

NEUTRAL EVALUATION RULES

1 Introduction

- 1.1 Neutral evaluation is a process by which the parties to a dispute may obtain an objective opinion on the merits of their case from an independent third party (the 'Neutral') to assist them in resolving their dispute amicably.
- 1.2 The Neutral Evaluation service provided by the Singapore Mediation Centre (the 'Centre') is governed by these Neutral Evaluation Rules ('Rules').
- 1.3 The Rules may be amended by the Centre from time to time without prior notice. The Rules which shall govern a particular Neutral Evaluation shall be the Rules in force at the time the parties enter the Neutral Evaluation Agreement ('NE Agreement')¹.

2 Request for Neutral Evaluation

- 2.1 Any parties to a dispute or negotiation may request for Neutral Evaluation by sending an application for Neutral Evaluation in the prescribed form² to the Centre and paying the Centre's administrative fee.³ A Request shall be deemed accepted when the Centre's administrative fee is paid. ('Accepted Request')
- 2.2 The Centre's administrative fee shall be ascertained in accordance with the Schedule of Fees⁴.
- 2.3 The Centre's administrative fee is non- refundable.

3 Parties

- 3.1 Where there is a Neutral Evaluation Session(s), parties may participate in person or by authorised representatives. The parties may also be assisted by legal advisers.
- 3.2 The parties shall be deemed, upon entering the NE Agreement, to have accepted and agreed to be bound by the terms of these Rules.

4 The Neutral

- 4.1 Where there is an Accepted Request, the Centre shall appoint a Neutral within five (5) working days after Accepted Request.
- 4.2 If any of the parties has any valid reason to object to an appointment, the objection shall be made in writing to the Centre. The Centre will appoint another Neutral

¹ See Annex B

² See Annex A.

³ See Annex D

⁴ See Annex D

within five (5) working days from the date of the receipt of the objection.

- 4.3 A person selected as a Neutral shall disclose any circumstances which may give rise to justifiable doubts as to his independence, impartiality or prevent him from discharging his duties as a Neutral promptly. This duty of disclosure is a continuing duty and should circumstances which may give rise to justifiable doubts as to his independence or impartiality arise during the course of the Neutral Evaluation, the Neutral shall advise the Centre immediately.
- 4.4 Upon receipt of any such disclosure by the Neutral, the Centre shall appoint another person as the Neutral within five (5) working days of receipt of disclosure, unless parties agree to the Neutral's appointment.
- 4.5 The Neutral shall:
- (a) prepare himself appropriately before the commencement of the Neutral Evaluation; and
 - (b) abide by the terms of the NE Agreement⁵ and the Neutral's Code of Conduct⁶.
- 4.6 The Neutral shall not, at any time, act for any of the parties in connection with the subject matter of the Neutral Evaluation.
- 4.7 If the Neutral is unable to continue in his appointment, the Centre shall appoint a substitute Neutral within five (5) working days from the date the Centre receives the Neutral's notice of his inability to continue in the Neutral Evaluation.
- 4.8 If a Neutral resigns or is replaced, the proceedings shall resume at the stage where the Neutral who resigned or was replaced ceased to perform the Neutral's functions, unless the replacement Neutral decides that any part of the prior proceedings are to be repeated.
- 4.9 Where Rule 4.8 applies, the procedural timelines shall be extended by the period of time that elapses between the Neutral's resignation or removal and the appointment of a substitute Neutral. Proceedings shall continue from the stage where the Neutral who resigned or was replaced ceased to perform his functions. The substitute Neutral has the discretion to repeat any part of the proceedings from his appointment.
- 4.10 The Neutral and the Centre are neither agents of, nor acting in any capacity for, any of the parties.
- 4.11 The Neutral is not an agent of the Centre.

5 Centre

- 5.1 The Centre shall make the arrangements for the Neutral Evaluation, including the following:

⁵ See Annex B

⁶ See Annex C

- (a) appointment of the Neutral;
- (b) financial management of the Neutral Evaluation;
- (c) provision of a venue for the Neutral Evaluation session(s), if necessary; and
- (d) provision of secretariat support.

6 Agreement

- 6.1 Before the Neutral Evaluation is carried out, the parties shall enter into the NE Agreement in the prescribed form⁷ with each other, the Centre and the Neutral in relation to the conduct of the Neutral Evaluation. For the avoidance of doubt, the NE Agreement, or any variations of it, may take the form of any electronic record.
- 6.2 As between the parties, any of the terms of the NE Agreement including but not limited to:
- (a) the confidentiality of:
 - (i) the Neutral Evaluation process;
 - (ii) the documents and materials prepared for the Neutral Evaluation; or
 - (iii) the communications made during the Neutral Evaluation;
 - (b) the use of the Neutral's written opinion and whether it shall be binding; or
 - (c) the extension of recommended timelines;

may be varied, subject to the approval of the Centre.

7 Security Deposit

- 7.1 Upon signing of the NE Agreement, the Centre shall estimate the total fees and expenses of the Neutral Evaluation and collect a deposit from the parties as reasonable security for estimated costs and expenses ('Security Deposit').
- 7.2 Parties shall pay the Security Deposit in equal shares.
- 7.3 The Security Deposit shall be paid before the first Preliminary Conference. The Centre and/or the Neutral reserve the right not to take any administrative or procedural steps till the Security Deposit is paid in full. The Centre also reserves the right to collect a further Security Deposit where necessary.
- 7.4 If parties decide to terminate the Neutral Evaluation at any stage, Rule 14.4 shall apply.

8 Preliminary Conference

- 8.1 The Neutral shall convene a Preliminary Conference with the parties and their representatives within five (5) working days of the appointment of the Neutral.
- 8.2 During the Preliminary Conference, parties may discuss procedural matters to structure the Neutral Evaluation which may include but are not limited to:

⁷ See Annex B

- (a) the terms of reference of the Neutral;
- (b) the issues which are in dispute and which matters, if any, can be agreed upon;
- (c) the procedure to be adopted (e.g. the length of time for submissions, if parties have a right of reply, if parties to call for expert witnesses, the type of evidence to be adduced, the right to submit further submissions etc.); and/or
- (d) the scheduling of any Evaluation session(s) as defined in Rule 10.1(b).

8.3 For the avoidance of doubt, the Preliminary Conference may be held via electronic means including but not limited to email, tele-, video- or web-conferencing.

9 Exchange of Information

9.1 Each party shall, within five (5) working days from the date of the completion of the Preliminary Conference, serve the Neutral, the Centre and all parties with the following:

- (a) a statement of its case (the "Case Statement"); and
- (b) copies of all documents referred to in the Case Statement that the party is relying on.

9.2 The Case Statement shall include:

- (a) the nature and basis of the dispute;
- (b) the factual and legal issues involved in the dispute and the party's contentions as to those issues; and
- (c) the relief or remedy sought and the quantum of any claim or counterclaim.

10 The Neutral Evaluation

10.1 By the signing of the NE Agreement,, parties shall decide whether:

- (a) the Neutral is to express an opinion based on the Case Statements and documents submitted without further hearings or meetings ('Documents-only Evaluation'); or
- (b) to have an evaluation session(s) ('Evaluation Session(s)').

If parties choose a Documents-only Evaluation, there shall be no Evaluation Session(s). The Neutral may raise queries and/or seek clarification on the points raised in the Case Statements.

10.2 If parties wish for an Evaluation Session(s), it shall be held within five (5) working days from the date the Neutral receives all the Case Statements and documents.

10.3 The Evaluation Session(s) is informal and the rules of evidence do not apply. For the avoidance of doubt, evidence may be given via electronic means including but not limited to email, tele-, video- or web- conferencing

10.4 The Neutral may conduct a site visit with the consent of the parties. Such a site visit shall be treated as part of the Evaluation Session(s).

- 10.5 The Neutral may choose to investigate the matter further by obtaining expert advice in technical matters. This investigation shall form part of the Evaluation Session(s).
- (a) If the Neutral is of the view that further investigations should be conducted after the Evaluation Session(s), parties should be informed accordingly. Unless parties agree to commission such an investigation, the Neutral shall render an opinion based solely on the submissions and evidence available. The Neutral may qualify the opinion to explain the constraints under which the opinion was rendered.
 - (b) If the parties decide to commission such an investigation, the expert commissioned to conduct the investigation shall be an agent of the parties, and the parties themselves shall be jointly liable to the expert for the costs of the investigation. The parties shall pay the expert's costs directly, and the expert's costs shall be a separate expense item over and above the administrative fees and expenses payable to the Centre and the Neutral's professional charges.
- 10.6 Unless a Party requests the return of any documents provided to the Neutral for the purpose of the Evaluation Session(s), the Neutral and the Centre shall destroy all documents and records provided by the parties for the purpose of the Evaluation within 2 calendar months from the date of service of the Opinion on the parties.

11 The Opinion

- 11.1 The Neutral shall serve his Opinion on the Centre within ten (10) working days from the date of the last Evaluation Session(s) or further investigation or site visit, whichever is latest. In the case of a Documents-only Evaluation, the Neutral shall serve his Opinion on the Centre within ten (10) working days from the date he receives all the Case Statements and documents.
- 11.2 Unless parties agree otherwise, the Neutral shall provide an Opinion which is reasoned and in writing.
- 11.3 The Neutral's Opinion shall be based on the submissions and materials presented to the Neutral by parties and the Neutral's actual observations during any site inspection or any further investigation that is conducted as part of the Neutral Evaluation. The comments made and opinions expressed by the Neutral shall be read subject to the constraints under which the Neutral Evaluation is conducted.

12 Stay of Proceedings

- 12.1 Unless the parties agree otherwise, the Neutral Evaluation shall not prevent the commencement of any suit or arbitration, nor act as a stay of such proceedings.

13 Confidentiality

- 13.1 This Neutral Evaluation process is entirely private and confidential. All parties involved shall keep the matter fully confidential except as is required by law.

- 13.2 Any person attending the hearing may do so only by consent of the parties and Neutral.
- 13.3 The Neutral Evaluation shall be conducted in confidence. In particular, if a meeting is convened:
- (a) No transcript, audio or video recording or other formal record shall be made at any stage of the Neutral Evaluation.
 - (b) Only the Neutral, the parties and/or their representatives and/or legal advisers shall be permitted to participate during the Neutral Evaluation.
- 13.4 Unless the parties agree otherwise, all communications expressed and disclosed in the course of the Neutral Evaluation, including all materials prepared and/or rendered and/or exchanged for purposes of the Neutral Evaluation shall be kept confidential, treated as 'without prejudice' and shall not be offered as evidence in any other proceedings.

14 Fees

- 14.1 In the event that the actual fees and expenses of the Neutral Evaluation ("the Final Fee") is less than the Security Deposit, the Centre will serve the Opinion as soon as practicable.
- 14.2 In the event that the Final Fee is more than the Security Deposit, the Centre shall advise parties accordingly. Parties shall remain jointly and severally liable for the outstanding amount of the Final Fee. The Centre will serve the Opinion on the parties after the outstanding amount is paid in full.
- 14.3 Parties shall bear their own costs, expenses and disbursements of their participation and the fees of their legal advisers and representatives in the Neutral Evaluation.
- 14.4 If the Parties agree not to proceed with the Neutral Evaluation at any stage after an Accepted Request, the Security Deposit shall be refunded to the parties after deduction of the fees and expenses incurred by the Neutral and the Centre up to and including the date of termination, computed at the Centre's discretion.

15 Waiver of Liability and Disclaimer

- 15.1 The parties shall not make any claim whatsoever against the Neutral and/or the Centre and/or the Centre's officers or employees for any matter in connection with or in relation to:
- (a) the Neutral Evaluation; and/or
 - (b) the services provided by the Neutral and/or the Centre; and/or
 - (c) the dispute between the parties.
- 15.2 The Neutral shall not be liable to the parties for any act or omission whatsoever in connection with the services provided by him or in relation to the Neutral Evaluation.
- 15.3 The Centre shall not be liable to the parties for any act or omission whatsoever in

connection with the services provided by the Neutral and/or the Centre or in relation to the Neutral Evaluation.

- 15.4 All comments made and opinions expressed by the Neutral, whether oral or in writing, are stated:
- (a) in the context of the dispute between the parties; and
 - (b) for the limited purpose of assisting the parties in resolving their dispute.
- 15.5 The parties shall not engage or appoint the Neutral as a consultant or arbitrator in any proceedings in relation to the dispute. Unless the parties agree otherwise, they shall not call the Neutral as a witness in any proceedings arising out of or in connection to the Neutral Evaluation.
- 15.6 The parties shall also not call the Centre or any of its officers or employees as a witness, consultant, arbitrator or expert in any proceedings in relation to the dispute.

16 Interpretation

- 16.1 In these Rules, any reference to the masculine includes the feminine.
- 16.2 The interpretation that is given by the Centre to any provision in this Neutral Evaluation Procedure shall be the correct interpretation of the provision concerned.

ANNEXES

Annex A	Request for Neutral Evaluation
Annex B	Neutral Evaluation Agreement
Annex C	Neutral's Code of Conduct
Annex D	Fee Schedule

**Issued by the Singapore Mediation Centre
2 May 2012**

SINGAPORE MEDIATION CENTRE
NEUTRAL EVALUATION SERVICE
REQUEST FOR NEUTRAL EVALUATION

To: The Singapore Mediation Centre

Request and the Parties involved

1.1 We/I wish to request for a Neutral Evaluation of a dispute between the following parties:

Particulars of Applicant(s)
Full Name:
Address:
Telephone number:
Fax number:
Email address:
Authorised Representative (if any):

Particulars of Respondent(s)
Full Name:
Address:

Telephone number:
Fax number:
Email address:
Authorised Representative (if any):

(If there is more than one applicant or respondent, please provide the relevant details in a separate document)

1.2 We/I confirm that the parties above are agreeable to Neutral Evaluation.

1.3 The Parties request for the Neutral Evaluation to be a:

<input type="checkbox"/>	Documents-Only Neutral Evaluation
<input type="checkbox"/>	Neutral Evaluation with hearing session(s)

1.4 The Parties request for the Opinion of the Neutral to be:

<input type="checkbox"/>	Binding
<input type="checkbox"/>	Non-binding

1 Brief Details of Dispute

2.1 The brief details of the dispute are as follows:

Type of Dispute (eg. shipping, construction etc.)
Particulars of Issue(s) for Neutral Evaluation

<input type="checkbox"/>	Legal proceedings <u>have not been</u> commenced in respect of this dispute.
<input type="checkbox"/>	Legal proceedings <u>have been</u> commenced in respect of this dispute and the particulars of the legal proceedings are as follows:
	Suit number(s):

3 Administration Fee

3.1 The Parties understand that the Administration Fee of _____ applicable to this Request is non-refundable.

4 Payment Method

<input type="checkbox"/>	Cheque No. _____ of amount S\$ _____ being the administration fee (inclusive of GST)
<input type="checkbox"/>	Cash of amount of S\$ _____ being the administration fee (inclusive of GST)

Signed by:

Name:

NRIC/Passport No:

Designation:

Date:

For and on behalf of Applicant(s):
(if applicable)

Organisation stamp
(if applicable)

FOR OFFICIAL USE ONLY

Filing Date:

Remarks (if any):

**SINGAPORE MEDIATION CENTRE
NEUTRAL EVALUATION SERVICE
NEUTRAL EVALUATION AGREEMENT**

This Agreement is made between:

- (1) The Singapore Mediation Centre of 1 Supreme Court Lane, Level 4, Singapore 178879 (the Centre);
- (2) [Name of Neutral] of [Address of Neutral] (the Neutral)
- (3) [Name of Party 1] of [Address of Party 1]
- (4) [Name of Party 2] of [Address of Party 2] (jointly the Parties)

Whereas

- A. The Parties wish to attempt in good faith to resolve the disputes that have arisen between the parties.
- B. The Centre and the Neutral have agreed to provide the Centre's Neutral Evaluation Service to assist the Parties in resolving these matters.

It is agreed as follows:

1 The Neutral

- 1.1 The Parties consent to the appointment of [Title and Name of Neutral] to be the Neutral for the Neutral Evaluation of the dispute that has arisen between them.
- 1.2 The Neutral is independent of the Parties and does not offer legal advice nor does he have any duty to assert or protect the legal rights of any party or any duty to raise any issues not raised by either side.

2 Terms and Process of Neutral Evaluation

- 2.1 A working day means a day of the week other than Saturday, Sunday and any public holidays within the meaning of the Holidays Act (Cap. 126).
- 2.2 The Centre, the Neutral, and the Parties agree to abide by the Centre's Neutral Evaluation Rules.
- 2.3 This Neutral Evaluation process is entirely private and confidential. The Centre, the Neutral, and the Parties involved shall keep the matter fully confidential except as is required by law.
- 2.4 Unless the Parties agree otherwise:
 - (a) what transpires during the Neutral Evaluation;
 - (b) all documents and materials prepared for the Neutral Evaluation (except those that would, in any event, have been admissible as evidence or discoverable in other proceedings); and
 - (c) all communications made during the Neutral Evaluation, including any oral comments made or written opinions rendered by the Neutral;

shall be kept confidential and shall not be used in any other proceedings.

- 2.5 The Opinion provided by the Neutral shall be binding/non-binding⁸.
- 2.6 This Neutral Evaluation shall be a Documents-only Neutral Evaluation/Neutral Evaluation with hearing session(s)⁹ and shall be governed accordingly by the Centre's Neutral Evaluation Rules.
- 2.7 Unless the Parties agree otherwise, they shall not call the Neutral as a witness in any proceedings arising out of or in connection to the Neutral Evaluation.

3 Authorisation of Representatives

- 3.1 The following persons are authorised to represent the Parties in the Neutral Evaluation:

Party	Name of Representative	NRIC No./Passport No. of Representative(s)
[Name of Party 1]		
[Name of Party 2]		

4 Waiver of Liability

- 4.1 In consideration of the Centre and the Neutral providing the Neutral Evaluation Service sought by the Parties:
- (a) The Parties shall not make any claim whatsoever against the Neutral and/or the Centre, its officers and employees for any matter arising out of or in connection to:
- i. the Neutral Evaluation; and/or
 - ii. the services provided by the Neutral and/or the Centre; and/or
 - iii. the dispute between the Parties.
- (b) The Neutral shall not be liable to the Parties for any act or omission arising out of or in connection to the services provided by the Neutral or in relation to the Neutral Evaluation, unless the act or omission is fraudulent or involves wilful misconduct.
- (c) The Centre shall not be liable to the Parties for any act or omission arising out of or in connection with the Neutral Evaluation.

5 Fees and Expenses

- 5.1 The Centre shall estimate the total fees and expenses of the Neutral Evaluation and shall collect a deposit from the Parties as reasonable security (Security Deposit).
- 5.2 The Centre reserves the right to collect a further Security Deposit where necessary.

6 Law and Jurisdiction

- 6.1 This Agreement shall be governed by Singapore law and is under the jurisdiction of the Singapore Courts.

⁸ Delete where inapplicable.

⁹ Delete where inapplicable.

The Singapore Mediation Centre Neutral Evaluation Rules

Signed by:

Signed by:

[Name and designation]
for and on behalf of [Party 2]

[Name and designation]
for and on behalf of [Party 2]

Signed by:

Signed by:

[Name and designation]
for and on behalf of the Centre

[Name and designation]
The Neutral

Dated:

**SINGAPORE MEDIATION CENTRE
NEUTRAL EVALUATION SERVICE
REQUEST FOR NEUTRAL EVALUATION**

CODE OF CONDUCT

This Code of Conduct (this Code) applies to all persons appointed by the Singapore Mediation Centre (the Centre) to act as Neutrals in the Neutral Evaluation Service provided by the Centre.

1 Acceptance of Assignment

1.1 A Neutral will, before accepting an assignment, ensure that he is able to conduct the Neutral Evaluation expeditiously, independently and impartially.

2 Impartiality

2.1 A Neutral will be impartial and fair to the parties, and be seen to be so. Following from this, he will disclose to the Centre and, if he is nevertheless appointed by the Centre, to the parties any information which may lead to the impression that he may not be impartial or fair, including, that:

- (a) he has acted in any capacity for any of the parties;
- (b) he has a financial or any other interest (direct or indirect) in any of the parties or the outcome of the Neutral Evaluation; or
- (c) he has any confidential information about the parties or the matter that is the subject of the Neutral Evaluation derived from sources outside the Neutral Evaluation proceedings.

2.2 If the Centre offers a Neutral an appointment for which there is an actual, potential or apparent conflict of interest between the Neutral and any of the parties, the Neutral shall disclose this to the Centre.

2.3 If, at any stage during the Neutral Evaluation proceedings, circumstances arise that could give rise doubts to the impartiality or independence of the Neutral, he shall promptly disclose such circumstances to the Centre for its further action.

2.4 A Neutral shall not accept an appointment if he has previously acted for any of the parties in connection with the subject matter of the Neutral Evaluation.

2.5 When in doubt, a Neutral shall refer the matter to the Centre.

2.6 A Neutral (or any member of his firm or company) shall not act for any of the parties subsequently in any matter related to or arising out of the subject matter of the Neutral Evaluation without the written informed consent of all the parties.

3 The Neutral Evaluation Procedure

3.1 A Neutral will act in accordance with the Centre's Neutral Evaluation Rules and the Neutral Evaluation Agreement.

4 Confidentiality

- 4.1 Any document or information supplied for and/or disclosed in the course of the Neutral Evaluation will be kept confidential. A Neutral will only disclose the same if required to do so by law, or pursuant to an order of a court, or with the consent of all the parties.
- 4.2 A Neutral shall not act as a consultant or arbitrator in any proceedings arising or in connection to the subject matter of the Neutral Evaluation.
- 4.3 Unless all the parties agree, a Neutral shall not act as a witness or expert in any proceedings arising out of or in connection to the subject matter of the Neutral Evaluation.

5 Preparation

- 5.1 The Neutral will prepare himself appropriately before the commencement of the Neutral Evaluation.
- 5.2 The Neutral should carry out his role in a conscientious and diligent manner.

6 Withdrawal

- 6.1 A Neutral shall withdraw from a case:

- (a) when he realises that he has committed a breach of any of the terms of this Code;
- (b) if there is a justifiable request to do so in writing by any of the parties; or
- (c) when he is required by any of the parties to do anything in breach of this Code or the Centre's Neutral Evaluation Rules.

The Neutral shall, on the occurrence of (a), (b), or (c) as set out above immediately inform the Centre of his withdrawal.

- 6.2 In the event that a Neutral is requested to withdraw on request by parties, the Neutral may, after careful consideration, decide that:

- (a) the reason for the challenge is not justifiable; or
- (b) the withdrawal would cause unfair delay or expense or would be contrary to the ends of justice;

shall consult the Centre on the appropriateness of continuing as a Neutral.

- 6.3 A Neutral may, with the concurrence of the Centre, withdraw from a case if:

- (a) any of the parties breaches the Neutral Evaluation Agreement or the Centre's Neutral Evaluation Rules;
- (b) any of the parties acts unconscionably; or
- (c) the parties allege that he is in breach of this Code.

7 Fees

7.1 In accepting the appointment, the Neutral expressly agrees to the fees as fixed by the Centre, and he shall not make any unilateral or private arrangements with any of the parties for any fees.

8 Compliance

8.1 In abiding by this Code and the Neutral Evaluation Agreement, the Neutral must at all times act in accordance with the laws of Singapore.

**SINGAPORE MEDIATION CENTRE
NEUTRAL EVALUATION SERVICE**

FEE SCHEDULE

1 Administrative Fee

1.1 The Administrative Fee is payable to the Singapore Mediation Centre (SMC) for administering the Neutral Evaluation service.

1.2 The Administrative Fee is non-refundable and is fixed in accordance with the table below:

Sum in Dispute (S\$)	Up to \$500,000	\$500,001 up to \$1,000,000	\$1,000,001 up to \$5,000,000	Above \$5,000,001
Fees (S\$) (including GST)	\$749	\$1,070	\$1,605	\$2,140

2 Neutral's Professional Fee

2.1 The Neutral's Professional Fee, charged at an hourly rate, is paid to the Neutral through SMC.

2.2 The Neutral's Professional Fee is payable for services including but not limited to conducting the preliminary conference, reading and evaluating materials submitted, hearing and evaluating parties' oral submissions, conducting site visits and undertaking any other work as is reasonably required to provide an Opinion.

3 Other Charges

Description	Charge (S\$)
Room rental in the Supreme Court	To be advised by SMC depending on room used
Lunch and refreshments	\$36.38 (including GST) per person per day
Staff Overtime (payable where the matter proceeds beyond 6.00 pm)	\$42.80 (including GST) per hour

Notes:

- (i) The rates quoted for fees and charges stated above are subject to GST at the prevailing rate.
- (ii) The rates mentioned in paragraph 3 are subject to change without notice.

(June 2011)