

# CALL OPTION AND INVESTOR RIGHTS AGREEMENT

## IMPORTANT NOTES:

(1) This is an example of the agreement that you will be asked to enter into with investors if you are selected as the winner of the "Elevator Pitch Competition" in Hong Kong.

(2) This agreement is subject to further negotiation between you and the relevant investors and is a suggested starting point for those negotiations.

(3) Neither HKSTP nor any of its partners or sponsors will be involved with or will provide any advice on or in connection with the negotiation or finalization of this agreement. Neither HKSTP nor any of its partners or sponsors assume any liability to you in relation to the provision to you or use by you of this agreement and, accordingly, we strongly suggest that you seek independent professional legal advice prior to entering into this agreement.

This call option and investor rights agreement (the "**Agreement**") is entered into on \_\_\_\_\_ 2017

**Between:**

- (1) **[•]**, a company incorporated and registered in **[•]** with company number **[•]** and having its registered office at **[•]** (the "**Corporation**"); and
- (2) **[•]**, a company incorporated and registered in **[•]** with company number **[•]** and having its registered office at **[•]** (the "**INVESTOR**"),

each a "**party**" and, together, the "**parties**".

**Background:**

This Agreement is being entered into by the parties to set out the terms and conditions on which the INVESTOR is being granted a call option by the Corporation over certain of the Corporation's shares in return for a cash payment of US\$10,000. In addition to the option being granted, the INVESTOR is being granted certain pre-emptive and information rights in relation to the Corporation, in each case on the terms and conditions set out herein.

**Agreed Terms:**

NOW THEREFORE, in consideration of, and in reliance on, the representations, warranties, covenants and agreements set forth in this Agreement, the parties hereby agree as follows:

1. **Definitions and Interpretation:** In this Agreement, unless otherwise provided:
  - a. "**Acceptance Period**" has the meaning given in Section 5.
  - a. "**Board**" means the board of Directors of the Corporation as constituted from time to time.
  - b. "**Common Shares**" means the most senior class of Shares that are in issue from time to time.
  - c. "**Directors**" means the persons who are, from time to time, elected or appointed directors of the Corporation and a "**Director**" means any one of them.

- d. "**Equity Securities**" means:
- i. Shares or any other security of the Corporation (including Common Shares) that carries the residual right to participate in the earnings of the Corporation and, on liquidation, dissolution or winding-up, in the assets of the Corporation, whether or not the security carries voting rights;
  - ii. any warrants, options or rights entitling the holders thereof to purchase or acquire any Shares or other securities of the Corporation; or
  - iii. any securities issued by the Corporation which are convertible or exchangeable into Shares or other securities of the Corporation.
- e. "**Exercise Notice**" has the meaning given in Section 2.
- f. "**Exercise Price**" has the meaning given in Section 2.
- g. "**Exercise Window**" means the period from the date that is 30 days immediately prior to any Option Event up to (and including) the date of the relevant Option Event.
- h. "**Fully Converted Basis**" at any time means that all Shares and other securities of the Corporation (including the Option Shares, all options, warrants, units, rights of conversion or other rights that carries a right to acquire shares in the capital of the Corporation) then outstanding which are convertible or exchangeable into Common Shares (directly or indirectly) shall be deemed to have been fully converted and exchanged into Common Shares, in accordance with the rights, privileges, restrictions and conditions attached thereto, and Common Shares issuable as a result thereof shall be deemed to have been issued and to form part of the holdings of the Person(s) entitled to receive such Common Shares.
- i. "**Option**" has the meaning given in Section 2.
- j. "**Option Price**" has the meaning given in Section 2.
- k. "**Option Event**" means:
- 1. closing of a Significant Financing;

2. upon an amalgamation, merger or reorganization of the Corporation, a Sale of Control, initial public offering of equity securities of the Corporation or a sale of all or substantially all of the Corporation's assets or undertaking, other than as part of an internal amalgamation, merger or reorganization which does not involve persons who are not shareholders or wholly owned subsidiaries of the Corporation, where "**Sale of Control**" means any event after which a person or persons, holds, directly or indirectly, legally or beneficially, shares of the Corporation carrying more than 50% of the votes capable of being cast at a general meeting of the shareholders of the Corporation (a "**Change of Control**"); or
3. at any time at the option of the Investor (a "**Discretionary Exercise**").

I. "**Option Shares**" means:

- i. where the Option is exercised on closing of a Significant Financing, the number of Common Shares equal to the lower of:
  1. US\$10,000 divided by the lowest price paid per security in the Significant Financing; or
  2. US\$10,000 divided by the quotient of: dividing [two million five hundred thousand] US dollars (US\$[2,500,000.00]) (the "**Capped Price**") by the number of Securities (calculated on a fully diluted basis and (as applicable) taking into account Securities to be issued in the Significant Financing) at the time of exercise of the Option;
- ii. where the Option is exercised on Change of Control the number of Common Shares equal to the lower of:
  1. US\$10,000 divided by the price per share of the Corporation based on the valuation given in connection with the event triggering the Change of Control; or

2. US\$10,000 divided by the quotient of: dividing the Capped Price by the number of Securities (calculated on a fully diluted basis and (as applicable) taking into account Securities to be issued in the Change of Control) at the time of exercise of the Option; or
- iii. where the Option is exercised pursuant to a Discretionary Exercise, the number of Common Shares equal to the lower of:
  1. US\$10,000 divided by the price per share of the Corporation paid to the Corporation for Securities at the last external financing (i.e. a financing where such Securities were issued which includes investors other than the current directors, officers and employees of the Corporation) completed after the date of this Agreement; and
  2. US\$10,000 divided by the quotient of: dividing the Capped Price by the number of Securities (calculated on a fully diluted basis) at the time of exercise of the Option.
- m. "**Person**" means any individual, partnership, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, trust, trustee, executor, administrator, or other legal personal representatives, regulatory body or agency, government or governmental agency, authority or entity howsoever designated or constituted.
- n. "**Securities**" means all outstanding equity securities in the company and any and all instruments convertible into equity securities (including options, warrants and other convertible instruments), on an as-converted basis, at the relevant time.
- o. "**Shares**" means shares of any class in the share capital of the Corporation from time to time.
- p. "**Significant Financing**" means an issue of Equity Securities of the Corporation or an initial public offering of equity securities of the Corporation (such securities or units of securities are referred to as the "**Significant Financing Securities**") for gross proceeds of at least US\$500,000.
- q. "**Specified Additional Amounts**" has the meaning given in Section 5.

- r. "**Treasury Offer**" has the meaning given in Section 5.
- s. Any words defined elsewhere in the Agreement shall have the particular meaning ascribed thereto.
- t. Words (including defined terms) using or importing the singular number include the plural and vice versa and words importing one gender only shall include all genders and words importing persons in this Agreement shall include individuals, partnerships, corporations and any other entities, legal or otherwise.
- u. The headings used in this Agreement are for ease of reference only and shall not affect the meaning or the interpretation of this Agreement.
- v. Unless otherwise specified, all references to the symbol "US\$" are to lawful money of the United States of America.

## 2. **Option:**

- a. On the date of this Agreement the INVESTOR shall pay the Corporation the sum of US\$10,000 in cleared funds to the bank account nominated in writing by the Corporation (the "**Option Price**").
- b. In consideration for the payment of the Option Price, the Corporation grants to the INVESTOR an option (the "**Option**") to subscribe for the Option Shares in the Corporation for a subscription price of US\$1 in total for all Option Shares (the "**Exercise Price**"). The Option will expire and will be of no further effect if it has not been exercised by the date that is two years after this date of this Agreement.
- c. The Option may be exercised as follows:
  - i. once only and in full over all of the Option Shares only;
  - ii. only during the Exercise Window;
  - iii. by service of a written notice by the INVESTOR on the Corporation, stating the date, that the INVESTOR is exercising the Option and containing a signature by an authorised person of the INVESTOR (the "**Exercise Notice**");
  - iv. on the date that is 30 days after the date of the receipt of the Exercise Notice by the Corporation (or such other date as agreed in writing by the INVESTOR and the Corporation) completion shall occur at the Corporation's offices (or such other place nominated by the INVESTOR), at which time:

1. the INVESTOR will pay the Exercise Price to the Corporation and shall deliver a signed subscription letter to the corporation in respect of the Option Shares;
2. the Corporation will ensure that there are the appropriate board and shareholder authorities in place for the Corporation (as necessary and, including, where relevant, appropriate waivers of pre-emption rights) to allow for completion of the exercise of the Option and the issue of the Option Share to the INVESTOR;
3. the Corporation shall issue the Option Shares to the INVESTOR and shall update its books and records accordingly, make the relevant filings at any applicable company registries and shall issue a share certificate to the INVESTOR in respect of the Option Shares; and
4. the Corporation and the INVESTOR shall do all such other things as may be required to issue the Option Shares to the INVESTOR.

### 3. Reporting Requirements:

- a. The Corporation shall keep the INVESTOR regularly informed of the financial and operational status of the Corporation (on no less than a **semi-annually** basis), including full details of any contemplated Option Events. The Corporation agrees not to undertake, complete or otherwise enter into any arrangement which may or which would lead to the occurrence of an Option Event without first informing the INVESTOR in writing, giving full details of the Option Event and the proposed date of the Option Event and, thereafter, will promptly provide the INVESTOR such information as the INVESTOR may reasonably request in relation to the Option Event.
- b. The Corporation shall provide to the INVESTOR, for so long as the Option remains outstanding, or, if longer, for so long as the INVESTOR holds Equity Securities, the following documents, to be provided to the INVESTOR at the same time as they are provided to the members of the Board:
  - i. **Financial Statements** - comprehensive consolidated quarterly and annual unaudited financial statements prepared by the Corporation in accordance with generally accepted accounting principles in the Corporation's jurisdiction of incorporation or international financial reporting standards, as applicable to the Corporation (including its income statement, balance sheet and cash flow);

- ii. **Annual Audited Statements** - if prepared, annual audited consolidated financial statements for the Corporation (including its income statement, balance sheet and cash flow); and
- iii. **Progress Reports** - any other progress reports as are provided to Directors and the Corporation's shareholders.

4. **Offerings of Equity Securities:** Except as otherwise agreed to by the parties hereto, each offering by the Corporation of additional Equity Securities shall be made in accordance with Sections 5 and 6.

5. **Pro-Rata Preemptive Right:** Subject to Section 6 and unless waived in writing by the INVESTOR, each time the Corporation proposes to allot, issue, sell or resell any Equity Securities (a "**Treasury Offer**"), the Corporation shall first offer the INVESTOR its pro rata share of such Equity Securities on the following basis:

- a. **Pro Rata Portion** - The number of Equity Securities the INVESTOR shall be offered and may purchase shall be determined by the following formula:

Number of Equity Securities which the INVESTOR shall be offered and may purchase

=

(Number of Common Shares held by the INVESTOR on a Fully Converted Basis immediately prior to the Treasury Offer / Number of Common Shares held by all being offered shareholders of the Corporation on a Fully Converted Basis immediately prior to the Treasury Offer)

X

Total Number of Equity Securities being offered.

- b. **Notice of Offer** - Each Treasury Offer shall be made by written notice to the INVESTOR specifying:

- i. the total number and class of Equity Securities offered;

- ii. the INVESTOR's pro rata portion thereof as determined by the formula in (a) above;
  - iii. the price at which the Equity Securities are being offered;
  - iv. any other terms and conditions applicable to the offer not set out in this Section 5; and
  - v. that the INVESTOR shall have fifteen 15 business days (the "**Acceptance Period**") following receipt of the notice to accept the Treasury Offer.
- c. **Acceptance** - Acceptance of a Treasury Offer shall be made by notice in writing to the Corporation within the Acceptance Period specifying the number of Equity Securities up to the pro rata number determined above that the INVESTOR wishes to purchase. The INVESTOR may also specify in such notice an additional number of the Equity Securities ("**Specified Additional Amounts**") offered for sale that the INVESTOR is prepared to purchase if the Treasury Offer is not fully subscribed by the shareholders of the Corporation. If the INVESTOR does not accept the Treasury Offer before expiration of the Acceptance Period, then the INVESTOR shall be deemed to have refused the Treasury Offer. Additionally, if the INVESTOR notifies the Corporation in writing that it accepts or declines the Treasury Offer before the end of the Acceptance Period, then the Acceptance Period shall be deemed to have ended on the date the last such notice is received by the Corporation.
- d. **Sale to Third Party** - The Corporation shall be entitled to allot, issue or sell the balance of any of the offered Equity Securities which are not purchased by the INVESTOR upon completion of the above process to any Person(s), provided that such allotment, issuance or sale:
- i. shall not be effected at a price which is less than the price or on terms and conditions which are more favourable (from the purchaser's perspective) than those set forth in the written notice to the INVESTOR concerning the Treasury Offer; and
  - ii. shall be effected within a 3 month period following the expiration of the Acceptance Period, after which period has expired, the Corporation shall comply with this Section 5 before offering further Equity Securities to any Person.

6. **Permitted Non-Pro Rata Offerings**: The Corporation may directly allot, issue or sell Equity Securities without complying with Section 5 in the following circumstances:
- a. ***Share Option Plan*** - the Equity Securities are being issued pursuant to a duly approved grant or exercise of options under the Corporation's share option plan or in good faith to Directors and officers of the Corporation;
  - b. ***Subdivision*** - the Equity Securities are being issued pursuant to a duly approved subdivision, amalgamation, reorganization, or dividend payable in Equity Securities;
  - c. ***Conversion*** - the Equity Securities are being issued in accordance with the rights, privileges, restrictions and conditions attached to Shares;
  - d. ***Existing Options*** - the Equity Securities are being issued pursuant to the options, warrants or other rights disclosed in writing to the INVESTOR prior to the date of this Agreement;
  - e. ***Convertible Securities*** - the Equity Securities are being issued pursuant to the rights attaching to Equity Securities which were issued in accordance with Section 5 or 6; or
  - f. ***IPO*** - the Equity Securities are being offered as part of an initial public offering.
7. **Notices**: A notice given under this Agreement: (a) shall be in writing in the English language; (b) shall be sent for the attention of the person, and to the address set out at the top of the first page of this Agreement (or such other address as the relevant party may notify to the other party); and (c) shall be: (i) delivered personally; or (ii) sent by pre-paid first-class post or recorded delivery. A notice is deemed to have been received: (a) if delivered personally, at the time of delivery; or (b) in the case of pre-paid first-class post or recorded delivery, 48 hours from the date of posting; or (c) if deemed receipt under this Section 7 is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is not a business day), at the start of the next following business day.
8. **Entire Agreement and Non-Reliance**: This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party acknowledges that in entering into this Agreement it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this

Agreement. Nothing in this Agreement shall limit or exclude any liability for fraud. No party has relied on any representation, warranty or other assurance except those expressly set out in this Agreement.

9. **Non-Waiver of Rights**: The failure of any party at any time to require performance or observance by any other party of any provision of this Agreement does not in any way affect the right of such first party to require performance of that provision. Waiver by any party of any breach of any provision of this Agreement may not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself or a waiver of any right under this Agreement.
10. **Assignment**: This Agreement will enure to the benefit of and be binding upon the parties and their respective successors and assigns; it being understood and agreed that the Corporation shall not have the right to assign this Agreement, nor any of its rights hereunder, without the prior written consent of the INVESTOR, acting in its sole discretion. The INVESTOR shall be able to assign its rights under this Agreement at any time without the prior written consent of the Corporation.
11. **Costs**: Save as expressly set out in this Agreement, the parties will bear their own legal costs in relation to the negotiation, preparation and finalisation of this Agreement.
12. **Severability**: If any provision of this Agreement is determined to be invalid or unenforceable by a court of competent jurisdiction from which no further appeal lies or is taken, any such declaration will not affect the other provisions of this Agreement which are capable of severance and those other provisions will continue unaffected.
13. **Further Acts**: Each of the parties shall at the request of the other party, and at the expense of the Corporation, execute and deliver any further documents and do all acts and things as that party may reasonably require in order to carry out the true intent and meaning of this Agreement.
14. **Third Party Rights**: Save as otherwise expressly provided in this Agreement, a person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Ordinance (Chapter 623, Laws of Hong Kong) to enforce any term of this Agreement.
15. **Amendments**: No term or provision hereof may be amended except by an instrument in writing signed by all of the parties to this Agreement.
16. **Counterparts**: This Agreement may be executed in counterpart and such counterparts together will constitute a single instrument. Delivery of an executed counterpart of this Agreement by electronic means, including by facsimile transmission or by electronic delivery in portable document format (".pdf"), will be equally effective as delivery of a manually executed

counterpart hereof. The parties acknowledge and agree that in any legal proceedings between them respecting or in any way relating to this Agreement, each waives the right to raise any defence based on the execution hereof in counterparts or the delivery of such executed counterparts by electronic means.

17. **Governing Law and Jurisdiction**: This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of Hong Kong SAR. The courts of Hong Kong SAR shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, this Agreement (including non-contractual disputes or claims).

The parties have executed this Agreement on the date stated at the top of the first page

**Execution Page**

Signed for and on behalf of )

**[CORPORATION NAME]** )

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Director

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Director

**Execution Page**

Signed for and on behalf of )

**[INVESTOR NAME]** )

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Director

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Director