of Penta Arbitration and in accordance with the Penta Arbitration Rules. The law of this arbitration clause shall be the laws of Hong Kong. The seat of arbitration should be Hong Kong. The arbitration shall be international and the subject-matter of the arbitration agreement relates to more than one country. The number of arbitrators shall be one. The arbitration proceedings shall be conducted in Chinese and the Award shall be written in English."

2. Parties to an existing dispute in which neither an arbitration clause nor a previous agreement with respect to arbitration exists, who wish to refer such dispute to arbitration under the Rules, may agree to do so in the following terms:

"We, the undersigned, agree to refer to arbitration administered by the Tribunal of Penta Arbitration under the Penta Arbitration Rules any dispute, controversy, difference or claim (including any dispute regarding non-contractual obligations) arising out of or relating to:

(Brief description of contract under which disputes, controversies, differences or claims have arisen or may arise.)

The law of this arbitration clause shall be the laws of Hong Kong. The seat of arbitration shall be Hong Kong. The number of arbitrators shall be one. The arbitration shall be international and the subject-matter of the arbitration agreement relates to more than one country. The arbitration proceedings shall be conducted in Chinese and the Award shall be written in English."

Signed: _____ (Claimant)

Signed: _____ (Respondent)

Date: _____ "

Article 1 – Scope of Application

- 1.1 These Rules shall govern arbitrations where an arbitration agreement (whether entered into before or after a dispute has arisen) either: (a) provides for these Rules to apply; or (b) subject to Articles 1.2 and 1.3 below, provides for arbitration "administered by the Tribunal of Penta Arbitration" or words to similar effect.
- 1.2 Nothing in these Rules shall prevent the Parties to a dispute or arbitration agreement from naming the Tribunal of Penta Arbitration as the appointing authority, or from requesting certain administrative services from the Tribunal of Penta Arbitration, without subjecting the arbitration to the provisions contained in these Rules. For the avoidance of doubt, these Rules shall not govern arbitrations where an arbitration agreement provides for arbitration under other rules, including other rules adopted by the Tribunal of Penta Arbitration from time to time.
- 1.3 Subject to Article 1.4, these Rules shall come into force on 13th August 2014 and, unless the Parties have agreed otherwise, shall apply to all arbitrations falling within Article 1.1 in relation to which the Notice of Arbitration is submitted on or after that date.

Article 2 – Notices and Calculation of Periods of Time

- 2.1 Any notice or other written communication pursuant to these Rules shall be deemed to be received by a party or arbitrator or by the Tribunal of Penta Arbitration if: (a) delivered by hand, registered post or courier service to (i) the address of the addressee or its representative as notified in writing in the arbitration; or (ii) in the absence of (i), to the address specified in any applicable agreement between the relevant Parties; or (iii) in the absence of (i) or (ii), to any address which the addressee holds out to the world at the time of such delivery; or (iv) in the absence of (i), (ii) or (iii), to any last known address of the addressee; or (b) transmitted by facsimile, e-mail or any other means of telecommunication that provides a record of its transmission, including the time and date, to: (i) the facsimile number or email address (or equivalent) of that person or its representative as notified in the arbitration; or (ii) in the absence of (i), to the facsimile number or email address (or

equivalent) specified in any applicable agreement between the relevant Parties; or (iii) in the absence of (i) and (ii), to any facsimile number or email address (or equivalent) which the addressee holds out to the world at the time of such transmission.

- 2.2 Any such notice or written communication shall be deemed to be received on the earliest day when it is delivered pursuant to paragraph (a) above or transmitted pursuant to paragraph (b) above. For this purpose, the date shall be determined according to the local time at the place of receipt. Where such notice or written communication is being delivered or transmitted to more than one party, or more than one arbitrator, such notice or written communication shall be deemed to be received when it is delivered or transmitted pursuant to paragraph (a) or (b) above to the last intended recipient.
- 2.3 For the purposes of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice, notification, communication or proposal is received or deemed to be received. If the last day of such period is an official holiday or a non-business day at the place of receipt, the period shall be extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time shall be included in calculating the period.

Article 3 – Interpretation of Rules

- 3.1 The Tribunal of Penta Arbitration shall have the power to interpret all provisions of these Rules. The Arbitrator shall interpret the Rules insofar as they relate to its powers and duties hereunder. In the event of any inconsistency between such interpretation and any interpretation by the Tribunal of Penta Arbitration, the Tribunal of Penta Arbitration's interpretation shall prevail.
- 3.2 The Tribunal of Penta Arbitration has no obligation to give reasons for any decision it makes in respect of any arbitration commenced under these Rules. All decisions made by the Tribunal of Penta Arbitration under these Rules are final and, to the extent permitted by any applicable law, not subject to appeal.

- 3.3 These Rules include all Schedules attached thereto as amended from time to time by the Tribunal of Penta Arbitration, in force on the date on which the Notice of Arbitration is submitted.
- 3.4 The Tribunal of Penta Arbitration may from time to time issue practice notes to supplement, regulate and implement these Rules for the purpose of facilitating the administration of arbitrations. English is the original language of these Rules. In the event of any discrepancy or inconsistency between the English version and a version in any other language, the English version shall prevail.

Article 4 – Definitions

- 4.1 ‘Arbitration’ means the process of arbitration of a dispute under the Tribunal of Penta Arbitration;
- 4.2 ‘Arbitrator’ means a person who is appointed by the Tribunal of Penta Arbitration to act as an arbitrator;
- 4.3 ‘Award’ means an arbitral award rendered by the Arbitrator which is final and binding on the Claimant and the Respondent;
- 4.4 ‘Claim’ means a claim against a Respondent;
- 4.5 ‘Claimant’ means a person sending or who has sent a Notice of Arbitration to the Tribunal of Penta Arbitration;
- 4.6 ‘Court’ means to the courts of the Hong Kong Special Administrative Region;
- 4.7 ‘Hearing’ means a hearing fixed on a date by the Arbitrator in the process of Arbitration;
- 4.8 ‘HKEMC’ means the Hong Kong Efficient Legal Professional Mediation Centre;
- 4.9 ‘Hong Kong’ means the Hong Kong Special Administrative Region;

- 4.10 'List of Arbitrators' means the Tribunal of Penta Arbitration's list of arbitrators for arbitration;
- 4.11 'Notice of Arbitration' means a written notice sent by a Claimant to the Tribunal of Penta Arbitration and the Respondent to request the initiation of Arbitration;
- 4.12 'Response' means a written response to the Notice of Arbitration sent by the Respondent to the Tribunal of Penta Arbitration and the Claimant;
- 4.13 'Response to Counterclaim' means a written response to the Counterclaim sent by the Claimant to the Tribunal of Penta Arbitration and the Respondent;
- 4.14 'Parties' mean a Claimant and the relevant Respondent;
- 4.15 'Rule' means a term and/or condition set out in these Rules;
- 4.16 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.
- 4.17 References in the Rules to the seat of arbitration shall mean the place of arbitration as referred to in Article 20.1 of the UNCITRAL Model Law on International Commercial Arbitration as adopted on 21st June 1985 and as amended on 7th July 2006.

Article 5 – Notice of Arbitration

- 5.1 The Arbitration may be commenced by the Claimant giving to the Tribunal of Penta Arbitration a Notice of Arbitration in written form together with all written submissions and copies of all the relevant supporting documents. The Notice of Arbitration shall be filed by the Claimant in a number of copies sufficient to provide one copy each for the Arbitrator and for the Tribunal of Penta Arbitration and shall be sent by the Claimant to the Respondent.
- 5.2 The Notice of Arbitration shall include the following:

- (a) a request that the Dispute be referred to Arbitration;
- (b) the names, addresses, telephone numbers and email addresses of the Parties;
- (c) identification of the arbitration agreement that is invoked (if any);
- (d) a statement of the facts supporting the claim;
- (e) the points at issue;
- (f) the legal arguments supporting the claim;
- (g) copies of the documents on which the Claimant will rely which are directly relevant to the points at issue and the outcome of the Arbitration;
- (h) the relief or remedy sought; and
- (i) a proposal on the appointment of Arbitrator and the language of Arbitration (as the case may be).

5.3 The appointment of the Arbitrator shall not be hindered by any controversy with respect to the sufficiency of the Notice of Arbitration, which shall be finally resolved by the Arbitrator. The Claimant shall rectify any non-compliance in the Notice of Arbitration upon a request by the Tribunal of Penta Arbitration within 7 days of the receipt of such request.

5.4 The Arbitration shall be deemed to commence on the date on which the Notice of Arbitration is received by the Tribunal of Penta Arbitration.

Article 6 – Response

6.1 Unless otherwise indicated by the Tribunal of Penta Arbitration, the Respondent shall, within 14 days of the service of the Notice of Arbitration, send to the Claimant the Response, their written submissions together with copies of the documents relied on in addition to those already provided by the

Claimant. The Response shall be filed with the Tribunal of Penta Arbitration in a number of copies sufficient to provide one copy each for the Arbitrator and the Tribunal of Penta Arbitration.

6.2 The Response shall include:

- (a) the names, addresses, telephone numbers and email addresses of the Respondent;
- (b) any response to the information set forth in the Notice of Arbitration;
- (c) a statement of the facts supporting the Response;
- (d) the points at issue;
- (e) the legal arguments supporting the Response;
- (f) any counterclaim, together with a statement of the facts supporting the counterclaim; the points at issue; the legal arguments supporting the counterclaim; and the relief or remedy sought;
- (g) copies of the documents on which the Respondent will rely which are directly relevant to the points at issue and the outcome of the Arbitration; and
- (h) a proposal on the appointment of Arbitrator and the language of Arbitration (as the case may be).

6.3 Upon receipt of the Notice of Arbitration and the relevant response from the Parties, a single Arbitrator will be appointed pursuant to Article 11 who shall resolve any dispute or controversy, if any, in connection with the language of the Arbitration and/or the sufficiency of the Notice of Arbitration and/or the relevant response.

6.4 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 of Arbitration, or an incomplete or late response to the Notice of Arbitration which shall be finally resolved by the Arbitrator. The Respondent

shall rectify any non-compliance in the Response upon request by the Tribunal of Penta Arbitration within 7 days of the receipt of such request.

- 6.5 If, within 14 days of the service of the Notice of Arbitration, the Respondent has failed to file the Response to the Tribunal of Penta Arbitration without showing sufficient cause for such failure, the Tribunal of Penta Arbitration may proceed with the arbitration and make an award on the basis of the evidence before it without a hearing unless the Tribunal of the Penta Arbitration is of the opinion that a hearing is necessary.

Article 7 – Response to Counterclaim

- 7.1 Unless the Arbitrator decides otherwise or it is agreed by the Parties, the Claimant shall, within 7 days of the service of the Response, send to the Respondent a Response to counterclaim (if any), their written submissions together with copies of the documents relied on in addition to those already provided in the Notice of Arbitration and the Response. The Response to counterclaim shall be filed with the Tribunal of Penta Arbitration in a number of copies sufficient to provide one copy each for the Arbitrator and the Tribunal of Penta Arbitration.

- 7.2 The Response to Counterclaim shall include:

- (a) any response to the information set forth in the counterclaim of the Response; and
- (b) a statement of the facts supporting the Response to Counterclaim;
- (c) the points at issue;
- (d) the legal arguments supporting the Response to Counterclaim;
- (e) copies of the documents on which the Claimant will rely which are directly relevant to the points at issue and the outcome of the Arbitration.

- 7.3 If, within 7 days of the service of the Response, the Claimant has failed to file

the Response to Counterclaim to the Tribunal of Penta Arbitration without showing sufficient cause for such failure, the Tribunal of Penta Arbitration may proceed with the arbitration in respect of the counterclaim and make an award in respect of the counterclaim on the basis of the evidence before it without a hearing unless the Tribunal of the Penta Arbitration is of the opinion that a hearing is necessary.

Article 8 – Request for Production of Documents and Information

- 8.1 The Parties may request documents and other information from each other. Unless otherwise specified by the Tribunal of Penta Arbitration, all requests for the production of documents and other information must be served on the other Party and the Tribunal of Penta Arbitration within 7 days after the service of Response.
- 8.2 The Arbitrator may consider requesting the documents and other information at the time of making the Preliminary Enquiry.

Article 9 – Preliminary Enquiry

- 9.1 The Arbitrator shall, unless the Arbitrator decides otherwise or it is agreed by the Parties, within 14 days of the service of the Response or 7 days of the service of the Response to counterclaim or 7 days of the request of the production of documents and information (as the case may be), make a preliminary enquiry to require the Parties to submit to him and to each other such further documents or information as he considers to be necessary for him to make his decision. Unless the Arbitrator is of the opinion that a preliminary meeting is necessary, the preliminary enquiry shall be conducted without a meeting. The Arbitrator shall be entitled to make a written, audio and/or video record of the preliminary meeting (if any).
- 9.2 The Parties shall, unless the Arbitrator decides otherwise or it is agreed by the Parties, within 14 days of the request under the Preliminary Enquiry, send to the other party a statement of the information together with copies of the documents in the request under the preliminary enquiry. It shall be filed with the Tribunal of Penta Arbitration in a number of copies sufficient to provide

one copy each for the Arbitrator and the Tribunal of Penta Arbitration. The Parties shall not produce any additional document after the submission of further documents or information under the Preliminary Enquiry unless the Arbitrator decides otherwise.

Article 10 – Hearing

- 10.1 The Arbitrator shall, unless the Arbitrator decides otherwise, fix a date for the Hearing within one month after the making of the preliminary enquiry.
- 10.2 The Arbitrator shall be entitled to proceed with the arbitration notwithstanding the failure or refusal of any party to comply with these Rules or with the Arbitrator's written orders or written directions. Such power shall extend to the Arbitrator to proceed ex-parte.
- 10.3 If one of the Parties, duly notified under these Rules, fails to present its case or attend the Hearing in accordance with these Rules including as directed by the Arbitrator, without showing sufficient cause for such failure, the Arbitrator may proceed with the arbitration and make an award on the basis of the evidence before it.
- 10.4 The Parties' submissions (if any) shall be provided to the other Party at least 7 days before the hearing. The submissions shall be filed in a number of copies sufficient to provide one copy each for the Arbitrator and for the Tribunal of Penta Arbitration.
- 10.5 Unless the Arbitrator decides otherwise, the Hearing shall be conducted in person. The Arbitrator have the sole discretion to decide the Hearing to be conducted by video link, by telephone, online or documents only upon the request of the Party.
- 10.6 Unless the Arbitrator decides otherwise, the Hearing shall be conducted on the date of the Hearing from 10am to 1pm and from 2pm to 5pm.
- 10.7 The Arbitrator shall be entitled to make a written, audio and/or video record of the Hearing.

10.8 Unless the Arbitrator decides otherwise, the sequence of the Hearing will be as follows:

- (a) The Claimant will make his submission for not more than one hour;
- (b) The Respondent will make his submission for not more than one hour thereafter;
- (c) The Arbitrator will make enquiries with the Parties for not more than three hours thereafter. The Arbitrator can at his sole discretion set the time for making enquiries with each Party.
- (d) The Respondent will make his reply for not more than thirty minutes thereafter;
- (e) The Claimant will make his reply for not more than thirty minutes thereafter.

Article 11 – Appointment of Arbitrator

11.1 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 Tribunal of Penta Arbitration shall have the sole discretion to appoint the Arbitrator and shall confirm in writing to the Parties the appointment of the Arbitrator.

11.2 The appointment of the Arbitrator takes effect upon confirmation in writing by the Tribunal of Penta Arbitration.

Article 12 – Disclosures Required of Arbitrators

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

12.2 Before appointing an Arbitrator, the Tribunal of Penta Arbitration 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 Tribunal of Penta Arbitration, any circumstances which might preclude the potential Arbitrator from rendering an objective and impartial determination in the proceedings, 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 the 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.

12.3 The obligation under Article 12.2 to disclose interests, relationships, or circumstances that might preclude a potential Arbitrator from rendering an objective and impartial determination is a continuing duty that requires an Arbitrator who accepts appointment to arbitration proceedings to disclose, at any stage of the proceeding, any such interests, relationships, or circumstances that arise, or are recalled or discovered.

12.4 The Tribunal of Penta Arbitration will inform the Parties of any information disclosed to the Tribunal of Penta Arbitration under Articles 12.2 and 12.3 by the potential Arbitrator and/or the Arbitrator unless the potential Arbitrator declines appointment or voluntarily withdraws from the Arbitration as soon as the Arbitrator learns of any interest, relationship or circumstance that might preclude the Arbitrator from rendering an objective and impartial determination in the proceedings, or the Tribunal of Penta Arbitration removes the Arbitrator.

12.5 Subject to Articles 12.2 and 12.3, the Arbitrator shall confirm in writing that there is no conflict of interest in relation to his appointment as the Arbitrator to the Dispute.

Article 13 – Challenge and Removal of Arbitrator by the Tribunal of Penta Arbitration

- 13.1 The Tribunal of Penta Arbitration may remove an Arbitrator due to the reason of conflict of interest or bias, either upon the request of a Party or on the Tribunal of Penta Arbitration's own initiative.
- 13.2 Any challenge of an Arbitrator, whether for an alleged lack of impartiality or independence, or otherwise, shall be made by a Party to the Tribunal of Penta Arbitration of a written statement specifying the facts and circumstances on which the challenge is based and shall be decided by HKEMC.
- 13.3 For a challenge to be admissible, it must be submitted by a Party either within 7 days from receipt by that Party of the confirmation of the Arbitrator, or within 7 days from the date when the Party making the challenge was informed of the facts and circumstances on which the challenge is based if such date is subsequent to the receipt of such notification.
- 13.4 The Tribunal of Penta Arbitration will, in its sole discretion, decide on the admissibility and, at the same time, if necessary, on the merits of a challenge and 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.
- 13.5 The Tribunal of Penta Arbitration must first notify the Parties in writing before removing an Arbitrator on its own initiative.

Article 14 – Conduct of Arbitration

- 14.1 Subject to Article 18.1, all documents or information supplied to the Arbitrator by one Party shall at the same time be communicated by that Party to the other Parties and HKEMC.

- 14.2 The Arbitrator may, after consulting with the Parties, appoint a secretary. The secretary shall remain at all times impartial and independent of the Parties, and shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence prior to his appointment. A secretary, once appointed and throughout the Arbitration, shall disclose without delay any such circumstances to the Parties unless they have already been informed by him of these circumstances.
- 14.3 The Arbitrator and the Parties shall do everything necessary to ensure the fair and efficient conduct of the Arbitration.
- 14.4 In all matters not expressly provided for in these Rules, the Tribunal of Penta Arbitration, the Arbitrator and the Parties shall act in accordance with the spirit of these Rules.
- 14.5 The Arbitrator shall make every reasonable effort to ensure that an Award is valid.
- 14.6 In all cases, the Arbitrator shall ensure that the Parties are treated impartially and that each Party is given a fair opportunity to present its case, give its reasons and provide evidence.
- 14.7 At any time after the commencement of the Arbitration, the Arbitrator or the Tribunal of Penta Arbitration may require written proof of the authority of any representative of the Party.
- 14.8 No legal representatives, including in-house lawyers, are allowed to act on behalf of either Party in the Arbitration.

Article 15 – Seat of Arbitration

- 15.1 The Parties may agree on the seat of arbitration. Where there is no agreement as to the seat, the seat of arbitration shall be Hong Kong, unless the Arbitrator determines, having regard to the circumstances of the case, that another seat is more appropriate.

Article 16 – Jurisdiction of the Arbitrator to Interpret these Rules

16.1 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.

Article 17 – The Arbitration Process

17.1 The Arbitrator shall conduct and decide the Dispute on the basis of the documents submitted and evidence provided. The Arbitrator shall entitle to limit the documents to be submitted and evidence to be provided by the Parties and shall decide the relevancy of the documents and evidence to the points at issue and the outcome of the Arbitration. The Arbitrator shall entitle to exclude the documents submitted and evidence provided by the Parties which are not relevant to the points at issue and the outcome of the Arbitration.

17.2 Each party shall have the burden of proving the facts relied on to support its claim or defence or counterclaim (if any).

17.3 The Arbitrator shall determine the admissibility, relevance, materiality and weight of the evidence, including whether to apply strict rules of evidence.

17.4 At any time during the Arbitration, the Arbitrator may allow or require a Party to produce documents, exhibits or other evidence that the Arbitrator determines to be relevant to the case and material to its outcome. The Arbitrator shall have the power to admit or exclude any documents, exhibits or other evidence.

17.5 The Arbitrator, after consulting with the Parties, may appoint one or more experts. The Parties are to be responsible for paying the fees of the Arbitrator-appointed expert in the sole discretion of the Arbitrator. The Arbitrator may meet privately with any Arbitrator-appointed expert. Such expert shall report to the Arbitrator, in writing, on specific issues to be determined by the Arbitrator. The Parties shall give the expert any relevant information or produce for his inspection any relevant documents, goods or properties that he may require of them.

- 17.6 The Arbitrator may make directions for the translation of oral statements made at a Hearing and for a record of the Hearing if it deems that either is necessary in the circumstances of the case.
- 17.7 Hearings shall be held in private unless otherwise consented to by the Tribunal of Penta Arbitration and both Parties.
- 17.8 The Arbitrator may request in his sole discretion, further information, statements or documents from either of the Parties at the Hearing.
- 17.9 Without prejudice to the above and with regard to the Arbitration, the Arbitrator shall have the power and/or jurisdiction to:
- (a) make any relief or remedy;
 - (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 Tribunal of Penta Arbitration that –
 - to provide the information would breach a Court order;
 - to provide the information would breach a duty of confidentiality to a third party and, despite all reasonable endeavours, the third party's consent to the disclosure of the information has not been obtained;
 - to provide the information would prejudice an ongoing investigation by the police, the regulators or other law enforcement agencies, and, despite all reasonable endeavours, the consent to the disclosure of the information has not been obtained;
 - the information does not exist or no longer exists or is not within the Party's reasonable possession or control; or

- the information is irrelevant to the Dispute.

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

- (e) receive and take into account such written or oral evidence as he shall determine to be relevant and shall not be bound by the rules of evidence; and/or
- (f) proceed with the Arbitration and make an Award notwithstanding the failure or refusal of any of the Parties to comply with 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.

17.10 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 Dispute to be dealt with by a court, the Arbitrator may terminate the Arbitration.

17.11 The Arbitrator shall have the power to extend any of the time limits stipulated in these Rules with the consent of the Tribunal of Penta Arbitration.

17.12 The Arbitrator shall have the power to allow an additional party to be joined to the arbitration provided that, prima facie, the additional party is bound by an arbitration agreement under these Rules giving rise to the arbitration. If the Dispute involves more than two Parties, the Tribunal of Penta Arbitration shall have the power to revise these Rules, taking into account the circumstances of the case.

Article 18 – Communication between the Parties and the Arbitrator

18.1 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 Tribunal of Penta Arbitration 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 Tribunal of

Penta Arbitration. 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, postage pre-paid and return receipt requested; or electronically via the Internet, provided a record of its transmission is available.

Article 19 – Award

- 19.1 The Arbitrator shall, unless otherwise extended by the Arbitrator with the consent of the Tribunal of Penta Arbitration or the Parties, render an Award within one month of the holding of the Hearing or the receipt of the last document whichever is later.
- 19.2 Unless otherwise agreed by the Parties, an Award shall be made in writing and shall be final and binding on the Parties and any person claiming through or under any of the Parties. The Parties and any such person shall be deemed to have waived their rights to any form of recourse or defence in respect of enforcement and execution of any Award, insofar as such waiver can validly be made.
- 19.3 The Parties undertake to comply without delay with any Award or order made by the Arbitrator.
- 19.4 An Award shall state the concise reasons upon which it is based unless the Parties have agreed that no reasons are to be given.
- 19.5 An Award shall be signed by the Arbitrator. It shall state the date on which it was made and the seat of arbitration as determined under Article 15 and shall be deemed to have been made at the seat of arbitration.
- 19.6 The validity or enforceability of the Award shall not be hindered by any controversy with respect to the Arbitrator's failure to sign the Award.
- 19.7 The validity or enforceability of the Award shall not be hindered by any controversy with respect to the failure to meet any time limits stipulated in

these Rules.

- 19.8 The validity or enforceability of the Award shall not be hindered by non-compliance of these Rules. The Arbitrator may rectify any non-compliance of these Rules upon request by the Tribunal of Penta Arbitration or the Party within 7 days of the receipt of such request.
- 19.9 Subject to any lien, originals of the Award signed by the Arbitrator and affixed with the seal of the Tribunal of Penta Arbitration shall be communicated to the Parties and HKEMC by the Arbitrator. The Tribunal of Penta Arbitration shall be supplied with an original copy of the award.

Article 20 – Settlement or Other Grounds for Termination

- 20.1 If, before the Award is made, the Parties agree on a settlement of the Dispute, the Arbitrator shall either issue an order for the termination of the arbitration or, if requested by both Parties and accepted by the Arbitrator, record the settlement in the form of an Award on the agreed terms. The Arbitrator is not obliged to give reasons for such an Award.
- 20.2 If, before the Award is made, the continuation of the Arbitration becomes unnecessary or impossible for any reason not mentioned in Article 20.1, the Arbitrator shall issue an order for the termination of the Arbitration. The Arbitrator shall issue such an order unless a Party raises a justifiable objection, having been given a reasonable opportunity to comment upon the proposed course of action.
- 20.3 Copies of the order for termination of the Arbitration or of the Award on the agreed terms, signed by the Arbitrator, shall be communicated by the Arbitrator to the Parties and HKEMC. Where an Award on the agreed terms is made, the provisions of Articles 19.2, 19.5 and 19.6 shall apply.

Article 21 – Correction of the Award

- 21.1 Within 7 days after receipt of the Award, either Party, with notice to the other Party and the Tribunal of Penta Arbitration, may request the Arbitrator to

correct in the Award any errors in computation, any clerical or typographical errors, or any errors of a similar nature. The other Party may comment on such request within 7 days.

- 21.2 The Arbitrator shall make any corrections it considers appropriate within one month after receipt of the request but may extend such period of time if necessary.
- 21.3 The Arbitrator may within one month after the date of the Award make such corrections on its own initiative.
- 21.4 The Arbitrator has the power to make any further correction to the Award which is necessitated by or consequential on (a) the interpretation of any point or part of the award under Article 22; or (b) the issue of any additional award under Article 24.
- 21.5 Such corrections shall be in writing, and the provisions of Articles 34.2 to 34.6 shall apply.

Article 22 – Interpretation of the Award

- 22.1 Within 7 days after receipt of the Award, either Party, with notice to the other Party and the Tribunal of Penta Arbitration, may request that the Arbitrator give an interpretation of the Award. The other Party may comment on such request within 7 days.
- 22.2 Any interpretation considered appropriate by the Arbitrator shall be given in writing within one month after receipt of the request but the Arbitrator may extend such period of time if necessary.
- 23.3 The Arbitrator has the power to make any further interpretation of the Award which is necessitated by or consequential on:
 - (a) the correction of any error in the award under Article 22; or
 - (b) the issue of any additional award under Article 24.

23.4 Any interpretation made under Article 38 shall form part of the award and the provisions of Articles 19.2 to 19.6 shall apply.

Article 24 – Additional Award

24.1 Within 7 days after receipt of the award, either Party, with notice to the other Party and the Tribunal of Penta Arbitration, may request the Arbitrator to make an additional Award in relation to claims presented in the Arbitration but omitted from the Award. The other Party may comment on such request within 7 days.

24.2 If the Arbitrator considers the request for an additional Award to be justified, it shall make the additional Award within one month after receipt of the request but may extend such period of time if necessary.

24.3 The Arbitrator has the power to make an additional Award which is necessitated by or consequential on:

- (a) the correction of any error in the award under Article 21; or
- (b) the interpretation of any point or part of the award under Article 22.

24.4 When an additional Award is made, the provisions of Articles 19.2 to 19.6 shall apply.

Article 25 – Confidentiality

25.1 The Parties and the Arbitrator agree not to disclose, transmit, introduce or otherwise use any pleadings, submissions, documents, communications, opinions, suggestions, proposals, offers, or admissions, or other information obtained or disclosed relating to: (a) the Arbitration under the arbitration agreement(s); or (b) an Award made in the Arbitration, beyond the Parties to the arbitration and their representatives, the Arbitrator, the Tribunal of Penta Arbitration, and any person necessary to the conduct of the proceedings, except as may be lawfully required whether in judicial proceedings or otherwise in the normal course of business of the Parties unless agreed in

writing by the Arbitrator, the Tribunal of Penta Arbitration and the Parties to the Arbitration. The fact that Arbitration has occurred, is continuing, or has concluded shall not be considered confidential.

- 25.2 The deliberations of the Arbitrator are confidential.
- 25.3 No person shall publish or otherwise make available to the public any award, decision or ruling even if the same has been edited to delete the identity of the Parties or identifying details.

Article 26 – Exclusion of Liability

- 26.1 Neither the Tribunal of Penta Arbitration nor other body or person specifically designated by it to perform the functions referred to in these Rules, nor other staff members of the Tribunal of Penta Arbitration, the Arbitrator or secretary of the Arbitrator shall be liable for any act or omission in connection with an arbitration conducted under these Rules, save where such act was done or omitted to be done dishonestly.
- 26.2 The Parties jointly and severally release, discharge and indemnify the Tribunal of Penta Arbitration, its staff members and representatives, the Arbitrator and secretary of 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 Arbitration conducted under these Rules, save for the consequences of fraud or dishonesty.
- 26.3 After the Award has been made and the possibilities of correction, interpretation and additional awards referred to in Articles 22 to 24 have lapsed or been exhausted, neither the Tribunal of Penta Arbitration, the Arbitrator, nor secretary of the Arbitrator shall be under an obligation to make statements to any person about any matter concerning the Arbitration, nor shall a Party seek to make any of these persons a witness in any legal or other proceedings arising out of the Arbitration.

Article 27 – Appeal

- 27.1 Sections 2, 3, 4, 5, 6 and 7 of Schedule 2 of the Arbitration Ordinance (Chapter 609) shall not apply.
- 27.2 Subject to Article 27.1, in the event of an appeal against the Award, an application to set aside the Award, an application to challenge the Award or an application to object the enforcement of the Award in the Arbitration being brought by a Party, that Party agrees that the recoverable legal costs incurred in, arising out of and/or resulting from such an appeal or application shall be limited to HK\$25,000.

Article 28 – Closure of Proceedings

- 28.1 When it is satisfied that the Parties have had a reasonable opportunity to present their case, the Arbitrator shall declare the proceedings closed. Thereafter, no further submission or argument may be made, or evidence produced, unless the Arbitrator reopens the proceedings in accordance with Article 28.2.
- 28.2 The Arbitrator may, if it considers it necessary owing to exceptional circumstances, decide, on its own initiative or upon the application of a party, to reopen the proceedings at any time before the Award is made.

Article 29 – Arbitration Fees

- 29.1 Unless otherwise agreed by the Tribunal of Penta Arbitration, the arbitration fees for the Arbitration are paid by the Parties to the Tribunal of Penta Arbitration according to the Schedule.
- 29.2 All arbitration fees are in Hong Kong dollars, and subject to Article 29.5, are not refundable after payments are made to the Tribunal of Penta Arbitration.
- 29.3 Unless otherwise agreed by the Tribunal of Penta Arbitration, the Claimant has to pay in advance his share of contribution towards the arbitration fees and a deposit of the equal amount when the Notice of Arbitration is filed by the Claimant.

- 29.4 The Respondent has to pay in advance his share of contribution towards the arbitration fees and a deposit of the equal amount when the Response is filed by the Response.
- 29.5 The Arbitrator shall in his sole discretion decide under the Award which party is to be responsible for paying the arbitration fees. The Party who is decided upon to be not responsible for paying the arbitration fees will be refunded the deposit of both Parties which will be released within 14 days after the Award is made provided that both Parties paid their shares of contribution towards the arbitration fees and the deposits of the equal amount,.
- 29.6 The Tribunal of Penta Arbitration shall decide and may provide the venue for conducting the Hearing. The Parties may have to bear the cost of the venue for conducting the Hearing if the rooms at the Tribunal of Penta Arbitration are fully occupied or otherwise unavailable.
- 29.7 Claims and counterclaims are aggregated for the determination of the amount in dispute.
- 29.8 An interest claim shall not be taken into account in the calculation of the amount in dispute. However, when the interest claim exceeds the amount claimed in principal, the interest claim alone shall be considered in calculating the amount in dispute.
- 29.9 If the amount in dispute is not quantified, the arbitration fees shall be decided by the Tribunal of Penta Arbitration, taking into account the circumstances of the case.
- 29.10 If the Dispute involves more than two Parties, the arbitration fees shall be decided by the Tribunal of Penta Arbitration, taking into account the circumstances of the case.
- 29.11 Amounts in currencies other than Hong Kong Dollars shall be converted into Hong Kong Dollars at the rate of exchange published by HSBC Bank on the date that the Notice of Arbitration is submitted or at the time when any new claim or counterclaim is filed.
- 29.12 The Tribunal of Penta Arbitration shall review the fee structure regularly and

any changes to the fee structure.

Article 30 – Issues not covered by these Rules

30. 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 Dispute.

Article 31 – Waiver

31. A Party who knows or ought reasonably to know that any provision of, or requirement arising under these Rules (including the arbitration agreement(s)) has not been complied with and yet proceeds with the Arbitration without promptly stating its objection to such non-compliance, shall be deemed to have waived its right to object.

SCHEDULE

1. For an amount in dispute **below HK\$500,000**, the arbitration fees (including the Tribunal of Penta Arbitration's administrative expenses and the arbitrator's fees) are **HK\$50,000** (to be equally shared by the two Parties to the Dispute).

2. For an amount in dispute **at or between HK\$500,000 and HK\$1,000,000**, the arbitration fees (including the Tribunal of Penta Arbitration's administrative expenses and the arbitrator's fees) are **HK\$80,000** (to be equally shared by the two Parties to the Dispute).

3. For an amount in dispute **over HK\$1,000,000**, the arbitration fees (including the Tribunal of Penta Arbitration's administrative expenses and the arbitrator's fees) are **HK\$120,000** (to be equally shared by the two Parties to the Dispute).