

**Important Notice**

The Terms and Conditions of Private Banking Service will create legal obligations and liabilities on the Client's part. The Client is strongly advised to carefully read and understand the terms and conditions herein and to seek independent legal advice before the Client agrees to be bound by the Terms and Conditions of Private Banking Service.

**TERMS AND CONDITIONS OF PRIVATE BANKING SERVICE**

**CATHAY UNITED BANK  
COMPANY, LIMITED  
HONG KONG BRANCH,  
a branch of a company with  
limited liability incorporated in  
Taiwan**

23/F, One Causeway Bay,  
281 Gloucester Road,  
Causeway Bay, Hong Kong

## Section 1

### GENERAL PROVISIONS

#### 1. DEFINITIONS AND INTERPRETATIONS

1.1 In the Agreement, unless the context otherwise requires or unless otherwise expressly stated, the following words and expressions shall have the following meanings:

- “Account”** means any account(s) of whatever nature or with whatever title maintained or to be maintained by the Bank for or on behalf of the Client, including, without limitation, any deposit account, investment account, securities account, trading account, trust account, Custodian Account and any other account or sub-account;
- “Account Holder”** means the Client;
- “Account Mandate”** means the Account Opening Form, signature card(s) and all other documents for corporation, partnership, sole proprietorship, individual or joint account in the form prescribed by the Bank in relation to giving instructions of the opening, operation, maintenance or closing of the Account(s) or Service(s);
- “Account Opening Form”** means the documents in the form prescribed by the Bank from time to time for opening Account(s) with the Bank;
- “AEOI”** means “Automatic Exchange of Financial Account Information” or one or more of the following, as the context requires: (i) FATCA; (ii) the OECD Standard for Automatic Exchange of Financial Account Information in Tax Matters – the Common Reporting Standard and any associated guidance; (iii) any intergovernmental agreement, treaty, regulation, guidance, standard or any other arrangement between Hong Kong and any other jurisdiction (including between any government bodies in each relevant jurisdiction), entered into to facilitate, implement, comply with or supplement the legislation, regulations, guidance or standards described in (i) and (ii) above; and (iv) any legislation, regulations or guidance implemented in Hong Kong to give effect to the matters outlined above;
- “Affiliates”** means, in relation to the Bank, (i) any entity controlled, directly or indirectly, by the Bank; (ii) any entity that directly or indirectly controls the Bank or (iii) any entity directly or indirectly under common control with the Bank; and **“control”** of any entity or person means beneficial ownership directly or indirectly, of more than 50% of the issued ordinary or common share capital (or the like) of the entity or person;
- “Agent”** means any agent, correspondent, broker, dealer, counterparty, adviser, bank, attorney, custodian, sub-custodian, depository, depository agent, manager, assayer, refiner, service provider or nominee selected or used by the Bank, whether in Hong Kong or elsewhere, and may include any of the Bank’s Affiliates;
- “Agreement”** means the agreements for the Account(s), the Service(s) and the Transaction(s) entered into between the Client and the Bank in writing as varied, modified, amended or supplemented from time to time, including, without limitation, the Account Opening Form, the Account Mandate, the General T&Cs, the Fee Schedule, Investor Risk Profile Questionnaire, Derivative Product Knowledge and Experience Assessment Form, any Facility Document, any Specific Agreement, any authority delegated, all other documents signed by the Client to the Bank in respect of the Account(s), the Service(s), Transaction(s), and Financial Product(s) and all other documents prescribed by the Bank from time to time to form part of the Agreement, or any one of them (each as may be supplemented, varied, amended or replaced from time to time);
- “Applicable Laws”** means all laws, rules, regulations, notices, directions, guidelines, directives, circulars, codes, practice notices, policy statements and disclosure requirements (whether or not having the force of law, but, if not having the force of law, being a type with which any person to which it applies is accustomed to comply) of any relevant jurisdiction, market or regulatory Authority which are applicable to the subject matter, the Accounts or the Services contemplated hereunder from time to time;
- “Assets”** means all cash, deposits, funds, Financial Products and any other property, investments or assets of the Client as may be deposited, delivered and/or transferred by the Client, any Security Party, or otherwise to the Bank or to the Bank’s order, whether by way of security,

Margin, or for management, safe custody or any purpose whatsoever, including any assets held by the Bank or its nominee or Agent on custody for the Client. In cases where the Client is a trustee opening and maintaining an Account for the purpose of a trust, as expressly made known to and acknowledged by the Bank, references to Assets shall be construed to include references to the Assets of such trust, notwithstanding that beneficial ownership of those Assets may vest in persons other than the trustee;

- “Authority”** means the government of Hong Kong or any other jurisdictions, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory (including self-regulatory) or supervisory body or commission, central bank or banking commission, court or other entity exercising statutory, regulatory, judicial, administrative, taxing or supervisory powers or functions of or pertaining to government, or other regulatory body, exchange, clearing house or market operated by such exchange, industry or other agency which in the opinion of the Bank, has jurisdiction over the Bank, Bank Group, the Client, the Services and/or the Accounts;
- “Authorized Person”** means, the person(s) authorized or appointed by the Client and accepted by the Bank to act on behalf of the Client for or in connection with the establishment, operation, maintenance or closing of the Account or Services from time to time. For the avoidance of doubt, Authorized Persons shall (unless otherwise specified or the context otherwise requires), include Authorized Persons with Full Powers, Authorized Persons with Limited Powers and Authorized Persons with Powers to Receive Information, each as set out in Clause 6;
- “Bank”** means Cathay United Bank Company, Limited, Hong Kong Branch, being an Authorized Institution and a Registered Institution (CE number AGV591) carrying on Type 1 (Dealing in Securities) and Type 4 (Advising on Securities) regulated activities, and any of its offices or sub-branches in Hong Kong and includes its successors or assigns;
- “Bank Group”** means the Bank and any of its Affiliates and any of their branches;
- “Business Day”** in relation to:
- (a) Securities trading, means any day excluding Saturday, Sunday and public holiday but including such day on which severe weather falls, where severe weather refers to scenarios where a typhoon signal No. 8 or above or a black rainstorm warning is issued by the Hong Kong Observatory, or an “extreme conditions” announcement is made by the Hong Kong Government; and
  - (b) each other particular kind of business, means any day (excluding Saturday and Sunday) when banks are generally open for the transaction of such kind of business in Hong Kong;
- “Clearing House”** means HKSCC in relation to SEHK and, in relation to any Foreign Stock Exchange, the clearing house providing services similar to those of HKSCC to such Foreign Stock Exchange;
- “Client”** means the person or each person in whose name an Account is opened or maintained or a Service is set up or provided by the Bank and, where the context permits, includes the Authorized Persons;
- “Client Data”** means any and all information and data (including ‘personal data’ as defined in the Personal Data (Privacy) Ordinance (Cap. 486)) relating to the Client, to any person constituting or connected to the Client or authorized by the Client, including connected parties, Authorized Persons, beneficial owners or any other parties related to the Client, the Client’s account relationship or dealing relationship with the Bank, any and all Accounts, Services, Assets, Facilities, Transactions, or any other facilities and transactions whether relating to historical or current information;
- “Client Money Rules”** means the Securities and Futures (Client Money) Rules (Cap. 571I);
- “Client Securities Rules”** means the Securities and Futures (Client Securities) Rules (Cap. 571H);
- “Companies Registry”** means the Companies Registry of Hong Kong;
- “Cost of Funds”** means, in relation to any sum and any period the cost to the Bank of funding that sum for that period, as determined by the Bank in its absolute discretion, by reference to (i) the per annum rate of interest at which deposits in the relevant currency for a similar amount and period are

offered to the Bank in the relevant interbank market on the relevant day and (ii) the cost to the Bank occasioned by or attributable to complying with reserves, liquidity, deposit or other requirements imposed on the Bank by any relevant Authorities;

<b>“Custodian Account”</b>	shall have the meaning as set out in Clause 2 of Section 4;
<b>“Currency Linked Investments”</b>	means any currency linked investment in which a placement of funds is accepted in one currency, and which may be repayable in another currency;
<b>“Derivative Product Knowledge and Experience Assessment Form”</b>	means the documents in the form prescribed by the Bank from time to time to verify or assess the knowledge and experience of the Client in derivative products or other products as determined by the Bank in its absolute discretion;
<b>“Exchange”</b>	means SEHK and any Foreign Stock Exchange;
<b>“Event of Default”</b>	shall have the meaning as set out in Clause 12.1;
<b>“Facility”</b>	means trading facilities, margin facilities, overdraft facilities, credit facilities, and/or any other accommodation in its widest sense (including such facilities as from time to time amended, modified, supplemented, revised, varied or replaced) made available by the Bank to the Client from time to time and reference to <b>“Facility”</b> shall mean any one of them;
<b>“Facility Amount”</b>	shall have the meaning given to it in the relevant Facility Letter;
<b>“Facility Document”</b>	means any and all Facility Letters, Security Documents and any other documents which the Bank may from time to time require to be completed, executed and/or delivered in connection with the Facilities, any terms and conditions governing the Facility (including without limitation this General Terms and Conditions), and any loan, credit terms and conditions or deed, or other agreements or documents under or pursuant to which any monies or liabilities whatsoever may, at any time (now or hereafter), be due, owing or payable by the Client to the Bank, whether actually or contingently, solely or jointly and/or severally with another or others or as principal or as surety or otherwise, under or in connection with the Facilities (each as may be supplemented, varied, amended or replaced from time to time);
<b>“Facility Letter”</b>	means (i) any facility letter (as may be supplemented, varied, amended or replaced from time to time) relating to a Facility that is expressed to be subject to the Agreement and (ii) any agreement (as may be supplemented, varied or amended from time to time) relating to a Facility constituted by the Bank’s written notification approving that Facility pursuant to the Client’s submission to the Bank of the Client’s application for banking facility with the Bank;
<b>“FATCA”</b>	means Foreign Account Tax Compliance Act, i.e.: <ul style="list-style-type: none"><li>(a) sections 1471 through 1474 of the United States Internal Revenue Code of 1986 (as amended) or any amended or successor version thereof;</li><li>(b) any intergovernmental agreement, memorandum of understanding, undertaking and other arrangement between governments and regulators in connection with paragraph (a) above, including as entered into by the government of Hong Kong;</li><li>(c) agreements between the Bank and the Internal Revenue Service of the United States, or any other regulator or government agency (whether of the United States or of any other jurisdiction), pursuant to or in connection with paragraph (a) or (b) above; and</li><li>(d) any laws, rules, regulations, interpretations or practices adopted in the United States, Hong Kong or elsewhere pursuant to any of the foregoing;</li></ul>
<b>“Fee Schedule”</b>	means the fee schedule as may be furnished by the Bank to the Client (and as may be supplemented, varied, amended or replaced from time to time) setting out the fees charged or chargeable for the Accounts and/or Services offered by the Bank to the Client and other fees, commissions, benefits and/or remuneration that the Bank may receive from time to time;
<b>“Financial Products”</b>	means any Securities, Investment Funds, exchange traded derivatives, OTC Derivatives, derivative transactions, foreign exchange transactions, Structured Deposits, Currency Linked Investments, or any other investment or financial products as determined by the Bank from

time to time;

<b>“Force Majeure Event”</b>	means any event which the Bank determines, in its absolute discretion, is beyond the reasonable control of the Bank and shall include any act of God, calamity, natural disaster, explosion, industrial action, labour difficulties, power failure, malfunction of, error in, breakdown or failure of transmission or communication of information caused by any computer facilities, electronic, electrical or mechanical machine or system or any interception of such transmission or communication facilities, machines or systems, abnormal operating conditions, war, insurrection, act or threatened act of terrorism, civil strife, sabotage, governmental restrictions, change (including a change of interpretation) of any law or governmental or regulatory requirement, any form of exchange control restriction or requirement of whatsoever nature affecting availability, convertibility, credit or transfers of currencies, commodities, securities, financial instruments or funds, any form of debt or other moratorium on jurisdictions, individuals or entities, or any devaluation, redenomination or demonetisation of the underlying currencies, commodities, securities or instruments, embargo, moratorium or any other act of government or other authority (including any change in any Applicable Laws or taxes), postal or other strikes, closure or suspension of trading on any exchange, board of trade, market or clearing house and/or any act, error, neglect or default, actions or omissions, insolvency or failure in business of any agent (including any Agent) selected by the Bank in good faith or those of any of such agent’s officers or employees, or other acts or circumstances beyond the Bank’s control;
<b>“Foreign Stock Exchange”</b>	means a stock exchange which is permitted to operate in a foreign country or territory;
<b>“General T&amp;Cs” or “General Terms and Conditions”</b>	means these Terms and Conditions of Private Banking Service, as amended, modified, supplemented, revised, varied or replaced by the Bank in its absolute discretion from time to time;
<b>“Guarantee”</b>	means any guarantee, standby letter of credit, any other credit and/or any other instrument whatsoever from time to time issued or entered into by the Bank for or at the request of the Client pursuant to the Facilities under which the Bank incurs a liability (whether actual or contingent) to a third party (including any member of the Bank Group);
<b>“HKMA”</b>	means the Hong Kong Monetary Authority;
<b>“HKSCC”</b>	means The Hong Kong Securities Clearing Company Limited;
<b>“Hong Kong”</b>	means the Hong Kong Special Administrative Region of China;
<b>“Hong Kong Dollars” or “HKD”</b>	means the lawful currency for the time being of Hong Kong;
<b>“Investment Fund”</b>	means any investment company, partnership, unit trust, private equity fund, hedge fund, offshore fund, mutual fund, investment fund or any other collective investment scheme;
<b>“Investment Transaction”</b>	means any transaction that the Bank enters into or effect with or for and on behalf of the Client from time to time with respect to Financial Products, including Transactions on the purchase, subscription, sale, exchange or other disposal of and dealings in any and all kinds of Financial Products, whether effected through the Exchange, over-the-counter or otherwise and in any manner, and any other Transactions that the Bank deems to be Investment Transaction from time to time;
<b>“Investor Risk Profile Questionnaire”</b>	means the documents in the form prescribed by the Bank from time to time to verify the risk or investment profile of the Client and/or to seek confirmation from the Client as to the Client’s risk or investment profile;
<b>“Limit”</b>	means, in relation to a particular Facility, the maximum amount of that Facility or, in relation to all of the banking facilities comprised in a Facility, the maximum aggregate amount of all of such banking facilities;
<b>“Losses”</b>	means all and any losses, whether direct or consequential, damages (including special or exemplary), costs, expenses (including all duties, taxes or other levies and legal fees on a full indemnity basis), loss of profit, loss of revenue, loss of business opportunity, loss of reputation, loss of interest, charges, penalties, actions, suits, proceedings, claims, demands and all other liabilities of whatsoever nature or description howsoever arising;

<b>"Margin"</b>	means any assets (including Assets) acceptable to the Bank and provided by the Client and/ or any Security Party to the Bank as credit support, collateral, margin and/or security for any or all of the Client's obligations to the Bank, including the Total Liabilities, or for the purpose of protecting the Bank from and against any other Losses or risk of Losses (whether present, future or contingent);
<b>"Margin Facility"</b>	means the margin facility granted by the Bank to the Client subject to and upon the terms as the Bank may at the Bank's absolute discretion determine;
<b>"Margin Requirements"</b>	means the requirements prescribed by the Bank in respect of or incidental to the collection and specifications of the Margin;
<b>"New Money Credit Event"</b>	means any increase (directly or indirectly) in the Bank's exposure (whether by way of additional credit or banking Facility or otherwise including as part of a restructuring) to the Client, any Authority or other person in the Client's country occurring by reason of (i) any law, action or requirement of any Authority (de jure or de facto) or other person in the Client's country or (ii) any request in respect of external indebtedness of borrowers in the Client's country applicable to banks generally which conduct business with such borrowers or (iii) any agreement in relation to (i) or (ii), in each case to the extent calculated by reference to the amounts outstanding prior to such increase;
<b>"OTC Derivatives"</b>	means any over the counter derivatives contracts made available by the Bank to the Client;
<b>"OTC Derivatives Transaction"</b>	means any Transaction in respect of any OTC Derivatives;
<b>"PBOC"</b>	means the People's Bank of China and its successors or assigns;
<b>"Prime Lending Rate"</b>	means at any particular time, the rate per annum which is the Bank's prime lending rate in force at such time;
<b>"Remuneration"</b>	means any charges, rebates, discounts, spread, allowances, retrocessions, discounts, fees (including brokerage fees), profits (including trading profits from back-to-back transaction), commissions (including soft dollar commission), remuneration, emoluments, compensation (including distribution channel compensation) and/or other benefits and advantages;
<b>"Renminbi" or "RMB"</b>	means the lawful currency of China for the time being;
<b>"Risk Disclosure Statement"</b>	means the Risk Disclosure Statement in Section 2;
<b>"Securities"</b>	has the meaning given to it in Schedule 1 of the SFO;
<b>"Security Documents"</b>	means each and every security document or agreement creating or evidencing a security, charge, pledge, mortgage, assignment, guarantee or other assurance granted in favour of the Bank in connection with the Account(s), Service(s) (including Facility(ies) or Transaction(s)), or otherwise, to ensure the performance by the Client of its obligations under any of the Facility Documents or in respect of the Account(s) or Service(s) (including Facility(ies) or Transaction(s)) or otherwise, and any and every other document from time to time executed to guarantee, secure or otherwise assume the performance of the obligations of the Client under any of the Facility Documents or in connection with the Account(s) or Service(s) (including Facility(ies) or Transaction(s)) each as may be supplemented, varied, amended or replaced from time to time;
<b>"Security Party" or "Security Parties"</b>	means any third party person, if any, now or at any time hereafter executing any Security Document(s) in favour of the Bank for the due and punctual discharge of the Total Liabilities;
<b>"SEHK"</b>	means The Stock Exchange of Hong Kong Limited and its successors and assigns;
<b>"Service"</b>	means any service(s) or transaction(s) of whatever nature or with whatever title provided or to be provided by the Bank to the Client or carried out by the Bank with or on behalf of the Client from time to time, including, without limitation, any Facilities, Transactions, custody services, dealing or effecting any Transactions;

<b>“SFO”</b>	means the Securities and Futures Ordinance (Cap. 571), as amended, revised, supplemented, renamed, re-enacted and/or replaced from time to time;
<b>“Signing Arrangement”</b>	means the signing arrangement of the person(s) with authority to open, operate, maintain and close any Account, use or terminate any Service, and/or to sign any documents as required by the Bank, as specified in the Account Opening Form, the Account Mandate or otherwise, subject to change from time to time and accepted by the Bank;
<b>“Specific Agreement”</b>	means any document, application, agreement, contract or other terms and conditions relating to any specific Account, Service, Transaction or Facility (including any Facility Documents, terms and conditions for derivatives transactions, terms and conditions for any other specific Financial Product, Term Sheet and/or any additional terms and conditions prescribed by the Bank from time to time), but for the avoidance of doubt excluding this General T&Cs as may be signed by the Client, or binding on the Client or agreed between the Client and the Bank from time to time (and each as may be supplemented, varied, amended or replaced from time to time);
<b>“Structured Deposits”</b>	means a deposit under which any interest is payable, or is at risk, in accordance with a formula which is based on the performance of an one or more currencies, foreign exchange forward, equities, equity indices, bonds, interest rate, interest rate futures, index futures, commodities and any other money market or financial instruments or a combination of any or two more financial instrument;
<b>“Tax Deduction”</b>	means a deduction or withholding for or on account of tax from a payment under a Facility Document, other than a deduction or withholding from a payment under a Facility Document required by FATCA;
<b>“Term Sheet”</b>	means the document (howsoever named) prepared by the Bank from time to time setting out the terms, conditions, details and particulars of an intending Transaction and dealing in respect of any Financial Product;
<b>“Total Liabilities”</b>	means all monies, obligations, indebtedness, liabilities, Margin Requirements and costs which now are or at any time hereafter may be or become due from, or owing or incurred by the Client to the Bank, whether on or in respect of any Account, or in connection with any Service, instruction, Facility, and/or Transaction or otherwise pursuant to or in connection with the Agreement, in whatever currency the same shall be denominated or owing, whether solely or jointly or severally with any other person, whether current or otherwise, whether present, future, actual, contingent, primary, collateral or unmatured and whether as principal debtor, guarantor, surety or otherwise howsoever, including any and all costs incurred by the Bank and costs at such rate(s) as the Bank may from time to time charge the Client and all liabilities in connection with paying, accepting, endorsing or discounting any cheques, notes or bills, or under any Guarantee (whether a claim or demand has been made on the Bank under or in connection therewith);
<b>“Transaction”</b>	means any transaction(s) effected or to be effected under or pursuant to or in connection with the Agreement, including pursuant to or in connection with any Accounts, Services, or Facilities, including, without limitation, any Investment Transactions, Facilities, Services or any other transactions of whatever nature.

- 1.2 The clause headings in the General T&Cs or any sections thereof are for convenience only and shall not affect the interpretation or construction of the General T&Cs and have no legal effect.
- 1.3 References in the General T&Cs to the singular shall include references to the plural and vice versa and pronouns of either gender or neuter shall include the other pronoun forms as the context requires.
- 1.4 References in the General T&Cs to clauses and sub-clauses are, except where the context otherwise requires or otherwise stated, to be construed respectively as references to clauses and sub-clauses in the respective sections of the General T&Cs. However, the words “**herein**”, “**hereof**” and “**hereunder**” and other words of similar import refer to the General T&Cs as a whole and not to any particular section, clause or other subdivision of the General T&Cs.
- 1.5 References in the General T&Cs to any party hereto shall be deemed to be references to or to include their respective successors, personal representatives and permitted assigns.
- 1.6 Reference in the General T&Cs to any enactment shall be deemed to include references to such enactment as amended, extended or re-enacted from time to time and the rules and regulations thereunder.
- 1.7 References in the General T&Cs to the “**General T&Cs**”, any specific section of the General T&Cs or any other documents

shall, except otherwise expressly provided, include references to the General T&Cs, the relevant section of the General T&Cs or such other documents as amended, extended, novated, replaced and/or supplemented in any manner from time to time and/or any document which amends, extends, novates, replaces and/or supplements the General T&Cs (or any section thereof) or any such other documents.

- 1.8 References in the General T&Cs to the “**Bank**”, “**we**”, “**our**”, “**ours**” or “**us**” are to be construed as references to “**Cathay United Bank Company, Limited, Hong Kong Branch**” and references in the General T&Cs to “the **Client**”, “**you**”, “**your**” or “**yours**” are to be construed as references to the Client(s) who maintain(s) any Account(s) with or use(s) any Service(s) provided by “**Cathay United Bank Company, Limited, Hong Kong Branch**” from time to time.
- 1.9 Where the context permits, reference to “**Clients**” shall include the Authorized Persons.
- 1.10 The terms “**shall**”, “**will**” and “**agree**” are mandatory, and the term “**may**” is permissive.
- 1.11 “**amendment**” includes a supplement, variation, novation, extension (whether of maturity or otherwise), restatement, re-enactment or replacement (however fundamental and whether or not more onerous) and “**amended**” will be construed accordingly.
- 1.12 “**assets**” include present and future properties, revenues and rights of every description.
- 1.13 A “**day**” shall mean a calendar day unless utilized in the defined term Business Day.
- 1.14 A “**disposal**” of assets includes a sale, transfer and any other kind of disposal of, and the grant of any option in respect of, any right or interest, legal or equitable, in such assets, and any agreement for any of the foregoing (and “**dispose**” shall be construed accordingly).
- 1.15 A “**guarantee**” includes reference to any indemnity or other assurance against financial Losses including, without limitation, an obligation to purchase assets or services as a consequence of a default by any other person to pay an indebtedness, and “**to guarantee**” (and all conjugations thereof) and “**guaranteed**” shall be construed accordingly.
- 1.16 The words “**include**” and “**including**” are to be construed “**include/including without limitation**”.
- 1.17 “**indebtedness**” includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent.
- 1.18 The word “**or**” is not exclusive.
- 1.19 A “**person**” includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not have separate legal personality).
- 1.20 “**repay**” (or any derivative form thereof) shall, subject to any contrary indication, be construed to include “**prepay**” (or, as the case may be, the corresponding derivative form thereof).
- 1.21 “**rights**” includes rights, authorities, discretions, remedies, liberties, powers, easements, quasi-easements and appurtenances (in each case, of any nature whatsoever).
- 1.22 Unless a contrary indication appears, any obligation of the Client under the Agreement which is not a payment obligation remains in force for so long as any payment obligation of the Client is, may be or is capable of becoming outstanding under the Agreement.
- 1.23 Where the Agreement specifies an amount in a given currency (the “**specified currency**”) “**or its equivalent**”, the “**equivalent**” is a reference to the amount of any other currency which, when converted into the specified currency utilizing the Bank’s spot rate of exchange for the purchase of the specified currency with that other currency on the value or settlement date, is equal to the relevant settlement amount in the specified currency.
- 1.24 Any payment date which is due to occur, or period which is due to end on a day that is not a Business Day shall occur or end (as the case may be) on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).

## **2 THIRD PARTY RIGHTS**

- 2.1 Save as otherwise provided in the Agreement, a person who is not a party to the Agreement has no right under the Contracts (Rights of Third Parties) Ordinance (Cap. 623 of the Laws of Hong Kong) (“**Third Parties Ordinance**”), as amended, revised, supplemented, renamed, re-enacted and/or replaced from time to time, to enforce or enjoy the benefit of any term of the Agreement. This Clause shall not affect any right or remedy of any third party which exists or is available otherwise than by reason of the Third Parties Ordinance.
- 2.2 Notwithstanding any term of the Agreement the consent of any person who is not a party to the Agreement is not required to rescind or amend the Agreement at any time.
- 2.3 Any of the Bank’s director, officer, employee, Agent or Bank Group may, by virtue of the Third Parties Ordinance, as amended, revised, supplemented, renamed, re-enacted and/or replaced from time to time, rely on any provision of the General T&Cs and the Agreement (including without limitation any indemnity, limitation or exclusion of liability) which expressly confers rights or benefits on that person.

## **3 APPLICATION**

- 3.1 This Agreement is applicable to all Accounts and Services.
- 3.2 In this Agreement, in the event of any conflict or inconsistency between Section 1 and any other Sections of the General T&Cs, the other applicable Section(s) of the General T&Cs shall prevail with respect to the specific Accounts or Services in question.
- 3.3 In this Agreement, in the event of any conflict of inconsistency between the General T&Cs and the provisions of any Specific Agreement, the latter shall prevail in respect of the Accounts or Services in question.

#### 4. ACCOUNTS AND SERVICES

- 4.1 The Bank is at liberty to refuse to provide, withdraw, cancel or revoke any Accounts or Services (including Transactions and Facilities) at any time in whole or in part.
- 4.2 The Bank may from time to time upon the Client's application, open any Account and/or provide any Service at the Bank's sole and absolute discretion. The Bank may refuse an application for any Account and/or Service for any reason. Any Account and/or Service opened, maintained and/or provided shall be upon and subject to the Agreement and subject to such other conditions and requirements as the Bank thinks fit.
- 4.3 To enable the Bank to consider whether to open and/or provide the Client with any Account and/or Service, the Client is required to supply to the Bank from time to time the following documentation and information:
- (a) the Agreement together with any specific application form(s) for the relevant Account and/or Service which has been duly completed and signed by the Client;
  - (b) a self-certification from the Client and/or the Client's ultimate beneficial owner(s) or shareholder(s) as to his/their status in the Bank's prescribed form or in such other form agreed by the Bank, or such other documentary evidence acceptable to the Bank;
  - (c) all documentation and other information required by the Bank for the purpose of performing the due diligence and identification procedures, know-your-client procedures and investment suitability assessments, in relation to the Client in accordance with all Applicable Laws and its internal policies (including, but not limited to, verification of the identity of the Client or, as the case may be, partner(s), manager(s), beneficial owner(s) and ultimate beneficial owner(s), shareholder(s), controllers or directors (including any person having executive authority) of the Client or the Client's Authorized Persons, and source of funds or wealth and the nature of business of the Client);
  - (d) the Client's investment objectives, investment experience, and knowledge, financial circumstances, financial commitments, risk tolerance and any other information or circumstances required by the Bank for the purpose of ascertaining the Client's investment profile or otherwise; and
  - (e) any other information or documents as the Bank may require in its absolute discretion.

The Client will, from time to time, supply the Bank with information and documents in connection with the establishment or continuation of any Account or Service with the Bank. Failure to supply the information and documentation requested by the Bank may result in the Bank being unable to provide the Services or operate or maintain any Account with the Bank. It may also result in the Bank having to withhold or deduct amounts as required under the local or foreign laws, regulations and rules.

- 4.4 The Client agrees that it shall fully comply with and adhere to all Applicable Laws in the use of all Accounts and Services. The Bank's performance of its obligations under the Agreement is subject to Applicable Laws.

#### 5. INSTRUCTIONS

- 5.1 Subject as provided herein, all instructions in relation to all matters in connection with the Accounts or Services (including for the avoidance of doubt and without limitation, instructions on any Transactions or Facilities) shall be given by the Client or the Client's Authorized Person directly to the Bank, whether orally (in person or by telephone), by facsimile transmission, by any electronic mail ("**E-mail**"), or by other means of communication, provided that the means of communication is accepted by the Bank from time to time, and in such manner as may be prescribed by the Bank from time to time. The Bank may prescribe different acceptable means and manner of communication for instructions from time to time, which may differ for different Accounts and Services (including for the avoidance of doubt, Transactions or Facilities).
- 5.2 If instructions are given by the Client or the Client's Authorized Person by telephone:
- (a) the Client or the Client's Authorized Person must use the designated telephone number provided by the Bank from time to time (the "**Designated Telephone Number**"). For the avoidance of doubt, any instructions given by telephone without using the Designated Telephone Number, and any instructions given by messages left at the Bank's voicemails of any telephone numbers or any personal mobile phone numbers of the Bank's employees or agents shall not be regarded as valid or effective instructions to the Bank unless otherwise determined by the Bank in its absolute discretion. The Bank shall not be liable to the Client for any Losses whatsoever arising out of or in connection with the Client or the Client's Authorized Person's failure to comply with the terms of this Clause;
  - (b) notwithstanding the designation of the Designated Telephone Number and the provisions in sub-clause (a)

hereinabove, the Bank (but not the Client) has the sole discretion to accept, act on, carry out or effect any instructions given by telephone other than the Designated Telephone Number (the "**Non-Designated Telephone Number Instruction**"). If the Bank accepts, acts on, carries out or effects any Non-Designated Telephone Number Instruction, such Non-Designated Telephone Number Instruction shall be treated and deemed as an instruction of the Client in all respects and all the Bank's rights, protections, powers and remedies shall be applicable to such Non-Designated Telephone Number Instruction; and

- (c) the Bank has no responsibility for any delay, failure, error, interruption or suspension in the transmission or communication of instructions or information on prices or the mistaken receipt of any instructions by any other party. The Bank is authorized to act upon any instructions received by the Bank (regardless of delay, failure, error, interruption or suspension as aforesaid) and the Bank shall not be required to check the accuracy or authenticity of such instructions with the Client, nor shall the Bank be liable for any Losses suffered or incurred by the Client as a result of the Bank's acting upon the same. The Bank shall be entitled to require the Client to enter into a further agreement if the Client wishes the Bank to act on telephone instruction.

5.3 If instructions are given by the Client or the Client's Authorized Person by E-mail transmission, the Client or its Authorized Person must give such instruction: -

- (a) only by such means and in such manner as the Bank may from time to time designate for the relevant type of Account or Services (including Transactions or Facilities); and
- (b) at the request of the Bank (such request may be represented by electronic image or digitized voice or other electronic form, as the case may be), by inputting such information relating to the identity of the Client as may be required by the Bank, as well as the information and details with respect to the Accounts or Services (including Transactions or Facilities).

5.4 In the case of instruction by facsimile ("**Facsimile Instruction**"): -

- (a) the Client shall forthwith deliver to the Bank a hard copy of the Facsimile Instruction. In the event of any discrepancy between any of the Facsimile Instruction received and acted on by the Bank and a hard copy thereof, the Facsimile Instruction received and acted on by the Bank shall prevail and be deemed to be the conclusive instructions given by the Client; and
- (b) the Bank may require the Facsimile Instruction to contain an identification code or test specified by the Bank from time to time and the Client shall be responsible for any improper use of such code or test.

5.5 The Client recognises that facsimile is not a secure or reliable means of giving instruction or direction and is exposed to the risks of delay or failure in connection with transmission system, the risks of unauthorized or forged alternation, and the risks of wrongful transmission to unintended recipient.

5.6 The Client understands that the Bank is unable to know whether someone other than the Client or its Authorized Person has given, or is giving instructions using the Client's or its Authorized Person(s)' name or identity or, where applicable any user name or password. The Client shall not permit or allow any other person to have access to the Client's password, the Client's E-mail account or such other accounts or identifier that the Client uses to communicate instructions, or to the Accounts, for any purpose. The Client shall be responsible for the confidentiality and use of, and any order given or entered with, the Client's name or, where applicable the Client's user name and password. The Client shall remain responsible for all instructions using the Client's name or the Client's user name and password.

5.7 The Client recognizes the risks in giving instructions by telephone or facsimile transmission or E-mail transmission including, without limitation, the risk of any instruction being unauthorized or given by an unauthorized person. The Client accepts the risks in full if the Client chooses to give instructions by such means.

5.8 The Client shall bear all risks arising from any fax communication with the Bank, which the Bank is discharged from any responsibility in respect thereof apart from risks arising from the Bank's own fraud, wilful default or gross negligence. No claim to the contrary by the Client shall be admissible against the Bank unless any unauthorized Transaction arose from the Bank's fraud, wilful default or gross negligence or any of the Bank's employees, agents or servants.

5.9 The risks for which the Bank shall not be responsible shall include without limitation, those resulting from errors in transmission and misunderstandings or reasonable errors by the Bank regarding the Client's identity or the Client's Authorized Person.

5.10 Where the Client is acting as agent for and on behalf of any other person when giving instructions to the Bank pursuant to the Agreement, the Client is entering into this Agreement as principal and the Bank shall be entitled to treat the Client (rather than any such other person) as the Bank's client for all purposes and in relation to all obligations, and the Client will be liable as such. This applies even if the Client is acting on behalf of a person whom the Client has notified the Bank and no such person will be an "**indirect Client**".

5.11 The Bank shall have no responsibility to procure compliance by the Client with any law or regulation governing the Client's conduct as a fiduciary (if applicable).

5.12 Notwithstanding any provision in this General T&C, the Bank shall be under no duty to inquire into the authenticity of any

instruction or the identity or authority of the person giving or purporting to give any instruction regardless of the manner in which instructions are given. The Bank shall be entitled (but is not obliged) to treat all instructions as fully authorized and binding on the Client, and rely upon and act in accordance with all instructions without inquiry or verification by the Bank of the authority or identity of the person making or giving or purporting to make or give such instructions, and regardless of the circumstances prevailing at the time the instructions were given, the nature or amount of any Transaction effected pursuant thereto and notwithstanding any error, misunderstanding, fraud, forgery, lack of clarity in the instructions or lack of authority in relation to the instructions. Nevertheless, the Client may be required (but the Bank is not obliged to request the Client) to sign a form prescribed by the Bank to confirm the Client's verbal instruction (if so accepted by the Bank) where the Bank considers fit. Once given, instructions may not be cancelled, rescinded, withdrawn, altered or amended in whole or in part, unless the Bank's consent to it.

- 5.13 The Bank shall be entitled to treat an instruction given as fully authorized by and binding upon the Client and the Bank is entitled (but not bound) to act on or take such steps in connection with or in reliance upon such instruction as the Bank may in good faith consider appropriate, whether it be an instruction to acquire, purchase, sell, dispose of or otherwise deal with any monies, funds, assets or currency or transfer or withdraw any monies, funds, assets or currency from any Account or purport to bind the Client to any agreement or other arrangement with the Bank or with any other person or to commit the Client to any other type of Transaction or arrangement whatsoever, regardless of the nature of the Transaction or arrangement or the value, type and quantity of monies, funds, assets or currency involved or the amount of monies, funds, assets or currency involved and notwithstanding any error, misunderstanding or lack of clarity in the terms of such instruction.
- 5.14 The Bank reserves its right, in its absolute discretion, to refuse to accept or act in accordance with any instruction without any obligation to give any reason therefor and without any liability whatsoever. Nothing in the Agreement obliges the Bank to enter into any Transaction with the Client and the Bank may refuse to enter into any Transaction or otherwise act on any instruction without giving any reason for such refusal. The Client acknowledges that if the Bank declines an instruction, the Client will not hold the Bank liable for any failure to act on such instruction. In the event that the Bank decides to act on any instruction of the Client, or is otherwise under an obligation to act on any instruction of the Client, the Bank shall be allowed such amount of time to act and implement such instruction as may be reasonable having regard to the systems and operations of the Bank and the other circumstances then prevailing. The Bank shall not be liable for any Losses whatsoever or howsoever arising from any delay on the part of the Bank in acting on any such instruction or for refusing to act on or to delay in acting on any instruction. The Bank may (but is not obliged to) act on ambiguous or conflicting instructions and if it so decides to act, the Bank shall be entitled to rely and act upon any instruction in accordance with any interpretation which any officer or employee of the Bank believes in good faith to be the correct interpretation and the Bank shall not be liable for any Losses whatsoever or howsoever arising from an incorrect interpretation of the instruction.
- 5.15 The Client undertakes that any instruction from the Client or any Authorized Person(s) on behalf of the Client shall be given in the manner or pursuant to the arrangement(s) as from time to time agreed and accepted by the Bank, including in accordance with any Signing Arrangement, Account Mandate or instructions to the Bank. However, the Bank is not under any duty to verify the authority or identity of the person giving the instruction and whether it accords with the arrangements as from time to time agreed and accepted by the Bank, including any Signing Arrangement, Account Mandate or instructions to the Bank. Notwithstanding that the Bank is not under any duty to verify, the Bank may (but is not obliged to) refuse to accept the instruction under the Agreement where instructions received are, in the Bank's opinion, not in accordance with the Signing Arrangement, Account Mandate or instructions to the Bank. However, where the Bank chooses to act on such instruction, the instructions shall be binding on the Client.
- 5.16 Without prejudice to the Bank's general right to refuse to act on instructions, the Client agrees and confirms that, if in the Bank's sole opinion, any instructions to act or not to act, or any document presented to the Bank or any Transaction contemplated herein involves or may involve any illegal or unlawful activities including money laundering, drug-trafficking, terrorist financing, bribery, corruption or other activities that are prohibited or are deemed illegal or unlawful by any Applicable Law, or may constitute a breach or violation of economic or trade sanctions imposed by any Authority, the Bank has the absolute right:
- (a) not to act on any instruction or enter into or conclude any Transaction with the Client or any person;
  - (b) to delay, block or refuse to make any payment under or in connection with such instruction or Transaction;
  - (c) not to handle or process such instruction or Transaction or the documents, and the Bank shall not be liable for any delay or failure to pay, process or return such documents or for any related disclosure of information.
- 5.17 The Client agrees and acknowledges that the Bank Group is required to act in accordance with Applicable Laws and that the Bank Group may take such action as it considers appropriate in accordance with or by reference to all such Applicable Laws and requests of Authority. Without limitation, the Bank may:

- (a) investigate any instructions, payment messages and other information provided to or passed through the Bank;  
or
- (b) report suspicious Transactions to the relevant Authority without reference to or knowledge of the Client and free of any liability whatsoever to the Client or any person.

5.18 Subject to the Bank's right to reject any instructions, the Bank shall accept and execute instructions during banking hours on Business Days, unless otherwise agreed.

5.19 The Client authorizes the Bank to record any oral instruction from the Client or the Authorized Persons and any communications between the Client or the Authorized Person and the Bank (including telephone and face to face conversations) by audio or electronic recording devices and/or in writing. Any such record made by the Bank shall be final and conclusive as to the fact and contents of such oral instructions and communications and shall be binding on the Client. Any such record shall be the property of the Bank and the Client agrees it is not entitled to such record.

## 6. AUTHORIZED PERSONS

6.1 When the Client appoints any Authorized Person, the Client is required to notify the Bank in writing and provide the Bank with the Authorized Person's particulars (whether personal or otherwise) and specimen signature(s) together with all other information as prescribed by the Bank.

6.2 **Authorized Persons with Full Powers.** Where the Client appoints the Authorized Person with full powers to act on the Client's behalf, such Authorized Person shall be fully authorized to open (where applicable), operate, maintain, close or deal with all other matters in connection with the Accounts and Services (including for the avoidance of doubt, any Facilities and/or Transactions), and generally to do all such other acts and things and take all such other steps and exercise such discretion, rights and powers as the Client can do or as the Authorized Person may consider expedient or desirable in connection with the Account and Service(s) (including Facilities and/or Transactions), including without limitation:

- (a) to open and/or close any and all Accounts, to utilise any and all Services made available to the Client (including the Facilities), to enter into any and all Transactions and to approve (with or without amendments), sign and, where required, execute under seal, and deliver or cause to be delivered to the Bank, all agreements, notices, declarations, instruments, deeds and any other document required by the Bank from time to time in connection therewith, including the Agreement and the Specific Agreements, and any amendments, variations, supplements or replacement in relation thereto;
- (b) to request for any information regarding the Account as the Client and/or the Authorized Person(s) may require and to receive, examine and verify all confirmations, advices, statements of Accounts and other documents supplied by the Bank recording or setting out any activity or Transaction on the Accounts;
- (c) to draw, sign, accept and endorse bills of exchange and promissory notes (including bills of exchange and promissory notes signed, accepted or made by the Client and/or the Authorized Person(s) or on the Client's behalf and/or on behalf of the Authorized Person(s)) drawn upon or addressed to or made payable with the Bank and to arrange terms with the Bank for the negotiation or discount of any document;
- (d) to give, vary and revoke instructions to the Bank regarding remittances, including telegraphic transfers, and as to the manner in which any money payable by or to the Client (whether periodically or otherwise) is to be paid or dealt with;
- (e) to apply for, sign and accept on the Client's behalf any and all Facilities and to charge, mortgage, pledge and create any other security interest whatsoever over, and deposit with the Bank, any asset (including Assets) of the Client upon such terms as the Bank may require to secure repayment to the Bank on demand (whether such demand is made orally or otherwise) of all or any of the Total Liabilities to the Bank and to execute for and on the Client's behalf any document creating or evidencing any charge, mortgage, pledge or other security interest whatsoever over or in respect of any asset (including Assets);
- (f) to withdraw any or all Assets and to give, vary or revoke instructions to deliver, dispose of or deal with any Assets (including any instruction in favour of the Client and/or the Authorized Person(s), or for the Client's benefit and/or the benefit of the Authorized Person(s));
- (g) to give, vary and revoke instructions to the Bank (including any instruction in favour of the Client and/or the Authorized Person(s), or for the Client's benefit and/or the benefit of the Authorized Person(s)) in connection with any and all Accounts, Service, Transactions, Facilities and/or Assets (including the purchase or sale of or other dealings in deposits and Financial Products and any other Transaction) and to make any request for the issue of any letter of credit, Guarantee, indemnity or counter-indemnity or to give, vary or revoke instructions in relation to any letter of credit, Guarantee, indemnity or counter-indemnity (including any letter of credit, Guarantee, indemnity or counter-indemnity in the Client's favour and/or in favour of the Authorized Person(s) or in respect of any of the Client's obligations and/or any obligations of the Authorized Person(s));

- (h) to provide verbal confirmation of instructions to the Bank and to verify any instructions (whether verbal or written) given by the Client or any other Authorized Persons to the Bank in connection with any Accounts and/or Services;
- (i) to withdraw any or all monies, funds or Assets, dispose of or deal with any Assets;
- (j) to represent the Client in all matters in relation to all Accounts, Services, Transactions and Facilities;
- (k) to provide on behalf of the Client, such information and documents as may be requested by the Bank from time to time;
- (l) to provide any notification or update to the Bank in relation to any changes to the information or documents provided to the Bank from time to time, including change of correspondence address and contact number;
- (m) upon the loss of any password (i) to give and sign any form or request prescribed by the Bank for application for issuance or re-selection of a new password, (ii) to give and sign any acknowledgement of receipt for such new password, and/or (iii) to designate any one of such Authorized Person(s) to re-select such new password. For the avoidance of doubt, nothing contained in this provision shall affect the Bank's discretion to determine whether to provide a new password in favour of the Client;
- (n) to withdraw, close, cancel or disable any Accounts, Services, Facilities and Transactions; and
- (o) generally to do all such other acts and things and take all such other steps and exercise such discretion, rights and powers as the Client can do or as the Authorized Person(s) may consider expedient or desirable for the purpose of or in connection with the Accounts, Services, Transactions, Facilities and/or Assets,

**except that:**

- (i) the Authorized Person appointed under this Clause shall have no power of delegation or substitution or to vary the powers conferred on any of them by this Clause; and
- (ii) where the Client is an individual, the Authorized Person appointed under this Clause shall have no power or authority to open any new Account, apply for any new Facility or charge, mortgage, pledge or create any other security interest whatsoever over any Asset, and sign any documents in connection with the foregoing. For the avoidance of doubt, where the Client is a non-individual, Authorized Persons appointed under this Clause shall have the power to carry out the acts set out in this sub-clause (ii).

6.3 **Authorized Persons with Limited Powers.** Unless otherwise agreed in writing with the Bank, where the Client appoints the Authorized Person with limited powers to act on the Client's behalf, such Authorized Person shall have the powers in Clause 6.2 (Authorized Persons with Full Powers),

**except that:**

- (a) the Authorized Person appointed under this Clause shall have no power of delegation or substitution or to vary the powers conferred on any of them by this Clause; and
- (b) the Authorized Person appointed under this Clause shall have no power or authority to:
  - (i) apply for the opening or closing of any new Account or signing of any documents in connection with the foregoing;
  - (ii) apply for any new Facilities, or charge, mortgage, pledge or create any other security interest whatsoever over any Asset, and signing of any documents in connection with the foregoing;
  - (iii) withdraw or transfer monies, funds or Assets from the Accounts, unless such withdrawal or transfer is to an account belonging to the Client (whether with the Bank or third party financial institutions) or in connection with or pursuant to any Investment Transactions. For the avoidance of doubt, Authorized Persons appointed under this Clause shall have the power to provide trade instructions, including instructions to sell or dispose of any Financial Products or Assets of the Client; or
  - (iv) change the correspondence address, contact number or any other details of the Account Holder(s).

6.4 **Authorized Persons with Power to Receive Information.** Where the Client appoints the Authorized Person with power to receive information and access communications on behalf of the Client, such Authorized Person shall be fully authorized to request for and receive any information regarding the Accounts and Services, including any Client Data, as the Client and/or the Authorized Person may require or request, **except that** the Authorized Person appointed under this Clause shall have no power of delegation or substitution or to vary the powers conferred on any of them by this Clause.

6.5 **Default authority.** For the avoidance of doubt, all Authorized Persons with Full Powers and Authorized Persons with Limited Powers shall have the authority under Clause 6.4.

6.6 **Bank's rights.** Notwithstanding the authority granted to the Authorized Persons, the Bank reserves the right at any time to require the Client, the Client's directors, partners, managers or any other persons having executive authority over the

Client (as applicable), or any Authorized Persons falling under a category with wider authority than the Authorized Person seeking to provide instruction or signature to the Bank, to sign documents, to confirm or verify instructions, if the Bank deems necessary, and the Bank shall not be liable to the Client for any Losses as a result of undertaking such request.

- 6.7 Where more than one Authorized Person is appointed by the Client, instruction from any one such Authorized Person shall be binding on the Client.
- 6.8 Client is responsible for ensuring that documents requiring signature are signed in accordance with the Signing Agreement or Account Mandate. If any Signing Arrangement shall consist of two or more levels of authorization, all and any of such levels of authorization shall be equally effective as the Signing Arrangement of such Service.
- 6.9 Unless otherwise agreed between the Client and the Bank in writing, any change in, addition to or revocation of the Authorized Person and/or the specimen signature(s) and/or the Account Mandate or Signing Arrangement shall not be put into operation unless and until the Bank shall have actually received such documents and/or authorizations in the form and substance satisfactory to the Bank and have accepted such change or revocation.
- 6.10 The Client agrees that the Bank is entitled to act on the instructions of Authorized Person until the Client notifies the Bank in writing that the authority of the Authorized Person has been revoked or varied, and the Bank has actually received and accepted such revocation or variation. Prior to the acceptance of such revocation or variation, the Client agrees that the instructions of the Authorized Person shall be absolutely and conclusively binding on the Client and shall be valid and effectual in favour of the Bank.
- 6.11 Any effective change in, addition to or revocation of the Authorized Person and/or the specimen signature(s) and/or Signing Arrangement or Account Mandate shall apply to all of the Accounts or the Services unless otherwise agreed between the Client and the Bank in writing.
- 6.12 Notwithstanding anything contained herein, the Client agrees and acknowledges that the Bank shall have the absolute right at any time, without prior written notice or giving any reason therefor, not to accept any order, request or instruction from all or any of the Authorized Persons.
- 6.13 When any one or more or all of the Account Holders or the users of the Service die(s), any act, thing, deed or matter made or done by the Bank pursuant to the requests, instructions or directions of the Authorized Person or any of them after such death but before the actual receipt of notice in writing thereof by the Bank shall be absolutely and conclusively binding on the Account Holder or the user of the Service, his estate and personal representative and any person claiming through or under the account holder or the user of the Service.
- 6.14 The Client undertakes with the Bank from time to time, and agrees to ratify at all times all acts, things, deeds, directions, orders or instructions given or purported to be given by the Authorized Person, including but not limited to any instruction which may be given or purported to be given between the revocation of the authority of the Authorized Person and the actual receipt of notice and acceptance of such revocation by the Bank and acknowledges that the same shall be at all times be absolutely and conclusively binding on the Client.
- 6.15 Notwithstanding anything herein contained, the Client acknowledges and confirms that the Authorized Person is neither an employee nor agent of the Bank, and there is no partnership or employment relationship between the Authorized Person and the Bank. The Authorized Person is appointed by the Client as agent and shall have full authority to act on behalf of the Client under the Agreement, as if he were the Client himself, and shall have the authority to give good and valid receipt to any payment, monies, funds, properties or assets (including Assets) comprised in the Account made or given to the Authorized Person. Any instruction given by the Authorized Person shall be and be deemed to be the instruction of the Client and all acts, omissions, default or breach by the Authorized Person (whether with or without the instructions or consents of the Client) shall be and be deemed to be the acts, omissions, default or breach by the Client. The Bank shall not be in any way liable to the Client or any other parties for the acts, omissions, default or breach by the Authorized Person (whether with or without the instructions or consent of the Client).

## **7. EXCLUSION OF LIABILITY**

- 7.1 Save for Losses arising directly from the Bank's fraud, gross negligence or wilful default, the Bank shall not be liable for any Losses which may be suffered or sustained by the Client in any way in relation to any Account or Service (including any Transaction, Facilities or any other Assets or investments), howsoever caused, including without limitation, any Losses suffered or sustained by the Client directly or indirectly arising out of or in relation to:
- (a) the cancellation or termination of all or any of the Accounts and/or the Services (as the case may be);
  - (b) the cancellation, withdrawal, revocation or suspension of the Client's Transactions or any failure to execute or effect Transactions or order from the Client;
  - (c) any refusal to accept or act on any of the Client's (or any of its Authorized Persons) instruction even if provided

in accordance with this Agreement;

- (d) leakage of the Client's instruction or information by any telecommunication company, equipment, device of intermediary through which the instruction or information is communicated to or from the Bank or the Agent or any other third party;
- (e) any Force Majeure Event;
- (f) any mechanical failure, power failure, malfunction, breakdown, interruption or inadequacy of equipment or installation in connection with the Services, acts of God, government act, flood, fire, civil commotion, strike, war or any other causes beyond the Bank's reasonable control;
- (g) any interruption, suspension, delay, loss, damage or other failure or inaccuracy in transmission of the Client's instructions or other information howsoever caused;
- (h) any Transaction effected as a result of a forged instruction or any other fraudulent conduct;
- (i) any drawings made under any lost cheques or cheques on which fraudulent alterations or forgeries have been made or any Losses which the Client may suffer relating thereto; and
- (j) any Losses or diminution in the value of any Assets or any delay in crediting any Assets to the Account(s) due to any reason whatsoever (including the occurrence of any Force Majeure Event) and whether arising in Hong Kong or in any other jurisdiction in which the Bank has deposited such funds or otherwise.

7.2 No delay on the Bank's part in exercising any power of sale or any other right or option hereunder and no notice or demand which may be given to or made upon the Client by the Bank with respect to any power of sale or other right or option hereunder, shall constitute a waiver thereof, or limit or impair the Bank's right to take any action or to exercise any power of sale or any other right or option hereunder without notice (whether oral or otherwise) or demand, or prejudice the Bank's rights as against the Client in any respect or render the Bank responsible for any Losses arising therefrom.

7.3 Unless the act or omission is due to fraud, gross negligence or wilful default on the Bank's part, the Bank shall not be liable to or responsible for any Losses the Client sustains or suffers directly or indirectly arising out of any act or omission of any counter-party, custodian, sub-custodian, professional advisor, broker, dealer or agent or any other Agent or of any party contracted or retained in good faith for the purposes hereunder, and in particular and without limitation, the Bank gives no warranty as to the solvency of any of counter-party, custodian, sub-custodian, professional advisor, broker, dealer, agent or any other Agent selected by the Bank in good faith.

7.4 Notwithstanding anything contained herein, in no event shall the Bank nor its nominees or Agents nor any director, officer, employee or agent of any of the foregoing be liable for any indirect, consequential, special or exemplary Losses or of damage, including loss of profits, revenue, business opportunity or reputation, whether or not caused by the Bank's fault, gross negligence or negligence and howsoever caused, and whether or not the Bank is aware, or is advised of the possibility of such Losses. The Bank, its nominees and Agents and every director, officer, employee or agent of any of the foregoing shall be entitled to every exemption from liability, every defence and every indemnity to which the Bank is entitled and for the purposes hereof, the Bank is and shall be deemed to be acting as agent on behalf of and for the benefit of such persons.

## **8. CLIENT'S REPRESENTATIONS AND WARRANTIES**

8.1 The Client represents and warrants (which representations and warranties shall be deemed to be repeated by the Client on each date on which Transaction is entered into under the Agreement) and undertakes to the Bank that:

- (a) it is a professional investor as prescribed in Securities and Futures (Professional Investor) Rules (Cap. 571D);
- (b) (if it is a company or corporation) it is duly organized and validly existing under the laws of the jurisdiction of its organization or (if it is a private individual) it is of full age and sound mind and has full capacity to enter into the Agreement;
- (c) the Client has full power and authority to execute and deliver the Agreement, and any other documentation relating thereto, and to perform the Client's obligations under the Agreement and each Transaction and have taken all necessary actions to authorize such execution, delivery and performance;
- (d) unless otherwise notified in writing, the Client is entering into the Agreement and each Transaction as principal for its own account and not as agent of any person, and will be liable to the Bank as principal for all obligations in respect of each Transaction;
- (e) any such execution, delivery and performance will not violate or conflict with any law, regulation, decree or legal restriction applicable to the Client, any provision of any constitutional documents or any charge, trust deed, contract or other instrument or any contractual restrictions applicable to, binding on or affecting the Client or any of the Client's Assets or oblige the Client to create any lien, security interest or encumbrance;
- (f) the obligations under the Agreement constitute the Client's legal, valid and binding obligations, enforceable in accordance with their respective terms;

- (g) no Event of Default or potential Event of Default (including any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default) with respect to the Client has occurred and is continuing and no such event or circumstances would occur as a result of its entering into or performing its obligations under the Agreement. The Client will promptly notify the Bank upon the occurrence of any Event of Default or circumstances which may lead to an Event of Default;
- (h) all acts, conditions and things (including without limitation all governmental, regulatory and other permits, consents and approvals) that are required to enable the Client to enter into, exercise its rights and comply with its obligations under the Agreement have been so taken, obtained, fulfilled and done and remain in full force and effect and all conditions of any such permits, consents and approvals have been complied with;
- (i) no litigation, arbitration or administrative proceedings of or before any court, tribunal, arbitral or administrative body or government agency has been commenced or threatened against or is otherwise affecting the Client;
- (j) no action, suit or proceedings at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that purports to draw into question or is likely to affect the legality, validity or enforceability against the Client of the Agreement or its ability to perform its obligations under the Agreement has been commenced or threatened against or is otherwise affecting the Client;
- (k) no legal or other proceedings has been initiated or threatened and no meeting has been convened for the bankruptcy, winding-up, liquidation, termination of existence or reorganisation of, or for the appointment of a receiver, manager (judicial or otherwise), trustee or similar officer of, the Client or in respect of any or all of its Assets;
- (l) the Client has complied and will comply with all Applicable Laws;
- (m)
  - (i) the Client is responsible for its own tax affairs and for ensuring compliance with the Client's own tax obligations;
  - (ii) the Client has complied and will comply with all Applicable Laws on tax binding on the Client;
  - (iii) the Client has not committed or been convicted of any tax crimes or been subject to any investigation or criminal proceedings, whether in Hong Kong or elsewhere, in relation to tax matters; and
  - (iv) none of the Client's Assets constitute proceeds from tax crimes or any other criminal activities;
- (n) the Client's purpose for opening any Account is not illegitimate and the Client shall not use any Account as a platform for illegal tax activities and the Client is aware of Hong Kong's firm stance against illegal or illicit tax activities;
- (o) except as otherwise notified by the Client in writing, the Client is the legal and beneficial owner of the Assets, free and clear of any lien, charge or encumbrance and/or restriction as to title and transferability and no person other than the Client has, or will have or acquire any beneficial or other interest in or security or other rights over the Client's Account or any of the Assets without the Bank's prior written consent;
- (p) the Client will promptly give (or procure to be given) to the Bank such information and assistance as the Bank may require from the Client to enable the Bank to assist or achieve compliance with any of the obligations under the Agreement;
- (q) the Client shall pay on demand all sums that may be due from the Client howsoever incurred;
- (r) in the event that the Account is an account of the Client's client, the Client has internal controls in place to verify the identity of the underlying client and where applicable, effective systems and controls to allocate funds in the pooled account to the respective underlying clients. In addition, the Client is satisfied as to the source of the funds or wealth used to open the Account or passing through the Account;
- (s) all information (written or otherwise) and documents furnished by the Client to the Bank (pursuant to the Account Opening Form or otherwise) at any time is true, complete and accurate in all material respects and does not omit material facts, and the Bank may rely on such information and document provided until the Bank has received written notice from the Client of any changes therein;
- (t) the Client will from time to time provide such information and documents (including any self-certification) as the Bank may from time to time require or deem necessary for the purpose of compliance with any Applicable Law or any obligations imposed on any Bank Group member under any present or future contractual or other commitment with any Authority or compliance with the Bank's internal policy and procedures;
- (u) the Client will promptly notify the Bank in writing of any change in circumstances, information or documents furnished to the Bank from time to time, whether material or not, (including without limitation any change in status, nationality, tax residence status or residence status, residence address and mailing address, telephone or facsimile number, email address, investment objectives, investment experience, financial circumstances, financial commitments, risk tolerance and any other information as the Bank may require for the purpose of ascertaining the Client's investment or risk profile), and where the Client is a partnership, a company or other entities, any change in its constitution, partners, managers, shareholders, beneficial owners and ultimate

beneficial owners, controllers (including any change in their tax residence status), Authorized Persons, directors (including any person having executive authority) or company secretary, or the nature of the Client's business;

- (v) the Client will use all reasonable efforts to maintain in full force and effect all consents of any Authority that are required to be obtained by it with respect to the Agreement and will use all reasonable efforts to obtain any consent that may become necessary in the future;
- (w) the Client will do or execute any act, deed, document or thing which the Bank requires the Client to do being in the reasonable opinion of the Bank necessary or desirable in connection with the implementation and enforcement of the Agreement. The Client agrees to ratify or confirm all such acts, deeds, documents or things by the Bank;
- (x) the Client will agree to do such acts and things and to execute such documents as are necessary or are in the reasonable opinion of the Bank desirable to ratify or confirm anything done by the Bank, its nominee, subsidiary or associated company, or any other entity instructed by any of them in the proper exercise of any right or power conferred by the Agreement or any agreement entered into pursuant to the Agreement or relating to the Account; and
- (y) the Client is not a U.S. person (as defined in Regulation S of the Securities Act of 1933 under the laws of the United States of America), and shall not enter into, make or hold any Transaction and/or Financial Product beneficially owned by or for a U.S. person or in violation of any applicable law.

## 9. INDEMNITY FROM CLIENT

9.1 In the absence of wilful misconduct, gross negligence or fraud by the Bank and the Agents and their directors, employees, nominees, correspondents, agents, or representatives, the Client shall indemnify and keep the Bank and the Agents and their directors, employees, nominees, correspondents, agents or representatives, fully indemnified from and against all Losses whatsoever which the Bank or the Agent may suffer, incur or sustain, whether actual or contingent, as a result of or arising directly or indirectly from:

- (a) anything done or omitted pursuant to any instruction (regardless of the manner of instruction and form of communication) of the Client or the Authorized Person or anyone purporting to be the Client or the Authorized Person or acting on behalf of the Client or the Authorized Person;
- (b) anything lawfully done or omitted by the Bank or the Agent, or any action by the Bank or the Agent in accordance with the Agreement;
- (c) any act or omission of the Authorized Persons;
- (d) any breach or default on the part of the Client in the discharge or performance of its undertakings and obligations in or under the Agreement;
- (e) any representation, warranty, undertaking or statement by the Client in the Agreement or any other document (including self-certification) delivered by or on behalf of Client is or proves to have been incorrect, untrue, inaccurate or misleading when made or deemed to be made, or becomes untrue or inaccurate subsequently;
- (f) the collection of debts owed by the Client;
- (g) any act of omission of the Client or Authorized Persons;
- (h) the enforcement of any of the provisions of this Agreement; or
- (i) any other Transactions, contracts or services entered into and/or provided by the Bank under any Account or (as the case may be) any Service or as a result of maintaining or continuing any Account or Service.

9.2 The Client shall pay to the Bank on demand all sums (whether actual or contingent) so suffered, incurred or sustained by the Bank (whose determination shall be conclusive and binding on the Client, save for manifest error) together with interest accrued thereon from the date when the same were first paid or incurred by the Bank until actual payment in full by the Client at such rate specified by the Bank from time to time and to be made available to the Client upon request.

## 10. CLIENT DATA

10.1 The Client agrees and acknowledges that it has noted and will note the content of the 'Circular on the Personal Data (Privacy) Ordinance (Cap.486) (the "Ordinance") and the Code of Practice on Consumer Credit Data (the "Code of Practice") issued by the Bank (the "**Circular**", including the same as may be updated or varied by the Bank from time to time) and on display in the Bank's banking halls or otherwise made available to the Client and agrees that it is necessary to supply the Bank with Client Data in connection with the opening or continuation of the Account or the Service(s). The Client further authorizes the Bank or any of its Affiliates to use Client Data for the purposes set out in the Circular and such other purposes directly or indirectly relating to any transaction or other matter in connection with any Account or (as the case may be) any Service. The Client notes that Client Data held by the Bank or any of its Affiliates will be kept confidential but permits the Bank or any of its Affiliates to provide such information to the persons listed in the Circular or

any other person(s) (including debt collecting agent(s)) for the purposes set out in the Circular or in compliance with any Applicable Laws.

- 10.2 In addition to Clause 10.1 above, the Bank and its Affiliates and their respective employees, agents and representatives are hereby further authorized to and may, at its discretion, provide and divulge information (including credit balance and transactions conducted) in respect of the Client or in connection with any Account or (as the case may be) any Service or any Transaction made thereunder in writing or otherwise, to:
- (a) any other banks, financial institutions, debt collection agencies, agents, credit providers, charge or credit card issuing companies, credit reference agencies, service providers or contractors;
  - (b) any Authority or any person pursuant to Applicable Law in any jurisdiction or pursuant to any agreement or arrangement that the Bank or any of its Affiliates have or may have in the future with any Authority, whether local or foreign governmental, regulatory, tax, law enforcement or other authorities, or self-regulatory or industry bodies or associations of financial services providers, whether imposed by law or assumed by the Bank or any of its Affiliates for the protection of its financial, commercial, business or legitimate interests in or related to such jurisdiction; and
  - (c) any persons who are engaged by the Bank to provide services to the Bank for maintaining or operating the Account(s) and/or Service for the Client.
- 10.3 The Client confirms and warrants that, in respect of any information provided to the Bank that relates to a third party (including any Authorized Person(s), shareholder, director, associate or partner of the Client), the Client has obtained the consent of such third party to the provision of such information to the Bank for the purposes set out in this Clause 10 and for disclosure to such persons as stipulated in this Clause 10.
- 10.4 The Client further authorizes the Bank to contact any of its employers (if applicable), other banks, referees or any other sources for the purpose of obtaining or exchanging any information and to compare the information provided by the Client with other information collected by the Bank for checking purposes. The Bank is entitled to use the result of such comparison to take any action which may be adverse to the interest of or against the Client or any of them (if the Client consists of more than one person).
- 10.5 The Client consents to Client Data being transferred to another jurisdiction outside Hong Kong and to any matching procedures being carried out in respect of such Client Data (including any matching procedure as defined in the Ordinance). The Client agrees that such Client Data may be transferred to a business support centre (“Centre”) operated and managed by the Bank or its Affiliate outside Hong Kong to provide service support in data processing activities to the Bank and the Bank will remain fully responsible for the integrity of processes as well as the security and confidentiality of Client Data. The staff of the Centre responsible for providing support services will give strict undertaking to the Bank to ensure that all Client Data will be kept confidential. No Client Data will be disclosed to third parties, except as required by Applicable Law, or to such persons and used for such purposes as set out in the General T&Cs. The operation of all Account(s) of the Client and all Service(s) to the Client will remain unchanged.
- 10.6 The Client expressly authorizes the Bank to record by tape, other devices and/or in writing all communications between the Client and/or any Authorized Person(s) with the Bank by telephone from time to time, including any communication through the Bank’s telephone hotline, and further agrees that if a dispute arises at any time in relation to the contents of any such communication, the recording of such communication, or a transcript thereof certified as a true transcript by the Bank’s officer, shall be conclusive evidence between the Bank and the Client as to the contents and nature of such communication unless and until the contrary is established, and may be used as evidence in such dispute. Nothing herein shall constitute a right of the Client to any of the Bank’s records and notwithstanding that requests may be made by the Client for such records, the Bank may refuse (without giving any reasons whatsoever) the Client’s requests for such records.
- 10.7 The Client shall immediately inform the Bank in writing of any change in the personal particulars, address, telephone number, facsimile number, e-mail address or any other particulars of the Client or any of its Authorized Person(s), signatory(ies) or attorney(s), proprietor (if the Client is a sole-proprietorship firm), beneficial owner(s) including ultimate beneficial owner(s), shareholders, directors, managers, partners, connected parties, or any change in any other information provided to the Bank in the Account Opening Form or otherwise.
- 10.8 The Client may withdraw all or any of its consents or authorizations given in this Clause 10 by giving to the Bank at least thirty (30) days’ prior written notice. The Client acknowledges that upon such withdrawal, the Bank may not be able to open or continue the Accounts or Services for or to the Client.
- 10.9 For the purpose of this Clause 10, all references to “Client” shall be construed to include each of its Authorized Persons.

## 10A. PERSONAL DATA PROTECTION ACT OF TAIWAN

10A.1 The collection of personal information involves the privacy rights of the Client, any person constituting or connected to the Client or authorized by the Client, including connected parties, Authorized Persons, beneficial owners, legal representative or statutory assistant of the Client or any other parties related to the Client (collectively, "**Client Group**"). When carrying out the business activities which are currently permitted (or may be permitted in the future) by law and to the extent necessary for conducting the relevant business (but subject to the actual business dealings between the Client and the Bank), where the Bank has the need to, directly or indirectly, collect, process, use and/or internationally transfer any Client Group personal information, the Bank shall, at the time when it collects personal information from the Client, notify the Client of the following in accordance with the first paragraph of Article 8 and the first paragraph of Article 9 of the Personal Data Protection Act (個人資料保護法) of Republic of China ("**Taiwan**") (hereinafter referred to as the "**Taiwan PDPA**"):

- (a) names of non-government agencies which collect the personal information;
- (b) purposes of collection;
- (c) categories of personal information;
- (d) duration and locations of use, users, and means of use, of personal information;
- (e) sources of the personal information collected;
- (f) the rights (and ways to exercise such rights) available to the party in question under Article 3 of the Taiwan PDPA;
- (g) the impact of not providing personal information on the rights and interests of the party in question (where the party has the right to choose whether to provide personal information).

The codes and types of purposes of collection are in reference to the "Personal Data Protection Act Specific Purposes and Personal Data Categories (個人資料保護法之特定目的及個人資料之類別)" published by the Taiwan's Ministry of Justice. Any change to such codes and types shall be applicable hereunder. The Client agrees that the Bank may collect, process, use and/or internationally transfer his/her own personal information in accordance with this Clause

10A. **PERSONAL DATA PROTECTION ACT OF TAIWAN** and that they have read this Clause 10A.

**PERSONAL DATA PROTECTION ACT OF TAIWAN** carefully and agrees to the same. Where the Client is required to have a legal representative/statutory assistant/other authorized persons appointed under the law, such legal representative/statutory assistant/other authorized persons appointed under the law agrees that the Bank may collect, process, use and/or internationally transfer his/her own personal information in accordance with this Clause 10A. **PERSONAL DATA PROTECTION ACT OF TAIWAN** and that they have read this Clause

10A. **PERSONAL DATA PROTECTION ACT OF TAIWAN** carefully and agrees to the same.

10A.2 With regard to any Client Group personal information to be collected by the Bank, the purposes of collection, categories of personal information, and duration and locations of use, users, and means of use of the personal information are as follows:

- (a) Purposes of collection:  
"022 Foreign exchange services," "036 Deposit and transfer" (automatically authorized debit and transfer), "067 Credit card, cash card, debit card or electronic stored-value card services," "082 Borrower and Account Holder loan and deposit consolidated management" (WMA, payment through transfer), "088 Loan approval and credit extension services" (cash advance, balance transfer, credit facility and long term revolving credit facility), "001 Life insurance," "112 Cheque clearance services," "106 Credit extension services," "111 Financial instrument services," "126 Debt consolidation, discount and purchase services," "154 Credit reporting," "044 Investment management," "068 Trust services," "166 Securities, futures, securities investment trust and consulting services," "094 Personal property management," "065 Insurance brokerage, agency and notarization services," "093 Property insurance," "030 Arbitration," "040 Marketing (including crossselling activities between financial holding companies)," "059 Financial services sector's collection, processing and use in accordance with laws and regulations for financial supervision needs," "060 Financial dispute resolution," "061 Financial supervision, administration and inspection," "063 Nongovernment agencies' collection, processing and use of personal information in accordance with legal obligations," "069 Matters related to contracts, quasi-contracts or other legal relations," "090 Consumer, customer management and services," "091 Consumer protection," "098 Commercial and technical information," "104 Account management and debt trading activities," "113 Pleading, petition and report handling," "129 Accounting and related services," "135 Information (communication) services," "136 Information (communication) and database management," "137 Information and communication security and management," "148 Online shopping and other electronic commerce services," "157 Investigation, statistics and research analysis," "160 Certification business management (including OTP dynamic password and Global MyB2B Digital Certificate)," "173 Other government agencies' supervision and administration of targeted industries," "177 Other financial management services," "181 Other business activities in accordance with the business registration or Articles of Incorporation" (including business activities permitted by law or approved by the competent authorities) and "182 Other consulting and advisory services."

(b) Categories of personal information collected:

Name, address (including electronic mail address), unified identity card number, tax resident status, country/region of domicile, tax identification number, gender, date of birth, correspondence information, biometric data (including without limitation facial features, fingerprints, digital veins and so forth), business activities and financial position (e.g. consumption volume, location and items, revenue, income, assets and investments, liabilities and expenses, credit rating, insurance details, financial transactions and so forth), mobile and online media information (e.g. mobile device identifier, mobile device location, social network information, IP address, web browsing history, Cookie and so forth), and other details such as relevant service applications or contracts, as related to the business dealings, accounts or services between the Bank and the Client and as provided by or actually collected from the Client or third parties (e.g. the Joint Credit Information Center ("JCIC"), entities with whom the Bank cooperates/partners, other entities with whom the Bank has business dealings and so forth). The Bank collects personal information from the Client based on the needs of different business activities, accounts or services. Such personal information is classified into the following ten categories in accordance with the Personal Data Protection Act Specific Purposes and Personal Data Categories (個人資料保護法之特定目的及個人資料之類別) promulgated by the Ministry of Justice of Taiwan: identity information – C001 to C003 (such as name, phone number, bank account number, credit card number and unified identify card number); personal characteristics – C011 to C013 (such as gender and date of birth); family status – C021 to C024 (such as marital status and name of spouse); social status – C031 to C041 (such as address, property information, lifestyle, and residency certificate); education, examination-based qualifications, technical skills or other specializations – C051 to C053 (such as education and professional skills); employment status – C061, C062, C064, C066, C068 (such as employer, job title and salary); financial details – C081 to C089, C091 to C094 (such as gross revenue, gross income, loans, credit rating, foreign exchange transaction records and documentary credits); business information – C101 to C103 (such as type of business); health and other – C111, C115 to C116, C119 (such as medical reports, records of treatment and diagnosis); other information – C131 to C132 (such as unclassified data and emails).

(c) Duration and locations of use, users, and means of use, of personal information:

- (i) Duration: the duration for which the specific purposes for collecting the personal information exist, the retention period required under relevant laws and regulations or required for the Bank's business operations, or the retention period stipulated in individual contracts (whichever is the longest).
- (ii) Locations: the local and overseas locations of the users set forth under "Users" below.
- (iii) Users: (1) the Bank (including the Bank's head office, overseas branches and affiliates, third party agencies engaged by the Bank); (2) entities using the personal information in accordance with relevant laws and regulations (e.g. Cathay Financial Holding Co., Ltd., i.e., the Bank's parent company, and its subsidiaries); (3) other entities engaging in related business activities (e.g. correspondent banks, JCIC, the Agriculture Credit Guarantee Fund of Taiwan, the Overseas Credit Guarantee Fund of Taiwan, the National Credit Card Center of Taiwan, the Taiwan Clearing House, the Financial Information Service Co., Ltd. of Taiwan, the Small and Medium Enterprise Credit Guarantee Fund of Taiwan, the Agricultural Credit Guarantee Fund, the Bureau of Labor Insurance, international credit card organizations, credit card acquirers and contracted merchants and their statutory assistants, credit guarantee agencies, the Financial Ombudsman Institution, any person who intends to transfers assets and liabilities to the Bank, bear risks for the Bank, or merge with/acquire the Bank (or such person's agents or advisers), other entities with whom the Bank has business dealings (e.g. Google, Facebook and other social media platforms and advertising agencies), recipients of personal information transmitted internationally who are not subject to the restrictions imposed by the central government authorities of targeted industries); (4) authorities or agencies having jurisdiction or investigative authority over the foregoing parties under the law; and (5) other users agreed by the Client (e.g. companies engaging in co-marketing activities or sharing customer data with the Bank, or companies collaborating with the Bank on promotional activities).
- (iv) Means of Use: by way of automated machines or other non-automated means in accordance with personal information protection laws.

(d) The Bank will have the personal information undergo an appropriate de-identification process (e.g. outlier detection, randomization and k-anonymization) and/or take relevant protection measures when using personal information for the purpose of "157 Investigation, statistics and research analysis". The result of aforementioned usage shall not lead to any identification of any specific person.

10A.3 Sources of personal information collected:

- (a) Directly obtained from the Client Group or the Client's authorized person by the Bank.
- (b) Made public by the Client Group or third parties lawfully.
- (c) Obtained from JCIC or other third parties by the Bank (such as the legal representatives or statutory assistants of the parties involved, Cathay Financial Holding Co., Ltd. and its subsidiaries which share customer data with

the Bank, companies collaborating with the Bank on promotional activities, groups co-branding credit cards with the Bank, and other entities with whom the Bank has business dealings) or

(d) Obtained from any open source, including but not limited to the internet.

10A.4 Pursuant to Article 3 of the Taiwan PDPA, the Client or any member of the Client Group may exercise the following rights with regard to his/her own personal information retained by the Bank:

(a) except for the circumstances provided in Article 10 of the Taiwan PDPA, the Client or any member of the Client Group may make requests to the Bank to access or review his/her own personal information, or request the Bank to provide copies of such information, provided that the Bank may charge necessary costs and fees in accordance with Article 14 of the Taiwan PDPA;

(b) the Client or any member of the Client Group may request the Bank to supplement or correct his/her own personal information, provided that the Client or any member of the Client Group shall provide the reasons and facts in relation to such request pursuant to Article 19 of the Enforcement Rules of the Personal Data Protection Act (個人資料保護法施行細則) of Taiwan;

(c) pursuant to the fourth paragraph of Article 11 of the Taiwan PDPA, the Client or any member of the Client Group may request the Bank to cease collecting, processing or using any of his/her own personal information in the event that the Bank has collected, processed or used such information in violation of the Taiwan PDPA;

(d) pursuant to the second paragraph of Article 11 of the Taiwan PDPA, in the event of a dispute over the accuracy of personal information, the Client or any member of the Client Group may request the Bank to cease processing or using any his/her own personal information. However, pursuant to the proviso of the same paragraph, the preceding sentence shall not apply where the personal information is required for the performance of the Bank's services and such dispute has been notified to, or to the extent consented to in writing by the relevant person or party in the Client Group;

(e) pursuant to the third paragraph of Article 11 of the Taiwan PDPA, when the specific purposes for collecting personal information no longer exist or the relevant time period expires, the Client or any member of the Client Group may request the Bank to delete or cease processing or using his/her own personal information. However, pursuant to the proviso of the same paragraph, the preceding sentence shall not apply where the personal information is required for the performance of the Bank's services, or to the extent consented to in writing by the relevant person or party in the Client Group.

10A.5 If the Client or any member of the Client Group wishes to exercise the aforesaid rights as provided in Article 3 of the Taiwan PDPA, the Client may contact the relationship manager assigned to the Client or visit the Bank's website (<https://www.cathaybk.com.tw/cathaybk>) for further details on how to exercise such rights.

10A.6 The Client may decide on whether to provide the relevant personal information and on the types of personal information to be provided. However, if the personal information or types of personal information that the Client refuses to provide are necessary for transaction approval or operations, please understand that the Bank may not be able to provide the relevant services or better services to the Client due to the Bank's inability to process the necessary approval or carry out the necessary operations.

10A.7 The terms in this Clause 10A. **PERSONAL DATA PROTECTION ACT OF TAIWAN** are without prejudice to Clause 10 and would be applicable only to individuals who are nationals of Taiwan in connection with personal information provided to, collected, processed, used, or internationally transferred, directly or indirectly, by the Bank or any other person acting on behalf of the Bank. In addition, any legal representative/statutory assistant/other authorized persons appointed under the law to act on behalf of the Client would be agreeing to the terms of this Clause 10A. **PERSONAL DATA PROTECTION ACT OF TAIWAN** both in its personal capacity and in its capacity as legal representative/statutory assistant/other authorized persons of the Client.

10A.8 The Client warrants, acknowledges and agrees that, in respect of any personal information provided by the Client to the Bank that relates to any member of the Client Group, the Client is responsible for and hereby represents and warrants that prior to the provision of such personal information, the Client has procured that such member of the Client Group has read this Clause 10A. **PERSONAL DATA PROTECTION ACT OF TAIWAN** carefully and agrees to the same, for the Bank's collection, process, use or internationally transfer, directly or indirectly, in accordance with this Clause 10A. **PERSONAL DATA PROTECTION ACT OF TAIWAN**.

## 11. TERMINATION AND SUSPENSION

11.1 Subject to the provisions of the Agreement including any Specific Agreement, the Client may close the Account and/or terminate any Service at any time by giving instructions to the Bank in accordance with the Agreement.

11.2 Without prejudice to the rights of the Bank upon an Event of Default, and subject to the Applicable Laws and without

prejudice to the generality of the other provisions herein, the Bank may in the Bank's absolute discretion terminate one or more or all of the Accounts and/or the Services provided always that the Bank shall serve the Client a written notice of intention to terminate the Account or Service not less than thirty (30) days prior to the intended date of termination or (upon the Client's request) a longer period of notice where it is practicable to do so, except that the Bank may at any time suspend or terminate any Account and/or Service immediately without giving any reason or notice if the Bank determines that:

- (a) it is illegal, unlawful or prohibited by any Applicable Law or is restricted by any economic or trade sanctions imposed by any Authority to maintain the relevant Account and/or provide the Service;
- (b) the Bank has notice of irregularity (whether actual or constructive) in connection with the operation, maintenance or closing of the Bank Account;
- (c) the Bank has conflicting instruction(s) from the Client or the Authorized Person;
- (d) the Client commits any material breach or is in default in the discharge or performance of its undertakings and obligations in the Agreement and/or the T&Cs of General Banking Service;
- (e) there is a material adverse change in the circumstances relating to the Client, including the Client's legal status, assets, financial or business condition;
- (f) the Client becomes insolvent or is subject to any bankruptcy, winding up or insolvency proceedings under any Applicable Law, or a petition is presented or filed in respect of the Client for bankruptcy, winding up (whether voluntary or otherwise), dissolution or analogous proceedings under any Applicable Law;
- (g) all or a substantial part of the Client's assets are seized or are subject to enforcement of a judgment by any party; and
- (h) the relevant Account or Service is being used or is suspected of being used for money laundering, drug-trafficking, terrorist financing, bribery, corruption or other activities that are prohibited or are deemed illegal or unlawful by any Applicable Law.

11.3 The Client agrees to do all such things and/or execute such documents as the Bank may require to facilitate the closure and/or termination of Accounts or Services, including giving instructions for the termination, closing out and/or liquidation of the Client's Financial Products and Transactions, debiting from the Accounts all Total Liabilities or otherwise making payment of all Total Liabilities in respect of such Account and Services, and converting Assets into monies in such manner as the Bank consider appropriate. For the avoidance of doubt, no interest will be payable on the credit balance of any Account as from the date of termination.

11.4 Upon termination of any or all of the Accounts and/or the Services, all Total Liabilities due and payable to the Bank in respect of the relevant Account(s) and/or Services, including the whole or part of any fees or any other sums which are periodically payable (such amounts being correspondingly proportionate to the period which has elapsed prior to the date of termination) shall be immediately due and payable without notice (whether oral or otherwise) and the Bank shall be entitled to demand immediate repayment thereof (whether such demand is made orally or otherwise) and the Bank shall not be obliged to grant, provide or extend such time to the Client as may be necessary to implement any payment.

11.5 Upon the closure of any Accounts, all Services linked to the Account will be terminated automatically unless otherwise determined by the Bank and the Bank shall be entitled to hold any credit balance therein in a non-interest bearing suspense account pending withdrawal by the Client.

11.6 Termination or suspension of the Account, the Service and/or the Agreement by the Bank or the Client shall be:

- (a) without prejudice to the completion of any Transaction or Transactions already initiated and any Transaction or all Transactions outstanding at the time of termination or suspension will be completed, settled and delivery made;
- (b) without prejudice to and shall not affect any accrued rights, existing commitments or liabilities or any contractual provision intended to survive termination, including but not limited to:
  - (i) the liabilities, obligations or indebtedness of the Client existing, arisen or incurred at the time under the Agreement and/or any agreement made with the Bank on or before the termination of the Agreement, including but not limited to the indebtedness, liabilities or obligations of the Client arising out of or in connection with any open positions or outstanding Transactions at the time of the termination of the Agreement;
  - (ii) the liabilities, obligations or indebtedness of the Client arising out of or in connection with any agreements, warranties, representations, undertakings and indemnities given by the Client under the Agreement and/or any agreement made with the Bank;
  - (iii) the rights and powers to liquidate, terminate, transfer or settle all the open positions or outstanding Transactions of the Client, and the rights and powers to take such action or do all such acts and things

incidental or in relation to the liquidation, termination, transfer or settlement mentioned in this Clause;  
and

(iv) the rights and powers to take such action or do all such acts and things incidental or in relation to the termination, conclusion, consolidation, clearing or settlement of all the Client's liabilities, obligations or indebtedness under the Agreement, or the rights and powers to take such action or do all such acts and things incidental or in relation to the termination of the Agreement; and

(c) without penalty or other additional payment save that the Client will pay:

(i) all Total Liabilities outstanding under the Agreement;

(ii) any Losses incurred by the Bank under the Agreement and payable by the Client;

(iii) any additional expenses incurred by the Bank in connection with termination; and

(iv) any Losses necessarily realized in settling or concluding outstanding obligations under the Agreement; and

(d) without prejudice to any other claim, right or remedy whatsoever which the Bank may have under the Agreement.

11.7 Where the formalities or procedures for opening the Account(s) or using the Service(s) as prescribed by the Bank in the Bank's absolute discretion remain uncompleted or the required documents thereof are still outstanding, the Account(s) or the Service(s) shall be suspended from operation or use until the completion of the formalities and procedures and the provision of outstanding documents. Further, the sum of money deposited into the Account(s) or paid under the Service(s) shall not be withdrawn, transferred or otherwise disposed of except with the Bank's consent.

## 12. EVENTS OF DEFAULT

12.1 An event of default ("**Event of Default**") shall be deemed to occur if the Bank determines that:

(a) the Client or the Security Parties commits any breach or is in default in the discharge or performance of its undertakings and obligations in the Agreement (including any Specific Agreements);

(b) the Client fails to pay or settle any amount which is due to the Bank on the due date of payment (including failure to deliver or pay any Margin) or, if payable on demand, on demand by the Bank (whether such demand is made orally or otherwise, and without the Bank being obliged to grant, provide or extend such time to the Client);

(c) the Client fails to maintain sufficient funds and/or Margin as required by the Bank;

(d) it is illegal, unlawful or prohibited by any Applicable Law or is restricted by any economic or trade sanctions imposed by any Authority to maintain the relevant Account and/or provide the Service or any parts thereof;

(e) it is or will become unlawful for the Client and/or the Bank to perform or comply with any of its obligations, or for the Bank to exercise all or any of its rights and remedies, under the Agreement;

(f) the Bank has notice of irregularity (whether actual or constructive) in connection with the operation, maintenance or closing of any Account;

(g) the Bank has conflicting instruction(s) from the Client or the Authorized Person, or any dispute or proceedings arise between any of the joint Account Holders or joint service users;

(h) any proposed change to the Authorized Person(s), Account Mandate and/or the Signing Arrangement for the time being of any Account and/or Service concerned is not acceptable to the Bank;

(i) Total Liabilities or any other indebtedness of any nature (whether owed to the Bank or not) in respect of any financial obligation of the Client (including without limitation any obligation under any finance lease, redeemable preference share, letter of credit, futures contract, bills facility, Guarantee in relation to financial accommodation, indemnity in relation to financial accommodation or any Transaction that is a swap, cap, collar, floor, forward futures, option, foreign exchange transaction or any other derivatives) is not paid when due or becomes capable of being rendered due and payable before its normal maturity;

(j) any representation and/or warranty made by the Client to the Bank, whether contained in the Agreement or otherwise, or any information given by the Client to the Bank, is false, incomplete, incorrect or misleading in any aspect;

(k) any consent, authorisation (including any resolution) or approval required by the Client to enter into the Agreement or to perform its obligations thereunder, (i) is modified in a manner unacceptable to the Bank, (ii) is wholly or partly revoked, withdrawn, suspended or terminated, (iii) expires and is not renewed, or (iv) otherwise fails to remain in full force and effect;

(l) the Client disaffirms, disclaims, rescinds or repudiates or purports to disaffirm, disclaim, rescind or repudiate the Agreement or a Transaction (in whole or in part), or evidences an intention to disaffirm, disclaim, rescind or repudiate any such Agreement or Transaction (in whole or in part);

(m) any event occurs or circumstances arise (including (i) any political, financial or economic condition in or in respect of Hong Kong or any other jurisdiction in which any Asset subject to security is located), and/or (ii)

changes in the Client's financial condition or other circumstances which in the Bank's opinion would affect the ability of the Client to perform or comply with any of the obligations under the Agreement, or place the Client's business in jeopardy, or result in any change in the international capital and/or money markets;

- (n) the Client ceases to be duly incorporated or constituted and/or validly existing under the laws of its country of incorporation or constitution, whether as a result of its act, omission or otherwise, or the Client suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business or disposes of all or a substantial part of its business or assets, or proposes to do any of the foregoing;
- (o) in the case of a Client who is an individual, the Client passes away or becomes, in the Bank's view, incapable of managing, or authorising any Authorized Person(s) to manage, the Client's affairs or operating any Account concerned, whether by reason of mental incapacity, legal disability or otherwise;
- (p) the Client becomes bankrupt, insolvent or is unable to or deemed to be unable, under Applicable Laws, to pay its debts as they fall due or admits its inability to pay its debts as they fall due, or is subject to any bankruptcy, winding up or insolvency proceedings under any Applicable Law, or a resolution is passed or petition is presented or filed in respect of the Client for a voluntary arrangement or composition or reconstruction of its debts, bankruptcy, winding up (whether voluntary or otherwise), dissolution, reorganisation, administration, receivership, judicial management or analogous proceedings under any Applicable Law;
- (q) the Client (i) enters into, or takes any step with a view to enter into, or propose, or make any arrangement, composition or compromise with its creditors or any assignment for the benefit of its creditors, or (ii) stops, suspends or threatens to stop (by way of moratorium or otherwise) or suspend payment of all or substantially all of its debts or commences negotiations or takes proceedings or any other steps with a view to rescheduling or deferring all or substantially all of its indebtedness;
- (r) any action is taken by any of the Client's creditors to recover, realise or enforce any security over any of the Client's assets or property (including the Assets), or any part of the Client's assets (including the Assets) are seized or are subject to enforcement of a judgment by any party;
- (s) the relevant Account or Service is being used or is suspected of being used for money laundering, drug-trafficking, terrorist financing, bribery, corruption or other activities that are prohibited or are deemed illegal or unlawful by any Applicable Law;
- (t) any legal proceeding, suit or action of any kind whatsoever (whether criminal or civil) is instituted against the Client, or the Client or its affairs become for whatever reason the subject of investigation by any Authority in Hong Kong or in any other jurisdiction, and the Bank is of the opinion that it will or could affect the Client's ability to perform and observe its obligations under the Agreement;
- (u) any law, regulation or order, or any change in any law or regulation, does or purports to vary, suspend, terminate, or excuse performance by the Client of any of its obligations under the Agreement;
- (v) any Authority nationalises, compulsorily acquires, expropriates or seizes all or a material part of the business or assets of the Client;
- (w) the continuation of any Account or Service would not be in the Bank's or Bank Group's interest or would be inconsistent with prudent banking practice whether in Hong Kong or in any other jurisdiction;
- (x) any third party asserts a claim, right or interest in respect of any monies or funds in any Account of the Client with the Bank;
- (y) the levying of attachment or charge against any Account of the Client with the Bank;
- (z) any lien or any security is created or any part thereof respectively in relation to the indebtedness, obligations or Total Liabilities under the Agreement being avoided or discontinued;
- (aa) any Security Document expires or terminates or fails or ceases to be in full force and effect for the purpose of the Agreement prior to the satisfaction of all obligations of such party under each Transaction to which such Security Document relates without written consent of the Bank; or the Client or any Security Party disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, a Transaction or any Security Document relating to a Transaction;
- (bb) any deterioration or impairment (in the Bank's opinion) or any decline or depreciation (in the Bank's opinion) in the value or market price (whether actual or reasonably anticipated) of the Assets or any security or any part thereof respectively;
- (cc) any action or proceeding is commenced or any claim or demand is made by any person against the Client in connection with any matter herein contained or the Assets or any part thereof or against the Bank in connection with any matter herein contained or the Assets or any part thereof;
- (dd) the Client merges or amalgamates or becomes consolidated with any non-affiliated party, or sells all or a substantial portion of the Client's business or assets to another entity;
- (ee) any adverse change (in the sole and subjective opinion of the Bank) in the corporate structure, business,

assets, financial condition, creditworthiness and general condition or prospects of the Client;

- (ff) the occurrence of any event which, in the sole opinion of the Bank, may or shall jeopardize, prejudice or affect any of the rights, interests or benefits of the Bank;
- (gg) notice by the Bank of the death or incapacity of the Client;
- (hh) any other event of default howsoever described in the Agreement has occurred.

12.2 Upon the occurrence of an Event of Default, the Total Liabilities shall be immediately due and payable without notice (whether oral or otherwise), and the Bank shall, without providing any reasons and without notice (whether oral or otherwise) to the Client, without being obliged to grant, provide or extend such time to the Client as may be necessary to implement any payment, and without prejudice to any other claim, right or remedy whatsoever which the Bank may have, be entitled to do any or all of the following immediately in any order as the Bank shall in its absolute discretion deem fit:

- (a) suspend any Account or Service;
- (b) suspend the Bank's obligations to perform pursuant to the Agreement;
- (c) demand immediate repayment of all of the Total Liabilities or any part thereof (whether such demand is made orally or otherwise);
- (d) cease to comply with all or any instructions of the Client or its Authorized Persons;
- (e) close out, liquidate, set off, sell, realise, redeem, exercise any option held by the Bank on behalf of the Client or otherwise dispose of or deal with any or all of the Transactions and/or Assets, including Financial Products (notwithstanding that any such Transaction(s) and/or Assets has/have not yet matured and whether or not any Losses to the Client may arise as a result thereof), immediately or at such time, for such consideration and by such means and in such manner as the Bank, in its absolute discretion deems appropriate;
- (f) take such action as the Bank thinks necessary or appropriate to cancel, settle, redeem or terminate any outstanding Transactions between the Client and the Bank as principal or with any third party entered into by the Bank as the Client's agent;
- (g) sell, realise, liquidate, assign, transfer, enforce the Bank's security interest or otherwise dispose of any or all of the Transactions and/or Assets, in such manner and on such terms as the Bank may in its absolute discretion deem fit and to apply the net proceeds thereof or any other cash deposits or funds (after deduction of any costs incurred and/or conversion at such rate of exchange as the Bank may in its absolute discretion conclusively determine) in or towards the full or partial satisfaction of the Total Liabilities;
- (h) revise, change, withdraw, stop or cancel any Facilities or any part thereof;
- (i) disregard or cancel any or all instruction, orders or any other commitments made on behalf of the Client or in relation to any Transaction;
- (j) apply any amounts of whatsoever nature standing to the credit of the Client against any amounts which the Client owes to the Bank (of whatsoever nature and howsoever arising, including any contingent amounts) or generally to exercise the Bank's right of set-off and/or combination of Accounts against the Client and to effect any conversion at such rate of exchange as the Bank may in its absolute discretion conclusively determine;
- (k) after any amounts standing to the credit of the Client are applied against any amounts which the Client owes to the Bank or generally after the exercise of the Bank's right of set-off and/or combination of Accounts against the Client, demand any shortfall from the Client, hold any excess pending full settlement of any other obligation of the Client, or pay any excess to the Client;
- (l) require the Client to procure the release and discharge of the Bank from all guarantees and other contingent and/or unmatured liabilities owing, sustained or incurred by the Bank pursuant to the utilisation by the Client of any Facilities, whereupon the Client shall be obliged to immediately do so and, pending such release or discharge, shall provide cash Margin to the Bank in such amounts as shall be sufficient to fully satisfy all such liabilities and any costs in relation thereto and/or place the Bank in funds by paying to the Bank, for credit to a suspense or other account or accounts as the Bank may decide, such amounts as shall be sufficient to fully satisfy all such liabilities and any costs in relation thereto (which cash Margin and/or amounts shall only be released to the Client if and to the extent that all such liabilities of the Bank are fully and irrevocably released and discharged and all such costs are paid in full);
- (m) exercise all its rights, powers and remedies under the Agreement, in such manner and order as the Bank may, in its absolute discretion, deem fit, including the rights under Clause 13 below.

12.3 The Bank shall have absolute discretion in all matters relating to the exercise of its rights under this Clause, and may sell any Assets or property on a single or collective basis. The Client hereby waives all claims and demands (if any) against the Bank in respect of any Losses, involuntary or otherwise arising from the exercise by the Bank of the powers conferred by this Clause, howsoever such Losses may have been caused (other than through fraud, gross negligence or wilful default of the Bank), whether in relation to the timing or manner of the exercise of such powers or otherwise.

12.4 The Client undertakes to immediately notify the Bank upon becoming aware of any Event of Default or any circumstances that may lead to an Event of Default.

### 13. LIEN, SET-OFF AND CONSOLIDATION, CHARGE

#### Lien

13.1 Without prejudice and in addition to any general lien or any other rights which the Bank may be entitled to by law, under the Agreement or otherwise, the Bank shall for so long any of the Total Liabilities remain outstanding, have a right of lien over all Assets held from time to time by the Bank, its Agents or nominees, in the Client's name or on the Client's behalf, including Assets in transit to the Bank, the Bank's Agents or nominees ("**Lien**").

13.2 The Bank shall be entitled to retain and not repay any amount in the Assets, unless and until the Client has discharged the Total Liabilities in full. For so long as any Total Liabilities remain outstanding, the Bank reserves the right to decline any request by the Client to withdraw any of the Assets held by the Bank or its Agents or nominees.

13.3 At any time as the Bank shall determine appropriate and/or upon the occurrence (in the sole and subjective judgment of the Bank) of any Event of Default, the Lien shall be immediately enforceable and the Bank, without prejudice to any of the rights or powers of the Bank under the Agreement or other documents, shall have the right, without notice to the Client, to:

- (a) appropriate, pay, deduct, transfer or set-off the whole or any part of any Assets at any time and from time to time in or towards payment, satisfaction or discharge of any Total Liabilities secured by the Lien; and/or
- (b) sell, dispose of, liquidate, transfer or deal with (and the Bank is authorized to do all such things necessary in connection with such sale, disposal, liquidation, transfer or dealing) the Assets or any part thereof (to be selected by the Bank in its absolute discretion) at any time and from time to time either together or in parcels and by public or private means or in such other manner and for such consideration (whether payable or deliverable immediately or by instalments and whether for cash or other valuable consideration or both) and on such terms and conditions as the Bank shall think fit in its absolute discretion without being in any way liable to the Client for any Losses occasioned thereby however arising.

Without limiting the generality of the foregoing, the Bank is hereby specifically authorized to dispose of, liquidate, transfer and/or deal with the Assets without notice to the Client.

13.4 In any sale, disposal, liquidation, transfer or dealing pursuant to this Clause or the Agreement, if less than all the Assets are to be sold, disposed of, liquidated or transferred, the Bank shall in its absolute discretion select which part of the Assets are to be sold, disposed of, liquidated, transferred or dealt with at any time and from time to time.

13.5 The Client agrees that the Bank shall have the full and absolute right and discretion to determine at what time and day to exercise or enforce its right and power to carry out or execute the sale, disposal, appropriation, liquidation, transfer or dealing pursuant to this Clause or the Agreement. The Client shall not have any right to claim against the Bank in respect of any Losses arising out of any sale, disposal, appropriation, liquidation, transfer or dealing pursuant to the Agreement, howsoever such Losses may have been caused, and whether or not a better price or position could or might have been obtained on the sale, disposal, appropriation, liquidation, transfer or dealing of any of the Assets by either deferring or advancing the time or date of such sale, disposal, appropriation, liquidation, transfer or dealing or otherwise howsoever.

#### Rights of Appropriation, Debit, Set-off and/or Consolidation

13.6 In addition and without prejudice to any charge, lien or right to which the Bank may be entitled by law, under the Agreement or otherwise, the Bank for itself or as agent for any of the Affiliates may at any time and without notice or reference to the Client:

- (a) combine or consolidate all accounts including any Account or any other account of any nature whatsoever and either individually or jointly with others, maintained with the Bank and the Bank may, without prior notice or reference to the Client, set off or transfer any Assets in any such Accounts to satisfy the Client's Total Liabilities; and
- (b) if any sum is due but remains unpaid hereunder, retain all or any Assets whatever and wherever situated which may be deposited with or otherwise held by the Bank or its Agents or nominees for or in the Client's name or on behalf of the Client whether for safe custody or otherwise and sell the same or any part thereof at such price and in such manner as the Bank shall in the Bank's absolute discretion determine and the Bank may retain such agent or broker therefor and apply the proceeds thereof to set off any or all sums owing under the Agreement after full deduction of all costs and expenses.

13.7 In addition and without prejudice to any general or banker's lien, right to set-off or similar rights to which the Bank is entitled by law, or pursuant to the Agreement or otherwise, the Bank shall have the right (but is not obliged) to set off or apply any of the Total Liabilities owed to the Bank (whether or not matured or contingent and whether or not arising under the Agreement, any Transaction or otherwise, and regardless of the currency, place of payment or booking office of the obligation) against any obligation of the Bank owed to the Client (whether or not matured or contingent and whether or not

arising under the Agreement, any Transaction or otherwise, and regardless of the currency, place of payment or booking office of the obligation). To the extent that any amounts are so set off, those amounts will be discharged promptly and in all respects.

- 13.8 The Bank is authorized at any time and in its absolute discretion convert any sum in the Account or under the Service into any currency by any lawful means at the Bank's disposal and at the prevailing rate of exchange as determined by the Bank on the day of passing the entry for the purpose of set off or transfer without reference to the Client.
- 13.9 If an obligation is unascertained, the Bank may estimate that obligation and set off in respect of the estimate, subject to the relevant party accounting to the other when the obligation is ascertained.
- 13.10 Any exercise of the Bank's rights in accordance with this Clause 13 shall not be treated as a payment of the amount due (except to the extent of any amount standing to the credit of any of the Client's Accounts or a waiver of any Event of Default).
- 13.11 The Bank may in its absolute discretion, aggregate the amount payable to or from the Client under the Agreement on any date and only the net amount payable by or to the Client shall be made.
- 13.12 If any security or payment to the Bank is avoided or reduced by virtue of any Applicable Law relating to insolvency for the time being in force, any settlement, assignment, payment, release or discharge between the Client and the Bank shall be wholly void and the Bank shall be entitled to exercise all of its rights against the Client as if such settlement, assignment, payment, release or discharge had never been granted, given or made.

#### **Charge**

- 13.13 In consideration of the Bank agreeing to or continuing to make available Facilities or other Services or accommodation whatsoever, including giving time and indulgence to the Client, and or entering into any Transactions with or for the Client, the Client hereby charges, pledges, mortgages, assigns and otherwise create a first fixed charge to and in favour of the Bank over all the Client's Assets as continuing security for the payment and discharge of Total Liabilities. The charge created hereunder is in addition to, and independent of, any charge, guarantee or other security or right or remedy now or at any time hereafter held by or available to the Bank. The Client agrees to perform all such acts and/or execute all such documents as may be necessary for the purpose of perfecting the charge created under this Clause.
- 13.14 Save as otherwise provided in this Agreement, the Client shall not, without the Bank's prior written consent, assign, transfer, mortgage, pledge, charge, or create or permit to arise or exist any lien, security or other form of encumbrances of any nature on or over its right, title, interest and claim in or to any rights or interest of, in or under any Transaction in any Account or any Financial Products or Assets held by the Bank for account of the Client.

#### **14. PAYMENT**

- 14.1 Any sum payable by the Client to the Bank under the Agreement shall be paid to the Bank in Hong Kong Dollars or otherwise as the Bank may from time to time direct, in full, free and clear of any of present or future taxes, levies, duties, charges, fees or withholding and without set off, counterclaim or deduction whatsoever. If the Client is required by any Applicable Law to make any deduction or withholding, the Client shall promptly pay to the Bank such additional amount as will result in the net amount received by the Bank being equal to the full amount which would have been receivable had there been no deduction or withholding. Any additional amount paid under this Clause 14 shall not be treated as interest but as agreed compensation.
- 14.2 The Client hereby agrees and confirms that if at any time and for any reason the Bank determines that it shall be required by any Applicable Law to make any deduction or withholding from any payments payable to the Client by the Bank (whether as principal or as agent for a third party or otherwise), the Bank shall be entitled to make such deduction or withholding without consent or further reference to the Client. The Bank shall not be required to increase any payment in respect of which it makes such a deduction or withholding or otherwise compensate the Client of the payment for that deduction or withholding or liable for any Losses that the Client may incur by reason of such withholding or deduction. The Bank's determination of the applicability of such withholding or deduction requirement under the Applicable Law shall be binding on the Client and pending the Bank's determination, the Bank has the absolute discretion to deposit any such monies into a sundry or other account and/or retain such monies in such manner as the Bank deems appropriate.

#### **15. FEES, CHARGES, COMMISSIONS AND INTEREST**

- 15.1 The Bank shall have the right to impose or levy such fees, charges and/or commissions for the operation, maintenance or closing of any of the Accounts or provision of any of the Services (including the conduct of any Transaction) to the Client at such rate as prescribed by the Bank in any schedule of fees, charges and/or commission published by the Bank from time to time, and the Bank may vary, revise or amend the fees, charges, and/or commissions and the rate or the basis of calculation thereof at any time. The Client shall be bound by such rates and basis of calculation with effect from the date of such variation, revision or amendment as determined by the Bank in its absolute discretion. The Client may request for

such schedule of fees, charges and/or commission from the Bank. Any such fees, charges and/or commissions shall be payable by the Client to the Bank on demand forthwith.

15.2 The Client agrees to pay the Bank all interest accrued on all sums payable by the Client to the Bank calculated from the due date to the date of actual payment (before and after judgment) at such rate as prescribed by the Bank and for the actual number of days divided by 360 or 365 in accordance with the Bank's prevailing practice for the relevant currency.

15.3 The Client hereby authorizes the Bank (without prior written notice or reference to the Client) to deduct such interest, fees, charges and/or commission from any one or more of the Account.

## **16. STATEMENTS AND CONFIRMATIONS**

16.1 The Client agrees that the Bank is not required to issue any contract notes, statements of accounts and receipts pursuant to section 3(2)(b) of the Securities and Futures (Contract Notes, Statements of Account and Receipt) Rules (Cap. 571Q). The Client accepts and takes full responsibility for all risks including risks arising from any delays in the Client's detection of and/or notification to the Bank of any fraud, omission or error that may occur or arise in connection with any Account or Service that may result in any Losses to the Client.

## **17. RECORDS (INCLUDING TELEPHONE RECORDS) AND CONCLUSIVE EVIDENCE**

17.1 The Client acknowledges and accepts that telephone calls or other forms of communication between the Client and the Bank may be recorded or otherwise electronically monitored without any prior warning messages and that the Bank may use the recording as evidence of the Client's instructions in such manner as the Bank shall consider fit and subject to the Applicable Laws.

17.2 Except for manifest error, the books and records kept by the Bank (including, without limitation, tape recording and any handwritten information recorded by the Bank's employees or agents in the course of their dealing with the Client) in respect of the Account and/or Service shall be conclusive evidence and binding on the Client, for all purposes and in all courts of law.

## **18. JOINT ACCOUNTS, PARTNERSHIP AND OTHERS**

18.1 Where the Client consists of more than one person such as joint Account Holders or joint service users, the following provisions shall apply:

- (a) the obligations and liabilities of such persons under or pursuant to the Agreement shall be joint and several and any demand made by the Bank to any one or more of the Client so jointly and severally liable shall be deemed to be demand made to all such persons constituting the Client;
- (b) the Bank is at liberty to release or discharge any one or more of the persons constituting the Client from liability under the Agreement or to compound with, accept compositions from or make any other arrangements with any of such persons without in consequence releasing or discharging one or more person(s) constituting the Client from the Agreement or otherwise prejudicing or affecting the Bank's rights and remedies against the other person(s);
- (c) all instructions and Assets relating to any Account or (as the case may be) any Service in the event of the death of any one or more of the persons constituting the Client shall be subject to any claim or objection of any relevant Authority and shall be without prejudice to any right which the Bank may have arising out of any lien, charge, pledge, set-off, claim, counterclaim or otherwise whatsoever or any step or legal proceedings which the Bank may in its absolute discretion deem desirable to take in view of any claim by any person other than the survivor(s) of them or the executors or administrators of the deceased;
- (d) the Client agrees to dispense with giving each joint Account Holder or joint service user a separate set of notices or communications and/or any other correspondence in relation to the joint Account or service, and that only one set of communications and/or correspondence shall be sent to the mailing address specified. Notwithstanding any other provision to the contrary in this Agreement, any notice, request, communication and/or other correspondence sent, dispatched or delivered by the Bank to any one joint Account Holder or joint service user shall be deemed to have been sent and received by all the joint Account Holders or all joint service users;
- (e) subject to sub-clause (c) above, the Bank shall hold, on the death of any of the persons constituting the Client, all Assets in all the Accounts to the order of the survivor(s) of the Client, or the executor(s) or administrator(s) of the last survivor of the Client (in the case of death of all the persons constituting the Client), and any payment by the Bank as above shall be an absolute, full and conclusive discharge to the Bank as against the Client (including the deceased and his/her estate and successor) provided that the Bank may require the production of documentary proof of the death and/or the relevant legal grant to the estate of the deceased;
- (f) the Bank's set off right hereunder may be exercised against any one or more of such persons such that Assets may be applied by the Bank in or towards the satisfaction of any obligations or liabilities owing to the Bank by any one or more (albeit not all) of the persons comprising the Client;
- (g) unless otherwise agreed between the Client and the Bank in writing:

- (i) each joint Account Holder of the Account or joint users of the Service will have sole and full authority on behalf of all the joint Account Holders or all the joint service users to deal with the Bank fully and completely as if he were the sole owner of the Account or user of the Service without any notice to the other joint Account Holders or other joint service users (as the case may be). Such act, conduct, instructions, directions, signature, decisions and/or authorisations of any such joint Account Holder or joint service user shall be jointly and severally binding on the other joint Account Holders or joint service users such that the Bank may follow the instructions of any one of the joint Account Holders or joint service users and shall not be required to give notice to, or obtain authorisation from, the other joint Account Holders or joint service users; and
        - (ii) any of the joint Account Holders or the joint service users may give the Bank an effective and final discharge in respect of any of the Bank's obligations;
- (h) on the death of any of the Account Holders or the service users, the estate of the deceased joint Account Holder or joint service user or the surviving joint Account Holder(s) or joint service user(s) shall immediately notify the Bank in writing of the relevant death and produce and deliver to the Bank true copy of proof of such death and such other documents as the Bank may in its absolute discretion require (but the Bank is not required to verify the authenticity of such evidence so produced). The Agreement will not terminate but survive such death and remain binding on the other person(s) constituting the Client and the Bank may treat such survivor(s) as the only party to the Agreement, regardless of the arrangement or agreement among the joint Account Holders or joint service users and notwithstanding the Agreement being potentially invalid or unenforceable against any one or more of the joint Account Holders or service users (whether or not the deficiency is known to the Bank). For the avoidance of doubt, it is hereby declared and agreed by the parties to the Agreement that all rights and interests of and in the Account or the Service will be vested in the survivor(s) under the Account or the Service upon death of the Account Holder(s) or service user(s) by operation of the rule of survivorship; and
- (i) the Agreement shall not be affected by the incapacity or dissolution of any of the persons constituting the Client;
- (ii) termination of the Agreement by any one or more persons constituting the Client or his or her personal representatives shall not affect the continuing liability of the other persons;
- (k) notwithstanding the foregoing provisions or any instructions provided by the Client, the Bank hereby reserves the right:
  - (i) to require joint instructions, signatures, verification or confirmation from some or all of the joint Account Holders or the joint service users before taking any action under the Agreement as the Bank deems necessary, and the Bank shall not be liable to the Client for any Losses as a result of undertaking such request; and
  - (ii) to advise one or more joint Account Holders or joint service users of such conflict or inconsistency and/or to take no action on any such instructions or directions until the Bank receives further instructions or directions in the form and substance satisfactory to the Bank if the Bank receives instructions or directions from any one of the joint Account Holders or the joint service user which are not consistent with other instructions or directions.

18.2 Joint Account Holder or joint service users are responsible for ensuring that documents requiring signature are signed in accordance with the Signing Arrangement or Account Mandate.

18.3 If the Client is a firm without separate legal personality (whether sole proprietorship or partnership firm), the following additional provisions shall apply:

- (a) the Client and the proprietor/partners (whether general, special or limited) and persons carrying on business in the name of the firm concerned now or at any time hereafter shall be jointly and severally liable under the Agreement;
- (b) the Client shall immediately advise the Bank of any change:
  - (i) in the constitution or membership of the firm (whether by retirement, death, bankruptcy or admission of new parties); or
  - (ii) in the name of the firm,
 unless expressly released, the Client and all persons signing the Agreement as the proprietor or partners of the Client shall continue to be liable under the Agreement irrespective of any such change;
- (c) unless the Bank shall have actually received written notice from the Client of any change in the membership or constitution of the firm, whether as a result of death or otherwise, irrespective of whether such change has been reported to or filed on public records with the Companies Registry or any other relevant government department or Authority, the proprietor or the partners (as the case may be) of the firm on record with the Bank shall remain liable to the Bank as such and be deemed to have represented at all times to the Bank that the constitution and name of the firm have remained unchanged and the Bank shall be entitled to act accordingly and all the terms under the Agreement and authorities given to the Bank in respect of the Account(s) and/or the relevant

Service(s) shall continue to be binding and of full effect;

- (d) for the avoidance of doubt, the word “**Client**” shall include the firm and its sole proprietor or partners (as the case may be) for the time being and the Agreement shall be so construed accordingly;
- (e) in case of a partnership firm other than one with separate legal personality (the “**Firm**”), if any one or more of the partners cease to be a partner of the Firm by death, retirement, bankruptcy or otherwise, or in the event of any change in partnership constitution, the Bank shall be entitled and is authorized:
  - (i) to treat the surviving or continuing partners or partner for the time being as having full power to carry on the business of the Firm and to deal with any matter whatsoever concerning or arising from the Account or (as the case may be) the Service relating thereto (including without limitation the power to close any Account) as if there had been no change in the Firm and all Transactions effected pursuant to the request or instruction of such surviving or continuing partners or partner shall be conclusively binding on all the partners or their respective estates and personal representatives, including the one or more of the partners who shall have ceased to be a partner or partners;
  - (ii) in the absence of written instructions to the contrary signed by all partners of the Firm immediately before such cessation, to close or suspend the Account or (as the case may be) to terminate or suspend the Service without any prior notice or reference to the Client. The assets (including Assets), property(ies) or proceeds held in any Account of the Client (subject to any rights or claims of the Bank thereon) shall be held by the Bank to the order of all partners of the Firm immediately before such cessation; and/or
  - (iii) at the request of the surviving or continuing partner(s) for the time being, to open a new Account or (as the case may be) to set up a new Service with them in the same name as that of the Firm (hereinafter referred to as the “**New Firm**”) and to carry on business with them and to collect and pay thereto any or all cheques, bills, drafts, promissory notes and/or other instruments with the name of the firm as the named payee (whether they are in fact payable to the Firm or the New Firm) without enquiry and such collection and payment shall be a valid discharge to the Bank and conclusively binding on all of the partners of the Firm and their respective estates and/or personal representatives, including the one or more of the partners who shall have so ceased to be partner or partners, irrespective whether or not such payment or collection will in fact result in reduction, payment or satisfaction of any or all of the debts or liabilities of the New Firm to the Bank and/or otherwise be used only for the benefit or business of the New Firm or the partners of the New Firm to the Bank’s knowledge,

for the avoidance of doubt, it is hereby expressly declared that this sub-clause (e) shall continue to apply and have effect irrespective of whether or not any notice of change in the constitution or name of the Firm has in fact been sent to and received by the Bank and whether or not the partnership of the Firm be deemed in law or in fact to have been dissolved or ceased to exist.

- (f) in the case of a partnership other than one with separate legal personality, any change in:
  - (i) the name of the partnership;
  - (ii) the partners of the partnership as a result of death, retirement or introduction of new partner; or
  - (iii) the constitution of the partnership,

shall not affect the Client’s liabilities which shall continue and be binding on the Client and all partners from time to time constituting the partnership. The Bank shall be entitled to debit the Client’s Account at any time in respect of any sum howsoever due or owed to the Bank by any partner from time to time constituting the partnership; and

- (g) unless otherwise agreed by the Bank, the Client’s partnership agreement, if any, will not bind the Bank and the operation, maintenance or closing of a partnership account with the Bank or uses of the Service by a partnership are entirely regulated and subject to the Agreement.

18.4 If the Client is an association, committee or other unincorporated body, the Agreement shall remain in full force and effect and shall be binding on the Client, notwithstanding any change in membership or constitution of the Client.

18.5 If the Client is a trustee of a trust:

- (a) the Bank will deal with the Client and be entitled to deal with the Client as a client as if there were no trust constituted or subsisting and without prejudice to the foregoing, the Bank shall not be obliged to:
  - (i) act on any instructions relating to the Account or Service other than from the Client; or
  - (ii) obtain any consent from or see to the execution of any trust for any person, unless the Bank agrees in writing;
- (b) the Client is required to provide the Bank with such information on the Client’s clients as may be required by the Bank. If the Client cannot disclose such information due to the confidential nature of such information, the Client must:

- (i) provide the Bank with undertakings in form and substance satisfactory to the Bank and in relation to such matters as the Bank may from time to time require; and
  - (ii) upon the Bank's request, promptly provide the Bank with information and documents relating to the Client's clients;
- (c) the Client must observe anti-money laundering, counter-terrorism financing and/or other similar legislation of the country where the Client is registered/incorporated and where the Account is located. The Client acknowledges and understands that the Bank may be requested to provide information about the Account or the Client's clients by any relevant agency or Authority, and the Bank has no obligation to ascertain or enquire into the purpose for which such information is requested;
- (d) at the Bank's written request, the Client is required to provide the Bank with a copy of the most updated trust deed or other document(s) constituting the trust. The Bank shall be deemed not to have knowledge whether actual or constructive or otherwise of provisions in the document constituting or evidencing the trust other than in the case where the Bank has actual knowledge on provisions relating to the identity of the settlor, the beneficiaries and trustees and provisions relevant in order for the Bank to determine that the trust has been constituted, the general signing powers of the trustee and its representatives, the purposes of the trust, the reasons for opening the Account and anticipated Services which may be requested for the trust. The Bank has no duty or obligation to review the terms of the document constituting or evidencing the trust, the powers and duties of the trustee and to determine whether the trustee is in breach of the provisions of the trust;
- (e) the Client will not do, or fail to do, any act whereby the Client's right of indemnity out of the assets of the trust, or the Bank's right to be subrogated to that right of indemnity, would be prejudiced or diminished in any way;
- (f) any liability of or indemnity given by the Client or any of the Client's other obligations under the Agreement shall be on the basis that the Bank has full recourse to all the assets of such trust as well as any and all amounts standing to the credit of the Accounts;
- (g) the Client agrees that, even though the Client is acting as trustee, the Client will be personally liable in respect of any obligations for which the Client has no right to be indemnified from the assets of the trust or where the Bank has no right to be subrogated to such right of indemnity, or in respect of any breach by the Client of any of its representations or warranties under, or the terms of, the Agreement; and
- (h) the Client agrees that the Bank is entitled but not obliged to treat the Client as trustee of a trust and to treat the Account as a trust Account to be governed by this Clause even if the Client has not opened the Account on the basis, or expressly instructed or informed the Bank, that the Account is held in trust. The Bank will have the discretion to refuse to provide the Client with any Service or refuse to enter into any Transaction for the Account if the Client has not provided the Bank with information which the Bank requires or for any other reason whatsoever. The Bank will not be liable or responsible for any Losses which the Client or any beneficiaries of any trust may incur as a result of or arising from such treatment or refusal.

18.6 The Client hereby warrants and represents that:

- (a) if the Client is a limited company or other incorporated or unincorporated body, the Client has been duly established and is validly existing under the laws of its country of establishment and has the power to own its assets and carry on its business as it is being conducted; and
- (b) all acts, conditions and things required to be done, performed and observed in order that the Agreement shall constitute the legal, valid and binding obligations of the Client enforceable in accordance with its terms have been done, performed and observed in strict compliance with all Applicable Laws and (if applicable) the constitutional documents of the Client.

## 19. OUTSOURCING

19.1 Subject to the Applicable Laws, the Bank is entitled to outsource or delegate any of the Bank's functions under the Agreement to any Affiliate, any Agent or any other parties, whether in Hong Kong or elsewhere for the performance of such functions in such manner conclusively determined by the Bank and when the Bank considers fit, including without limitation appointing any Affiliate or Agent to take delivery and to be registered as nominee of any of the Client's assets in any part of the world, without further notice to the Client or consent from the Client.

19.2 The Bank shall not be responsible for any act, omission, neglect or default of any such third party or Agent provided that such third party or Agent was selected and appointed by the Bank in good faith.

## 20. CONFLICT OF INTEREST, DISCLOSURE AND REMUNERATION

20.1 In relation to any Account and/or Services (including Transactions and Facilities) contemplated hereunder, the Bank and/or the Affiliates may have an interest, relationship, arrangement, or duty which is material or which gives or may give rise to an actual or potential conflict of interest with the Client's interest(s) in relation to such Transaction directly or indirectly, or which gives rise or may give rise to an actual or potential conflict of interest between a Client's interest(s) and the interests of other Clients (the "**Material Interest**"). Where the Bank has Material Interest in a Transaction with or for a

Client, it should neither advise, nor deal in relation to the Transaction unless it has disclosed the Material Interest to the Client and has taken all reasonable steps to ensure fair treatment of the Client

20.2 Without limit to the generality of the foregoing, Material Interests that could arise during the Agreement and to which the Client consents to by entering into the Agreement include where the Bank and/or its Affiliates:

- (a) carry on business on behalf of other Clients;
- (b) make recommendations to a Client which differs from advice or recommendations given to other Clients;
- (c) deal on a Client's behalf through another Affiliate which receives an agent's commission;
- (d) act as trustee or agent or in any other capacity for any other person whatsoever and contract or enter into any financial, banking or other Transaction with, or be interested in any such contract or Transaction with, any other person;
- (e) effect, arrange or give advice on Transactions where the Bank or an Affiliate benefit from Remuneration payable otherwise than by a Client, or the Bank or its Affiliate is remunerated by the counterparty to the Transaction;
- (f) engage a Client in a Transaction or recommendation which involves investments issued by the Bank or its Affiliates, or one of the Bank's or its Affiliates' customers;
- (g) trade contracts on the Bank's director, employees or agents own account pursuant to the Bank's internal policy;
- (h) deal with a Client as principal for the Bank's or its Affiliate's own account or have a long or short position in Securities or any other Financial Products that are held by a Client or in which the Bank deals on such Client's behalf;
- (i) match a Client's Transaction with that of another Client by acting as principal with such other Client and then as principal with the first-mentioned Client;
- (j) execute a Transaction or advice in circumstances where the Bank has lawfully obtained knowledge of other or potential transactions in the investment concerned;
- (k) deal or recommend units in a collective investment scheme or investment funds in respect of which the Bank or its Affiliate either act as, or advise, the trustee, investment manager or operator of such collective investment scheme or otherwise act in a similar capacity;
- (l) are involved in or act in respect of a new issue, rights issue, takeover or any other transaction or have any other relationship with an issuer of investments which is relevant to investments in which the Bank deals on behalf of a Client or makes recommendations;
- (m) have officers or employees who act as officers or employees of issuers of investments in respect of which the Bank deals on behalf of a Client or makes recommendations;
- (n) accept and receive Remuneration from any issuers of any Financial Products, brokers, dealers and person engaged relating or incidental to the Transaction; and
- (o) receive good and services from, or enter into soft commission arrangements with, brokers or dealers engaged in Transactions for the account of the Client in return for the Bank and/or its Affiliates directing transaction or business to them. Such goods and services may include investment advice, research or advisory services, economic and political analysis, portfolio analysis (including valuation and performance measurement), market analysis, data and quotation services, computer hardware and software or other information facilities incidental to the foregoing goods and services, clearing and custodian services and investment related publications. Such goods and services may not include travel and accommodation, entertainment, general administrative goods or services, general office equipment or premises, membership fees, employee salaries, or direct money payments.

Neither the Bank nor its Affiliates shall be under any duty which would prevent the Bank or its Affiliates from doing business of the sort indicated above, except where it is prohibited by Applicable Laws.

20.3 The Client acknowledges and agrees that the Bank shall be entitled (but is not obliged) to give advice or make recommendation to the Client or enter into any Transaction for or with the Client or act as the Client's agent or provide the Services and any other service notwithstanding the Material Interest.

## **21. DEBT COLLECTION**

21.1 The Bank is entitled to retain debt collection agent(s) to collect any sum due to be paid to the Bank but remains unpaid by the Client under the Agreement. The Client agrees and acknowledges that the Client has been warned that the Client shall indemnify and keep the Bank indemnified on a full indemnity basis from and against all Losses which the Bank may reasonably incur in employing debt collection agent(s).

## **22. FORCE MAJEURE**

22.1 The Bank will incur no liability whatsoever for any partial or non-performance of any of the Bank's obligations by reason of any Force Majeure Event, and the Bank shall not be held liable for any Losses the Client or others may incur, whether directly or indirectly, as a result thereof.

## **23. AMENDMENT**

- 23.1 The Client agrees and accepts that subject to the Applicable Laws, the Bank may unilaterally amend the provisions in the Agreement and/or the General T&Cs at any time in such manner and to such extent as the Bank may from time to time in its sole discretion consider fit and such amendment shall be effective and binding on the Client upon the Bank giving the Client not less than thirty (30) days' prior written notice or by way of displaying the amendment in a prominent position of the Bank's office premises or in such other manner as the Bank shall in its sole discretion consider fit.
- 23.2 Where the Client refuses to accept the amendment and chooses to terminate the relevant Account or (as the case may be) the relevant Service(s) to which the amendment relates within a reasonable period, the Bank shall, on application of the Client, repay any annual or other periodic fee (if any), which can be separately distinguished, paid in advance in relation to such Account or (as the case may be) Service(s) on a pro rata basis unless the amount involved is minimal.

## **24. NOTICE**

- 24.1 Any notice or other communication to the Client in connection with any Account or (as the case may be) any Banking may be given by the Bank to the Client orally or in writing. Written notice to the Client may be by letter, by way of advertisement in the newspaper or posting notices in banking halls or through such other means as the Bank deems fit. When giving any notice or other communication to the Client by letter in connection with any Account or Service, the Bank shall be entitled to dispatch the same to the last known correspondence address of the Client.
- 24.2 Subject to Clause 24.4, a notice or demand in writing by the Bank under the Agreement may be served by post, personal delivery, electronic mail or facsimile transmission and shall be deemed to have been duly served if by post on the day following the day of posting if posted in Hong Kong to an address in Hong Kong and on the 7th day after the same has been posted if posted to or from a place outside Hong Kong (its subsequent return or non-delivery notwithstanding) and if by personal delivery, electronic mail or facsimile transmission at the time on the day of such personal delivery, electronic mail or facsimile transmission if addressed to the Client or its legal or personal representative(s) at the last known address, electronic mail address or facsimile number according to the Bank's record.
- 24.3 Subject to Clause 24.4, any written notice or communication from the Bank to the Client shall be deemed duly sent to the Client if it is sent to the Client at the correspondence address, facsimile number or e-mail address of the Client stated in the Agreement and/or such other address, facsimile number or e-mail address from time to time notified by the Client to the Bank in accordance with Clause 24.7 below.
- 24.4 All written notices and announcements by the Bank shall be deemed duly made and effectively communicated to the Client if published on newspaper or displayed at banking hall of the branch/sub-branches/offices as the Bank may in its absolute discretion determine.
- 24.5 Subject to any express instruction that is accepted by the Bank, if the Client consists of more than one person or if there is more than one Authorized Person, any written notice or other written communication sent to the correspondence address, facsimile number or e-mail address of any one Client (or any one of the Authorized Persons), as the case may be, last known to the Bank according to the Bank's record, shall be deemed effectively sent to and received by the Client.
- 24.6 Oral notice or communication shall be deemed to have been duly given to and received by the Client when any officer or agent acting for the Bank verbally notifies, whether in person or through the telephone, the Client or (as the case may be) any person comprising the Client or any one of his Authorized Persons or any person believed by such officer or agent in good faith to be the Client or (as the case may be) any person comprising the Client or any one of his Authorized Persons.
- 24.7 Subject to Clause 24.9 below, any notice or communication from the Client relating to any Account or Service shall be signed as per the Signing Arrangement, provided that if the notice or communication is relating to the change of the correspondence address, numbers or other details of the Client, the Bank may require the Client to give and sign the notice or communication personally and:
- (a) if the Client consists of more than one person or is a partnership firm, the Bank may require any one of the persons comprising the Client or (as the case may be) any one of the partners of the Client to give and sign the notice or communication in favour of the Bank, and any such notice or communication so given and signed shall be binding upon the Client absolutely; or
  - (b) if the Client is a limited company or any other body or entity acceptable to the Bank, the Bank may require the Authorized Person(s) of the Client to give and sign in accordance with the Signing Arrangement the notice or communication in favour of the Bank, and any such notice or communication so given and signed shall be binding upon the Client absolutely.
- 24.8 Subject to Clause 24.9 below, a notice by the Client or the Client's legal representative(s) or the Client's estate may be

served by post, personal delivery or facsimile transmission at the Bank's registered office or principal place of business but shall not be deemed to have been duly served unless and until actual receipt of such post, personal delivery or facsimile transmission by the Bank.

24.9 The Bank may from time to time expressly agree (subject to any specific requirements from time to time prescribed by the Bank) any notice or communication from the Client to the Bank (including those relating to the change of the correspondence address, the contact telephone numbers or other details of the Client) to be given other than in accordance with Clause 24.7 or 24.8.

## **25. CHANGE OF INFORMATION**

25.1 The Client and the Bank undertake to inform each other of any material change to the information provided in the Agreement. In particular, the Client and the Bank agree that:

- (a) the Bank shall notify the Client of any material change to:
  - (i) its name, address and licensing and/or registration status with the HKMA and/or the SFC or the Bank's CE number;
  - (ii) the nature of Service provided by the Bank to the Client;
  - (iii) the remuneration (and the basis for payment) that is to be paid by the Client to the Bank (such as commission, brokerage and any other fees and charges);
  - (iv) if any Margin or short selling facilities are to be provided to the Client, details of Margin Requirements, interest charges, margin calls, and the circumstances under which a Client's positions may be closed without the Client's consent; and
- (b) the Client will notify the Bank of any change of name, address, particulars and any other change in information or circumstances that the Client has previously notified the Bank pursuant to the terms of this Agreement (including without limitation Clause 4.3), and provide such supporting documents as reasonably required by the Bank.

## **26. CURRENCY EXPOSURE**

26.1 For any Transaction contemplated hereunder (including without limitation in respect of any Account(s) or Service(s)) in currencies other than Hong Kong Dollars), the Client acknowledges that there may be profits or Losses arising as a result of a fluctuation in exchange rates, which shall be entirely for the Client's account and at the Client's own risk.

26.2 Without prejudice to the generality of Clause 26.1 above, if the Client gives instructions to the Bank to effect any Transaction requiring a conversion from one currency to another, the costs thereof and any profit or Losses arising as a result of fluctuations in the exchange rate of the relevant currency will be entirely for the account and risk of the Client. The Bank may convert monies in any Account into and from any currency at such rate of exchange as the Bank shall in its sole discretion determine as being the then prevailing market rate of exchange. Such conversion may be made for the purpose of any Transaction or for the calculation of any debit balance due from the Client or credit balance owed to the Client. The Client authorizes the Bank to debit any Account for any expenses incurred in effecting any currency conversion. The Bank reserves the right at any time to refuse to accept any instructions from the Client in relation to any currency conversion.

## **27. TAX COMPLIANCE**

27.1 The Client and any person acting on the Client's behalf acknowledge that it is the Client's sole responsibility to understand and comply with the Client's tax obligations in all jurisdictions. Such tax obligations include but are not limited to tax payment or filing of returns or other required documents to relevant Authorities (which means any government, government body, government agency or regulator, in or outside of Hong Kong, including the Inland Revenue Department of Hong Kong and Internal Revenue Service of the United States of America). Certain countries have tax legislation with extraterritorial effect regardless of the Client's place of domicile, residence, citizenship or incorporation. The Client may consider seeking independent legal and tax advice and neither the Bank nor the Bank's agents provide the same.

27.2 The Client undertakes to provide the Bank, upon request, any documentation or other information regarding the Client and the Client's beneficial owners that the Bank may require from time to time in connection with the obligations under, and in compliance with, Applicable Laws, including, but not limited to, AEOI. The Client further agrees and consents that the Bank may collect, store and process information obtained from the Client or otherwise in connection with this Agreement and/or the Client's Transactions or any other Client Data for the purposes of complying with AEOI and/or other Applicable Laws, including disclosures from the Bank to the governmental authorities of the United States of America, Hong Kong and/or other jurisdictions and to persons from whom the Bank or its Agents receive or make payments on behalf of the Client. To the extent permitted by law, the Client hereby waives any provision of any data protection, privacy, banking secrecy or other law or regulation of any jurisdiction and/or the terms of any confidentiality agreement, arrangement or understanding that would otherwise prevent

compliance by the Bank with AEOI and/or other Applicable Laws. The Client acknowledges that this may include transfers of information to jurisdictions which do not have strict data protection, data privacy laws or banking secrecy laws. The Client shall ensure that, before the Client or anyone on the Client's behalf discloses information relating to any third party to the Bank in connection with this Agreement or the Client's Transactions that third party has been provided with such information and has given such consents or waivers as are necessary to allow the Bank to collect, store, process and disclose his, her or its information as described in this Clause.

### 27.3

- (a) The Client shall upon request by the Bank confirm to the Bank (i) whether the Client is a person who is entitled to receive payments free from any deduction or withholding as required by AEOI (the "AEOI Exempt Party"); and (ii) supply to the Bank such forms, documentation and other information relating to the Client's status under AEOI (including its applicable passthru rate or other information required under the US Treasury Regulations or other official guidance including intergovernmental agreements) as the Bank may reasonably request for the purposes of its compliance with AEOI.
- (b) If the Client confirms to the Bank pursuant to the above that the Client is an AEOI Exempt Party and the Client subsequently becomes aware that the Client is not, or has ceased to be a AEOI Exempt Party, the Client shall notify the Bank as soon as reasonably practicable.
- (c) If the Client fails to confirm the Client's status or to supply forms, documentation or other information requested in accordance with sub-clause (a) above (including, for avoidance of doubt, where sub-clause (b) above applies), then:
  - (i) If the Client fails to confirm whether the Client is (and/or remains) a AEOI Exempt Party then the Client will be treated as if the Client is not a AEOI Exempt Party; and
  - (ii) If the Client fails to confirm its applicable passthru rate then the Client will be treated as if its applicable passthru rate is 100%, until such time that the Client provides the Bank the requested confirmation, forms, documentation or other information.

27.4 If the Bank is required pursuant to AEOI or otherwise by law to withhold or deduct any AEOI withholding taxes (including any penalties or interest payable in connection with any failure to pay or any delay in paying any such taxes) on any payments to the Client, the Bank may deduct such taxes and will not be required to increase any payment in respect of which the Bank makes such withholding. The Client shall be treated for all purposes of this Agreement as if the Client had received the full amount of the payment, without any deduction or withholding. The Client shall provide the Bank such additional documentation reasonably requested by the Bank to determine the amount to deduct and withhold from such payment.

27.5 To the greatest extent permitted by Applicable Laws, the Bank will not be liable to the Client for any Losses the Client may suffer as a result of our complying with legislation, regulations, orders or agreements with tax authorities or by and between tax authorities or if the Bank makes an incorrect determination as to whether or not the Client should be treated as being subject to tax or tax reporting obligations.

27.6 The Bank may take whatever action it considers appropriate to meet any obligations, either in Hong Kong or elsewhere in the world, relating to the prevention of tax evasion. This may include, but is not limited to, investigating and intercepting payments into and out of the Client's Account(s) particularly in the case of international transfer of funds), investigating the source of or intended recipient of funds, sharing information and documents with domestic and international tax authorities and withholding income from any Account(s) and transferring it to such tax authorities. In the event that the Bank is not satisfied that a payment in or out of the Account(s) is lawful, the Bank may refuse to process the Client's request.

## 28. FINANCIAL CRIME COMPLIANCE

28.1 The Bank is required to act in accordance with Applicable Laws, regulations, policies (including the Bank's policies) and request of statutory and regulatory authorities operating in various jurisdictions. These relate, amongst other things, to the prevention of money laundering, terrorist financing, bribery, corruption, actual or attempted tax evasion, fraud and the provision of financial or other services to any persons which may be subject to sanctions. The Bank may in the Bank's absolute discretion take any action as the Bank considers appropriate to comply with all such laws, regulations, policies and requests. Such action may include but is not limited to:

- (d) screening, intercepting and investigating any instruction, drawdown request, application for services, payment or communication sent to or by the Client (or on Client's behalf) and to or from the Client's Account;
- (e) investigating and making further enquiries as to the source of or intended recipient of funds, the status and identity of a person or entity, whether they are subject to a sanction regime, and whether a name which might refer to a sanctioned person actually refers to that person;
- (f) combining and using information about the Client, the Client's personal data, beneficial owners, Authorized Persons and other representatives, Accounts, Transactions, use of the Bank's Services with other related information possessed by the Bank or the Affiliates;

- (g) delaying, blocking, suspending or refusing to process any payment or instruction to the Client or by the Client in the Bank's absolute discretion;
- (h) refusing to enter into or conclude any Transactions involving certain persons or entities;
- (i) terminating the Bank's relationship with the Client;
- (j) reporting suspicious Transactions to any Authority; and
- (k) taking any other actions necessary for the Bank or the Bank's Affiliates to meet any legal, regulatory or compliance obligations.

To the extent permissible by law, neither the Bank nor any of the Bank's agents shall be liable for any Losses suffered by the Client or any third party, caused in whole or in part in connection with Financial Crime Compliance. For the purpose of this Clause 28, "**Financial Crime Compliance**" means any action to meet the compliance obligations relating to detection or prevention of financial crime that the Bank may take.

## 29. COMPLAINTS

- 29.1 In the event a Client has a complaint, it should first contact its Bank representative by phone, in writing or by email and set out details of its complaint. If the complaint is not resolved to the Client's satisfaction, the Client should next contact the Bank's Compliant Handling Officer at Tel (852) 3921 7317 or via email to [compliant@hk.cathaybk.com](mailto:compliant@hk.cathaybk.com).
- 29.2 If the Bank is unable to assist the Client after these steps, the Client may be able to refer its complaint to the following separate regulatory body for independent assessment:

### **Financial Dispute Resolution Scheme**

**Room 408-409, 4/F, West Wing, Justice Place  
11 Ice House Street, Central, Hong Kong**

**Tel:** (852) 3199 5100

**Email:** [fdrc@fdrc.org.hk](mailto:fdrc@fdrc.org.hk)

## 30. DEPOSIT PROTECTION

The following types of deposits are not protected under the Deposit Protection Scheme:

- (a) financial products other than deposits (such as bonds, stocks, foreign currency linked and equity linked products);
- (b) time deposits longer than 5 years in maturity;
- (c) bearer form deposits (such as bearer certificates of deposit);
- (d) offshore deposits (such as Renminbi funds if deposited into a financial institution or any other company related to or associated with the Bank which is incorporated outside Hong Kong including China); and
- (e) deposits held by an excluded person (as defined in the Deposit Protection Scheme Ordinance (Cap. 581)).

## 31. DORMANT ACCOUNTS

- 31.1 If the Bank determines that there has been no activity on any Account for an extended period, the duration of which shall be determined by the Bank from time to time in its absolute discretion, the Bank may designate such Account as a dormant account (each, a "**Dormant Account**").
- 31.2 Upon the designation by the Bank of any Account as a Dormant Account, the Client acknowledges and accepts that the Bank shall:
- (a) not be obliged to send any further statement of Accounts to the Client;
  - (b) be entitled to impose, and withhold Services; and
  - (c) be entitled to close such Dormant Account, upon giving not less than thirty (30) days' prior written notice to the Client.
- 31.3 The Client accepts that upon closure of any Account(s) pursuant to Clause 31.1, no Service shall be performed by the Bank. Assets in the Account(s) shall be dealt with as unclaimed Assets in accordance with the Bank's procedures as the Bank shall in its absolute discretion deem fit. No interest shall accrue or be paid by the Bank on unclaimed balances from any closed Account(s). Closure of the Account(s) or termination of all of the Services, Facilities and/or Transactions shall not affect the provisions relating to indemnities and the rights, powers and benefits of the Bank set out in the Agreement, including any Facility Documents.

## 32. MISCELLANEOUS PROVISIONS

- 32.1 The Agreement shall apply to all outstanding and future Transactions.
- 32.2 The Client will be responsible for filing tax and other returns and reports on the Transactions that the Bank handles for the

Client.

- 32.3 The Client will, where necessary, obtain and maintain at the Client's own cost suitable equipment, facilities and connections (including computer, software and communications connections) to use a Service. The Client is responsible for all telephone, Internet service and other charges incurred.
- 32.4 The Bank may destroy any documents relating to any Account or Service after microfilming/scanning the same and destroy any microfilm, scanned records upon expiration of such period as the Bank shall consider fit.
- 32.5 In the event of loss of the identity document, seal or chop used for giving instructions to the Bank in respect of any Account or Service, the Client is obliged to forthwith notify the Bank in writing. The Bank shall not be responsible for any payment made or transaction executed against the above documents or seal/ chop prior to receipt of such written notice.
- 32.6 No failure to exercise or enforce and no delay in exercising or enforcing on the Bank's part of any right, remedy, power or privilege under the Agreement shall operate as waiver thereof, nor shall any single or partial exercise or enforcement of any right, remedy, power or privilege hereunder operate as a waiver thereof, nor shall any single or partial exercise or enforcement of any right, remedy, power or privilege preclude any other further exercise or enforcement thereof, or the exercise or enforcement of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative to and not exclusive of any right, remedy, power and privilege provided by law or other documents held by the Bank.
- 32.7 The Agreement shall be binding upon, and enure to the benefit of the parties to the Agreement and their respective successors and permitted assigns.
- 32.8 The Client will not assign any of the Client's rights, benefits, powers, obligations or liabilities under the Agreement, without the prior written consent of the Bank.
- 32.9 The Bank may at any time assign or transfer all or any of its rights, benefits, powers, obligations or liabilities hereunder and in the Agreement to any party, without any consent or further action from the Client, and in such event the assignee or transferee shall have the same rights, benefits or powers against the Client and the same obligations and liabilities towards the Client as the assignee or transferee would have had as if the assignee or transferee had been a party hereto, and the Client waives and forgoes all the Client's rights, if any, to challenge the validity of any such assignment or transfer by way of this Clause 32.9.
- 32.10 Each of the provisions of the Agreement is severable and distinct from the others and if at any time one or more of such provisions is prohibited by law or becomes illegal, void, invalid or unenforceable in any respect under the laws of any jurisdiction, neither the legality, validity or enforceability of the other remaining provisions hereof nor the legality, validity or enforceability of such provision under the laws of any other jurisdiction shall in any way be affected or impaired thereby.
- 32.11 The Agreement constitutes the entire agreement and understanding of the Client and the Bank with respect to its subject matter. Each of the Client and the Bank acknowledges that in entering into the Agreement it has not relied on any oral or written representation, warranty or other assurance (except as provided for or referred to in the Agreement) and waives all rights and remedies which might otherwise be available to it in respect thereof, except that nothing in the Agreement will limit or exclude any liability of the Client or the Bank for fraud.
- 32.12 The Agreement and all the Client's and the Bank's rights and obligations hereunder shall also be subject to all Applicable Laws. The Bank shall be entitled to rely on and act in accordance with all Applicable Laws and any other information applicable to it including those published by HKMA, and/or the Hong Kong Association of Banks, to the extent that they are applicable to the Bank providing the Accounts and Services under the Agreement, and the Bank shall not incur any liability to the Client as a result of so relying or acting.
- 32.13 Signature to the Agreement, instructions and communications digitally signed and supported by a digital certificate will have the same validity, admissibility and enforceability as if signed in writing. Any communication that is digitally signed must comply with any Applicable Law.
- 32.14 Time shall in all respects be of essence in the performance of any or all of the Client's liabilities and obligations under the Agreement.
- 32.15 Our right to vary or revise the interest rate(s) in respect of the Account as published on the Bank's official website and displayed in the Bank's office premises from time to time is reserved.
- 32.16 In the event of any inconsistency in interpretation or meaning between any English and Chinese versions of the Agreement, the Client and the Bank agree that the English version shall prevail. The Bank will not be liable for any inaccuracy or inconsistency between the English and Chinese versions of the Agreement, and the Client confirms that where it is in any doubt as to the meaning of the English language version (or the accuracy of any translation), it will seek independent

advice.

**33. GOVERNING LAW AND JURISDICTION**

33.1 The Agreement and the General T&Cs are governed by and construed in accordance with the laws of Hong Kong and the parties agree to submit to the exclusive jurisdiction of the Hong Kong Courts. This Clause is for the benefit of the Bank only. As a result, the Bank shall not be prevented from taking proceedings relating to the Agreement and the General T&Cs in any other courts with jurisdiction. To the extent allowed by law, the Bank may take concurrent proceedings in any number of jurisdictions.

**SECTION 2**  
**RISK DISCLOSURE STATEMENTS**

**A. GENERAL**

1. This Risk Disclosure Statement forms an integral part of this Agreement. Please note that this is an important document which the Client should read carefully.
2. The objective of this Risk Disclosure Statement is to explain to the Client briefly the nature and risks of the Transactions, Financial Products and investments that the Client may undertake with the Bank. In particular, the Client must be aware that the risk of Losses in any Transactions and investments in any Financial Products can be substantial.
3. Nothing in this Risk Disclosure Statement shall be construed as the Bank being obliged to offer any of the products referred herein. The Bank reserves its right to offer any products as the Bank deem fit from time to time, and the right to accept or reject any trade orders on any products from the Client.
4. This Risk Disclosure Statement does not purport to advise the Client of the suitability of any particular Financial Product, Transaction or investment for the Client's purpose and/or disclose or discuss all the risks and other significant aspects of any Financial Product, Transaction or investment.
5. The Client represents and warrants (which representation and warranty will be deemed to be repeated on each date that a Transaction is entered into) to the Bank that:
  - (a) the Risk Disclosure Statement has been fully explained to the Client and that it has been invited to seek independent legal and financial advice in relation to the matters as more particularly set out in this Risk Disclosure Statement; and
  - (b) it has carefully read the Risk Disclosure Statement and fully understands and accepts the content of the same and agrees to be bound by the same.
6. Any risk associated with and any other Losses suffered as a result of the Bank entering into any Financial Products, Transactions or investments on the Client's behalf are for the account of the Client.
7. The Client shall not hold the Bank responsible and hereby releases the Bank from all liability or responsibility for any delay or failure on the part of the Bank to perform as contemplated in any Transactions as a result of any circumstances beyond the control of the Bank, including without limitation, Force Majeure Events and like events which declare or cause any obligations on the part of the Bank to be inoperative, null and void or ineffective or impedes the proper performance thereof. The Client hereby confirms that the Client will bear all such risks.

**POTENTIAL CONFLICTS OF INTEREST**

In addition to other applicable terms as set out in this Agreement, including Clause 20 of Section 1:

8. The Bank and its Affiliates may hold positions in Financial Products and/or any other assets or instruments which may not be consistent with any advice given by the Bank's officers or employees.
9. The Bank and its Affiliates may hold positions in the same or other Financial Products held by the Client or recommended to the Client and/or engage in buying and/or selling such Financial Products with or on behalf of others (whether clients of the Bank or otherwise), whether or not in connection with the General T&Cs.
10. Regardless of whether the Client or any third party makes profits or Losses from any Financial Product, Transaction or investment, the Bank may make a profit from any Financial Product, Transaction or investment entered into with the Client or on the Client's behalf.
11. The Client understands that the Bank acts simultaneously for a large number of customers as well as for its own account. Accordingly, conflicts of interest cannot be completely avoided. The Client acknowledges that the Bank and/or its Affiliates may:
  - (a) be the issuer of any Financial Product, Transaction or investment;
  - (b) combine the Client's orders with its own orders or the orders of other customers;
  - (c) make investments or effect Transactions for the Client through the agency of and/or with a counterparty which is a related organisation or a person otherwise associated with the Bank;
  - (d) have a position or a direct or indirect interest in any Financial Product, Transaction or investment even if such position or interest is opposite to that taken by the Client;

- (e) have bought or sold any investment or entered into any transaction as principal or for other customers; or
  - (f) have other banking, advisory or other corporate relationships with companies whose investments are held for the Client's account or are purchased and sold for the Client and the Bank's employees, agents or officers may be officers and directors of such companies.
12. The Client acknowledges that the Bank may pay to, or receive from, any Agent charges, commissions, fees, rebates or other payments (as the case may be) in any form in respect of, or may profit or gain from:
- (a) any Financial Product, Transaction or investment effected for or with the Client;
  - (b) any hedge effected by the Bank in connection with any Financial Product, Transaction or investment; or
  - (c) any Services provided to the Client in the Bank's capacity as principal, trustee or agent.
13. The Services provided by the Bank to the Client are non-exclusive and the Bank is under no obligation to account to the Client for any benefit received by providing any Service to other customers or to disclose to the Client any fact or thing which may come to the Bank's notice in the course of providing any Service to other customers or in any other capacity or in any manner whatsoever otherwise than in the course of providing Services to the Client under the Agreement.
14. The Client should be aware that the Bank is engaged in certain customer driven and proprietary activities in many markets. These general activities, as well as the Bank's hedging activities which are or may be related to certain Financial Product, Transaction or investment entered into with the Client, may adversely affect the value of such Financial Product, Transaction or investment.

### **RISK OF SECURITIES TRADING**

15. The prices of Securities fluctuate, sometimes dramatically. The price of Securities may move up or down, and may become valueless. It is as likely that Losses will be incurred rather than profit made as a result of buying and selling Securities.
16. Certain Securities may not be readily realisable. There can be no certainty that market traders will be prepared to deal in them, and proper information for determining their current value may not be available.
17. Any representation of past performance is not necessarily a guide to future performance.
18. Where investments in Securities involve exposure to foreign currency, changes in rates of exchange may cause the value of the Securities to fluctuate up or down.
19. The Bank is entitled to act upon the Client's instructions and the Client cannot assume that the Bank will warn the Client if the Client's instructions is ill-timed or inadvisable for any reason or if the instructions are likely to cause Losses to the Client.
20. The Client will be exposed to the risks of bad delivery of Securities purchased. There are also risks involved in not registering purchased Securities in the name of the Client for any reason or in the name of the Client's nominee or custodian.
21. Investments in Securities that are commonly known as derivatives (such as convertibles, equity-linked bonds) require careful assessment. Such Securities can expose the Client to a variety of option related risks which should be fully understood before an investment is contemplated. A description of some of these risks is set out under "Derivatives" below (although please note that this list is not exhaustive).

### **MARKET FORCES AND RELATED RISK**

22. The Client's payments or receipts under any Financial Product, Transaction or investment will be dependent on changes in the particular financial market to which the Financial Product, Transaction or investment is linked, and the Client will be exposed to price, currency exchange, interest rate or other volatility in that market. Such market movements cannot be predicted accurately, and may cause substantial Losses to the Client's Financial Products, Transactions or investments if the market conditions move adversely against the Client's positions.
23. The Client should be aware of the general risk of market failure or collapse which may arise from any political or financial development or any unpredictable event that may immediately result in sharp price movements, volatile market conditions and strained market liquidity.

### **LIQUIDITY AND MARKETABILITY RISK**

24. The Client should be aware that at certain times, or under certain market conditions, it may be difficult or impossible to liquidate a position, to assess value or to determine a fair price of any Financial Product, Transaction or investment. Certain Securities and money market instruments, in particular, structured notes or products, may not be readily realisable or marketable. There can be no certainty that market traders will be prepared to deal in them.

25. Liquidity risks decrease for near term Financial Products, Transactions or investments and increase for Financial Products, Transactions or investments which have longer maturity periods or are linked to merging markets and instruments with lower credit ratings. Reversing any Financial Products, Transactions or investments at short notice can be difficult or even, impossible, especially for complicated structures. Unexpected and sudden erosion of liquidity can also arise from sharp price movements and volatile market conditions, resulting in illiquid markets.
26. The benefits of customisation of any Financial Products, Transactions or investments to achieve the Client's particular financial and risk management objectives may be offset by significant liquidity risks.

#### **INTEREST RATE RISK**

27. Interest rate fluctuations may have an adverse impact on the value of certain investments, in particular, debt instruments, such as bonds or money market instruments.

#### **INSOLVENCY RISK**

28. The Client should familiarise itself with the protections accorded to any Assets deposited by the Client, particularly in the event of the Bank's insolvency, or the insolvency of an issuer, counterparty, custodian or intermediary. The extent to which the Client may recover its Assets will be governed by the Applicable Laws and the Client may in some cases fail to recover all of such Assets. In some jurisdictions, property which had been specifically identified as the Client's own will be pro-rated in the same manner as cash for the purposes of distribution in the event of a shortfall.

#### **RISK OF NON-TRANSFERABILITY AND NON-MARKETABILITY**

29. The Client acknowledges that it cannot assign or transfer a Financial Product, Transaction or investment without the counterparty. As such, the Bank is not obliged to terminate, unwind or repurchase any Financial Product, Transaction or investment from the Client. If the Financial Products, Transactions or investments are customised and not fungible, engaging in a Transaction with another dealer to offset a Transaction the Client has entered into with the Bank, whether on the Client's behalf or otherwise, will not automatically close out those positions (as would be true in the case of equivalent exchange-traded futures and options) and will not necessarily function as a perfect hedge and may increase the risk to the Client. It may also be difficult or impossible to liquidate an existing position, assess the value thereof, determine a fair price or assess the exposure to risk.

#### **RISK OF ELECTRONIC TRADING AND SERVICES**

##### ***Trading facilities***

30. Electronic trading facilities are supported by computer-based component systems for the order-routing, execution, matching, registration or clearing of trades. As with all facilities and systems, they are vulnerable to temporary disruption or failure. The Client's ability to recover certain Losses may be subject to limits on liability imposed by the system provider, the market, the clearing house and/or participant firms. Such limits may vary. The Client should ask the Bank for details in this respect where such electronic trading facilities are offered to the Client.

##### ***Electronic trading***

31. Trading on an electronic trading system may differ from trading on other electronic trading systems. If the Client trades through or on an electronic trading system offered by the Bank, the Client will be exposed to the risks associated with the system including the failure of hardware and software. This can cause a disruption in the trading activities or an unavailability of reference prices for the relevant Financial Product, Transaction or investment. The result of any system failure may be that the Client's order is either not executed according to the Client's instructions or is not executed at all.

##### ***Services provided through electronic means***

32. Due to unpredictable traffic congestion and other reasons, electronic transmission may not be a reliable medium of communication. Transactions conducted via electronic means are subject to delays in transmission and receipt of the Client's instructions or other information, delays in execution or execution of the Client's instructions at prices different from those prevailing at the time the Client's instructions were given, transmission interruption or blackout. There are risks of misunderstanding or errors in communication. It is also usually not possible to cancel an instruction after it has been given.

#### **RISK OF TRADING NASDAQ-AMEX SECURITIES AT THE STOCK EXCHANGE OF HONG KONG LIMITED**

33. The Securities under the Nasdaq-Amex Pilot Program ("PP") are aimed at sophisticated investors. The Client should consult the Bank and become familiarised with the PP before trading in the PP Securities. The Client should be aware that the PP Securities are not regulated as a primary or secondary listing on the Main Board or the Growth Enterprise Market of The Stock Exchange of Hong Kong Limited.

#### **RISK OF TRADING GROWTH ENTERPRISE MARKET STOCKS**

34. Growth Enterprise Market (GEM) stocks involve a high investment risk. In particular, companies may list on GEM with neither a track record of profitability nor any obligation to forecast future profitability. GEM stocks may be very volatile and illiquid.
35. The Client should make the decision to invest only after due and careful consideration. The greater risk profile and other characteristics of GEM mean that it is a market more suited to professional and other sophisticated investors.
36. Current information on GEM stocks may only be found on the internet website operated by The Stock Exchange of Hong Kong Limited. GEM Companies are usually not required to issue paid announcements in gazetted newspapers.
37. The Client should seek independent professional advice if the Client is uncertain of or has not understood any aspect of this risk disclosure statement or the nature and risks involved in trading of GEM stocks.

#### **RISK OF INVESTING IN EMERGING MARKETS**

38. Investments in emerging market Securities need careful and independent assessment by the Client of each investment and the risks. Such risks include (i) currency exchange matters, including fluctuations in the rate of exchange between the Client's reference currency and the various foreign currencies in which the Securities are denominated, and costs associated with conversion of investment principal and income from one currency into another; and (ii) the possible imposition of withholding taxes on income received from or gains with respect to such Securities. In addition, certain of these capital markets involve factors not typically associated with investing in established Securities markets, including risks relating to (a) differences between markets, including potential price volatility in and relative illiquidity of some foreign securities markets; (b) the absence of uniform accounting, auditing and financial reporting standards, practices and disclosure requirements, and less government supervision and regulation; and (c) certain economic and political risks, including potential exchange control regulations and potential restrictions on foreign investment and repatriation of capital.

#### **RISK OF CLIENT ASSETS RECEIVED OR HELD OUTSIDE HONG KONG AND INVESTMENTS OR TRANSACTIONS IN OTHER JURISDICTIONS**

39. Client Assets received or held by the Bank outside Hong Kong are subject to the applicable laws and regulations of the relevant overseas jurisdiction which may be different from the SFO and the rules made thereunder. Consequently, such client Assets may not enjoy the same protection as that conferred on client Assets received or held in Hong Kong.
40. In addition, Financial Products, Transactions or investments on markets in other jurisdictions other than the Client's home jurisdiction may expose the Client to additional risks. Such markets may be subject to regulations that may offer different or diminished investor protection. Before any trade, the Client should enquire about any rule relevant to the particular Financial Product, Transaction or investment. The Client's local regulatory authority may be unable to compel the enforcement of rules of the regulatory authorities or markets in other jurisdictions where Client's Financial Products, Transactions or investments have been effected. The Client should enquire for details about the types of redress available in both the home jurisdiction and the other relevant jurisdiction before the Client trades.

#### **RISK OF PROVIDING AN AUTHORITY TO REPLEDGE THE CLIENT'S SECURITIES COLLATERAL ETC.**

41. There is risk if the Client provides the Bank with an authority that allows it to apply the Client's Securities or Securities collateral pursuant to a Securities borrowing and lending agreement, repledge the Client's Securities collateral for financial accommodation or deposit the Client's Securities collateral as collateral for the discharge and satisfaction of the its settlement obligations and liabilities.
42. If the Client's Securities or Securities collateral are received or held by the Bank in Hong Kong, the above arrangement is allowed only if you consent in writing. Moreover, the Client's authority must specify the period for which it is current.
43. Additionally, the Client's authority may be deemed to be renewed (i.e. without the Client's written consent) if the Bank issues the Client a reminder at least 14 days prior to the expiry of the authority, and the Client does not object to such deemed renewal before the expiry date of the Client's then existing authority.
44. The Client is not required by any law to sign these authorities. But an authority may be required by the Bank, for example, to facilitate margin lending to the Client or to allow the Client's Securities or Securities collateral to be lent to or deposited as collateral with third parties. The Bank should explain to the Client the purposes for which one of these authorities is to be used.
45. If the Client sign one of these authorities and the Client's Securities or Securities collateral are lent to or deposited with third parties, those third parties will have a lien or charge on the Client's Securities or Securities collateral. Although the Bank is responsible to the Client for Securities or Securities collateral lent or deposited under the Client's authority, a default by it could result in the loss of the Client's Securities or Securities collateral.
46. A cash account not involving securities borrowing and lending is available from most licensed or registered persons. If

the Client does not require margin facilities or do not wish for the Client's Securities or Securities collateral to be lent or pledged, it should not sign the above authorities and ask to open this type of cash account.

#### **RISK OF MARGIN TRADING**

47. The risk of Losses in financing a transaction by deposit of collateral (including Margin) is significant. The Client may sustain Losses in excess of the Client's cash and any other assets deposited as collateral with the Bank. Market conditions may make it impossible to execute contingent orders, such as "stop-loss" or "stop-limit" orders. The Client may be called upon at short notice to make additional margin deposits or interest payments. If the required margin deposits or interest payments are not made within the prescribed time, the Client's collateral (including Margin) may be liquidated without the Client's consent. Moreover, the Client will remain liable for any resulting deficit in the Client's account and interest charged on the Client's account. The Client should therefore carefully consider whether such a financing arrangement is suitable in light of the Client's own financial position and investment objectives.

#### **RISK OF UNDERTAKING CONTINGENT LIABILITY TRANSACTIONS**

48. All futures, options writing and contracts for differences are contingent liability transactions. They are usually margined and require the Client to make a series of payments against the purchase price, instead of paying the whole purchase price immediately.

#### **COUNTERPARTY RISK**

49. On many exchanges, the performance of a Transaction by the broker (or the third party with whom the broker is dealing on the Client's behalf) is "guaranteed" by the exchange or its clearing house. However, this guarantee is unlikely in most circumstances to cover the Client and may not protect the Client if the broker or another party defaults on its obligation to the Client.
50. The insolvency or default of the Client's counterparty or broker or that of any other counterparties or any other counterparties or brokers involved with the Client's Transactions, may lead to positions being liquidated or closed out without the Client's consent. In certain circumstances, the Client may not get back the actual assets which the Client lodged as collateral and the Client may have to accept any available payment in cash.

#### **SETTLEMENT OF ISSUER RISK**

51. Repayment of instruments held to maturity may be dependent on the financial ability of the issuer to do so and may further be subject to any intervening circumstances such as government action or legal inhibitions placed on the issuer or affecting the currency in which the instrument is denominated.
52. Instruments may be held or delivered for settlement to a custodian appointed in good faith by the Bank, or by its sub-custodians. Such persons are not under the control of the Bank, and the Bank accepts no liability for any default of any nature by such third party.

#### **B. RISKS ASSOCIATED WITH SPECIFIC FINANCIAL PRODUCTS**

##### **FIXED INCOME INVESTMENTS**

53. The Client will be taking on the risk that the issuer of the fixed income product or the counterparty may not honour its obligations to pay principal and/or interest, which may result in Losses. Reliance on any published credit rating of the issuer should always be supplemented by the Client's own credit analysis of the credit risk as changes in the ratings may lag behind changes in financial conditions. Periodic independent analysis is advised.
54. The Client will also be exposed to liquidity risk as there may be no market for a fixed income instrument and the Client may not be able to sell the fixed income instrument at the desired time or price. Even when a market exists, there may be a substantial difference between the offer and purchase price for a fixed income instrument.
55. The Client will also be exposed to the risk of interest rate fluctuations as the value of fixed income instruments will fluctuate with changes in interest rates. The degree of interest rate sensitivity depends on the maturity, coupon and call provisions of the fixed income instrument. Floating rate fixed income instruments can help to lessen the interest rate risk. If the issuer of the fixed income instrument has the right to redeem the fixed income instruments before maturity, this can adversely affect the Client's exposure.

##### **STRUCTURED DEPOSITS**

56. Returns on Structured Deposits are variable and not guaranteed, and are usually contingent on the performance of one or more underlying financial instruments. They will bear the risks associated with that underlying financial instrument.
57. Structured Deposits are also generally held for longer tenors than traditional fixed or time deposits. The Client should therefore ensure that they have sufficient funds and/or necessary liquidity in order to hold each Structured Deposit until

maturity. Unless the Bank otherwise agrees, the principal amount of a Structured Deposit cannot be withdrawn, whether partially or in whole, prior to its maturity. If the Bank allows for premature termination, the Bank shall be entitled to deduct from the principal amount, any premature termination costs. Certain Structured Deposits may be subject to early termination before maturity. In such instances, the Client may receive less than the principal amount invested in the Structured Deposit or be exposed to the potential loss of the principal sum invested in the Structured Deposit if the Structured Deposit is not held to maturity.

#### **UNIT TRUSTS**

58. The Client should be aware that unit trusts are not bank deposits or obligations of or guaranteed by the Bank, or any of the Bank's Affiliates. Unit trusts are naturally subject to investment risks including the possible loss of the principal amount invested. The value of units and the income from any unit trust may fall as well as rise and cannot be guaranteed. Past performance of a unit trust is not necessarily indicative of the future performance of that unit trust.
59. Any forecast or opinion provided to the Client by the fund manager are as the date of the document and is subject to change from time to time. The Client should not regard those forecasts or opinions as a guarantee of future or likely performance of the unit trust. The Client shall be aware that there are necessarily limitations whenever performance is stated or comparison is made to another unit trust for a period of less than three years and that there are limitations and difficulties in using any graph, chart, formula or other device to determine whether or not and when to make an investment in any unit trust.

#### **PRIVATE EQUITY INVESTMENTS**

60. The Client should be aware that private equity investments tend to involve high-risk projects, in return for higher expected returns. The contractual conditions governing such investments often requires the contribution of liquid funds (either single payment or by several periodic payments) in a substantial amount and for a considerable period of time. Once the Client has made the commitment to invest, the Client may be required to stand ready to meet calls for further capital contribution ("capital calls" or "commitment calls"), which may be at short notice. The penalty for failure to honour any capital or commitment calls can be extreme, including a complete forfeiture of any capital already invested. Any capital invested by the Client may be tied up, either completely or with restricted access, during the investment period. As such, there is no recognised secondary market in private equity investments, such investments may not be sold and/or transferred freely.
61. The Client should be aware of the potential risk of considerable Losses, and even a total loss of investment, when the private equity investment vehicle (such as a fund or private company) is either wound up or declared insolvent and/or the commercial interest in the business of the private company or fund ceases to exist.

#### **CURRENCY LINKED INVESTMENT**

62. Currency Linked Investments are subject to exchange rate fluctuations which may affect the returns on such investment. A wide range of factors, including national and international financial and economic conditions and political and natural events, may affect exchange rates. The effect of normal market forces may at times be discounted by interventions of central banks and other bodies, including foreign exchange controls being imposed. At times, the exchange rates may rise or fall sharply. If the exchange rate moves against the Client's favour, the Client may incur a loss on the principal sum in comparison with the amount initially invested.
63. Unless the Bank otherwise agrees, the principal amount cannot be withdrawn, whether partially or in whole, prior to its maturity. If the Bank allows for premature termination, the Bank may be entitled to deduct from the amount payable to the Client any premature termination costs. Any payment the Client may receive upon such premature termination may be substantially less than the principal amount initially invested.
64. A Currency Linked Investment may also be subject to early termination by the Bank before maturity, upon the occurrence of certain specified events (such as the imposition of exchange control restrictions or any devaluation, redenomination or demonetisation of the relevant currencies). In such instances, the Client may receive less than the principal amount initially invested.

#### **FOREIGN EXCHANGE TRANSACTIONS, INCLUDING LEVERAGED, MARGIN OR OPTION FOREIGN EXCHANGE CONTRACTS**

65. Fluctuation of currency exchange rates
- Currency exchange rates are affected by a wide range of factors, including national and international financial and economic conditions and political and natural events. The effect of normal market forces may at times be countered by intervention by central banks and other bodies. At times, currency exchange rates, and prices linked to such rates, may be volatile and may rise or fall rapidly and sharply.
66. Effect of currency exchange controls

Currency exchange controls or other monetary measures may be imposed by a government, sometimes with little or no warning. Such controls or measures may have a significant effect on the convertibility or transferability of a currency and may give rise to unexpected consequences for foreign exchange Transactions.

**67. Market risk**

Market conditions (including illiquidity, moratoriums or currency exchange controls) or the operation of the rules of certain markets may increase the risk of Losses by making it difficult or impossible to effect transactions or liquidate or offset positions.

**68. Deposited Cash and Property**

The Client should familiarize itself with the protections given to money or other property it deposits for domestic and foreign Transactions, particularly in the event of a firm insolvency or bankruptcy. The extent to which the Client may recover its money or property may be governed by specific legislation or local rules. In some jurisdictions, property which had been specifically identifiable as its own will be pro-rated in the same manner as cash for purposes of distribution in the event of a shortfall.

**69. Commissions and other charges**

Before the Client begins any foreign exchange Transactions, it should obtain a clear explanation of all commissions, fees and other charges for which it will be liable. These charges will affect the Client's net profit (if any) or increase its Losses.

**70. Off-exchange transactions**

Foreign exchange Transactions entered into between the Client and the Bank on a principal to principal basis are entered into off-exchange. It may be difficult or impossible to liquidate an existing position, to assess the value, to determine a fair price or to assess the exposure to risk. For these reasons, these transactions may involve increased risks. Off-exchange transactions may be less regulated or subject to a separate regulatory regime. Before the Client undertakes any foreign exchange Transaction, it should familiarize itself with the applicable rules and risks.

**71. The Bank is under no obligation to warn the Client if any of its instructions to effect foreign exchange Transaction is ill-timed or inappropriate for any reason, or if any instruction is likely to result in Losses to the Client.**

**72. The risk of Losses in leveraged, margin or option foreign exchange trading can be substantial. The Client may sustain Losses in excess of the initial Margin or funds and any additional Margin or additional funds or collateral deposited with the Bank to establish or maintain a position. Placing contingent orders, such as "stop-loss" or "stop-limit" orders, will not necessarily limit Losses to the intended amounts. Market conditions may make it impossible to execute such orders at the designated time or price or at all. Furthermore, the Client may find it difficult or impossible to liquidate a position under certain market conditions. The Client may be called upon by the Bank to deposit additional Margin funds at short notice. If the required funds are not provided within the prescribed time, the Client's positions in leveraged foreign exchange trading may be closed-out and liquidated by the Bank without further notice to the Client. The Client will remain liable for any resulting deficit in the Client's account.**

**73. If the market moves against the Client's position, the Bank may call upon the Client to deposit immediately substantial amount of additional Margin in order to maintain the Client's position. If the required additional Margin is not received by the Bank immediately, the Client's position may be closed-out and liquidated by the Bank without further notice to the Client. Any such close-out will likely result in Losses to the Client and, in addition, the Client will be liable to make further payment to the Bank in the event that the Client's Margin deposits do not cover the full Losses accruing to the Client's account upon any close-out.**

**74. A "spread" position may not be less risky than a simple "long" or "short" position.**

**75. The high degree of leverage which is often obtainable through margin foreign exchange trading can work against the Client as well as for the Client. The use of leverage can lead to large Losses as well as gains.**

**76. The Client should therefore carefully consider whether leveraged, margin or option foreign exchange trading is suitable for the Client in light of the Client's own experience, investment objectives, financial condition and other relevant circumstances.**

**DERIVATIVES**

**77. Derivative transactions, including derivatives in any currency or any other underlying ("**Derivative Transactions**") can involve a range of products (including some more generally known as structured notes and also including products known as equity linked instruments). Such products can either be apparently simple (such as forwards or options) or highly (and perhaps individually) structured. These products can have substantial benefits for users but they carry with them risks which must be clearly understood by their users. Considering the possible risks, the Client should ensure that it has all necessary information it requires to assess a Derivative Transaction before deciding on its appropriateness for the Client. The Client should consider what the Client intends to achieve from a Derivative Transaction, including the**

Client's financial and operational resources, and any tax and accounting considerations. The Client should be aware of any general framework for Derivative Transactions established by any governing body. There may also be significant regulatory or other legal considerations to be taken into account.

- 78.** The Client should not enter into a Derivative Transaction unless the Client fully understands:
- (a) the nature and fundamentals of a derivative and the financial asset underlying such derivative;
  - (b) the legal terms and conditions of the documentation for such derivative;
  - (c) the extent of the economic risk to which the Client is exposed as a result of entering into such derivative (and the Client has determined that such risk is suitable for the Client in light of the Client's specific experience in relation to the specific derivative and the Client's financial objectives, circumstances and resources);
  - (d) the tax treatment of such derivative (which can be complex and/or uncertain); and
  - (e) the regulatory treatment of such derivative.
- 79.** Where the Derivative Transaction is made up of several derivative instruments there are risks associated with each instrument evaluated separately as well as of the Derivative Transaction evaluated as a whole.
- 80.** Because the prices and characteristics of most derivatives are individually negotiated and there is often no central source for obtaining prices from competing dealers, derivative pricing may be unclear and non-transparent. Further, in certain circumstances the normal pricing relationship between a derivative and its underlying product/market asset may be disrupted. The Bank consequently does not warrant that its pricing will at any time be the best price available in the market to the Client. All prices quoted are merely indicative at which the Bank is willing to trade with the Client unless the Client specifically asks for a "dealing price" which will only be valid for a certain period of time. The Bank may make a profit from a Derivative Transaction with the Client no matter what result such transaction has on the Client. The Client's net returns from a Derivative Transaction would also be affected by transaction costs (i.e. commissions, fees and other charges) charged by the Bank.
- 81.** The Client should however note that any indicative Term Sheet provided to the Client is not a comprehensive or conclusive list of all terms to which the Derivative Transaction is subject. It instead seeks to draw the Client's attention to material terms only, and the Client should obtain independent professional advice if the Client has any doubts and should not rely on the Bank to advise the Client.
- 82.** A derivative generally cannot be assigned or transferred without the consent of the other party. The Bank may, but is not obliged to, repurchase any derivatives from the Client. It may therefore be impossible for the Client to liquidate any Derivative Transaction entered into by the Client prior to maturity. Because derivatives are usually customised and not fungible, engaging in a Derivative Transaction with another dealer to offset a Derivative Transaction entered into with the Bank will not automatically close out those positions (as would be true in the case of equivalent exchange-traded futures and options) and will not necessarily function as a perfect hedge.

## **FUTURES AND OPTIONS**

- 83.** The risk of Losses in trading futures contracts or options is substantial. In some circumstances, the Client may sustain Losses in excess of the Client's initial Margin funds. Placing contingent orders, such as "stop-loss" or "stop-limit" orders, will not necessarily avoid Losses. Market conditions may make it impossible to execute such orders. The Client may be called upon at short notice to deposit additional Margin funds. If the Client fails to comply with a request for additional Margin funds within the time prescribed, the Client's position may be liquidated at a loss and the Client will be liable for any resulting deficit. The Client should therefore study and understand futures contracts and options before the Client trades and carefully considers whether such trading is suitable in the light of the Client's own financial position and investment objectives. If the Client trades options, the Client should inform itself of exercise and expiration procedures and the Client's rights and obligations upon exercise or expiry.

### **Futures**

- 84.** Effect of "Leverage" or "Gearing"
- Transactions in futures carry a high degree of risk. The amount of initial margin is small relative to the value of the futures contract so that transactions are "leveraged" or "geared". A relatively small market movement will have a proportionately larger impact on the funds the Client has deposited or will have to deposit: this may work against the Client as well as for the Client. The Client may sustain a total loss of initial Margin funds and any additional funds deposited with the Bank to maintain the Client's position. If the market moves against the Client's position or the required Margin levels are increased, the Client may be called upon to pay substantial additional Margin funds on short notice to maintain the Client's position. If the Client fails to comply with a request for additional Margin funds within the time prescribed, the Client's position may be liquidated at a loss and the Client will be liable for any resulting deficit.
- 85.** Risk of additional margin requirement
- The Client may be required to provide additional Margin periodically or at any time during the life of the forward or

futures contract if the Bank determines that the Margin provided by the Client has fallen below the amount required by the Bank. This usually corresponds to the mark-to-market loss arising from a decline in value of the Investment or Transaction or the underlying assets.

**86. Risk-reducing orders or strategies**

The placing of certain orders (e.g. “**stop-loss**” orders, or “**stop-limit**” orders) which is intended to limit Losses to certain amounts may not be effective because market conditions may make it impossible to execute such orders. Strategies using combinations of positions, such as “**spread**” and “**straddle**” positions may be as risky as taking simple “**long**” or “**short**” positions.

**87. Delivery of underlying assets**

Transactions in futures involve the obligation to make, or to take, delivery of the underlying asset of the contract at a future date, or in some cases to settle the position in cash without delivery of the underlying assets.

**Options**

**88. Restrictions on Option Exercise and Realization**

In order to realise any value from the option, it will be necessary either to offset the option position or to exercise the option.

Some option contracts may provide only a limited period of time for exercise, and some option contracts may provide for exercise only on a specified or stipulated date. For barrier options, the exercise rights will only arise when the market value of the underlying instrument reaches the barrier (in the case of knock-in options) or will expire irrevocably when that barrier is reached (in the case of knock-out options).

**89. Variable degree of risk**

Transactions in options carry a high degree of risk. The Client should familiarize itself with the type of option (i.e. put or call) which the Client contemplates trading and the associated risks. The Client should calculate the extent to which the value of the options must increase for the Client’s position to become profitable, taking into account the premium and all transaction costs. The Client should be aware of the exercise and expiration procedures and its rights and obligations upon exercise or expiry.

The purchaser of options may offset or exercise the options or allow the options to expire. The exercise of an option results either in a cash settlement or in the purchaser acquiring or delivering the underlying interest. If the option is on a futures contract, the purchaser will acquire a futures position with associated liabilities for margin (see the section on “Futures” above). If the purchased options expire worthless, the Client will suffer a total loss of the Client’s investment which will consist of the option premium plus transaction costs. If the Client is contemplating purchasing deep-out-of-the-money options, the Client should be aware that the chance of such options becoming profitable ordinarily is remote.

Selling (“writing” or “granting”) an option generally entails considerably greater risk than purchasing options. Although the premium received by the seller is fixed, the seller may sustain Losses well in excess of that amount. The seller will be liable for additional Margin to maintain the position if the market moves unfavourably. The seller will also be exposed to the risk of the purchaser exercising the option and the seller will be obligated to either settle the option in cash or to acquire or deliver the underlying interest. If the option is on a futures contract, the seller will acquire a position in a futures contract with associated liabilities for Margin (see the section on “Futures” above). If the option is “covered” by the seller holding a corresponding position in the underlying interest or a futures contract or another option, the risk may be reduced. If the option is not covered, the risk of Losses can be unlimited.

Certain exchanges in some jurisdictions permit deferred payment of the option premium, exposing the purchaser to liability for Margin payments not exceeding the amount of the premium. The purchaser is still subject to the risk of losing the premium and transaction costs. When the option is exercised or expires, the purchaser is responsible for any unpaid premium outstanding at that time.

**Additional risks common to futures and options**

**90. Terms and conditions of contracts**

The Client should ask the Bank about the terms and conditions of the specific futures or options which the Client is trading and associated obligations (e.g. the circumstances under which the Client may become obliged to make or take delivery of the underlying interest of a futures contract and, in respect of options, expiration dates and restrictions on the time for exercise). Under certain circumstances the specifications of outstanding contracts (including the exercise price of an option) may be modified by the exchange or clearing house to reflect changes in the underlying interest.

**91. Suspension or restriction of trading and pricing relationships**

Market conditions (e.g. illiquidity) and/or the operation of the rules of certain markets (e.g. the suspension of trading in any contract or contract month because of price limits or “circuit breakers”) may increase the risk of Losses by making

it difficult or impossible to effect Transactions or liquidate/offset positions. If the Client has sold options, this may increase the risk of Losses. Further, normal pricing relationships between the underlying interest and the futures, and the underlying interest and the option may not exist. This can occur when, for example, the futures contract underlying the option is subject to price limits while the option is not. The absence of an underlying reference price may make it difficult to judge "fair value".

**92.** Deposited cash and property

The Client should familiarize itself with the protections given to money or other property the Client deposits for domestic and foreign Transactions, particularly in the event of a firm insolvency or bankruptcy. The extent to which the Client may recover its money or property may be governed by specific legislation or local rules. In some jurisdictions, property which had been specifically identifiable as the Client's own will be pro-rated in the same manner as cash for purposes of distribution in the event of a shortfall.

**93.** Commission and other charges

Before the Client begins to trade, the Client should obtain a clear explanation of all commission, fees and other charges for which the Client will be liable. These charges will affect the Client's net profit (if any) or increase the Client's Losses.

**94.** Transactions in other jurisdictions

Transactions on markets in other jurisdictions, including markets formally linked to a domestic market, may expose the Client to additional risk. Such markets may be subject to regulation which may offer different or diminished investor protection. Before the Client trades, the Client should enquire about any rules relevant to the Client's particular Transactions. The Client's local regulatory authority will be unable to compel the enforcement of the rules of regulatory authorities or markets in other jurisdictions where the Client's Transactions have been effected. The Client should ask the Bank with which the Client deals for details about the types of redress available in both the Client's home jurisdiction and other relevant jurisdictions before the Client starts to trade.

**95.** Currency risks

The profit or Losses in Transactions in foreign currency-denominated contracts (whether they are traded in the Client's own or another jurisdiction) will be affected by fluctuations in currency rates where there is a need to convert from the currency denomination of the contract to another currency.

**96.** Off-exchange transactions

In some jurisdictions, and only then in restricted circumstances, firms are permitted to effect off-exchange Transactions. The Bank with which the Client deals may be acting as the Client's counterparty to the Transaction. It may be difficult or impossible to liquidate an existing position, to assess the value, to determine a fair price and/or to assess the exposure to risk. For these reasons, these Transactions may involve increased risks. Off-exchange Transactions may be less regulated or subject to a separate regulatory regime. Before the Client undertakes such Transactions, the Client should familiarize itself with applicable rules and attendant risks.

**CREDIT DERIVATIVES**

**97.** Credit derivatives involve a liquidity risk, as often, such instruments cannot be sold before maturity as there is no market for such instruments. The Client will additionally be exposed to the credit risk on each of the reference assets, as well as the issuer of the reference assets. As investments or Transactions involving credit derivatives carry a high degree of risk, the Client is advised to seek independent professional advice before entering into such Transactions or investments.

**RISK OF PRODUCT DENOMINATED IN RENMINBI (RMB)**

Devaluation risk

**98.** There is no assurance that RMB will not be subject to devaluation. The Client must subscribe for the product and will receive realization proceeds in RMB. If the Client converts its investment monies in Hong Kong Dollars or other currencies into RMB in order to invest in the product, the Client will suffer Losses in case of RMB devaluation, if the Client converts realization proceeds back into Hong Kong Dollars or other currencies.

Renminbi currency risk

**99.** Renminbi is not freely convertible at present and conversion of Renminbi through banks in Hong Kong is subject to certain restrictions. For Renminbi products which are not denominated in Renminbi or with underlying investments which are not Renminbi denominated, such products will be subject to multiple currency conversion costs involved in making investments and liquidating investments, as well as the Renminbi exchange rate fluctuations and bid/offer spreads when assets are sold to meet redemption requests and other capital requirements (e.g. settling operating expenses). The PRC government regulates the conversion of Renminbi and other currencies. If the restrictions on Renminbi convertibility and the limitations on the flow of the Renminbi funds between PRC and Hong Kong become

more stringent, the depth of the Renminbi market in Hong Kong may become further limited.

#### Exchange rate risk

- 100.** The value of Renminbi against Hong Kong Dollar and other foreign currencies fluctuates and is affected by changes in the PRC and international political and economic conditions and by many other factors. For Renminbi products, the value of the Client's investment in Hong Kong Dollar terms may decline if the value of Renminbi depreciates against Hong Kong Dollar.

#### Interest rate risk

- 101.** The PRC government has gradually liberalized the regulation of interest rates in recent years. Further liberalization may increase interest rate volatility. For Renminbi products which are, or may invest in, Renminbi debt instruments, such instruments are susceptible to interest rate fluctuations, which may adversely affect the return and performance of the Renminbi products.

#### Limitation on the provision of Renminbi funding

- 102.** In case the Client does not have sufficient Renminbi funding in the account to subscribe Renminbi products, subject to compliance with all applicable laws, rules and regulations, the Bank may assist the Client to convert other currencies to Renminbi. However, the Bank does not guarantee that the Bank can assist the Client to obtain sufficient Renminbi funding due to the limitation on the flow of Renminbi funds in Hong Kong. The Bank may unwind the Client's trade due to insufficient Renminbi funding and the Client's investment may be adversely affected if the Client suffers Losses due to settlement failure.

#### Limited availability of underlying investments denominated in Renminbi

- 103.** For Renminbi products that do not have access to invest directly in Mainland China, their available choice of underlying investments denominated in Renminbi outside Mainland China may be limited. Such limitation may adversely affect the return and performance of the Renminbi products.

#### Projected returns which are not guaranteed

- 104.** For some Renminbi investment products, their return may not be guaranteed or may only be partly guaranteed. The Client should read carefully the statement of illustrative return attached to such products and in particular, the assumptions on which the illustration are based, including, for example, any future bonus or dividend declaration.

#### Long Term commitment to investment products

- 105.** For Renminbi products which involve a long period of investment, if the Client redeems the Client's investment before the maturity date or during the lock-up period (if applicable), the Client may incur significant loss of principal where the proceeds may be substantially lower than the invested amount. The Client may also suffer from early surrender/ withdrawal fees and charges as well as the loss of returns (where applicable) as a result of redemption before the maturity date or during lock-up period.

#### Credit risk of counterparties

- 106.** For Renminbi products investing in Renminbi debt instruments which are not supported by any collateral, such products are fully exposed to the credit risk of the relevant counterparties. Where a Renminbi product may invest in derivative instruments, counterparty risk may also arise as the default by the derivative issuers which may adversely affect the performance of the Renminbi product and result in substantial Losses.

#### Liquidity risk

- 107.** Renminbi products may suffer significant Losses in liquidating the underlying investment, especially if such investments do not have an active secondary market and their prices have large bid / offer spread.

#### Possibility of not receiving Renminbi upon redemption

- 108.** For Renminbi products with a significant portion of non-Renminbi denominated underlying investments, there is a possibility of not receiving the full amount in Renminbi upon redemption. This may be the case if the issuer is not able to obtain sufficient amount of Renminbi in a timely manner due to the exchange controls and restrictions applicable to the currency.

### **RISK OF EXCHANGE-TRADED DERIVATIVE PRODUCTS**

#### Issuer default risk

- 109.** In the event that an exchange-traded derivative product issuer becomes insolvent and defaults on their issued products, the Client will be considered as unsecured creditors and will have no preferential claims to any assets held by the issuer. The Client should therefore pay close attention to the financial strength and credit worthiness of exchange-traded derivative product issuers.

#### Uncollateralized product risk

- 110.** Since exchange-traded derivative products are not asset backed, in the event of issuer bankruptcy, the Client can lose the Client's entire investment.
- Gearing risk
- 111.** Exchange-traded derivative products such as warrants and callable bull/bear contracts are leveraged and can change in value rapidly according to the gearing ratio relative to the underlying assets. The Client should be aware that the value of an exchange-traded derivative product may fall to zero resulting in a total loss of the initial investment.
- 112.** Limited life
- Most of the exchange-traded derivative product has an expiry date after which the products may become worthless. The Client should be aware of the expiry time horizon and choose a product with an appropriate lifespan for the Client's trading strategy.
- 113.** Extraordinary price movements
- The price of an exchange-traded derivative product may not match its theoretical price due to outside factors such as market supply and demand. As a result, actual traded prices can be higher or lower than the theoretical price.

## **WARRANTS**

- 114.** The value of a warrant is likely to decrease over time. In the worst case, the warrants may expire with no value. Therefore, it should not be viewed as long-term investments.
- 115.** Certain events (including, without limitation, a right issue, bonus issue or cash distribution by the issuer, a subdivision or consolidation of the underlying shares and a restructuring event of the issuer) may entitle the issuer to adjust the terms and conditions of the warrant.
- 116.** The value of the warrants may not correlate with the movements of the underlying index level and is affected by implied volatility of underlying asset price, the time remaining to expiry, interest rates, and the expected dividend on the underlying assets.
- 117.** The liquidity provider may be the only market participant for the warrants. There may not be a secondary market or the secondary market is limited and it may be difficult for the Client to realize the value in the warrants prior to expiry.

## **CALLABLE BULL/BEAR CONTRACTS ("CBBC")**

- 118.** Issuer default risk
- In the event that a CBBC issuer becomes insolvent and defaults on their listed securities, the Client will be considered as unsecured creditor and will have no preferential claim to any assets held by the issuer. The Client should therefore pay close attention to the financial strength and credit worthiness of CBBC issuers.
- 119.** Uncollateralized product risk
- Uncollateralized CBBCs are not asset backed. In the event of issuer bankruptcy, the Client can lose the Client's entire investment. The Client should read the listing documents to determine if a product is uncollateralized.
- 120.** Gearing risk
- CBBCs are leveraged and can change in value rapidly according to the gearing ratio relative to the underlying assets. The Client should be aware that the value of a CBBC may fall to zero resulting in a total loss of the initial investment.
- 121.** Expiry considerations
- CBBCs have an expiry date after which the issue may become worthless. The Client should be aware of the expiry time horizon and choose a product with an appropriate lifespan for the Client's trading strategy.
- 122.** Extraordinary price movements
- The price of a CBBC may not match its theoretical price due to outside influences such as market supply and demand factors. As a result, actual traded prices can be higher or lower than the theoretical price.
- 123.** Foreign exchange risk
- Client trading CBBCs with underlying assets not denominated in Hong Kong Dollars is also exposed to exchange rate risk. Currency rate fluctuations can adversely affect the underlying asset value and thereby also affect the CBBC price.
- 124.** Liquidity risk
- The Exchange requires all CBBC issuers to appoint a liquidity provider for each individual issue. The role of liquidity providers is to provide two way quotes to facilitate trading of their products. In the event that a liquidity provider defaults or ceases to fulfill its role, investors may not be able to buy or sell the product until a new liquidator provider has been assigned.

**125. Mandatory call risk**

CBBC has a fixed expiry date and closely tracks the performance of an underlying asset (for example, a share, index, commodity or currency). The Client's trading CBBCs should be aware of their intraday "knockout" or mandatory call feature. A CBBC will cease trading when the underlying asset value equals the mandatory call price/level as stated in the listing documents. The Client will only be entitled to the residual value of the terminated CBBC as calculated by the product issuer in accordance with the listing documents. The Client should also note that the residual value can be zero.

**126. Funding costs**

The issue price of a CBBC includes funding costs. Funding costs are gradually reduced over time as the CBBC moves towards expiry. The longer the duration of the CBBC, the higher the total funding costs will be. In the event that a CBBC is called, the Client will lose the funding costs for the entire lifespan of the CBBC. The formula for calculating the funding costs are stated in the listing documents.

**127.** When the underlying asset is trading close to the call price, the price of a CBBC may be more volatile with wider spreads and uncertain liquidity. CBBC may be called at any time and trading will terminate as a result. Once it is called, the contract cannot be revived and the Client will not benefit even if the underlying asset bounces back to a favorable position. Any trades executed after this mandatory call event will not be recognized and will be cancelled.

**128.** The Client should be aware that CBBC is a complex leveraged investment which may not be suitable for all people. With its gearing feature, it may magnify potential returns and potential Losses as well. In the worst-scenario, the Client may lose all of the Client's investments.

**129.** Although CBBC has liquidity providers, there is no assurance that the Client will be able to buy or sell CBBC at the Client's target prices any time they wish.

**EQUITY-LINKED INSTRUMENTS (ELIs)**

**130.** Transactions in equity-linked instruments ("ELIs") carry a high degree of risk. ELIs are products combining notes with stock options which may allow, amongst others, a bull, bear or strangle (i.e. trading range) bet. The return component of an ELI may be based on the performance of a single equity security, a basket of equity securities, or an equity index. ELI may come in different forms, amongst others, equity-linked notes and equity linked contracts. While the maximum return on an investment is usually limited to a predetermined amount of cash, the Client stands to potentially lose up to the entire investment amount if the underlying share price moves substantially against the Client's view. Before investing in an ELI, the Client should carefully study and understand the risks involved and considers whether such trading is suitable in the light of the Client's own financial position, experience and investment objectives.

**CONTRACTS FOR DIFFERENCES**

**131.** Contracts for differences generally cover any contracts for adjustment between the parties based on the respective values or levels of certain assets or index references at the time of the contracts and at an agreed future time. These can be options and futures on any index, as well as securities, etc. There is no delivery on these contracts, which can only be settled in cash.

**EXCHANGE-TRADED FUNDS (ETFs)**

**132. Tracking Error Risk**

ETFs are typically designed to track the performance of certain indices, market sectors, or groups of assets such as stocks, bonds, or commodities. The Client is exposed to the political, economic, currency and other risks related to the ETFs' underlying index/assets it is tracking. There may be tracking errors (i.e. disparity in the performance between an ETF and its underlying index/assets), due to, for instance, failure of the tracking strategy, currency differences, fees and expenses. The Client must be prepared to bear the risk of Losses and volatility associated with the underlying index/assets.

**133. Counterparties Risk**

Where an ETF invests in derivatives (i.e. synthetic ETF) to replicate the underlying index/assets performance, the Client is exposed to the credit risk of the counterparties who issued the derivatives, in addition to the risks associated with the underlying index/assets. Further, potential contagion and concentration risks of the derivative issuers should be taken into account (e.g. since derivative issuers are predominantly international financial institutions, the failure of one derivative counterparty of a synthetic ETF may have a "knock-on" effect on other derivative counterparties of the synthetic ETF). Some synthetic ETFs have collateral to reduce the counterparty risk, but there may be a risk that the market value of the collateral has fallen substantially when the synthetic ETF seeks to realize the collateral.

**134. Discount or Premium Risk**

Where the index/assets that the ETF tracks is subject to restricted access, the efficiency in unit creation or redemption to keep the price of the ETF in line with its net asset value (NAV) may be disrupted, causing the ETF to trade at a higher

premium or discount to its NAV. If the Client would buy an ETF at a premium or sells when the market price is at a discount to NAV, the Client may sustain Losses.

**135. Liquidity Risk**

Trading in ETFs is also subject to liquidity risk. Although an ETF is traded in an exchange, there is no assurance that liquid market exists for an ETF. A higher liquidity risk is involved if a synthetic ETF involves derivatives that do not have an active secondary market. Wider bid-offer spreads in the price of the derivatives may result in Losses.

**136. Exchange Rate Risk**

The Client trading ETFs with underlying assets not denominated in Hong Kong Dollars are also exposed to exchange rate risk. Currency rate fluctuations can adversely affect the underlying asset value, also affecting the ETF price.

**137. Counterparty risk involved in ETFs with different replication strategies**

(a) Full replication and representative sampling strategies

ETFs using a full replication strategy generally aim to invest in all constituent stocks/assets in the same weightings as their benchmark. ETFs adopting a representative sampling strategy will invest in some, but not all of the relevant constituent stocks/assets. For ETFs that invest directly in the underlying assets rather than through synthetic instruments issued by third parties, counterparty risk tends to be less of concern.

(b) Synthetic replication strategies

ETFs utilizing a synthetic replication strategy use swaps or the derivative instruments to gain exposure to a benchmark. Currently, synthetic replication ETFs can be further categorized into two forms:

(i) Swap-based ETFs

Total return swaps allow ETF managers to replicate the benchmark performance of ETFs without purchasing the underlying assets.

Swap-based ETFs are exposed to counterparty risk of the swap dealers and may suffer Losses if such dealers default or fail to honor their contractual commitments.

(ii) Derivative embedded ETFs

ETF managers may also use other derivative instruments to synthetically replicate the economic benefit of the relevant benchmark. The derivative instruments may be issued by one or multiple issuers.

Derivative embedded ETFs are subject to counterparty risk of the derivative instruments' issuers and may suffer Losses if such issuers default or fail to honor their contractual commitments.

Even where collateral is obtained by an ETF, it is subject to the collateral provider fulfilling its obligations. There is a further risk that when the right against the collateral is exercised, the market value of the collateral could be substantially less than the amount secured resulting in significant loss to the ETF.

**138. Underlying Subject Matter Risk**

ETFs, because of their strategy of tracking certain indices, market sectors, or groups of assets, may end up concentrating the investments in issuers of one or more particular industries or geographical regions. If the particular industry or geographical location performs poorly, this will magnify the negative impact on the value of the ETF.

**NON-TRADITIONAL INVESTMENT FUNDS**

**139. Non-traditional Investment Funds (hedge funds, alternative funds, alternative investment funds and offshore funds) bear additional risks (non-exhaustive):**

- (a) the investment strategies adopted by such non-traditional funds are often high risk and highly complex. Further, due to the use of leverage, a small market movement can lead to major gains or Losses. In certain circumstances, the entire amount of the Client's investment may be lost;
- (b) the non-traditional fund industry is largely unregulated and the availability, quality and flow of information may be significantly less than that for traditional investment products. The Client may not be kept informed about the fund's strategies or changes to the fund management team;
- (c) the liquidity and tradability of non-traditional funds can vary a great deal and fixed holding or "lock-up" periods lasting many years are not unusual. Liquidations of such funds may also stretch over many years;
- (d) certain non-traditional funds may provide for powers to compulsorily redeem all or any portion of an investor's holdings at any time and for any reason upon short notice. The proceeds that the Client may receive upon such redemption may be substantially less than the amount invested in the fund;

- (e) many non-traditional funds have an offshore domicile and may be subject to less stringent legislation and supervision, which in turn offers poorer investor protection. Problems or delays may arise in the settlement of buy and sell orders for units in such funds. There is also no guarantee that the Client's legal rights under these non-traditional funds will be enforceable.

Non-traditional funds involve a high degree of risk. The Client should seek independent advice about the particular risks involved and carefully study any information (including any fund offering documents) on the relevant Financial Product, Transaction or investment. The Client should ensure that they fully understand and agree to assume the risks involved and the exposure to potential Losses (which could involve complete loss).

## **RISK OF TRADING BONDS**

Issuer default risk

140. There is a risk that the issuer may fail to pay the Client the interest or principal as scheduled.

Interest rate risk

141. When the interest rate rises, the price of a fixed rate bond will normally drop. If the Client wants to sell the Client's bond before it matures, the Client may get less than the Client's purchase price.

Foreign exchange risk

142. The Client trading bond denominated in a foreign currency faces an exchange rate risk. Any fall in the foreign currency will reduce the amount the Client receives when the Client converts a payment of interest or principal back into the local currency.

Liquidity risk

143. The Client may need to sell the bonds before maturity when the Client has an urgent cash-flow need or use the capital for other investments. However, the Client may not achieve this if the liquidity of the secondary bond market is low.

Reinvestment risk

144. If the Client holds a callable bond, when the interest rate goes down, the issuer may redeem the bond before maturity. If this happens, the Client has to re-invest the proceeds, the yields on other bonds in the market will generally be less favorable.

Equity risk

145. If the bond is "convertible" or "exchangeable", the Client also faces equity risk associated with stocks. A fall in the stock price will usually make the bond price fall.

## **STRUCTURED PRODUCTS**

146. Structured products carry a high degree of risk, and their net outcome will depend on the underlying financial instruments (which may include one or more derivatives). Because of the complexity, the Client should be aware that a market movement (however slight) or event could lead to substantial Losses and may even involve the loss of the entire amount initially invested. The Client should therefore fully understand the risks associated with each underlying financial instrument, as well as the structured product as a whole, and be satisfied that the Client is willing to accept all such risks.

147. Because each structured product has its own risk profile, and given the unlimited number of possible combinations, it is not possible to detail all associated risks. The Client should obtain independent advice so as to understand and be familiar with the risks involved.

148. Furthermore, because the Client, as buyer, can only assert their rights against the issuer, there are issuer risks and potentially a total loss of investment if the issuer or its counterparty should default. As structured products are usually executed over-the-counter, it may accordingly be difficult to liquidate an existing position, assess the value of, determine a fair price for or assess the Client's exposure to risks under such investment or Transaction. The Client should factor this uncertainty in the overall consideration of the potential impact of the Client's investment or Transaction.

## **RISK OF OTC DERIVATIVES**

Most risks of exchange traded derivative product will also apply to OTC Derivatives. In addition, the following additional risks of OTC Derivatives should be noted.

### **Market Risk**

149. Option embedded in OTC Derivatives carries high risk. Upon maturity, Losses may incur as a result of market price or interest rate movement. The Client should understand that in case of equity-linked product, the Client may lose principal in the worst scenario. In the event of principal-protected product, Client may lose the non-principal-protected portion. The Bank gives no guarantee as to the return on the product upon maturity. The Client should carefully assess the investment prior to the Client's entering into the transaction and pay attention to the impact on option resulting from the

movement of the underlying assets.

#### **Credit Risk**

150. Attention should be paid to issuers' credit rating that is formulated in accordance with the issuers' scale, gearing ratio, liquidity, and profit and Losses. The Client should review the issuers' credit risk and the Client's risk tolerance. Where credit risk of the issuer is materialized, the Client may lose the Client's principal.

#### **Early Termination Risk**

151. In case of early termination, the terms regulating profits and Losses upon maturity set out in the trading contract will no longer apply. The Client may be personally liable to penalty up to certain extent. Issuer and/or the Bank will not warrant that the Client will receive the principal in whole upon termination.

#### **Liquidity Risk**

152. If the product is less liquid, there exists significant difference between the actual transaction price and the unit price of the contract. Where the Client terminates the contract early, the Client may suffer loss in principal. It requires the Client to take the product until maturity, if the market becomes entirely illiquid.

#### **Exchange Rate Risk**

153. If the Client makes investment in the product with currency other than that denominated, the Client should pay attention to the risk that upon return of the investment principal, the Client will receive the amount less than that the Client paid when making investment if the invested principal is converted into another currency. The Bank will not forecast the trend of foreign exchange rate.

#### **Interest Rate Risk**

154. The Client should be aware that should the product make investment in fixed income product with the fund the Client invested, the price is subject to the interest rate trend. When interest rate rises, the market value of the fixed income product will go down and it may result in Losses. In the event of interest rate going down, the market value of fixed income product will go up and the Client may earn extra return.

### SECTION 3

## TERMS AND CONDITIONS OF ACCOUNTS OPERATIONS, DEPOSITS, STANDING FX ORDERS, PAYMENTS AND REMITTANCE

### (the "T&Cs of Accounts, Deposits, Standing FX Orders, Payments and Remittance")

#### 1. SERVICES

- 1.1 Unless otherwise agreed by the Bank, any Service shall be provided to the Client within the banking hours on a Business Day as conclusively determined by the Bank from time to time in the Bank's absolute discretion.

#### 2. ACCOUNT OPERATION

- 2.1 The Bank shall be entitled (but is not obliged to) and is authorized by the Client:

- (a) to honour and to act on all instructions and/or orders for transfer of funds, remittance, withdrawal and/or payment and to debit the same to the Account specified;
- (b) to act on all requests, instructions, orders and/or directions relating to the Account, their operation and/or closing;
- (c) where applicable, to honour and comply with all cheques, drafts, orders to pay, bills of exchange and promissory notes expressed to be drawn, signed, accepted, endorsed or made on the Client's behalf drawn upon, or addressed to, or made payable with, the Client whether any of the Account is in credit or in debit or may become overdrawn in consequence or otherwise but without prejudice to the Bank's right to refuse to allow any overdraft or increase of overdraft beyond any specified overdraft limit from time to time; and
- (d) to honour and comply with any orders to withdraw any or all moneys on any of the Account and with any instructions to deliver, dispose of, or deal with, any securities, deeds or documents or other property, including security boxes and their contents, whatsoever from time to time in the Bank's possession for the Client whether by way of security, safe custody or otherwise.

- 2.2 Notwithstanding Clause 2.1 above, save as otherwise expressly agreed by the Bank, no instruction for withdrawal, transfer or payment out of any Account will be accepted unless: (a) there are sufficient funds in the currency concerned available in the Account specified when the relevant instruction is being processed by the Bank; and (b) the rules and regulations of the Bank applicable are complied with, provided however that despite an instruction for withdrawal, transfer or payment out of any Account has been accepted by the Bank, the Bank shall be entitled to reject such instruction if subsequently there are insufficient funds in the currency concerned available in the relevant Account when the Bank intends to carry out the accepted instruction. For the avoidance of doubt, after the Bank has accepted any instruction for withdrawal, transfer or payment out of any Account, the Bank is in no way under any obligation whatsoever to withhold any funds available in the relevant Account pending the carrying out of the accepted instruction and the Bank shall be entitled to disburse all or any funds in the Account pursuant to any subsequent instructions given to or accepted by the Bank.

- 2.3 All operations of the Account at the counter, where applicable, can only be made within such business hours determined absolutely by the Bank. The Account may be operated by the Client at the branch or sub-branch or office at which the Account concerned is maintained and if so permitted by the Bank at its absolute discretion at such other branch or sub-branch(es) or office(s) of the Bank. All such operations permitted at places apart from the branch or sub-branch or office at which the Account concerned is maintained shall be subject to such terms and conditions, limitations and/or restrictions as the Bank shall determine absolutely from time to time.

- 2.4 The Client authorizes the Bank to collect inward remittances for account of the Client from time to time as the Bank may think fit. If the Bank elects to collect an inward remittance for account of the Client, the Client shall be bound by the following terms and such other terms and conditions as the Bank may impose from time to time:

- (a) the remittance proceeds shall, after deduction of all costs, charges and expenses, be paid to the Account of the Client nominated in the remittance instruction or such other Account as the Bank may determine in its absolute discretion (the "**Collection Account**") and for this purpose, the Bank may convert the currency of the remittance proceeds into the relevant currency of the Collection Account at the then prevailing spot rate of exchange quoted by the Bank (as conclusively determined by the Bank);
- (b) the Bank shall not in any way be liable to account to the Client for any interest or benefit which the Bank may receive from or derive out of the remittance proceeds or any part thereof prior to the Bank's credit of the same into the Collection Account and such interest and benefit (if any) shall be received and held by the Bank to its own use and benefit absolutely;
- (c) for the avoidance of doubt, nothing contained in this Clause 2.4 shall prejudice or affect any of the Bank's rights of appropriation or set-off.

- 2.5 The Client authorizes the Bank to receive inter- and intra-bank credit transfer instruction for the account of the Client from time to time as the Bank may think fit. If the Bank elects to receive an inter- or intra-bank credit transfer instruction for account of the Client, the Client shall be bound by the following terms and such other terms and conditions as the Bank may impose from time to time:
- (a) the Bank may credit and update the Account according to prevailing banking practice. The Client hereby agrees that the Bank shall be entitled to immediately reverse the credit entry or entries if the Bank is subsequently informed that the inter- or intra-bank credit transfer instruction is to be reversed for whatever reason (including without limitation if in relation to an inter-bank credit transfer, the transferring bank fails to settle the Transaction) and the Bank shall not be responsible for any Losses, arising to the Client as a result of such reverse entry or entries.
  - (b) the Bank will only release the sum(s) credited as a result of the inter- or intra-bank credit transfer instruction according to prevailing banking practice and it may not necessarily be the same day when the credit entry is recorded in the Account.
  - (c) the Client may only withdraw or utilize the funds transferred to the Account after the Bank has duly verified it.
- 2.6 (a) In this Clause 2.6:
- “**Standing Order**” means a conditional order or instruction of the Client relating to the sale or purchase of FX; which includes “**Circular Order**” and “**Limit Order**”;
- “**Circular Order**” means Client can select a designated cycle to effect the sale or purchase of FX;
- “**Limit Order**” means Client can select a target rate, system will effect the sale or purchase of FX when the spot rate of exchange meets the target rate specified by the Client within the effective period and at designated execution time set by the Bank; and
- “**FX**” means those types of currencies (including Hong Kong Dollars) as the Bank may from time to time designate.
- (b) FX Transactions are subject to the terms and conditions set out in any Specific Agreements.
  - (c) Standing Orders may be placed by the Client with the Bank and are accepted or rejected by the Bank at its absolute discretion. The Bank may from time to time prescribe the maximum and/or minimum amounts and/or the conditions which can be pre-set by the Client for such Standing Orders. Unless otherwise agreed by the Bank, a Standing Order shall only be valid on the Business Day on which it is received and accepted by the Bank.
  - (d) Upon fulfilment of all the conditions pre-set by the Client for the Standing Order, the Bank shall be authorized to:
    - (i) for the purchase of FX:
      - (A) debit the funds necessary to make the purchase from the Account designated by the Client (“**Payment Account**”);
      - (B) convert the funds so debited and denominated in the currency of the Payment Account into the FX; and
      - (C) credit the amount so purchased into an Account specified by the Client (“**Receiving Account**”) denominated in the currency of the amount to be credited;
    - (ii) for the sale of FX:
      - (A) debit the FX to be sold from the Payment Account; and
      - (B) credit the funds representing the proceeds of sale into a Receiving Account by converting the FX to be sold into the currency of the Receiving Account.
  - (e) The Client agrees that:
    - (i) if the Client places a Circular Order, the Bank is entitled to effect a currency transaction for the Client at the spot rate of exchange as quoted by the Bank from time to time,
    - (ii) if the Client places a Limit Order, the Bank is entitled to effect a currency transaction for the Client at the rate of exchange specified by the Client if such rate falls within the spot rate of exchange quoted by the Bank at the time. The Bank is not under any obligation to check rate of exchange specified by the Client against the rate prevailing in the relevant foreign exchange market on a real time basis, nor to effect any currency transaction at such rates.
  - (f) In case there are insufficient funds or prearranged credit available in the Payment Account at the time of making a purchase or sale pursuant to a Standing Order, the Bank shall be entitled to refuse to make the purchase or sale, in which event the Bank may levy the usual charge and may cancel the Standing Order. The Bank shall not howsoever be liable for any consequence arising out of the failure of the Bank to carry out the Standing Order in such circumstances.

- (g) Notwithstanding that there are insufficient funds or pre-arranged credit in the Payment Account, the Bank may, at its absolute discretion, but is not obliged to, carry out the Standing Order without prior written notice to or approval of the Client. The Client shall be liable for the resulting debit balance or overdraft, advance or credit (or any increase in the same) and all interest and standard charges of the Bank relating thereto. Such debt shall be repayable to the Bank on demand together with interest thereon, from the date of carrying out of the Standing Order to the date of actual repayment (whether before or after judgment), both days inclusive, at such rate as published by the Bank from time to time for unauthorized overdraft and compounded at such intervals as the Bank may determine from time to time.
- (h) The Client acknowledges that notwithstanding the Bank's acceptance of a Standing Order, such Standing Order may not eventually result in any sale or purchase of FX owing to market conditions and/or any restrictions (such as any limit for purchase or sale of any FX, exchange control or otherwise) which may from time to time be imposed on the Bank under any laws, rules or regulations. Without prejudice to the foregoing, if for any reason the Bank is not able to deliver the relevant currency at the time when a Transaction would otherwise be executed, the Bank shall have no obligation to execute any Transaction pursuant to any Standing Order notwithstanding that the Standing Order has been accepted.
- (i) The Bank may from time to time determine whether an advice setting out the Transactions effected by the Bank pursuant to Standing Orders will be issued to the Client.
- (j) Nothing herein shall oblige the Bank to provide any credit or pre-arranged credit to the Client.

### **3. PAYMENT OUT / REMITTANCE**

- 3.1 A payment instruction may be acted on if there are sufficient cleared funds in the relevant currency in the Client's Account for a full payment, and if the Bank's requirements have been complied with. Such requirements may include amount limits, and restriction on the office from which a withdrawal may be made. In particular, withdrawals in cash or by electronic means may be subject to limit.
- 3.2 If the Bank acts on a payment instruction without sufficient cleared funds in the Client's Account or beyond an overdraft limit, the Client will repay to the Bank the resulting debit together with interest and the Bank's charges.
- 3.3 The Bank is authorized to pay the bearer a withdrawal instruction purported to be signed by the Client, but may require the Client's personal attendance.
- 3.4 When providing remittance service, the Bank is obliged to comply with Applicable Laws. The Bank's right to prescribe any conditions subject to which the Bank provides any services or accepts any instruction or to refuse to provide any services or act on any instruction to ensure the Bank's compliance with any of the Applicable Laws is reserved. The Bank will only provide remittance services or accept instructions to the extent that the Bank is (in the Bank's reasonable opinion) practicable and reasonable to do so, having due regard to the Bank's prevailing business practices and procedures (whether internal or otherwise).
- 3.5 The Client agrees that the Bank merely acts as the Client's remittance agent when following the Client's outward remittance instructions and has no control over the operations of and the charges and commissions levied or imposed by the Agent.
- 3.6 Any instruction for remittance shall not be revoked or revised in whole or in part except with the Bank's written consent. If so agreed by the Bank, any amendment or cancellation of any outward remittance instruction shall be given by the Client in writing in a form satisfactory to the Bank.
- 3.7 A request to countermand or alter a payment may be subject to satisfactory evidence, indemnity and, in the case of a draft issued by the Bank, return of the original draft. The Bank is not responsible if payment cannot be countermanded or altered; and charges will not be refunded. A refund may only be made after the Bank has confirmed, for example, with an Agent or the receiving bank that the payment order has been cancelled, and after receiving cleared funds and deducting all reasonable expenses and, if applicable, converting the payment currency into Hong Kong Dollars at the Bank's spot rate. If the Bank has acted reasonably, the Bank will not be responsible for any delay or Losses (from exchange rate movements, of interest or otherwise).
- 3.8 The Client agrees that the Bank and the Agent are entitled to charge such reasonable charges and fees as the Bank or the Agent may determine from time to time. All charges incurred outside Hong Kong is for the account of the beneficiary unless otherwise instructed. In the event of the beneficiary failing to pay any such charges, the Client shall be liable to reimburse on demand the Bank and the Agent for all such charges and fees.
- 3.9 In the absence of fraud, wilful default or gross negligence, the Bank is not responsible for any delay or failure in effecting a remittance or delivering any item. The Bank is not responsible as to when the receiving bank pays the Client's payee or if it fails to do so, or to recover any payment from it. The Agents and the Bank may do or refrain from doing anything that they or the Bank believes is required in order to comply with any Applicable Laws. All such actions and omissions bind the Client.

- 3.10 Funds sent out of Hong Kong may be subject to currency conversions in Hong Kong or at the destination. Unless otherwise agreed, a remittance will be made in the currency of the country in which the payment is to be made, and charges (including those of the Bank's correspondents) will be deducted before payment to the payee.
- 3.11 The Bank is not responsible to advise the Client on the requirements of any law, regulation or custom including exchange control of Hong Kong or any other jurisdictions outside Hong Kong. The Client shall make its own enquiries. The Bank is not required to advise the Client in advance of the Agents' charges.
- 3.12 The Bank may remit an amount to, or draw a draft payable at, a place different from that required by the Client if the Bank believes that it is necessary to do so.
- 3.13 If a provisional exchange rate is used in the Client's application for a remittance or draft, the Bank may debit any deficit or credit any gain to the Client's Account without prior notice after the Bank has determined the applicable exchange rate.
- 3.14 The Bank will take reasonable steps to comply with the Client's value date for a remittance, but does not guarantee that the Client's request can be met. Cut-off times, local telecommunications system, banking practices and other procedures of the remittance destination may apply before the payee or its banker will receive payment.
- 3.15 The Bank may transmit any message in respect of a telegraph transfer or other electronic transfer in explicit language, code, or cipher and shall not be held liable to any error, misinterpretation, neglect, or default of any Agent save for fraud or gross negligence on the Bank's part.
- 3.16 Without prejudice to the generality of the foregoing provisions, the Bank shall not be liable for any Losses to the Client or any other person as a result of any:
- (a) delay or error in payment or in giving advice of payment; and
  - (b) loss of remarks or messages provided by the Client in transit or otherwise,
- save for fraud or gross negligence on the Bank's part.
- 3.17 The Bank shall comply with all Applicable Laws, in particular, those laws regulating and supervising the prevention of money laundering and terrorist financing activities. For this purpose, the Bank may take any action or implement any measure which the Bank may in absolute discretion consider appropriate to take. Such action or measure may include, without limitation, the interception and investigation of any payment messages and other information or communications transmitted to or by the Client or on the Client's behalf via the Bank's systems or any of the Affiliate's system and making further enquiries in such manner as the Bank shall consider necessary in its absolute discretion.
- 3.18 Remittance messages may contain certain personal information of the remitter (including the address, date of birth and the number of the identification document of the remitter) in order to comply with the Applicable Laws to which the Bank may be subject. The beneficiary and the paying bank may be permitted to see or access such information. Further, such information may also be made available to other parties or competent Authority, to the fullest extent permitted by any of the Applicable Laws. The Client authorizes the Bank to disclose the Client Data and information relating to the Client's remittances to the banks and other entities involved and to any Authority.
- 3.19 A service that permits payment to third party accounts involves risks; for example, an unauthorized person obtaining access to the Client's Account may pay funds to third party accounts.

#### **4. ORDINARY DEPOSIT**

- 4.1 Available fund in the Account may not be withdrawn by way of cheque. No passbook will be issued to the Client for the purpose of recording transactions.
- 4.2
- (a) Subject to the sub-clauses below, interest will be accrued on the credit balance(s) in the Account at such rate(s) determined absolutely by the Bank from time to time and calculated on the actual number of days elapsed and a 365-day year or a 360-day year (for both ordinary and leap years) for such currency(ies) as determined by the Bank from time to time or according to other day count convention according to the market practice and rounded to the nearest cent on every Business Day.
  - (b) For the avoidance of doubt, if the Account contains credit balance(s) denominated in different currency(ies), different interest rate(s) may be applied by the Bank to such credit balance(s). Different interest rates will be applicable to credit balances falling at different deposit amounts designated by the Bank and the lowest interest rate may be zero. Such deposit amounts may be varied by the Bank upon not less than thirty (30) days' prior written notice to the Client.
  - (c) For items under collection, interest will only start to accrue when the funds are actually collected and credited into

the Account.

- (d) The interest accrued will be rounded to the nearest cent (1 cent) and credited to the Account monthly or on such other basis as may be specified by the Bank from time to time.
- (e) If the Account is closed at any time prior to the date on which the accrued interest is due to be credited to the Account, interest will be deemed to accrue and payable up to the end of the preceding month or such other date as determined by the Bank absolutely.

## 5. TIME DEPOSIT

- 5.1 Time deposit may be fixed deposit or call deposits or (where applicable) club deposits accepted or set up by the Bank.
- 5.2 The term "fixed deposit" means any deposit denominated in any currency which is deposited with the Bank for a fixed term or up to an agreed date. The date falling on the end of such fixed term or such agreed date is hereinafter called the "maturity date". For the avoidance of doubt, a fixed deposit includes, but without limitation, a club deposit. The term "call deposit" means any deposit denominated in any currency which is deposited with the Bank subject to the condition that its withdrawal may only be made after the Client has given the Bank a written withdrawal notice of a prescribed period. The term "deposit" used in this Clause 5 shall mean a fixed deposit and/or a club deposit and/or a call deposit, as the case may be.
- 5.3 Subject to the Bank's right not to accept any deposit at the Bank's absolute discretion, a time deposit account will be opened upon the Client first placing a time deposit with the Bank. A time deposit account may only be placed in such currencies and with such minimum initial deposit in regard to a range of maturity dates as determined by the Bank from time to time. All placements, renewals or withdrawals of time deposits are accepted subject to the Transaction dates and hours determined by the Bank from time to time.
- 5.4 If there requires any conversion of currencies to set up a deposit, the applicable exchange rate shall be quoted and determined by the Bank absolutely.
- 5.5 The Bank reserves the absolute right to require deposits to be made by immediately available funds in the same currency as that of the deposit. In the event the Bank agrees in its discretion to set up a deposit pending receipt of available funds,
  - (a) the deposit will only take effect upon actual receipt of the funds in full by the Bank;
  - (b) the deposit may be cancelled by the Bank without notice if such funds is not subsequently received in full by the Bank; and
  - (c) the Client shall on demand indemnify the Bank for all Losses arising out or as a result of such non-receipt of the funds in full by the Bank.
- 5.6 Upon accepting a deposit from the Client, the Bank will issue to the Client a deposit confirmation to evidence the deposit and its essential terms (the "**deposit confirmation**").
- 5.7 The Bank shall be entitled (but not under any duty) to require the production and surrender to the Bank of the deposit confirmation or deposit receipt/certificate concerned for the withdrawal of any deposit.
- 5.8 Unless otherwise agreed by the Bank, fixed deposits can only be withdrawn on or after the applicable maturity date and call deposits can only be withdrawn after the expiration of the prescribed withdrawal notice given by the Client. Unless otherwise agreed by the Bank, all withdrawals shall be made in Hong Kong and payable by the Bank in Hong Kong in accordance with the procedures prescribed by the Bank from time to time.
- 5.9 If the maturity date of a fixed deposit, or the day on which the Client is entitled to withdraw a call deposit, is not a Business Day, it shall be postponed to the succeeding Business Day, except when such extension exceeds the maximum period for time deposit acceptable to the Bank or as regulated from time to time. In that event, the time deposit will become payable on the Business Day immediately preceding the original maturity date.
- 5.10 Any instruction or direction in relation to disposal of funds at the maturity date and any amendments thereto should be clear and unambiguous and given at least one (1) Business Day or such other minimum notice period prescribed by the Bank prior to the maturity date. Where automatic renewal instructions are given by the Client to the Bank for time deposits, the prevailing rate applied will be the rate applicable at the maturity date or at such time as the Bank shall in the Bank's absolute discretion determine.
- 5.11 The Bank shall be entitled to act on such instructions of the Client unless and until the Bank receives further instructions from the Client to the contrary.
- 5.12 If no instructions to dispose of the time deposit are received by the maturity date, interest on the maturity date and

thereafter will accrue on the principal amount only. The interest will accrue at such rate(s) as determined by the Bank from time to time. Accrued interest will be paid or credited into the time deposit account only when disposal instructions are received.

- 5.13 Interest shall accrue on a fixed deposit at such rate and up to such maturity date specified in the applicable deposit confirmation and be calculated on the actual number of days elapsed and a 365-day year or a 360-day year (for both ordinary and leap years) for such currency(ies) as determined by the Bank from time to time or according to other day count convention according to the market practice. Unless the Bank and the Client have agreed otherwise, accrued interest is only payable on the maturity date.
- 5.14 As for call deposits, interest will be calculated on a daily basis on the actual number of days elapsed and a 365-day year or a 360-day year (for both ordinary and leap years) for such currency(ies) as determined by the Bank from time to time or according to other day count convention according to the market practice at the rate quoted by the Bank in its absolute discretion for deposits of comparable amount and for comparable duration and such rate of interest will be subject to fluctuation. Interest on a call deposit is only payable upon the expiration of the prescribed withdrawal notice.
- 5.15 Upon the Client's request, the Bank may in its absolute discretion repay a time deposit to the Client before the maturity date and the Bank:
- (a) shall not be required to pay any interest on such time deposit;
  - (b) is entitled to deduct a sum representing handling charges and additional costs, if any, of obtaining funds in the market for the remaining period of such time deposit or such other sums as reasonably prescribed by the Bank from the total sum to be repaid to the Client; and
  - (c) is entitled to deduct any sums already paid to the Client by way of interest and to the Authorities by way of taxation, if applicable, from the principal sum before repayment thereof.
- 5.16 Interest payable on a time deposit will accrue up to but exclusive of the maturity date of the time deposit and is payable on the maturity date and may be either drawn or added to the principal for renewal of the time deposit. Details and/or breakdown of the accrued interest and the amount of tax deducted, if applicable will be advised when a time deposit is withdrawn or renewed.
- 5.17 Unless otherwise agreed by the Bank, the deposit and its accrued interest shall only be withdrawable by the Client at the branch/sub-branch/office of the Bank where the deposit is placed and set up. Furthermore, all instructions relating to the disposal or renewal of the deposit and its accrued interest should also be directed to such branch/sub-branch/office, unless the Bank agrees otherwise.
- 5.18 The following additional provisions shall be applicable to deposits which are club deposits:
- (a) the Client will be required to make deposit(s) in such amount(s) and at such time(s) as specified in the applicable deposit confirmation, during the period leading up to the applicable maturity date;
  - (b) if any day on which the Client is required to make any deposit under the deposit requirement mentioned in sub-clause (a) above is not a Business Day, such day shall be deemed to mean and refer to the immediately succeeding Business Day (if there is one in the same calendar month) or the immediately preceding Business Day (if there is no succeeding Business Day in the same calendar month). If any day on which the Client is required to make any deposit under the deposit requirement mentioned in sub-clause (a) above is a Saturday, such day shall be deemed to mean and refer to the immediately succeeding Business Day (if there is one in the same calendar month) or the preceding Business Day (if there is no succeeding Business Day in the same calendar month); and
  - (c) unless otherwise agreed by the Bank, no interest shall be payable on the applicable maturity date on any amount deposited by the Client as a part of a club deposit, unless the Client has duly and punctually complied with the deposit requirement mentioned in sub-clauses (a) and (b) above.

## **6. ACCOUNT IN FOREIGN CURRENCIES**

- 6.1 The following provisions shall apply to any Accounts, deposits or funds denominated in foreign currencies:
- (a) the words "foreign currency" or "foreign currencies" mean all currencies other than Hong Kong Dollars and shall include unit or units of accounting internationally accepted as equivalent to currencies;
  - (b) payments into any Accounts in foreign currencies shall be in foreign currencies by way of telegraphic transfer only;
  - (c) for withdrawals from Accounts in foreign currencies, subject to the Bank's rights in this Agreement, the Client shall provide the Bank with two Business Days notice, and the Bank shall, subject to the Bank's right to act otherwise, be entitled to pay the Client by any one or a combination of both of the following methods as absolutely determined by the Bank:

- (i) subject to deduction of such charges as specified in any schedule of fees published by the Bank from time to time and to be made available to the Client upon request, by telegraphic transfer of the amount withdrawn, in its original currency, to such account or accounts with a financial institution designated by the Client and acceptable to the Bank; and/or
  - (ii) for payment in Hong Kong Dollars into any Account, being the equivalent of the amount withdrawn after it is converted into Hong Kong Dollars at the applicable T/T buying rate quoted by the Bank at the time of such withdrawal; and
- (d) the Client shall be responsible for all exchange rate risks.

## 7. RENMINBI BUSINESS

- 7.1 The Bank may take all necessary measures for the compliance with rules and regulations of the PBOC, the HKMA, any clearing bank, any clearing agent within China or any other supervisory or competent authorities. If required, the Bank may also provide any transaction and account information related to any holder of a Renminbi bank account to the clearing bank and supervisory or competent authorities.
- 7.2 The Bank is entitled to:
- (a) prescribe restrictions that apply only to Renminbi bank account or services and to amend and/or revise the General T&Cs applicable to Renminbi bank account or services from time to time, whether or not any such action applies to any other Clients of the Bank;
  - (b) delay or decline, without giving reason and without liability, to execute any instructions of the Client or to accept any Renminbi deposit; and
  - (c) at any time in any way vary, suspend, withdraw or terminate all or any part of the Renminbi services.
- 7.3 The Client confirms and declares that the Client fully understands all the rules and regulations applicable to Renminbi bank account or services stipulated by the supervisory or competent authorities. The Client agrees that all Renminbi bank account or services are to be bound by the applicable rules and regulations promulgated by the supervisory or competent authorities from time to time.
- 7.4 The Client acknowledges and understands that Renminbi circulation is subject to restriction and customer who conducts Renminbi business may be subject to the following risks:
- (a) the Client should be cautious that assets or liabilities denominated in Renminbi may be required to be paid or discharged by way of other currency as payment tool in the event that there is change in laws:
    - (i) whilst the Bank shall ensure to seek practical solutions or means, the Client, who is beneficially entitled to assets or carries liabilities denominated in Renminbi or liable to payment obligations in Renminbi by reason of concluded transactions, may be required to pay or receive by means of other currency which is exchanged at the prevailing exchange rate for the reason that change in laws will have impact on the demand and supply of Renminbi in the market or settlement of the concluded transactions;
    - (ii) customer to whom the banking facilities denominated in Renminbi are extended is advised to consider the ability to repay Renminbi upon maturity and exchange risk when the Client is not capable of making repayment in Renminbi; and
    - (iii) notwithstanding that a specified loan amount or limit is provided in the loan agreement entered into by customer to whom the banking facilities are granted and the Bank, the customer is still subject to the risk that the loan will not be drawn in Renminbi on account of the legal restriction and, thus, the customer is subject to risk of shortage of funding. If it is drawn in other foreign currency, the customer may suffer or sustain exchange loss by reason of exchange rate fluctuation;
  - (b) the Client is advised that the circulation of Renminbi is subject to restrictions imposed by local laws in China and those local laws may change from time to time;
  - (c) Renminbi remittance to China will be turned away in the event that the same fails to comply with the legal or regulatory requirements and Renminbi is not freely circulated. Where the Client remits Renminbi to China and the remittance is not effectively paid to the payee for the reason as aforesaid, the Bank shall arrange the refund of the remitted amount provided that all cable, postage and other charges shall be borne by the Client and will be deducted from the remitted amount;
  - (d) in the event that customer to whom the banking facilities are extended in Renminbi is desirous of utilizing the banking facilities in China, the Client should obtain the approval of the competent authority in China to permit the remittance of the Renminbi funding to China and proceed with registration for complying with foreign debt administration rules in China. In the event that drawdown amount is not effectively remitted to China for payment or returned on the ground of the Client's failure to comply with the relevant laws in China, the accrued interest and expenses in connection therewith shall be borne by the Client;
  - (e) the Client should fully understand that Renminbi is subject to exchange rate fluctuation which will create risk to transaction. The market movement is subject to numerous factors which will result in substantial exchange rate fluctuation. The Client entering into Renminbi transaction are subject to transaction risk and evaluation loss as a result of market turbulences or exceptional circumstances. Thus, the Client should assess the Client's own financial condition and risk tolerance prior to entering into of the transaction. The Client is also advised to understand the financial, accounting, tax and legal rules relevant to the transactions and ensure that the Client is willing to undertake the transaction risk and absorb loss;
  - (f) non-Hong Kong resident is required to, when opening Renminbi account, acknowledges that he does not hold Hong Kong Identity Card of any kind. If the Client obtains Hong Kong Identity Card at any time subsequent to

the point of time of account opening, the Client should notify the Bank forthwith. Thereafter, the Bank shall provide the Client with the service in accordance with the rules for Renminbi business applicable to Hong Kong resident;

- (g) it is a requirement for Hong Kong resident who opens Renminbi account with the Bank, to acknowledge that he does not open any Renminbi account as non-Hong Kong resident with other licensed banks in Hong Kong; and
- (h) the Client is required to acknowledge that the Client fully understands the foregoing provisions and potential risks associated with Renminbi business before the Client conducts the same, and agrees that the Client is willing to pay expenses and absorb all losses in relation to the transactions under Renminbi business.

7.5 The Client hereby acknowledges the perpetual risk of loss associated with the rapid movement in exchange rates. The Client hereby acknowledges that the Bank shall not be liable for any losses and damages arising out of or in relation to:

- (a) any change in laws, regulations or orders issued by any government agencies or any other relevant bodies or any cause beyond the Bank's control which prohibits the execution of Renminbi exchange and remittance service by the Bank or by any financial institution associated with the Bank; or
- (b) the Bank's inability to quote Renminbi exchange rate or vary the spread to buy or sell due to market condition or the closure of Renminbi market.

7.6 If the Bank provides any exchange service, it shall be done at such exchange rate as determined by the Bank at its absolute discretion and subject to such terms as prescribed by the Bank.

7.7 The Client hereby acknowledges that all Renminbi funds if deposited into a financial institution or any other company related to or associated with the Bank which is incorporated outside Hong Kong including China is not protected under the Deposit Protection Scheme Ordinance (Cap. 581 of the Laws of Hong Kong).

## **8. ACCOUNTS BELOW MINIMUM AMOUNT**

8.1 If the credit balance of any Account falls below any applicable minimum deposit or funding amount designated by the Bank for such type of Account from time to time, the Bank shall be entitled to impose a charge on such Account monthly or at such other interval as the Bank may determine from time to time until the credit balance of the Account resumes to such minimum deposit or funding amount.

## **9. INTEREST ON UNARRANGED OVERDRAFT**

9.1 All amounts overdrawn on any applicable Account accepted by the Bank without prior arrangement or exceeding the pre-arranged limit shall be repayable by the Client on demand and shall bear such interest at the rate of unarranged overdraft specified in the relevant schedule of fees and/or interest published by the Bank from time to time from the date drawn to the date of actual repayment (as well after as before judgment), provided that the Bank shall have the right to vary the basis of calculation of the interest rate at any time upon not less than thirty (30) days' prior written notice to the Client. Interest accrued but unpaid shall bear interest at the same rate and may be debited to the Account concerned or be compounded monthly at the Bank's discretion.

## **10. FEES AND DEPOSIT CHARGES**

10.1 The Bank shall have right to levy handling charge(s) and fees in connection with the provision and/or maintenance and/or operations, on any Account. Such charges and fees will be specified in the schedule of fees published by the Bank from time to time and will be made available to the Client upon request.

10.2 Notwithstanding anything herein contained to the contrary, the Bank hereby reserves the right to levy deposit charges to the Client against any credit balance held for the Client in any Account at such rate(s) as the Bank may determine from time to time.

## **11. PAYMENT OF INTEREST ON ACCOUNTS**

11.1 Payment to the Client of interest accrued on any Account is subject to interest tax, if any.

**SECTION 4**  
**TERMS AND CONDITIONS FOR CUSTODY SERVICES**  
**(the "T&Cs of Custody Services")**

1. These T&Cs of Custody Services shall apply, if at the Client's request, the Bank agrees to hold in custody any Assets on the Client's behalf, whether in Hong Kong or elsewhere. **For the purpose of these T&Cs of Custody Services, Assets exclude cash and monies and all references to Assets shall be construed accordingly. Without limitation to the generality of the foregoing, all cash received or held by the Bank, including proceeds and accruals attaching to any Financial Products and Transactions and any cash in any Account, will be held by the Bank as banker, and not as custodian or trustee and will not be held under the remaining terms in these T&Cs of Custody Services.**
2. The Bank may (but is not obliged to) open and operate a custodian account ("**Custodian Account**") for the purpose of holding any Asset on the Client's behalf. The Bank shall act as custodian and/or nominee of such Asset in accordance with these T&Cs of Custody Services and any Applicable Law. Notwithstanding the foregoing, the Bank may, in its absolute discretion, refuse to accept any Asset for custody.
3. To the fullest extent permitted by the Applicable Laws, any Asset held by the Bank or its nominee shall be at the sole risk of the Client, and the Bank and the relevant nominee shall be under no obligation to insure any of the Assets in custody against any kind of risk, which obligation shall be the sole responsibility of the Client.
4. The Client agrees and acknowledges that the Client shall not pledge, charge, sell, grant an option or otherwise deal in any of the Assets without the prior written consent of the Bank.
5. The Client agrees that all Assets held in custody by the Bank are subject to the Bank's rights and powers in Clause 13 of Section 1.
6. The Client represents and warrants that it is authorized to deposit all Assets received by the Bank for custody and to give instructions in relation thereto. The Client represents and warrants that the Assets or any applicable title or other documents submitted to the Bank for custody are authentic, valid and correct in every respect. In addition to and without prejudice to any other provision in this Agreement, the Client hereby agrees to fully indemnify the Bank any Losses that the Bank may suffer due to or arising out of the foregoing representations and warranties being untrue or incorrect in any respect.
7. The Client acknowledges and consents that all Assets held in custody by the Bank (except bearer stocks and other non-registrable Assets) will be registered in the Bank's name or (at the Bank's complete discretion) in the name of the Bank's nominee ("**Nominee**") and the Client authorizes the Bank and each of the Bank's Nominee to deliver the Assets to such person as may be required by Applicable Laws. The Bank may delay in procuring any such registration or delivery for such period as the Bank may think fit. The Bank will sign and execute all instruments of transfer and other documents as required by the Bank or any Nominee in the Bank's dealings with the Assets. The Client acknowledges that if the Bank does not become the registered owner of the Assets, the Bank may not be in a position to carry out all of the Bank's obligations as custodian, and the Bank will not be liable for any Losses that the Client may suffer or incur as a result thereof.
8. The Client acknowledges and consents that Assets held or registered in the Bank's name or its Nominee may in the Bank's absolute discretion be re-deposited with correspondent banks, sub-custodians or in any central clearing facility or securities depository or depository agent, or any other Agent, in or outside Hong Kong. The Bank shall not be responsible for any act or omissions or for the solvency of such correspondent banks, sub-custodians, central clearing facility, securities depository or depository agent or any other Agent selected by the Bank in good faith, and any Assets of the Client so custodised shall be at the Client's sole risk.
9. The Bank reserves the right to open additional sub-accounts for the Client in the Bank's discretion and to transfer Assets between such sub-accounts.
10. The Bank will or (if the Assets is held by a Nominee) the Bank will procure that the Nominee will:
  - (a) keep a separate record in the Bank's book of all Assets received and held for the Client's account from time to time; and
  - (b) arrange for all Assets to be held in safe custody in such manner and in such name as the Bank may in its discretion determine.

11. The Client acknowledges and agrees that Assets deposited with the Bank or held by any third party in the Bank's name or its Nominee may be held on a tangible basis or commingled with assets belonging to other parties. The Client understands and agrees that identification by distinctive numbers of any Asset owned by the Client may not be possible and that the Client's interest in such Assets may not be identifiable by separate certificates or other physical documents or equivalent electronic records. In such case, the Bank will maintain records of the Client's interest in such Assets which have been commingled in the manner as provided herein. Neither the Bank nor its Nominee or Agent holding any Asset on the Client's behalf shall be bound to return to the Client the identical Assets deposited in custody so long as such Assets returned to the Client are of the same class, denomination, quantity and nominal amount and rank pari passu with those originally deposited with or transferred to the Bank (subject always to any capital reorganisation in the meantime).
12. Where Assets are commingled with those of other parties:
- (a) in the event of an irreconcilable shortfall after the Bank's default or that of a Nominee or Agent, the Client may not receive its full entitlement and may share in that shortfall pro-rata among the Bank's other clients or such other parties or those of the Nominee or Agent;
  - (b) any distribution of entitlements to any benefits or entitlements arising as a result of corporate action will be allocated pro rata provided that: (i) fractions of entitlements that arise as a result of this process will be rounded down to the nearest whole unit or share; and (ii) the accumulated amount of any undistributed entitlements arising as a result of this process will be sold and the proceeds allocated pro rata; and
  - (c) where there is an allocation or share issue with rights weighted towards smaller investors, the Client's allocation may be less than it otherwise would have been entitled.
13. The Client hereby authorize the Bank to take such steps as the Bank may consider expedient to enable the Bank to hold the Assets in accordance with these T&Cs for Custody Services and without limitation to the generality of the foregoing, the Bank shall be authorized to:
- (a) acquire, hold in custody, dispose of or otherwise deal with such Assets on the Client's instructions or those of the Client or its Authorized Person provided that the Bank may, in the Bank's absolute discretion, require such instructions to be in writing and in a form satisfactory to the Bank before acting on the same;
  - (b) comply with all Applicable Laws, including any Applicable Laws which impose or purport to impose on a holder of any Asset kept in custody a duty to make or refrain from making any payment of monies or other distribution or from taking any action in respect of such Asset;
  - (c) register such Assets in the Bank's name and/or in the name of its Nominee and keep such Assets in such locations as the Bank shall think fit;
  - (d) use the services of any Nominee or other Agent for the purpose of holding in custody any Asset on such terms as the Bank deems appropriate, and where appropriate, authorize such Nominee or Agent to delegate the performance of some or all of its duties;
  - (e) request payment of, collect and receive interest, dividends, payments or other distributions in respect of any Asset;
  - (f) collect monies payable or any other property in respect of any Asset, at the Client's risk, in such currency as the Bank may, in the Bank's absolute discretion, determine, and pay such monies or deliver other property to the Client in such manner as the Bank may, in its absolute discretion, determine;
  - (g) surrender such Assets against receipt of monies payable at maturity or, if called prior to maturity, upon redemption provided always that where any Asset is to be redeemed prior to maturity, the Bank shall not be obliged to present such Asset for redemption unless the Client request in writing that the Bank does so after the redemption call is made;
  - (h) choose, on the Client's behalf and in the Bank's absolute discretion, to receive a distribution in cash or in kind, unless the Client has expressly instructed the Bank in writing of the Client's preferred type of distribution, provided always that where a distribution is to be received in kind, the Client agrees that the Bank shall be entitled to disregard any fractional entitlement and the Client hereby waives any right and claim to such fractional entitlement;
  - (i) where applicable, exchange any Asset in interim or temporary form for other Assets in definitive form and (where applicable), deliver physical scrip form of such Assets to any depository set up for the purpose of and/or operating scripless trading and to complete and deliver any document that may be required in connection therewith;
  - (j) deliver any document of title and any other instruments relating to such Assets to the Client at the Client's own risk;
  - (k) execute, as custodian, any necessary declaration or certificate of ownership under any Applicable Law now or in future; and
  - (l) take any action as the Bank shall think fit in the performance of the Bank's obligations under these T&Cs for Custody Services.
14. The Client understands and agree that the Bank is under no obligation to:

- (a) supervise or monitor any of the Client's investments or Transactions involving any Asset kept in custody with the Bank;
  - (b) advise or make any recommendation for any investment or Transactions in relation to the sale, purchase or disposal of any Asset kept in custody with the Bank unless the Bank agrees otherwise;
  - (c) assess the suitability and appropriateness of any investment or Transactions involving any Asset kept in custody with the Bank;
  - (d) assist the Client in claiming any tax benefit to which the Client may be entitled (whether under a tax treaty or any other Applicable Law) in connection with any Asset kept in custody with the Bank, including any exemption from, or a reduced rate of, withholding for income derived from such Asset;
  - (e) insofar as regards Assets in physical scrip form that are kept in custody by the Bank, provide any banking, processing or custodial service in respect of such Assets, save as expressly set out herein or as otherwise agreed to in writing; and
  - (f) attend or authorize the Client, as proxy, to attend any meeting or exercise any voting and other right attaching to or derived from such Assets or discharge any obligation conferred or imposed by reason of such holding (including rights or obligations in connection with any allotment, subscription, conversion, consolidation or reorganisation or any merger, receivership, bankruptcy, winding-up or other insolvency proceedings or any compromise or arrangement) or investigate, participate or take any affirmative action in connection therewith, provided always that the Bank may, in its absolute discretion and subject to such terms and conditions as the Bank may stipulate, accept and act in accordance with the Client's instructions in relation to any of the abovementioned matters.
- 15.** Unless otherwise instructed by the Client in writing, the Bank will take reasonable steps to forward to the Client, as soon as practicable after receipt, any notice or other communication (including those relating to redemption, rights issues, bonus issues and matters relating to corporate changes) received in respect of Assets kept in custody by the Bank pursuant to these T&Cs for Custody Services. If the Bank receives any notice or communication that does not call for any corporate action, the Bank shall have no obligation to forward such notice or communication to the Client. Save for Losses arising from gross negligence, fraud or wilful default on the Bank's part, the Bank and/or its Nominee shall not be liable for any Losses arising out of or in consequence of any failure to forward such notice or communication correctly or promptly or in sufficient time for instructions to be given to any matter referred to in such notice or communication.
- 16.** Without prejudice to Clause 14(f), after becoming aware of any corporate event (including any actual or proposed takeover, offer, sale, merger, compromise, arrangement, bankruptcy, insolvency or administrative proceedings affecting or in relation to any Asset or the issuer of any Asset or in relation to any rights for conversion, transfer or exchange of Asset), the Bank may (but shall not be obliged to), subject to such terms and conditions as the Bank may stipulate, accept and act in accordance with the Client's instructions in relation to any of the above-mentioned matters, provided always that in the absence of any instruction from the Client in due time, the Bank may take or not take any action as the Bank may, in its absolute discretion, consider reasonably appropriate under the circumstances. The foregoing is subject to the Bank's rights under this Agreement and/or any Specific Agreement in respect of such Asset.
- 17.** Without prejudice to any provision in these T&Cs for Custody Services, the Client acknowledges and agrees that the Bank may, on occasions, hold the same class of assets on behalf of one or more clients and in exercising any voting and other rights attached to such assets, the Bank will exercise such rights in accordance with the instructions given to the Bank by the majority of such clients, notwithstanding that the Client may have given contrary instructions in respect of the Assets. Further, the Client acknowledges that the Bank does not guarantee nor is the Bank under any obligation to ensure that any corporate action that may be taken by the issuer of any Asset would reflect and/or be in accordance with the Client's instructions to the Bank.
- 18.** In the absence of any prior contrary instruction from the Client, the Bank may settle, for and on the Client's behalf, any liability arising from or in respect of the Bank's holding of the Client's Assets. For this purpose, the Bank is authorized to debit such amount payable from any of the Client's Accounts and where necessary, effect any currency conversion at the prevailing rate of exchange, to settle such liabilities and the Bank shall not be liable for any Losses arising from the settlement of such liabilities or the failure to do so. The foregoing shall be without prejudice to any right of set-off and/ or lien that the Bank may have over such Assets and any other rights as set out in this General T&C over the Assets, including Clause 13 of Section 1.
- 19.** The Bank will furnish the Client with periodic statements in respect of the Client's Assets and notify the Client of any Transaction carried out in respect of such Assets in accordance with Applicable Laws.
- 20.** The provision of Services set out in these T&Cs for Custody Services does not constitute the Bank as a trustee (other than a bare trustee) and the Bank shall have no trust, fiduciary or other obligations in respect of any Asset kept in custody with the Bank pursuant to these T&Cs for Custody Services, save for those expressly provided for in these T&Cs for Custody Services or as otherwise agreed in writing.
- 21.** The Services to which these T&Cs for Custody Services applies may be terminated by the Client or the Bank in accordance

with this Agreement. Upon termination, the Bank will, subject to the release and discharge of any security created over any of such Assets in favour of the Bank, deliver all the Assets to the Client or to such other party as the Client may designate, provided always that Bank shall not be required to make any such delivery unless and until the Bank has received full payment of all Total Liabilities. The Client acknowledges that until payment in full of all Total Liabilities is made, the Bank shall have a right of lien in respect of the Assets and any other rights as set out in this General T&C over the Assets, including Clause 13 of Section 1.

- 22.** The Bank may charge fees for the custody services at such standard rates as specified in any schedule of fees published by the Bank from time to time and the Bank may vary, revise or amend the fees, charges, and/or commissions and the rate or the basis of calculation thereof at any time. The Client shall be bound by such rates and basis of calculation with effect from the date of such variation, revision or amendment as determined by the Bank in its absolute discretion. The Client may request for such schedule of fees, charges and/or commission from the Bank. Any such fees, charges and/or commissions shall be payable by the Client to the Bank on demand forthwith. The Bank may debit the fees against any of the Client's Account with the Bank at any time without notice.

**SECTION 5**  
**TERMS AND CONDITIONS OF INVESTMENT TRANSACTIONS**  
**(the "T&Cs of Investment Transactions")**

**1. GENERAL DEALING RULES**

1.1 Any Investment Transactions are subject to the Specific Agreement where applicable. To the extent there is any inconsistencies between the terms as set out in the General T&Cs and the Specific Agreement, the Specific Agreement shall prevail with respect to the Investment Transaction.

1.2 The Client acknowledges and accepts that instructions in relation to any Investment Transaction will not necessarily result in its execution. The Client's instruction will only be executed if:

- (a) market conditions permit; and
- (b) execution is in accordance with Applicable Laws.

If the Bank is unable to execute any instruction, the Bank will inform the Client as soon as reasonably practicable, whereupon such instruction will expire.

1.3 Once the Client has given an instruction, it may not be amended, rescinded or withdrawn without the Bank's written consent.

1.4 The Bank will only accept an instruction for any Investment Transaction if it is for execution on the day of instruction and if it is received before such cut-off time as the Bank may from time to time prescribe. Where for whatever reason such instruction has not been executed, it (or any unexecuted part of any such instruction in the case of a partially executed instruction) will be deemed to lapse at the expiry of the trading date specified in any such instruction. Any instruction for any Investment Transaction for execution on the date of the instruction must also be received before any relevant cut-off time in respect of any relevant Exchange, as determined by the Bank. All other instructions shall be given so as to allow the Bank sufficient time within which to comply. The Bank may at its discretion cancel open orders that have not been executed before the end of the month.

1.5 The Bank will not be liable for any Losses suffered or incurred by the Client by virtue of any delay in acting on any instruction or any partial completion of or failure or inability to act on any instruction for whatever reason (including without limitation any failure or error of any computer or electronic system or equipment). Such Losses would include Losses suffered or incurred as a result of any change in the price of any Financial Products or other assets between the time of giving to or receipt by the Bank of any instruction and the time at which any such instruction is acted on.

1.6 The Bank will execute orders for Investment Transactions on the Client's behalf and upon the Client's instructions, if such Investment Transactions are of a type or are traded on markets in which the Bank is prepared at its discretion to transact. The Client acknowledges and confirms that the Bank is authorized to effect Investment Transactions in accordance with the Applicable Laws and market practice from time to time of the relevant Exchanges and Clearing Houses, where applicable, and all Investment Transaction so effected shall be binding on the Client.

1.7 The Bank may upon instructions, effect Investment Transactions on any market or with such counterparty, negotiate and execute counterparty, account opening documentation and any other contracts and on the Client's behalf and take all routine or day-to-day decisions and otherwise act as the Bank consider appropriate in implementing the Client's instructions on Investment Transactions. Without limitation, the Client authorizes the Bank to instruct the Agent as the Bank may in its absolute discretion think fit to effect Investment Transaction and acknowledges that the terms of business of such Agent and the rules of any Exchange and Clearing House, where applicable, on and through which such Investment Transaction is executed and settled shall apply to such Investment Transaction and shall be binding on the Client.

1.8 Except otherwise agreed or where the Bank gives notice (whether in writing or otherwise) to the Client to the contrary, the Bank shall act as an agent of the Client in relation to any Investment Transaction undertaken by the Bank. The Client is therefore principally liable for, and shall assume all risks (including any counterparty or settlement risk) associated with all such Investment Transactions, notwithstanding that such Investment Transactions may have been undertaken in the Bank's name without disclosure of such agency. The Bank shall be absolutely entitled to all gains, profits and benefits derived from any Investment Transaction of the Client with the Bank.

1.9 Subject to any limitation or condition prescribed by Applicable Laws, the Bank and/or the Bank's Affiliate may, in respect

of any Investment Transaction undertaken on the Client's instruction:

- (a) be dealing as principal for the Bank or its own account in purchasing from or selling to the Client Securities or other Financial Products;
- (b) be matching such Investment Transaction with that of another of the Bank's customers or the Bank's Affiliate;
- (c) be receiving Remuneration or benefits and the Client agrees that the Bank or the Bank's Affiliate (as the case may be) may retain any Remuneration and shall be under no obligation to account for or disclose the same to the Client; and
- (d) have a direct or indirect Material Interest in any such Investment Transaction.

1.10 Without prejudice to any provision in this Agreement, the Client acknowledges that the Bank may, from time to time, have to accept sole and principal responsibility to any broker (notwithstanding that between the Client and the Bank, the Bank act as the Client's agent). The Client further acknowledge that by reason of the foregoing, the Securities, Investment Funds or other relevant Financial Products purchased may be regarded by the broker as being Securities, Investment Funds or other relevant Financial Products purchased by the Bank for the Bank's own account and this may result in prejudice to the Client.

1.11 In effecting Investment Transactions, the Bank may take all such steps as may be required or permitted by the Applicable Laws and market practice. The Bank will be entitled to take or not take any action the Bank considers fit in order to ensure compliance with the same and all such actions so taken will be binding on the Client.

1.12 Any day order placed with the Bank by the Client that has not been executed before the close of business of the relevant Exchange shall be deemed to have been cancelled automatically.

1.13 In the event that the orders are not executed in whole or in part, the Bank is not required to notify the Client immediately. The Client agrees that the Bank may execute an order in whole or in part.

1.14 The Client acknowledges that due to the trading practices of the Exchange in which the Investment Transaction is effected, it may not always be able to execute order at the price quoted "at best" or "at market" and the Client agrees in any event to be bound by the Investment Transaction effected by the Bank following any instructions given by the Client. Without limitation, the Client further acknowledges that where the Client initiates an order or specifies the venue or price at which the Investment Transaction is to be executed, the order for the Investment Transaction may also not always be effected in the best available terms and the Client agrees in any event to be bound by the Investment Transaction effected by the Bank following instructions given by the Client.

1.15 The Bank should handle orders of Clients fairly and in the order in which they are received, with priority given to Clients over the account of the Bank, or any account in which the Bank has an interest or the account of any employee or agent of the Bank. The Client agrees that the Bank may, at its absolute discretion:

- (a) aggregate and consolidate any instruction received from the Client in relation to any Securities, Investment Funds or other Financial Products with similar instructions received from other customers or with an order for its own account, but should give priority to satisfying orders of Clients in any subsequent allocation if all orders cannot be filled; and
- (b) to the extent permitted under Applicable Laws, allot or distribute the Securities, Investment Funds or other Financial Products purchased or sold arising from such consolidated instructions in any manner as the Bank deem fit. The Client accepts that such allotment or distribution or action by the Bank may result in Losses to the Client and the Client accepts the risk thereof as being for the Client's account. In the event that the consolidated instructions are only partially executed, the Client agrees that the Bank shall be entitled to allocate fewer units of Securities, Investment Funds or other Financial Products to the Client than that as may be instructed by the Client.

1.16 The Client's subscription or purchase of the Securities, Investment Funds or other Financial Products is subject to availability and the Bank will make any such allocation pro-rata so far as possible or based on other factors as the Bank deems fit, but will not allocate Securities, Investment Funds or other Financial Products which would result in an uneconomic holding, as determined by the Bank in its sole and absolute discretion from time to time. The Bank will not accept requests to alter or waive allocations after the event. Any allocation given to the Client will be binding on the Client, even if the market conditions change or there is any other change in circumstances. If allocated, the Bank will take up any amount of the Securities, Investment Funds or other Financial Products to the limit of the Client's full subscription or purchase.

1.17 The Bank may execute any order received from the Client in a series of Investment Transactions over a period of time; and report to the Client an average price for such series of Investment Transactions instead of the actual price for each Investment Transaction.

- 1.18 In the event of any default by any counterparty, the issuer or (if applicable) the guarantor of any Securities, Investment Funds or other Financial Products, the failure of the issuer or (if applicable) the guarantor to perform any of its obligations under the Financial Products, or the failure of the Bank's counterparty to perform any of its obligations to the Bank, as subscriber or purchaser of the Securities, Investment Funds or other Financial Products, the Client shall have no claim or right against the Bank whatsoever, and the Bank shall not be responsible or liable for any Losses which the Client may incur or sustain as a result thereof, in relation thereto or in connection therewith. The Bank will only pay the Client any monies (whether principal or interest) or deliver the Securities, Investment Funds or other Financial Products which the Bank actually receives from the issuer, guarantor or its counterparty in respect of the relevant Securities, Investment Funds or other Financial Products.
- 1.19 Subject to the Applicable Laws and market practice of the relevant Exchanges and Clearing Houses, the Bank may at the Bank's discretion determine the priority in the execution of the Client's orders, having due regard to the sequence in which such orders are received, and the Client shall not have any claim of priority to another client in relation to the execution of any order received by the Bank.
- 1.20 Unless otherwise agreed in writing or the Bank is already holding sufficient cash or the Financial Products in deliverable form on the Client's behalf, the Client will pay the Bank cleared fund or deliver to the Bank the Financial Products in deliverable form within the time limit as prescribed by the Applicable Laws and market practice of Exchange and Clearing House in order to settle the Investment Transaction.
- 1.21 Unless otherwise specified, all Investment Transactions undertaken on the Client's instruction shall be executed in the Bank's name and/or in the name of the Bank's nominee and all such Securities, Investment Funds or other Financial Products purchased shall be held by the Bank or its nominee, as custodian for the Client.
- 1.22 The Client agrees and acknowledges that the Applicable Laws may prohibit the Bank from placing a sale order on the Client's behalf when the order relates to Securities, Investment Funds or other relevant Financial Products which the Client does not own ("**Short Sell Order**"). The Client undertakes that prior to placing a Short Sell Order, the Client will have entered into an effective and valid securities borrowing arrangement or other form of arrangement acceptable to the Bank which will ensure that the Securities, Investment Funds or relevant Financial Products in issue will be delivered in a timely manner; and prior to execution of such Short Sell Order, the Client will provide the Bank with such documentary assurance that any such Short Sell Order is covered as the Bank shall prescribe. Further, the Client acknowledges that the Bank is entitled to request production of a copy of documentary evidence relating to the relevant securities borrowing transaction in such manner as the Bank shall consider fit. The Client undertakes to inform the Bank when a sell order amounts to Short Sell Order and, where required, shall provide the Bank with the assurance in accordance with Applicable Laws. The Client is fully responsible for understanding and complying with short selling requirements and short position requirements as amended from time to time and for any consequences of non-compliance with such requirements.
- 1.23 The Client undertakes to comply with any trading restrictions or position limits under Applicable Laws, irrespective of whether the Client trades through one or more banks or brokers. If any trading restriction or position limit is exceeded, the Bank may disclose the Client's identity and positions, and/or liquidate any of the Client's positions, if the Bank is required to do so by any Authority, Exchange or Clearing House.
- 1.24 In respect of each Investment Transaction undertaken on the Client's instructions, the Client shall ensure that all Applicable Laws (including any reporting and disclosure requirement and shareholding restriction) are strictly adhered to and complied with at all times and the Client agrees that the Bank need not enquire into or verify any action taken by the Client in connection therewith. The Client further warrants and represents that the Client's entry into each Investment Transaction does not contravene any Applicable Law, including Applicable Laws relating to insider dealing, market manipulation and/or any other trading offences.
- 1.25 Where any jurisdiction restricts foreign ownership of Securities, Investment Funds or other Financial Products, the Bank has no duty to ascertain the nationality of the owner of the Securities, Investment Funds or other Financial Products or whether the Securities, Investment Funds or other Financial Products deposited by the Client are approved for foreign ownership.

## **2. CLIENT'S MONEY AND SECURITIES**

- 21 The Client's money in the Account, after discharge of all the indebtedness of the Client owing to the Bank, shall be treated and dealt with in compliance with the provisions of the SFO and the Client Money Rules.
- 22 To the fullest extent permitted by the Applicable Laws, any of the Securities held by the Bank, any nominee, authorized financial institution or other persons approved by the SFC shall be at the sole risk of the Client, and the Bank and the relevant nominee, authorized financial institution and the approved persons shall be under no obligation to ensure any of the Securities against any kind of risk, which obligation shall be the sole responsibility of the Client.

- 23 The Client appoints the Bank to act as custodian for the Client to provide custody of the Client's Securities. The Client agrees and acknowledges that the Client shall not pledge, charge, sell, grant an option or otherwise deal in such Securities without the prior written consent of the Bank.
- 24 Any of the Securities held in Hong Kong by the Bank for safe keeping on the Client's behalf may, at the Bank's discretion:
- (a) (in the case of registrable Securities) be registered in the Client's name; or
  - (b) deposited in safe custody in a segregated account which is designated as a trust account or client account with an authorized financial institution as defined in the SFO, an approved custodian or another intermediary licensed by the SFC for dealing in securities in each case in Hong Kong.
- 25 Where the Securities are held by the Bank for safekeeping pursuant to this Clause, the Bank shall or shall procure any nominee or custodian appointed by the Bank to:
- (a) collect and credit any dividends or other benefits arising in respect of such Securities to the Account or make payment to the Client as agreed with the Client. Where the Securities form part of a larger holding of identical Securities held for you, the Client is entitled to the same share of the benefits arising on the holding as the Client's share of the total holding; and
  - (b) comply with any directions received from the Client as to the exercise of any voting or other rights attaching to or conferring on such Securities provided that reasonable prior written notice has been given to the Bank by the Client. Further, in the event that any payment or expense is required to be made or incurred in connection with such exercise, neither the Bank nor the Bank's nominee shall be required to comply with any directions received from the Client unless and until the Bank receives all amounts necessary to fund such exercise.
- 26 The Bank and the Bank's nominee are not obliged to redeliver to the Client the identical Securities received from or for the Client but may redeliver to the Client, at the Bank's office at which the Account is kept, Securities of same quantity, type and description.
- 27 Securities held by the Bank for safekeeping pursuant to this Clause are held by the Bank at the Client's sole risk and the Bank shall not be responsible for or liable in respect of any loss or damage suffered by the Client in connection hereof unless such loss or damage has been caused as a direct consequence of a fraud, wilful default or gross negligence on the Bank's part.
- 28 The Bank's obligations to deliver, to hold in safe custody or otherwise or to register in the Client's name, Securities purchased or acquired by the Bank on the Client's behalf shall be satisfied by the delivery, the holding or registration in the Client's name of Securities of the same class, denomination and nominal amount as, and rank *pari passu* with, those originally deposited with, transferred to or acquired by the Bank on the Client's behalf (subject always to any capital reorganization which may have occurred in the meantime) and the Bank shall not be obliged to deliver or return Securities which are identical to such Securities in terms of number, class, denomination, nominal amount and rights attached thereto.
- 29 The Bank may deal with Client Securities in accordance with:
- (a) an oral or written direction to sell the Client Securities or settle such a sale order;
  - (b) a written direction to withdraw Client Securities deposited in the segregated account or deal with the Securities registered in the Client's name; or
  - (c) a standing authority given by the Client to the Bank to the extent permitted by Applicable Laws.
- 2.10 Without prejudice to Clause 2.9, the Bank may dispose of any Client Securities in settlement of Total Liabilities owed by or on behalf of the Client to the Bank or a third person.

### **3. SETTLEMENT AND DELIVERY**

- 3.1 The Client's instructions may not be acted on if there are insufficient funds or pre-arranged credit available in the Account concerned. The Bank, however, may in the Bank's discretion act on such instruction despite the lack of available funds or pre-arranged credit, without seeking the Client's prior approval of or giving prior notice to the Client. In such event, the Client shall be liable for the resulting overdraft, advance or credit and shall repay the same to the Bank on demand together with interest thereon from the date of advance to the date of actual repayment (before and after judgment) calculated at the default interest rate as conclusively quoted by the Bank from time to time and compounded at such intervals as the Bank may reasonably determine from time to time. Where monies are payable in respect of any Investment Transaction in any currency, the Bank shall be authorized to carry out any foreign exchange transaction at its or its Agent's prevailing rates and to make any necessary withholding or deduction as may be required by Applicable Laws. Where the Client has placed several orders or instructions and there are insufficient monies or available pre-arranged credit to meet the resulting obligations, the Bank may in its discretion decide which of the orders or instructions will be executed, irrespective

of the order in which, or dates on which, the Bank receives them. The Bank reserves the right to debit any Account any amount due on an Investment Transaction before executing the Investment Transaction.

- 32 The Client acknowledges that the Bank is entitled to place order or enter into Investment Transaction for the purpose of carrying out or effecting any instruction without first checking whether there is sufficient fund or available pre-arranged credit. In such a case, if the instruction or an intended Investment Transaction concerned is carried out or effected but there is insufficient fund or insufficient pre-arranged credit for payment of such Investment Transaction, the Bank is entitled (but not under any duty), at any time at the Bank's discretion without giving notice to the Client, to place other order or enter into other Investment Transaction to counter the instructions so carried out or Investment Transaction so entered into as above and any Losses, deficit or shortfall arising therefrom or as a result thereof shall be entirely borne by and for the Client's account and the Bank shall be entitled to debit the same against any of the Account(s) with the Bank. However, if there is any gain, such gain shall belong absolutely to and be retained by the Bank for the Bank's own use and benefit. For the above purpose, the Bank's certificate in writing as to such Losses, deficit or shortfall and the amount thereof shall be binding and conclusive against the Client, save for manifest error.
- 33 The Client will take all actions necessary to enable the Bank to effect settlement and delivery of Financial Products as they fall due, and where applicable, in accordance with the requirements of the relevant Exchange or Clearing House including but not limited to making any appropriate payment and/or delivering any of the Financial Products or other Assets to the Bank in good time for the Bank to complete settlement and delivery.
- 34 When giving instructions to the Bank for the sale of any Securities, Investment Funds or other Financial Products, the Client shall ensure that the relevant Securities, Investment Funds or other Financial Products shall be delivered to or deposited with the Bank or the Bank's nominee by such date as may be notified by the Bank to the Client and that the Client is entitled to sell and deliver such Securities, Investment Funds or other Financial Products to the purchaser on the due date for settlement. If the Securities, Investment Funds or other Financial Products are not delivered to or deposited with the Bank or the Bank's nominee by the date as notified by the Bank to the Client, the Client acknowledges and agrees that the Bank shall, subject to Applicable Laws, have the right to purchase and/or borrow such number of Securities, Investment Funds or other Financial Products as is equivalent to the number of Securities, Investment Funds or other Financial Products sold by the Client, at such time and on such terms as the Bank thinks fit, for the purpose of effecting such delivery.
- 35 Without prejudice to other provisions hereunder and if the Bank does not receive either cash or the relevant Securities, Investment Funds or other Financial Products when due in respect of any Investment Transaction which the Bank is to settle or effect with or for the Client, or the Client does not take all steps necessary to secure the due and prompt settlement of any of the Investment Transaction, or the Client fails and/or neglects to meet or the Bank reasonably opines that the Client is about to fail to meet any other liability to the Bank or any third party, the Bank shall be entitled to (but not obliged) and at the Client's own costs and expenses, cancel, close out, terminate or reverse all or any of the Investment Transaction, buy in to settle or close out any short position created by the Client, and sell, realize, charge, pledge or otherwise dispose of any of the Securities, Investment Funds or other Financial Products, cash or other Assets held for the Client (including any Assets held in custody) or which the Bank may be entitled to receive or control on the Client's behalf at whatever price and in whatever manner the Bank sees fit in the Bank's absolute discretion (without being responsible for any Losses or diminution in price) and may at the Client's own costs enter into any other Transactions or do or not do anything (including the application of the Client's money held for the Client) which would or could have the effect of reducing or eliminating liability under any of the Investment Transaction, position or commitment undertaken by or for the Client.
- 36 Without limiting the generality of Clause 13 of Section 1, if the Client maintains more than one Account with the Bank, the Bank will, without prejudice to all the Bank's other rights or remedies provided by laws and other provisions hereunder, have the right to set-off the debit on one Account against the credit on another. If the accounts are expressed in different currencies they shall be converted into the settlement currency in the Bank's absolute discretion at the prevailing rate of exchange.
- 37 Without prejudice to the Bank's lien, right of set off or any other rights provided in this Agreement, it is agreed that all of the Investment Transaction executed by the Bank for the Client or with the Client shall be settled through any Account unless otherwise agreed. The Bank is authorized to put a hold on the sum in any Account equivalent to the aggregate of payment amount to be made by the Client under a buy order for the Securities, Investment Funds or other Financial Products placed with the Bank and the Bank's fees and charges once buy order is accepted by the Bank and to debit any Account with such sum to be paid on the settlement date. Unless otherwise agreed, any sum payable to the Client under any sell order may be credited into any Account.
- 38 Any crediting to the Client of cash or the Securities, Investment Funds or other Financial Products is subject to reversal if, in accordance with the Applicable Laws and market practice, the delivery of the Securities, Investment Funds or other

Financial Products or cash giving rise to the credit is reversed.

39 Any Losses suffered or incurred by the Bank as a result of any action taken by the Bank pursuant to its rights under the Agreement, including any Losses suffered or incurred as a result of any fluctuation in the market price of the Securities, Investment Funds or other Financial Products, shall be a debt due from the Client to the Bank repayable forthwith on demand, but any profit or gain made shall be forfeited to the Bank and the Client shall have no claim in respect thereof. For the avoidance of doubt, the Bank's rights in this Clause shall be in addition to and without prejudice to any right or remedy which the Bank may have under the Agreement and/or any Specific Agreement.

3.10 Any dividends, interest or other payments which may be received by the Bank in respect of any of the Securities, Investment Funds or other Financial Products may be applied by the Bank as if they were proceeds of sale hereunder notwithstanding that the power of sale may not have arisen and notwithstanding that subsequent to the execution of the Agreement the Bank may have paid any of the said dividends, interest or other payments to the Client.

#### **4. COMMISSIONS CHARGES AND INTEREST**

4.1 For any trading of any Financial Products (including for the avoidance of doubt, any Securities or Investment Funds), the Bank is authorized to deduct the Bank's fees, commissions and any other charges in connection with any of the Investment Transaction or the Financial Products effected with any person for the Client, including without limitation, all applicable levies imposed by Exchange or Clearing House, brokerage, stamp duty, charges, transfer fee, interest and nominee or custodial expenses immediately when it is due.

4.2 The Client is obliged to pay interest on all debit balances on any Account (including any amount otherwise owing to the Bank at any time) at such rates and on such other terms as the Bank notifies the Client from time to time. Such interest shall accrue on a day-to-day basis and shall be payable on the last day of each calendar month or upon any demand unless otherwise agreed.

4.3 The Bank may charge fees for the Services contemplated in these T&Cs for Investment Transactions, at such standard rates as specified in any schedule of fees published by the Bank from time to time provided that the Bank may vary, revise or amend the fees, charges and/or commissions, and the rate or the basis of calculation thereof at any time. The Client shall be bound by such rates and basis of calculation with effect from the date of such variation, revision or amendment as determined by the Bank in its absolute discretion. The Client may request for such schedule of fees, charges and/or commission from the Bank. Any such fees, charges and/or commissions shall be payable by the Client to the Bank on demand forthwith. The Bank may debit the fees against any of the Client's Account with the Bank at any time without notice.

#### **5. ADVICE, SOLICITATION AND RECOMMENDATION**

5.1 The Client acknowledges that unless otherwise agreed, the Bank does not provide the Client with investment advice as a Service and does not act as the Client's adviser or fiduciary in relation to any Investment Transactions.

5.2 The Client acknowledges that the Bank is not obliged to give advice or make any recommendations on any investments or Transactions.

5.3 However, if the Bank solicits the sale of or recommend any Financial Products to the Client, the Financial Product must be reasonably suitable for the Client having regard to the Client's financial situation, investment experience and investment objectives. No other provision in the General T&Cs or any other document the Bank may ask the Client to sign and no statement the Bank may ask the Client to make derogates from this Clause 5.3.

5.4 For the purposes of Clause 5.3, the Client understands that:

- (a) the Bank will only take into account circumstances relating to the Client which the Client has disclosed to the Bank or that the Bank should reasonably be aware of;
- (b) the Bank will not take into account the Client's investments which are held by the Client outside the Bank (unless the Client has specifically disclosed such investments to the Bank);
- (c) the Bank makes no representation and does not guarantee the outcome or performance of any investment made by the Client;
- (d) if the Client does not provide the Bank with the Client's up-to-date financial situation, investment experience and investment objectives, the Bank's ability to assess the suitability of any solicitation or recommendation may be affected;
- (e) the Bank may make available to the Client general information or general explanations about investments and investment strategies (including market views, research and/or investment ideas which are widely available to the Bank's customers) whether prepared by the Bank or others. Unless expressly acknowledged by the Bank in writing, none of this information is personalized or in any way tailored to reflect the Client's particular financial situation, investment experience or investment objectives;
- (f) where the Client instructs the Bank to enter into a Transaction, the Client does so on the basis that:
  - (i) the Client has carefully considered any information provided by the Bank (whether tailor made or not) in connection with any Transaction (including explanations of the risks and features of Transactions);

- (ii) the Client is satisfied with the information provided by the Bank (if any) in connection with the Transaction (including explanations of its risks and features); and
- (iii) the Client had the opportunity to ask questions and seek independent advice;
- (g) the Client must promptly notify the Bank if the Client does not understand any information provided by the Bank (whether tailor made or not);
- (h) subject to and save as otherwise required by Applicable Laws, the Bank does not accept any responsibility for the performance or monitoring of the Client's investments unless agreed with the Bank in writing;
- (i) subject to and save as otherwise required by Applicable Laws, the Bank will not advise the Client on an ongoing basis on the making and/or disposal of investments in the Client's accounts unless agreed with the Bank in writing; and
- (j) subject to and save as otherwise required by Applicable Laws, the Bank is responsible for being fully apprised of market prices and conditions and the effect of the same on any investments held by the Client unless agreed with the Bank in writing.

55 Where the Bank does not make a solicitation of the sale of or recommendation of any Financial Product, the following clauses shall apply:

- (a) the Client acknowledges that it has made and will make an independent assessment of each and every Financial Product and Investment Transaction before entering into such a transaction;
- (b) the Client has carefully considered any information provided by the Bank in connection with any Investment Transaction (including explanations of the risks and features of Investment Transactions, the Risk Disclosure Statement set out in Section 2 and any risks disclosed in the Agreement);
- (c) no communication from the Bank or the Bank's employees, agents or correspondents shall be construed as an advice, or any assurance, representation or guarantee of the outcome or performance of such product or any investment made by the Client;
- (d) the Client is satisfied with the information provided by the Bank (if any) in connection with the Investment Transaction (including explanations of its risks and features and the Risk Disclosure Statement set out in Section 2 and any risks disclosed in the Agreement);
- (e) the Client had the opportunity to ask questions and seek independent advice;
- (f) the Client is solely responsible for evaluating the merits and risks of the Investment Transaction and making its own decision to enter into the Investment Transaction and that each and every Investment Transaction entered into by the Client is executed solely at the Client's risk; and
- (g) the Bank shall be entitled, in its dealing with the Client, to rely materially on the Client's agreement therein to accept sole responsibility for the Investment Transaction.

## 6. MARGIN ACCOUNT

6.1 Margin may be required by the Bank prior to the entry into or in connection with certain Investment Transactions. The Client agrees to maintain the Margin Requirements and shall on demand pay such sum or assets by way of additional and/or supplemental Margin within such time limit (which may be within the same day) as may be determined by the Bank. The Margin Requirements may vary with each type of Investment Transaction, and is determined by the Bank, from time to time, in its absolute discretion.

6.2 The Bank shall be entitled to revise the Margin Requirements from time to time in the Bank's absolute discretion. No previous Margin Requirements shall establish a precedent and revised requirements once established shall apply to existing positions as well as to the new positions in the contracts affected by such revision.

6.3 If the value of the Margin is considered by the Bank to be insufficient or falls below what the Bank considers to be adequate (as determined by the Bank in its absolute discretion), the Bank may (in its absolute discretion and without limitation to all its other rights and remedies) take such action as it deems fit, including without limitation:

- (a) requiring the Client, the Security Party and/or any other person(s) to immediately on demand (whether such demand is made orally or otherwise) provide the Bank with additional Margin in such form and value acceptable to the Bank and subject to such terms and conditions as the Bank may stipulate. Demands for additional Margin may result from the Bank marking-to-market the Client's Account to reflect changes in the price of the relevant currency or asset, increased volatility in the price of the relevant currency or asset or other reasons determined conclusively by the Bank from time to time;
- (b) immediately sell or realise any and/or all of the Margin or any part thereof as the Bank deems fit without notice (whether oral or otherwise) to the Client, the relevant Security Party and/or any other person regardless of whether the Bank has made any demand under Clause 6.3(a) above or, in its absolute discretion, has granted, provided or extended time to the Client, the Security Party and/or any other person(s) to provide the Bank with additional Margin and such time granted, provided or extended has not expired; and/or
- (c) close out, liquidate, set off, sell, realise or otherwise deal with any or all of the Financial Products, other Assets or Investment Transactions (notwithstanding that any such Investment Transaction(s) has/have not yet matured and whether or not any Losses to the Client may arise as a result thereof) immediately or at such time and by

such means and in such manner as the Bank, in its absolute discretion, deems appropriate without notice (whether oral or otherwise) to the Client and/or any other person, regardless of whether the Bank has made any demand under Clause 6.3(a) or, in its absolute discretion, has granted, provided or extended time to the Client, the Security Party and/or any other person(s) to provide the Bank with additional Margin and such time granted, provided or extended has not expired.

- 6.4 While failure to pay the Margin when required within the period prescribed by the Bank from time to time will entitle the Bank to take any actions, including those as set out in Clause 6.3, the Bank is under no obligation to take such actions or take any other action in respect of positions opened or acquired on the Client's instruction.
- 6.5 All the Margin and other payments due by the Client to the Bank pursuant to the Agreement shall be made in cleared funds to such Account(s) or in such other forms as the Bank may from time to time specify. If the Client is by law required to make any deduction or withholding in respect of taxes or otherwise, then the Client will be liable to pay such sum to the Bank as will result in the Bank receiving a net amount equivalent to the full amount which would have been received had no such deduction or withholding been required.
- 6.6 The Bank may grant the Client a Margin Facility to an extent up to such percentage of the market value of the Securities or other Financial Products maintained with the Bank as may be determined by the Bank in its absolute discretion from time to time.
- 6.7 Without prejudice to the generality of Clause 13 of Section 1, as security for the performance of the Client's Total Liabilities under the Agreement, the Client hereby charges to the Bank by way of first fixed legal charge and as a continuing security:
- (a) all the Client's rights, title, privilege and interest in respect of Financial Products, cash and any other Assets;
  - (b) all the Client's rights under the Agreement including but not limited to all the Client's rights to delivery of cash, the Financial Products or other Assets;
  - (c) all the Financial Products or other Assets which, or the certificates or title documents to which, are for the time being deposited with or held by the Bank;
  - (d) all sums of money held by the Bank for the Client, the benefit of all accounts in which any such money may from time to time be held and all the Client's rights, titles and interest under any trust relating to such money or to such accounts as aforesaid; and
  - (e) all and any property and other rights in respect of or derived from the Assets referred to in this Clause, including, without limitation, any rights against any custodian, banker or other person.
- 6.8 The charge created in Clause 6.7 above is a continuing security and will extend to the ultimate balance of all the obligations, regardless of any intermediate payment or discharge in whole or in part. Such security is additional to any other security, guarantee or indemnity now or subsequently held by the Bank in respect of the obligations under the Agreement and the security is not in any way prejudiced or invalidated by any of other security, collateral, guarantee or indemnity now or hereafter deposited with or held by the Bank and shall remain in full force and effect until discharged by the Bank. Further, the security shall not be prejudiced or invalidated by the illegality, invalidity or unenforceability of, or any defect in, any provision of any documents relating to the Margin Facility or any security, indemnity or guarantee provided to the Bank whether on the ground of ultra vires, not being in the interest of the relevant person or not having been duly authorized, executed or delivered by any person or for any other reason whatsoever.
- 6.9 Whenever there is any obligation hereunder which is outstanding, the Bank has the right, without prior notice or reference to or consent from the Client, to dispose of or otherwise deal with any part of the Assets comprising the security at the Bank's absolute discretion upon such terms and in such manner the Bank thinks fit for settlement of the outstanding obligations to protect the Bank's interest, in particular for the Client's failure in meeting any call for the security or the Margin made by the Bank or significant fluctuation in market prices. In the event of any deficiency after the sale of the Assets comprising the security, the Client shall make good and pay on demand to the Bank such deficiency.
- 6.10 The Client shall pay or reimburse the Bank immediately upon demand all costs (including collection expenses and legal costs on a full indemnity basis) and expenses in connection with the enforcement or preservations of any right of the Bank under the Agreement.
- 6.11 Subject to the Applicable Laws and market practice and without prejudice to the generality of the provisions herein, the Bank is empowered to deal with the Financial Products which are not charged to the Bank and the Bank shall have absolute discretion to determine which Financial Products are to be disposed of for the purpose of discharging any liability owed by the Client to the Bank for:
- (a) dealing in the Financial Products which remains after the Bank has disposed of all other Assets designated as the security for securing the settlement of that liability; or
  - (b) the Margin Facility provided by the Bank to the Client which remains after the Bank has disposed of all other Assets designated as the security for securing the settlement of that liability.

- 6.12 Subject to the Applicable Laws and market practice and without prejudice to the generality of the provisions herein, the Bank is authorized to dispose of the Financial Products and the Bank shall have absolute discretion to determine which Financial Products charged to the Bank are to be disposed of in settlement of:
- (a) the Client's obligation to maintain the Margin; or
  - (b) any of the Client's liability to repay or discharge under the Margin Facility provided by the Bank; or
  - (c) any of the Client's liability to settle the Investment Transaction against which liability the security has been provided by the Client; or
  - (d) any liability owed by the Client to the Bank for dealing in the Financial Products which remains outstanding after the Bank has disposed of all other assets designated as the security for securing the settlement of that liability.
- 6.13 The Client authorizes the Bank in the Bank's discretion to deposit, transfer, lend, pledge, re-pledge or otherwise deal with such of the Financial Products to any other parties in whatsoever manner and for any purpose (including without limitation as security for financial accommodation provided to the Bank) as the Bank thinks fit in accordance with the Applicable Laws.
- 6.14 No purchaser from or other person dealing with, shall be concerned to enquire whether any of the powers exercised or purported to be exercised has arisen or become exercisable, whether obligations remain outstanding or to the propriety or validity of the exercise or purported exercise of any power and the title of such a purchaser and the position of any such person shall not be impeachable.
- 6.15 The Client irrevocably appoints by way of security the Bank and any person from time to time nominated by the Bank as the Client's attorney with full power of substitution for the Client and in the Client's name and on the Client's behalf and as the Client's act and deed to execute documents and take such other acts and steps as may be required to facilitate the enforcement of the security.
- 6.16 The Client agrees that the Client shall (at the Client's own costs) from time to time on request execute documents and take such other acts and steps as the Bank may require to perfect or preserve the security and to create new or further security interest over the same, to facilitate the enforcement of any of the security.

## **7. NEW ISSUE APPLICATION/INITIAL PUBLIC OFFERING/PLACEMENT OF SECURITIES AND OTHER FINANCIAL PRODUCTS**

- 7.1 The Client shall familiarize itself and abide by all the terms and conditions governing the Securities, Investment Funds or other Financial Products to be newly listed and/or issue and the application for such new Securities, Investment Funds or other Financial Products set out in any prospectus and/or offering document and the application form or any other relevant documents in respect of such new listing and/or issue and the Client acknowledges and agrees to be bound by such terms and conditions in any such Investment Transaction the Client may have with the Bank.
- 7.2 The Client acknowledges and understands that the legal, regulatory requirements and market practice in respect of application for new Securities, Investment Funds or other Financial Products may change from time to time. The Client undertakes to provide to the Bank with such information and take such additional steps and make such additional representations, warranties and undertakings as may be required in accordance with the Applicable Laws and market practice.
- 7.3 The Bank may, on the Client's instruction but subject always to the provision and/or execution of such documents and indemnities as the Bank may require, subscribe for Securities on the Client's behalf, pursuant to an initial public offering or private placement. Unless the Bank agrees otherwise, each such instruction shall be irrevocable.
- 7.4 When the Client asks the Bank to apply for new issues on the Client's behalf, the Client represents and warrants to and agrees with the Bank that:
- (a) the Bank is under no obligation to provide the Client with the prospectus, information memorandum, application forms or other offering document relating to such initial public offering or a private placement of Securities (collectively, the "Offering Documents"). By instructing the Bank to subscribe for such Securities on the Client's behalf, the Client confirms that the Client have obtained a copy of the Offering Documents and have read, understood and fully accept all the terms and conditions stated therein;
  - (b) the Client shall ensure that the Client fulfill and comply fully with any investor requirements, conditions of subscription, selling and/or other restrictions specified in the Offering Documents;
  - (c) where the Client have instructed the Bank to subscribe for Securities on the Client's behalf pursuant to any initial public offering or private placement of such Securities, the Client agrees that the Client shall not make any other application for subscription of the same Securities, whether directly or through any agent or nominee.
  - (d) where the Bank is required to make certain representations and/or warranties on the Client's behalf to other third parties in connection with such subscription of Securities, the Client shall ensure that each such representation

and/or warranty shall be true, correct and not misleading in any way and the Client shall forthwith notify the Bank in writing of any matter arising in the future which may render any such representation and warranty untrue, inaccurate or misleading in any way;

- (e) the Client acknowledges that the Bank is under no obligation to ensure the success of any application for subscription of Securities made on the Client's behalf in any initial public offering or private placement. If any such application (or any part thereof) is successful, the Client agrees that the Bank may, subject to Applicable Laws, allocate the Securities allotted pursuant thereto to the Bank's customers in such manner as the Bank deem appropriate and the Client shall be bound by any such allocation (notwithstanding that it may be fewer than the quantity the Client had instructed the Bank to subscribe for);
- (f) the applicants under such applications are fully entitled to make such application and hold the Securities applied for and no breach of any laws, regulation or other requirement in any part of the world will arise or result from the making or approval of any such application; and
- (g) the Bank is fully authorized to sign an application on the Client's behalf.

75 The Client agrees and acknowledges that the foregoing declaration and/or representation will be relied on by the Bank when making the application, and by the issuer in determining whether it will make allotment to such application.

76 Unless otherwise specified, all Securities Transactions undertaken on the Client's instructions shall be executed in the Bank's name and/or the name of the Bank's nominee. All such Securities purchased by the Client shall be held in the Bank's name and/or in the name of the Bank's nominee for and on the Client's behalf and shall be subject to the T&Cs for Custody Services.

## 8. ADDITIONAL TERMS FOR INVESTMENT TRANSACTIONS IN INVESTMENT FUNDS

8.1 The following provisions shall apply for Investment Transactions in Investment Funds.

8.2 The Client acknowledges and agrees that the Bank's distribution of any Investment Fund is not to be seen as a recommendation of such Investment Fund by the Bank. The Bank is not responsible for any Investment Fund or its performance. Unless otherwise stated, the Client acknowledges that the Bank is not the author of any prospectus, offering memorandum, private placement memorandum, information memorandum, Term Sheet, constitutive documents, application forms, subscription agreement or other offering documents of the Investment Funds ("**Fund Offering Document**") and the Bank shall have no liability whatsoever to the Client for any error, misstatement or omission in any Fund Offering Document or any other information received by the Client from the manager, issuer, adviser or agent of the Investment Fund ("**Fund Representative**") or otherwise on the relevant Investment Fund or any Losses suffered or incurred by the Client in connection with any investments in Investment Funds or steps taken or omitted to be taken by the Client on the basis of any Fund Offering Document.

8.3 Without prejudice to any provision in this Agreement and/or any Specific Agreement, the Client agrees that the Bank shall not be liable or responsible for any action, omission, error, neglect, default or delay on the part of any Investment Fund or Fund Representative.

8.4 If the Client wish to raise any question or seek further details in respect of any Investment Fund, the Client may address such questions to the Bank in writing and the Bank will use reasonable endeavours to obtain a written response to such questions from the relevant Investment Fund or Fund Representatives. Notwithstanding the above, the Bank shall not be obliged to obtain satisfactory written responses to the Client's questions and the Client agree that the Bank shall have no liability for failing or omitting to do so.

8.5 The Client acknowledge that the Bank may receive from the Investment Fund or any Fund Representative Remuneration in respect of the Client's investments in the Investment Fund. The Client agrees that the Bank shall be entitled to retain such Remuneration and shall not be liable to account to the Client for the same.

### Acquisition and Custody of Investment Fund

8.6 At the Client's request, the Bank may (but shall not be obliged to) act as the Client's agent in placing any order for the acquisition of any Investment Fund.

8.7 All investments in the Investment Fund shall be issued to, registered and held in the Bank's name and/or in the name of the Bank's nominee for and on the Client's behalf and shall be subject to the T&Cs for Custody Services.

8.8 The Client hereby undertakes, represents and warrants to the Bank that:

- (a) the Client shall promptly execute any subscription agreement, Specific Agreement or other document that may be required by the Bank, the Investment Fund or the Fund Representative;
- (b) the Client has received and read the Fund Offering Documents and fully understand the structure of and the terms and conditions applicable to the Investment Fund (including any restrictions on redemption and capital commitment) and the risks associated therewith;
- (c) the Client shall ensure that the Client fulfill and comply fully with any investor requirements, conditions of

subscription, selling and/or other restrictions specified in the Fund Offering Documents;

- (d) the Bank and/or the Bank's nominee are authorized to execute all agreements and other documents (including any subscription agreement) and generally do all such acts and exercise such discretion as the Bank or the Bank's nominee consider expedient or necessary in connection with any investment in the Investment Fund; and
  - (e) where the Bank and/or the Bank's nominee are required to provide any representation and warranty to the Investment Fund or any Fund Representative on the Client's behalf, the Client shall ensure that each such representation and warranty shall be true, accurate and not misleading as if the same is provided by the Client and the Client shall forthwith notify the Bank in writing of any matter arising in the future which may render any such representation and warranty untrue, inaccurate or misleading in any way.
- 8.9 The Client agrees that the Bank and/or the Bank's nominee may aggregate and consolidate the Client's orders for the acquisition of any Investment Fund with orders received from other customers, either daily or from time to time, before transmitting such aggregated order to the Investment Fund or the Fund Representative.
- 8.10 The Client acknowledges and agrees that, to the extent permitted under Applicable Laws, the Bank may, in the Bank's absolute discretion, allot or distribute any Investment Fund issued to the Bank pursuant to such aggregated order amongst the Client and other customers in any manner as the Bank may deem appropriate and the Client shall be bound by any such allotment or distribution (notwithstanding that it may be less than the number of units specified in the Client's order). The Client accepts that such allotment or distribution by the Bank may result in Losses to the Client and the Client accept the risk thereof as being for the Client's account.
- 8.11 The Client acknowledges that acceptance of any order placed on the Client's behalf for the acquisition of any Investment Fund is at the absolute discretion of the Investment Fund or, as the case may be, the Fund Representative and the Bank is under no obligation to ensure the same. If any such order is rejected (whether in whole or in part) by the Investment Fund or, as the case may be, the Fund Representative, any payment made for the Investment Fund shall be returned to the Client, without interest, within a reasonable period of time and in such manner as the Bank shall deem appropriate.
- 8.12 The Bank shall, or shall procure the Bank's nominee to, record and hold in a separate account in the Bank's or the Bank's nominee's books, all Investment Funds received and held by the Bank or the Bank's nominee from time to time for the Client's account. In this regard, the Client acknowledges and agrees that the Bank shall be entitled, without prior notice to or consent from the Client and without any liability on the Bank's and/or the Bank's nominee's part, round down the number of units of any Investment Fund held for the Client's account in the Bank's books to two decimal places in the event the actual number of units of such Investment Fund is more than two decimal places. In such circumstances, the Client agrees to waive and relinquish in the Bank's favour all claims for any shortfall in the number of units of Investment Fund that may arise (if any) due to such rounding down.
- 8.13 The Client acknowledges that:
- (a) the Bank may rely on valuations from the Investment Fund, the Fund Representative and/or other third parties for the purposes of reporting to the Client the value of any Investment Fund; and
  - (b) the Bank is under no duty to seek to verify the accuracy or otherwise of such valuations. Any price or value that the Bank may provide to the Client in respect of the Investment Fund is not final and binding and is only indicative and the Bank shall not be responsible or liable for any Losses, whatsoever and howsoever arising from any use of or reliance on the same.

#### **Redemptions and Distributions**

- 8.14 The Client acknowledges that any redemption of the Client's Investment Fund may only be made in accordance with the terms of the Fund Offering Documents.
- 8.15 Unless otherwise notified to the Bank, the Bank may credit any redemption proceeds, dividends and other income and monies in relation to any Investment Fund received by the Bank on the Client's behalf into any Account or make payment of the same by any means that the Bank consider appropriate. The proceeds, dividends, income and monies credited to any Account or otherwise paid to the Client shall be net of any applicable taxes, fees, charges or expenses incurred by the Bank and the Client agree that the Bank shall not be required to ascertain, or otherwise be responsible for the adequacy of such redemption proceeds, income or monies received.

#### **Switching**

- 8.16 The Client acknowledges that any switching or exchange of the Client's Investment Fund may only be effected in accordance with the terms of the Fund Offering Documents.
- 8.17 If the Client instructs the Bank to effect a switch of any Investment Fund, the Bank will subscribe for the Investment Fund required by the Client only after the confirmation and completion of the redemption of the relevant existing Investment Fund which are being switched.

### **Transfer of Investment Fund**

- 8.18 Unless otherwise provided herein or in any Specific Agreement, any transfer of the Client's Investment Fund, if permitted under the Fund Offering Documents, shall be subject to the Bank's prior approval and on such terms as the Bank may, in the Bank's absolute discretion, specify. Without prejudice to the foregoing, the Client shall ensure compliance with the procedures (if any) set out in the Fund Offering Documents, including obtaining any approval (whether from the board of directors of the Investment Fund, the Fund Representative or otherwise) as may be required for such transfer, and neither the Bank nor the Bank's nominee shall be under any obligation in this regard.
- 8.19 The Client further acknowledges and agrees that the Bank shall not be obliged to arrange for the transfer of any Investment Fund until all the Client's Total Liabilities (including any outstanding fees and expenses payable) are fully discharged.

### **Investment Fund-initiated Transactions**

- 8.20 If, at any time, for any reason whatsoever, the Investment Fund or any Fund Representative instructs the Bank or the Bank's nominee, as registered holder of any Investment Fund, to divest, transfer or otherwise dispose of any such Investment Fund, the Bank shall, subject to these terms and/or any Specific Agreement, seek the Client's instructions as to how the Client wish to proceed. In the absence of any instruction from the Client in due time or if a satisfactory course of action cannot be agreed with the relevant Fund Representative or Investment Fund within any time period specified for this purpose, the Bank shall, subject to the terms of the Fund Offering Documents, redeem or procure the Bank's nominee to redeem, the relevant Investment Fund and any redemption proceeds received in connection therewith shall be paid to the Client in accordance with the terms herein.

### **Commitment Calls by the Investment Fund**

- 8.21 The Client acknowledges that certain Investment Funds may require the Client to make capital contributions from time to time up to the amount the Client have committed to invest in the Investment Fund. The Client shall ensure that there are sufficient funds in the Client's Account to satisfy all such commitment calls.
- 8.22 If there are insufficient funds in the Client's Account as of the deadline stipulated in any drawdown notice issued by the Bank and/or if the Client fails to make the required capital contribution in respect of any commitment call, the Client agrees that the Bank may take such action as the Bank considers necessary to preserve the Bank's rights and interests, including transferring the Client's Investment Fund to be held directly by the Client in the Client's name without the Client's prior consent. The rights conferred on the Bank in this Clause are in addition to, and shall not prejudice any other rights or remedies which the Bank may have under this Agreement and/or any Specific Agreement.

### **Disclosure of Information**

- 8.23 The Client agrees that the Bank and the Bank's nominee may, upon any request by the Investment Fund and/or the Fund Representative, disclose any Client Data (including the Client's identity and/or the identity of any beneficial owner(s) of any Investment Fund) to such person(s) (including the Investment Fund, the Fund Representative or any government, quasi-government, regulatory, fiscal, monetary or other Authority or agency) and for such purpose(s) in connection with the Client's Investment Fund as may be specified in such request. The rights conferred on the Bank in this Clause are in addition to, and shall not prejudice, any other rights that the Bank may have under this Agreement, any Applicable Law or any Specific Agreement.

## **9. CHINA CONNECT**

- 9.1 Without prejudice to any other provisions in the Agreement, the Client acknowledges and accepts the following additional terms and conditions applicable to trading in Securities listed in the Shanghai Stock Exchange ("**SSE**") and/or Shenzhen Stock Exchange ("**SZSE**") ("**China Connect Securities**") through the China Connect ("**Northbound Trading**"):
- (a) The Client must understand and comply with all the applicable by-laws, codes, rules and regulations of SSE and/or SZSE ("**SSE/SZSE Rules**") and other Applicable Laws and regulations of Mainland China relating to Northbound Trading (together "**Northbound Trading Regulations**"). The Client acknowledges that if the Client is in breach of any Northbound Trading Regulations, the Client will be subject to regulatory investigation and be personally liable to any legal and regulatory consequences. The Bank will not and does not intend to advise the Client on any of such Northbound Trading Regulations. The Client should consult the Northbound Trading Regulations (including but not limited to the information about Northbound Trading Regulations published by Hong Kong Exchanges and Clearing Limited which can be accessed at its website) and obtain professional advice as necessary;
  - (b) The Client hereby agrees and authorizes the Bank to do or not to do whatever act without the Client's prior approval in connection with any Northbound Trading of the Client as the Bank in the Bank's absolute discretion deems appropriate to comply with any Northbound Trading Regulations or any orders, directions, notices or requests from any Authorities. The Bank shall not be liable for any Losses directly or indirectly suffered by the Client arising from or in connection with such action or inaction of the Bank;
  - (c) The Client must understand fully the rules and regulations of Mainland China in relation to securities investment, such as short-swing profits, disclosure obligations and follow such rules and regulations accordingly;

- (d) The Bank may in the Bank's absolute discretion refuse to execute or complete any instructions from the Client on any grounds such as, for example, in the Bank's reasonable belief, execution of such instructions may not be compliant with any Northbound Trading Regulations, or the Client does not have sufficient securities to settle delivery obligation or sufficient cash (in Renminbi) to settle payment obligation;
  - (e) Pre-trade checking is in place so that the Client must have the Client's Securities transferred to the Bank's corresponding Central Clearing And Settlement System ("CCASS") account before the commencement of trading on a trading day if the Client intends to sell the Securities during a trading day;
  - (f) All trading must be conducted on SSE/SZSE, i.e. no over-the-counter ("OTC") or manual trades are allowed;
  - (g) No day trading is allowed;
  - (h) Naked short selling is not allowed;
  - (i) Foreign shareholding restriction (including the forced-sale arrangement) is in place and the Bank has the right to "force-sell" the Client's shares upon receiving the forced-sale notification from the Exchange;
  - (j) The Bank has the right to cancel the Client's orders in case of contingency;
  - (k) The Bank may not be able to send in the Client's order cancellation requests in case of contingency such as when the Exchange loses all its communication lines with SSE/SZSE and the Client shall still bear the settlement obligations if the orders are matched and executed;
  - (l) At the request of the Exchange (for the purposes of assisting SSE/SZSE or other regulators of Mainland China in its regulatory surveillance, investigation and/or enforcement, or otherwise as part of the regulatory cooperation between the Exchange and SSE/SZSE or other regulators of Mainland China), the Bank may forward the information in relation to the Client, including but not limited to the Client's identity, personal data and trading activities, to the Exchange which may on-forward such information to SSE/SZSE or other regulators of Mainland China for such surveillance, investigation or enforcement purposes;
  - (m) If any Northbound Trading Regulations is breached, or the disclosure and other obligations referred to in the SSE/SZSE Listing Rules or SSE/SZSE Rules is breached, SSE/SZSE has the power to carry out investigation, and may, through the Exchange, require the Bank to provide relevant information and materials (in relation to, including but not limited to, the Client's identity, personal data and trading activity) and to assist in its investigation. The Client shall upon request by the Bank, SSE/SZSE or the Exchange provide such information and provide such assistance as requested. The Client hereby waives the benefit of any applicable secrecy laws and personal data protection laws;
  - (n) The Exchange may upon SSE's/SZSE's request, require the Bank to reject or cancel orders from the Client;
  - (o) The Client needs to understand and accept the risks concerned in Northbound Trading, including but not limited to prohibition of trading Securities listed in SSE/SZSE, being liable or responsible for breaching the SSE/SZSE Listing Rules, SSE Rules and other Applicable Laws and regulations;
  - (p) SSE/SZSE may request the Exchange to require the Bank to issue warning statements (verbally or in writing) to the Client, and not to extend Northbound Trading to the Client;
  - (q) The Bank shall have no obligation to collect or receive or take any other action in relation to any payment or distribution in respect of China Connect Securities for the Client's account, or to notify the Client about any notice, circular, announcement or similar corporate action in respect of China Connect Securities;
  - (r) The Client shall be solely responsible for all fees, charges, levies and taxes and all filing, tax returns, and other registration or reporting obligations as may be required by any relevant Authority, relating to any of the Client's investment through Northbound Trading and any income, dividend, profit and entitlement in respect of such investment; and
  - (s) The Bank, Hong Kong Exchanges and Clearing Limited, the Exchange, the Exchange's subsidiaries, SSE/SZSE and SSE's/SZSE's subsidiaries and their respective directors, employees and agents shall not be responsible or held liable for any Losses suffered by the Client or any third parties arising from or in connection with Northbound Trading or the China Connect.
- 92 The Client acknowledges and agrees that to the fullest extent permitted by laws, the Bank shall not be held liable for any Losses incurred or sustained by the Client arising out of or in connection with the Northbound Trading.
- 93 The Client acknowledges and agrees to accept the risks associated with the Northbound Trading including, without limitation, the following:
- (a) the Client's participation in the Northbound Trading is not protected by the China Securities Investor Protection Fund in China;
  - (b) when the respective aggregate quota balance for the Northbound Trading and the Southbound trading falls below the daily quota, the corresponding buy orders will be suspended on the immediately following trading day whereas sell orders will still be accepted unless and until the aggregate quota balance returns to the daily quota level. Once the daily quota is used up, the corresponding buy orders will not be accepted and will also be suspended forthwith, and in the meantime, no further buy orders will be accepted for the remainder of the trading day. Notwithstanding the above, sell orders will continue to be accepted and the accepted buy orders will not be affected by the using up of the daily quota. Whether buying services will be resumed on the following trading day depends on the aggregate quota balance position;

- (c) in so far as the Northbound Trading is concerned, the Client is prohibited from naked short selling in A-shares. The Client's selling of A-shares via the Northbound Trading will not be permitted to participate in any securities lending in China;
- (d) the trading days in Hong Kong and China are not the same because of the differences in holidays. Further, the differences in trading day may be triggered by bad weather conditions in China. Thus, the trading days and trading hours in the two markets are different. The Northbound Trading and the Southbound trading will only be operated upon the days when both markets are open for trading and banks in both markets are open to process settlements on the respective days. In the said premises, it is possible that there exist occasions where Hong Kong investors cannot trade any A-share on the trading day of China market. The Client is advised to carefully take note of the days and the hours which China Connect is open for business. In addition, the Client should determine whether or not to take on the risk of price fluctuations in A-shares during the time when China Connect is not trading in accordance with the Client's own risk tolerance level;
- (e) an eligible stock will turn to be non-eligible stock for trading via China Connect for a number of reasons. In that event, that stock can only be sold but prohibited from being bought. This may jeopardize the Client's investment portfolio or strategies. Please remain alert as to the list of eligible stocks as provided and renewed from time to time by SSE, SZSE and the Stock Exchange of Hong Kong ("**SEHK**") ;
- (f) the Client will only be permitted to sell A-share but is prohibited from further buying in the event that: (a) the A-share subsequently ceases to be a constituent stock of the relevant indices; (b) the A-share is subsequently subject to "risk alert"; and/or (c) the corresponding H share of the A-share subsequently ceases to be traded on SEHK. The Client should also note that price fluctuation limit would be applicable to A-shares;
- (g) A-shares listed companies and trading of A-share are all subject to applicable rules and disclosure requirements of the A-share market. Any changes in laws, regulations and policies of the A-share market or rules in relation to China Connect may have impact on the share prices (whether adverse or not). Further, foreign shareholding disclosure requirements applicable to A-share should be noted;
- (h) the Client will be subject to restrictions on trading (including, without limitation, restriction on retention of proceeds) in A-shares as a result of the Client's interest in the A-shares. Also, the Client is solely liable to compliance with all notifications, reports and applicable requirements in connection with the Client's rights and interests of and in A-shares;
- (i) under the prevailing rules in China, once the Client holds up to 5% of the shares of a listed company traded on the SSE or SZSE, the Client is required to disclose the Client's interest within three working days and during which the Client cannot trade the shares of that listed company. The Client is reminded that the Client is required to disclose any change in the Client's shareholding and comply with the applicable trading restrictions in accordance with the rules promulgated in China from time to time;
- (j) it is the prevailing market practice in China that the Client as beneficial owners of A-shares are prohibited from appointing proxies to attend shareholders' meetings on the Client's behalf; and
- (k) in addition to trading fees and stamp duties in connection with A-share trading, the Client should also take note that any new fees, tax and levy which is imposed or determined by the competent Authorities in carrying out the Northbound Trading.

## 10. ADDITIONAL TERMS FOR OTC DERIVATIVES

10.1 The following provisions shall apply for OTC Derivatives Transactions, except in the case where the Client enters into an ISDA Master Agreement with the Bank.

10.2 The following definitions are applicable in this Clause 10:

**"Application"** means the Client's irrevocable application, subscription, instruction, order or offer, whether in written, electronic, oral or any other form or manner, to the Bank for any OTC Derivatives Transaction as set out therein or evidenced thereby;

**"Confirmation"** means the document (howsoever named) issued or signed by the Bank setting out or incorporating the terms, details and particulars of the OTC Derivatives Transaction and constituting the Bank's confirmation of entering into, execution and completion of or the acceptance of the Transaction in respect of the OTC Derivatives pursuant to the Term Sheet, the Application and this Clause;

**"Credit Support Document"** means any credit support annex, credit support deed, credit support documents or any other document which by its terms secures, guarantees or otherwise provide assurance for any of the liabilities from time to time;

**"Credit Support Provider"** means any person (other than the Client) who has provided a Credit Support Document in favour of the Bank;

**"ISDA Definitions"** means definitions and annex or supplement to the definitions published by the International Swaps and Derivatives Association, Inc. from time to time;

**"Mandates"** means the Account Mandate for Settlement Accounts executed by the Client in favour of the Bank in relation to the operation and conduct of the Settlement Account and OTC Derivatives, as from time to time amended or supplemented;

**"Other Terms"** means the Mandates and other relevant clauses in these General T&Cs;

**"Parties"** means the Bank and the Client collectively, and each or any one of them is referred to as "**Party**";

**"Settlement Account"** means the Account opened and maintained with the Bank nominated by the Client for the

purpose of any OTC Derivatives and OTC Derivatives Transactions; and

“**Trade Date**” means the date on which a binding contract is entered into between the Bank and the Client in respect of any OTC Derivatives Transaction as specified in the Confirmation.

#### **Applicable terms and order of prevalence**

- 10.3 The Bank shall provide to the Client upon request product specifications and any prospectus or other offering document for the OTC Derivatives and a full explanation of margin procedures and the circumstances under which a Client’s positions may be closed without the Client’s consent.
- 10.4 In respect of each OTC Derivatives Transaction entered into by the Client, the Bank will send to the Client the Confirmation setting out details of the relevant OTC Derivatives Transaction.
- 10.5 All OTC Derivatives Transactions are also subject to and governed by the relevant and applicable ISDA Definitions. Without prejudice to the terms of the Confirmation and the Application, the relevant term or definition of the ISDA Definitions is deemed to be incorporated mutatis and mutandis into the OTC Derivatives Transaction and forms part of the terms and conditions of the OTC Derivatives Transaction. Any term or definition (which is contained in the ISDA Definitions) used but not otherwise defined in this Clause, the Application and/or the Confirmation shall have the same meaning set forth in the ISDA Definitions as from time to time amended or supplemented.
- 10.6 The Client agrees to be bound by the Applicable Laws and Rules in respect of each OTC Derivatives Transaction entered into with the Bank from time to time,
- 10.7 In the event of any conflict or discrepancy, these documentation and the Applicable Laws shall (to the extent permissible under law) govern in the following order of prevalence:
- (a) the Confirmation;
  - (b) the Application;
  - (c) this Clause;
  - (d) the ISDA Definitions;
  - (e) the Other Terms; and
  - (f) the Applicable Laws.

#### **Client’s Instruction**

- 10.8 The Bank shall have absolute discretion whether to take or accept any Application from the Client or the Client’s Authorized Person, and in such manner and on such terms, as the Bank shall in its absolute discretion think fit before confirmation of its acceptance of such Application. The Bank will endeavor to notify the Client (whether orally, in writing or by other means) of the acceptance or non-acceptance of any Application and to execute any accepted Application as soon as practicable after such Application is made to or placed with the Bank.
- 10.9 Upon the acceptance of or confirmation by the Bank of any Application received from the Client or the Client’s Authorized Person in relation to any OTC Derivatives Transaction, a binding and irrevocable contract as between the Bank and the Client shall be constituted whereby the Client shall be bound to enter into such OTC Derivatives Transaction on the terms (as set out in the Confirmation) agreed, irrespective of the receipt or non-receipt of any written confirmation (including without limitation the Confirmation) by the Client. If the Client fails or refuse to enter into such OTC Derivatives Transaction, the Client will be liable for the Bank’s costs and losses, including but not limited to the cost of unwinding hedging positions taken by the Bank to cover such OTC Derivatives Transaction and the Client shall indemnify the Bank against all claims, costs, expenses, losses and damages suffered by the Bank as a result of such failure or refusal by the Client.
- 10.10 The Bank shall not be liable for any loss or damage whatsoever and howsoever arising which the Client or any other person may suffer or incur and the Client shall indemnify the Bank against all claims, costs, expenses, losses and damages suffered by the Bank, in each case, arising out of, in connection with or in relation to the Bank’s not taking or accepting any Application or instruction from the Client.
- 10.11 The Client agrees to indemnify the Bank and hold the Bank harmless from and against all losses, costs and expenses (including legal costs on full indemnity basis) suffered or incurred by the Bank in reliance on any instructions, directions, notices or other communication given or purported to be given by or the Client’s Authorized Person.
- 10.12 The Client agrees, accepts and acknowledges that the Term Sheet contains information, terms and conditions which are indicative and for reference only. The Term Sheet is not intended to be legally binding on the Bank. The Term Sheet does not constitute an offer, an invitation to offer or a recommendation to enter into any OTC Derivatives Transaction. In giving or providing the Term Sheet to the Client, the Bank is not acting as the Client’s financial advisor or in a fiduciary capacity.
- 10.13 The Client agrees, accepts and acknowledges that the Application is made on the basis of or with reference to the Term Sheet but may not be in the same terms and conditions of the Term Sheet.

#### **OTC Derivatives Transaction**

- 10.14 In relation to each OTC Derivatives Transaction, the Client shall, at or before the time a binding contract is formed between the Client and the Bank or from time to time, maintain in the Settlement Account an amount at least equal to amounts as requested by the Bank to be payable by the Client under this Clause and/or the Other Terms. The Client hereby authorises the Bank to debit from the Settlement Account all such amounts (or any part thereof) on or after the Trade Date for effecting payment by the Client to the Bank. The Client undertakes not to create or permit to subsist any security or encumbrance over the Settlement Account.

- 10.15 All OTC Derivatives Transactions which the Bank effects on the Client’s Applications or instructions shall be effected in

accordance with Applicable Laws. All actions taken by the Bank in accordance with Applicable Laws shall be binding on the Client.

- 10.16 If any of the Client's Application to effect OTC Derivatives Transaction is accepted by the Bank, the Bank shall use reasonable endeavors to enter into or execute the OTC Derivatives Transaction in accordance with those Applications. By reason of physical restraints on or disruption events to any market, exchange, trading system, settlement system or clearing system and rapid changes in financial environment affecting the OTC Derivatives that frequently or occasionally take place, there may, on occasions and despite the Bank's, executing brokers', overseas brokers' or dealers' reasonable endeavors, be a delay in making prices or in dealing at any specific time or "at best" or "at market". The Client agrees in any event to accept and be bound by the Transaction or dealing which is concluded or take place, and agrees that the Bank shall not be liable for any loss arising by reason of difference between any terms of the Client's Application and the terms of the OTC Derivatives Transaction entered into or executed by the Bank.
- 10.17 Where the Bank is unable to enter into any OTC Derivatives Transaction set out in the Application in full, the Bank is entitled to effect partial performance only without prior reference to or confirmation from the Client and the Bank shall not be liable for any loss arising by reason of the Bank effecting such partial performance.

#### **Confirmation**

- 10.18 After the Bank and the Client have agreed on any OTC Derivatives Transaction, the Bank will give the Confirmation to the Client, whether in person, by post or any other methods as the Bank shall deem fit. The Bank may (but is not obliged) require the Client to sign on the Confirmation and/or return to the Bank a duplicate of the Confirmation duly signed by the Client. Notwithstanding the aforesaid, the validity of the contract as constituted between the Bank and the Client in respect of such OTC Derivatives Transaction shall not be prejudiced by the receipt or non-receipt of the Confirmation by the Client, the signing or non-signing of the Confirmation by the Client, or the receipt or non-receipt of the signed duplicate of the Confirmation by the Bank.
- 10.19 The Confirmation shall not constitute any evidence of title of any OTC Derivatives Transaction and shall not be negotiable or transferable.
- 10.20 The Client shall upon receipt of the Confirmation examine the Confirmation and to give immediate notice to the Bank if the Client considers that any detail stated therein is incorrect in any respect. If the Bank does not receive any notice from the Client within 7 days after the issue of the Confirmation, the Client shall be deemed to have accepted all the transaction details therein contained as true and accurate in all respects.

#### **Payment**

- 10.21 Subject to the other provisions of this Clause, the Client shall make each payment or delivery as specified in each Confirmation.
- 10.22 Payments by the Client under this Clause shall be made on the due date for value on that date in the place of the account specified in the relevant Confirmation or otherwise pursuant to this Clause, in freely transferable funds and in the manner customary for payments in the required currency.
- 10.23 Time is of the essence in respect of any payment to be made by the Client under this Clause and the Confirmations.
- 10.24 The Bank's payment obligation under this Clause is subject to:
- (a) the condition precedent that no Event of Default and no Termination Event has occurred and is continuing; and
  - (b) the fulfilment of each other condition specified in this Clause and the Confirmation to be a condition precedent for such payment obligation of the Bank.

#### **Netting**

- 10.25 All OTC Derivatives Transactions are entered into in reliance on the fact that the Parties would not otherwise enter into any OTC Derivatives Transactions.
- 10.26 The Client agrees and accepts that any default by the Client of or under any OTC Derivatives Transaction as evidenced by the Confirmation shall constitute defaults by the Client of or under all the OTC Derivatives Transactions as evidenced by the Confirmations.
- 10.27 If on any date amounts would otherwise be payable:
- (a) in the same currency; and
  - (b) in respect of the same OTC Derivatives Transaction,
- by each Party to the other, then, on such date, each Party's obligation to make payment of any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by one Party exceeds the aggregate amount that would otherwise have been payable by the other Party, replaced by an obligation upon the Party by which the larger aggregate amount would have been payable to pay to the other Party the excess of the larger aggregate amount over the smaller aggregate amount. If the aggregate amounts are equal, no payment shall be made.
- 10.28 The Bank may elect in respect of two or more OTC Derivatives Transactions that a net amount and payment obligation will be determined in respect of all amounts payable on the same date in the same currency in respect of those OTC Derivatives Transactions, regardless of whether such amounts are payable in respect of the same OTC Derivatives Transaction and the Party owing the net amount and payment obligation will pay to the other Party such net amount and payment obligation promptly. The election may be made in the Term Sheet and/or the Confirmation or by notifying the Client thereafter, by specifying that "Multiple Transaction Payment Netting" applies to the OTC Derivatives Transactions identified as being subject to the election (in which case the requirement in Clause 10.27(b) above will not apply to such OTC Derivatives Transactions). If Multiple Transaction Payment Netting is applicable to OTC Derivatives Transactions, it will apply to those OTC Derivatives Transactions with effect from the Trade Date. This election may be

made separately for different groups of OTC Derivatives Transactions.

- 10.29 The Client may also request in respect of two or more OTC Derivatives Transactions to be subject to multiple transaction payment netting. The Bank shall not be obliged to agree to the same. However, if the Bank in its absolute discretion agrees to the same (in which case the requirement in Clause 10.27(b) above will not apply to such Transactions), a net amount and payment obligation will be determined in respect of all amounts payable on the same date in the same currency in respect of those OTC Derivatives Transactions, regardless of whether such amounts are payable in respect of the same OTC Derivatives Transaction and the Party owing the net amount and payment obligation will pay to the other Party such net amount and payment obligation promptly.

#### **Calculations and Determinations**

- 10.30 All rates, fixings, values, calculations and all other matters required to be ascertained or established in respect of or in relation to any OTC Derivatives Transaction shall be conclusively determined by the Bank and shall be binding on the Client, save and except for manifest error.
- 10.31 Where an exchange rate is to be determined by the Bank at a particular time, or during a particular period, such determination shall be made by the Bank in accordance with generally accepted practices in the relevant foreign exchange market, and each such determination shall be conclusive and binding in the absence of manifest error.

#### **Information**

- 10.32 The Bank may make available to the Client various information which may include indicative price of any securities and exchange rates, commentaries or otherwise. Such information shall be provided for the Client's reference only.
- 10.33 The Client understands that the Bank does not assume any responsibility for the completeness or timeliness of any information provided. The Bank shall not be responsible for any decision made by the Client or any person, or any action or omission by the Client or any person, arising out of, in connection with or in relation to any information provided by the Bank for the Client's reference only nor shall the Bank be liable for any loss or damages incurred or suffered by the Client or any person occasioned by or incidental to any of such decisions, acts or omissions on the part of the Client..

#### **Representation, Warranties and Undertakings**

- 10.34 In addition to any other representations and warranties in the Agreement, the Client represents, warrants and undertakes to the Bank at all times that:
- (a) the Client is entering into and dealing with each OTC Derivatives Transaction and/or OTC Derivatives as a principal on the Client's own behalf and not as trustee or agent;
  - (b) the Client has full power, capacity and authority to enter into agreement constituted by this Clause, any Credit Support Document, any OTC Derivatives Transaction or OTC Derivatives, to deliver the same and to exercise the Client's rights and perform the Client's obligations under this Clause and any Credit Support Document, and have obtained all authorisations and consents necessary for the Client to do so, and such authorisations and consents are in full force and effect and this Clause and the Credit Support Document are legal, valid, binding and enforceable on the Client in accordance with its terms;
  - (c) the Client's delivery and performance of its obligations under this Clause and any Credit Support Document do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;
  - (d) all governmental and other consents that are required to have been obtained by the Client with respect to this Clause or any Credit Support Document to which it is a party have been obtained and are in full force and effect and all conditions of any such consents have been complied with;
  - (e) the Client's obligations under this Clause and any Credit Support Document to which it is a party constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law));
  - (f) none of the Events of Default exists or occurs;
  - (g) there is not pending or, to the Client's knowledge, threatened against the Client or any of its Credit Support Providers any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Clause or any Credit Support Document to which it is a party or its ability to perform its obligations under this Clause or such Credit Support Document;
  - (h) the Client shall not dispose of or encumber any Financial Product or any part thereof except in favour of the Bank;
  - (i) all the information, representations and warranties provided in the Application and Mandates and given or made by the Client are complete, true and accurate at all times, and the Bank may rely on such information, representations and warranties until the Bank has received written notice from the Client of any changes therein;
  - (j) the Client has disclosed and declared to the Bank all the necessary information and documents which may affect the Bank's decision as to whether to enter into, make or accept any Application made or placed by the Client for any OTC Derivatives Transaction;
  - (k) the Client has read all the terms of this Clause and understands them fully, it has adequate financial

expertise and resources to comply with such terms, and there is commercial justification for the Client entering into or make the OTC Derivatives Transaction with the Bank; and

- (l) in connection with any facility, service or accommodation to be provided or provided by the Bank to the Client under which a foreign exchange spot transaction occurs or is to occur, the Client has reviewed and understood the T&C's of Accounts, Deposits, Standing FX Orders, Payments and Remittance in Section 3, and hereby consent to the terms and conditions set out therein, as may be amended, supplemented and/or varied from time to time.

10.35 The Client shall forthwith notify and make known to the Bank in writing of any changes in the information, representations and warranties provided in the Application and Mandates, and provided, given or made by the Client pursuant to this Clause or any agreement entered into pursuant to this Clause or relating to any OTC Derivatives Transaction and/or OTC Derivatives and the Settlement Account.

10.36 The Client undertakes to the Bank to do or execute any act, deed, document or thing which the Bank requires the Client to do being in the reasonable opinion of the Bank necessary or desirable in connection with the implementation and enforcement of this Clause and the Confirmations.

#### **Events of Default and Termination Events**

10.37 The occurrence at any time of any of the following events constitutes an Event of Default:

- (a) failure by the Client to make, when due, any payment under this Clause and/or the Confirmation;
- (b) failure by the Client or any Credit Support Provider to comply with or perform any agreement or obligation to be complied with or performed by the Client or such Credit Support Provider in accordance with this Clause, the Confirmation and/or any Credit Support Document;
- (c) expiration or termination of a Credit Support Document or the failing or ceasing of such Credit Support Document, or any security interest granted by a Credit Support Provider to the Bank pursuant to any such Credit Support Document, to be in full force and effect for the purpose of this Clause, any Confirmation or any OTC Derivatives Transaction evidenced by such a Confirmation (in each case other than in accordance with its terms) prior to the satisfaction of Total Liabilities without the written consent of the Bank;
- (d) the Client or any Credit Support Provider disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, this Clause, any Confirmation, any OTC Derivatives Transaction evidenced by such a Confirmation or any Credit Support Document;
- (e) the Client or any Credit Support Provider:
  - (i) defaults under an OTC Derivatives Transaction or any credit support arrangement relating to a Transaction and, after giving effect to any applicable notice requirement or grace period, such default results in a liquidation of, an acceleration of obligations under, or an early termination of, that OTC Derivatives Transaction;
  - (ii) defaults, after giving effect to any applicable notice requirement or grace period, in making any payment due on the last payment or exchange date of, or any payment on early termination of, an OTC Derivatives Transaction (or, if there is no applicable notice requirement or grace period, such default continues for at least one Business Day);
  - (iii) defaults in making any delivery due under (including any delivery due on the last delivery or exchange date of) an OTC Derivatives Transaction or any credit support arrangement relating to an OTC Derivatives Transaction and, after giving effect to any applicable notice requirement or grace period, such default results in a liquidation of, an acceleration of obligations under, or an early termination of, all transactions outstanding under the documentation applicable to that OTC Derivatives Transaction;
  - (iv) disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, an OTC Derivatives Transaction or any credit support arrangement relating to an OTC Derivatives Transaction;
- (f)
  - (i) the occurrence or existence of a default, event of default or other similar condition or event (however described) in respect of the Client or a Credit Support Provider under one or more agreements or instruments relating to any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) under such agreements or instruments which has resulted in such obligation becoming, or becoming capable at such time of being declared, due and payable under such agreements or instruments before it would otherwise have been due and payable;
  - (ii) a default by the Client or Credit Support Provider in making one or more payments under such agreements or instruments on the due date for payment (after giving effect to any applicable notice requirement or grace period);
  - (iii) defaults in making any delivery due under (including any delivery due on the last delivery or exchange date of) an OTC Derivatives Transaction or any credit support arrangement relating to an OTC Derivatives Transaction and, after giving effect to any applicable notice requirement or grace period, such default results in a liquidation of, an acceleration of obligations under, or an early termination of, all transactions outstanding under the documentation applicable to that Transaction;
  - (iv) disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, an OTC Derivatives Transaction or any credit support arrangement relating to an OTC Derivatives Transaction;

- (g)
- (i) the occurrence or existence of a default, event of default or other similar condition or event (however described) in respect of the Client or a Credit Support Provider under one or more agreements or instruments relating to any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) under such agreements or instruments which has resulted in such obligation becoming, or becoming capable at such time of being declared, due and payable under such agreements or instruments before it would otherwise have been due and payable;
  - (ii) a default by the Client or Credit Support Provider in making one or more payments under such agreements or instruments on the due date for payment (after giving effect to any applicable notice requirement or grace period);
- (h) the Client or any Credit Support Provider:
- (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
  - (ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
  - (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
  - (iv) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation and either (1) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (2) is not dismissed, discharged, stayed or restrained in each case within 15 days of the institution or presentation thereof;
  - (v) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
  - (vi) seeks or becomes subject to the appointment of an administrator, judicial manager, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets;
  - (vii) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 15 days thereafter;
  - (viii) has or will have a moratorium declared in respect of any of its indebtedness;
  - (ix) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in sub-clauses (i) to (viii) above (inclusive); or
  - (x) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts;
- (i) the Client or any Credit Support Provider consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, or reorganises, reincorporates or reconstitutes into or as, another entity and, at the time of such consolidation, amalgamation, merger, transfer, reorganisation, reincorporation or reconstitution the resulting, surviving or transferee entity fails to assume all the obligations of the Client or such Credit Support Provider under this Clause, the Confirmations or any Credit Support Document to which it is a party.

10.38 The occurrence at any time of any event specified below constitutes a Termination Event:

- (a) after giving effect to any applicable provision, disruption fallback or remedy specified in, or pursuant to, the relevant Confirmation or elsewhere in this Clause, due to an event or circumstance occurring after an OTC Derivatives Transaction is entered into, it becomes unlawful under Applicable Laws (including without limitation the laws of any country in which payment, delivery or compliance is required by either Party or any Credit Support Provider), on any day, or it would be unlawful if the relevant payment, delivery or compliance were required on that day for a Party or a Credit Support Provider to perform any absolute or contingent obligation to make a payment or delivery in respect of such OTC Derivatives Transaction or under any Credit Support Document, to receive a payment or delivery in respect of such Transaction or under any Credit Support Document or to comply with any other material provision of this Clause, the Confirmation relating to such OTC Derivatives Transaction or any Credit Support Document (an "**Illegality**");
- (b) after giving effect to any applicable provision, disruption fallback or remedy specified in, or pursuant to, the relevant Confirmation or elsewhere in this Clause, by reason of force majeure or act of state occurring after an OTC Derivatives Transaction is entered into, on any day a Party or a Credit Support Provider is prevented from performing any absolute or contingent obligation to make a payment or delivery in respect of such OTC Derivatives Transaction or under any Credit Support Document, from receiving a payment or delivery in respect of such OTC Derivatives Transaction or under any Credit Support Document or from complying with any other material provision of this Clause, the Confirmation relating to such OTC Derivatives Transaction or any Credit Support Document (or would be so prevented if such payment, delivery or compliance were required on that day), or it becomes impossible or impracticable for a Party or a Credit Support Provider so to perform, receive or comply (or it would be impossible or impracticable for a Party or a Credit Support Provider so to perform, receive or comply if such payment, delivery or compliance were required on that day) (a "**Force Majeure Event**")

- (c) due to:
  - (i) any action taken by a taxing authority, or brought in a court of competent jurisdiction, after an OTC Derivatives Transaction is entered into, or
  - (ii) a change in tax law,
 a Party will, or there is substantial likelihood that it will:
  - (A) be required to pay to the other Party an additional amount in respect of tax; or
  - (B) receive a payment from which an amount is required to be deducted or withheld for or on account of a tax;
- (d) a Party will either:
  - (i) be required to pay an additional amount in respect of tax, or
  - (ii) receive a payment from which an amount has been deducted or withheld for or on account of any tax,
 in either case as a result of a Party consolidating or amalgamating with, or merging with or into, or transferring all or substantially all its assets to, or reorganising, reincorporating or reconstituting into or as, another entity where such action does not constitute an Event of Default under Clause 10.37(i)
- (e) any of the Designated Event occurs with respect to the Client or a Credit Support Provider, and the creditworthiness of the Client or a Credit Support Provider or, if applicable, the successor, surviving or transferee entity of the Client or a Credit Support Provider, is materially weaker immediately after the occurrence of such Designated Event than that of the Client or a Credit Support Provider immediately prior to the occurrence of such Designated Event. A “**Designated Event**” means that:
  - (i) the Client or a Credit Support Provider consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, or reorganises, reincorporates or reconstitutes into or as, another entity;
  - (ii) any person, related group of persons or entity acquires directly or indirectly the beneficial ownership of:
    - (A) equity securities having the power to elect a majority of the board of directors (or its equivalent) of the Client or a Credit Support Provider; or
    - (B) any other ownership interest enabling it to exercise control of the Client or a Credit Support Provider; or
  - (iii) the Client or a Credit Support Provider effects any substantial change in its capital structure by means of the issuance, incurrence or guarantee of debt or the issuance of:
    - (A) preferred stock or other securities convertible into or exchangeable for debt or preferred stock; or
    - (B) in the case of entities other than corporations, any other form of ownership interest; or

10.39 If an Illegality or Force Majeure Event has occurred and is continuing with respect to an OTC Derivatives Transaction, each payment or delivery which would otherwise be required to be made under that OTC Derivatives Transaction will be deferred to, and will not be due until the date on which the event or circumstance constituting or giving rise to that Illegality or Force Majeure Event ceases to exist or, if such date is not a Business Day, the first following day that is a Business Day.

#### **Termination and Close-Out**

10.40 If a Termination Event occurs, the Bank will use all reasonable efforts to notify the Client, specifying the nature of that Termination Event unless the Client is aware or ought to be aware of the occurrence of such Termination Event.

10.41 On the occurrence of an Event of Default or a Termination Event, the Bank shall, without prior notice to the Client or a Credit Support Provider and without prejudice to any other rights and remedies of the Bank and without releasing the Client or a Credit Support Provider from any liability, be entitled (but not under any duty) at such time and in such manner as the Bank shall in its absolute discretion determine to:

- (a) call for immediate payment of all Liabilities then outstanding;
- (b) terminate or close-out all or any one of the then outstanding OTC Derivatives Transactions and/or to terminate any or all outstanding Applications or any other instruction;
- (c) enforce any Credit Support Document or any security held by the Bank immediately;
- (d) apply any amount standing to the credit of the Settlement Account in or towards repayment and/or discharge of the Total Liabilities and for such purpose, the Bank may convert all or any part of such credit balance or liability to such other currencies at the rate specified in Clause 10.46 as may be necessary to effect such application; and
- (e) take such actions as the Bank may, in its absolute discretion, determine in order to cover the Bank’s position and/or to protect the Bank’s interest

10.42 To the extent the Bank elects to terminate or close-out any or all of the OTC Derivatives Transactions (“**Terminated Transactions**”) in accordance with Clause 10.41, above, the Bank will send a notice to the Client specifying the effective date of the termination or closing-out of the Terminated Transactions (“**Termination Date**”) and, effective from the Termination Date, the Bank shall be absolutely released and discharged from all liabilities and no further payments

or deliveries under such terminated Transaction will be required to be made by the Bank or the Client, but without prejudice to the provisions of this Clause. The amount, if any, payable in respect of the occurrence of such Termination Date will be determined pursuant to Clause 10.43, below

- 10.43 The Bank shall calculate, as of the Termination Date, the gain or loss (including transaction costs) of the Bank with respect to each Terminated Transaction. If the termination or close-out of an OTC Derivatives Transaction results in a gain or loss which is for value on a date in the future, such amount shall be discounted to present value at a market rate of interest determined in good faith by the Bank. All amounts of gains (expressed as a negative number) and losses (expressed as a positive number) of the Bank with respect to all Terminated Transactions shall be netted and/or aggregated to arrive at a net close-out amount ("**Net Close-out Amount**"). If the Net Close-out Amount is a positive number, the Client will pay such Net Close-out Amount to the Bank; if the Net Close-out Amount is a negative number, the Bank will pay the absolute value of the Net Close-out Amount to the Client, in each case, in full on the Business Day after the Termination Date and if such Net Close-out Amount due by the Client to the Bank is not so paid when due, it shall bear interest at a rate per annum equal to the cost (without proof or evidence of any actual cost) to the Bank plus 2% per annum until paid by the Client to the Bank. The Bank's right to terminate or close out OTC Derivatives Transactions shall be in addition to, and not in limitation or exclusion of, any other rights which the Bank may have (whether by agreement, operation of law or otherwise).
- 10.44 The Client shall, on demand, indemnify and hold harmless the Bank for and against all reasonable out-of-pocket expenses, including legal fees and relevant tax, if any, incurred by the Bank by reason of the enforcement and protection of its rights under this Clause, the Confirmation, any Credit Support Document or any related documents or by reason of the early termination or close out of any OTC Derivatives Transaction, including, but not limited to, costs of collection.
- 10.45 In addition to any right of set-off, combination of accounts, lien or other right to which a party may at any time otherwise be entitled (whether by operation of law, contract or otherwise), upon termination or closing out of the OTC Derivatives Transactions under and pursuant to this Clause, the Bank shall have the right (but shall not be obliged) to set off any obligation of the Client owing to the Bank (whether or not arising hereunder or under any other agreement(s) between the Client and the Bank, whether or not contingent or due and regardless of the currency of the obligation) against any obligation of the Bank owing to the Client (whether or not arising hereunder or under any other agreement(s) between the Client and the Bank, whether or not contingent or due and regardless of the currency of the obligation).
- 10.46 For the purpose of Clauses 10.40 to 10.45 and cross-currency set-off, the Bank may convert any obligation denominated in one currency to another currency at a market rate determined by the Bank. If any obligation is unascertained, the Bank may in good faith estimate that obligation and set-off in respect of the estimate, subject to the relevant Party accounting to the other when the obligation is ascertained. The Parties hereby agree that, for purposes of effecting the set-off hereunder, the obligations of the Bank owing to the Client shall be deemed due and payable at the time the Bank invoking its right of set-off whether or not such obligations are matured. If for any reason the amount so received by the Bank after conversion falls short of the amount in the relevant currency payable in respect of this Clause, the Client is required to immediately pay such additional amount in such relevant currency as may be necessary to compensate for the shortfall.

#### **Client Authorisation**

- 10.47 If the Client is obliged to pay an amount of cash in any currency or deliver any securities under this Clause, the Client hereby authorises the Bank to make such payment or delivery from monies, currencies or securities credited to the accounts of the Client held with the Bank in satisfaction of such obligations.
- 10.48 If the OTC Derivatives Transaction and/or the Application of the Client requiring or involving an exchange into or from one currency to another, the costs thereof and any profit or loss arising as a result of a fluctuation in the exchange rate of the relevant currency will be entirely for the account of the Client. The Bank may convert moneys in the Settlement Account into and from any currency at such rate of exchange as the Bank shall in its sole discretion determine as being the then prevailing money market rate. Such conversion may be made for the purpose of any transaction or for the calculation of any debit balance due from the Client or credit balance owed to the Client.

#### **Combination and Set-Off**

- 10.49 The Bank may, at any time and without notice to the Client, notwithstanding any settlement of account or other matter whatsoever, combine or consolidate all or any of the Client's accounts with the Bank (including the Settlement Account) or with any subsidiaries or associated companies and set-off or transfer any receivables held in or for the account of, or moneys standing to the credit of, any one or more of such accounts in or towards satisfaction of any of the Total Liabilities.
- 10.50 For the purpose of exercising the right of set-off or of discharging any of the Total Liabilities, the Bank may sell or dispose of any of the securities, receivables or monies from time to time held in or for the account of the Settlement Account or any other account with the Bank. The Bank shall be under no duty to the Client as to the price obtained in respect of any such sale or disposal.

## SECTION 6

### TERMS AND CONDITIONS OF CREDIT FACILITIES

#### (the "T&Cs of Credit Facilities")

#### 1. FACILITIES

- 1.1 The Bank may, in its absolute discretion and subject to and in accordance with the Facility Documents, make the Facilities available to the Client.
- 1.2 The Bank's acceptance of the Client's application for the Facilities may be oral, in writing or otherwise (as the case may be). In any event, the availability of the Facilities for utilisation by the Client from time to time (including the disbursement of monies) shall be deemed as the Bank's acceptance. Where the Bank advises of its acceptance of the Client's application for Facilities in writing, the Bank shall send a Facility Letter to the Client, which shall advise of its acceptance of the Client's application for the Facilities and any additional terms and conditions of the Facilities.
- 1.3 The Client agrees that any utilisation of the Facilities shall be subject to the Agreement and Facility Documents, and the Client shall be bound thereby.
- 1.4 The Facilities are uncommitted and repayable on demand (whether such demand is made orally or otherwise, and without the Bank being obliged to grant, provide or extend such time to the Client for repayment) and accordingly, the availability of the Facilities or any part thereof is subject to the Bank's absolute discretion. The Bank has no obligation whatsoever to make or continue to make available to the Client all or any part of the Facilities or to allow any particular utilisation thereof, whether or not any utilisation request is received or accepted by the Bank.
- 1.5 Notwithstanding absence of an Event of Default or any other provisions contained in the Facility Documents, the Agreement and any other terms and conditions, the Total Liabilities or any part thereof (whether pursuant to the Facilities or otherwise) are repayable by the Client upon the Bank's demand (whether such demand is made orally or otherwise, and without the Bank being obliged to grant, provide or extend such time to the Client for repayment). The Bank may, in its absolute discretion, review all or any part of the Facilities at any time and from time to time and may, pursuant to such review, vary, amend or extend the availability or repayment period, cancel and/or terminate the Facilities or any part thereof at any time without prior notice (whether oral or otherwise) to the Client. For the avoidance of doubt, any failure on the part of the Client to make immediate repayment of any sums required by the Bank (without the Bank being obliged to grant, provide or extend such time to the Client for repayment) under this Clause shall be an Event of Default.

#### 2. UTILISATION CONDITIONS

- 2.1 Any utilisation by the Client of any of the Facilities shall be subject to the prior approval of the Bank. Each such utilisation shall also be subject to the completion, execution and delivery of such documents as the Bank may require. Any utilisation request given by the Client shall be irrevocable.
- 2.2 Each utilisation of the Facilities shall be subject to the following additional conditions (and such other conditions as the Bank may in its absolute discretion specify from time to time):
- (a) each request for utilisation shall be made in such form and manner, and must be received by the Bank at such time before such utilisation, as the Bank may prescribe from time to time;
  - (b) the representations and warranties in this Agreement and the Facility Documents shall be true and correct as if repeated on the date of such utilisation;
  - (c) the Bank shall have received all Security Documents requested by the Bank, including those set forth in the relevant Facility Letter;
  - (d) Transactions in the relevant currency in the amount and for the term of such credit shall be permitted in Hong Kong and the relevant country on the date such credit is extended;
  - (e) the Bank shall have received such legal opinions and such other documents as the Bank may reasonably request;
  - (f) no breach of or default (however described) under any of the terms of the Agreement and Facility Documents shall have occurred and no such breach or default will be caused by, or result from, such utilisation; and
  - (g) there shall have been no material adverse change in the condition (financial or otherwise), prospects or assets of the Client (including any Assets) and every other Security Party (if any).

### **3. GUARANTEES**

- 3.1 If payments are to be made by the Bank under or in respect of a Guarantee, the Client shall, on the Bank's demand, fund, reimburse and indemnify the Bank for each amount paid or payable by the Bank under or in respect of that Guarantee together with all charges, interest and expenses (including legal expenses) incurred by the Bank in connection therewith, by paying to the Bank the amount demanded. The Client's obligation to pay such amount demanded by the Bank shall be absolute and unconditional, notwithstanding any claim that any payment by the Bank under or in respect of a Guarantee was improperly made or that any dispute between the Client and the beneficiary thereof exists or that any demand, draft or certificate of such beneficiary was forged or fraudulent or that any discrepancies exist between the documents presented and the terms of the applicable Guarantee regardless of when such discrepancies are discovered and irrespective of any invalidity, illegality or unenforceability of any agreement with any beneficiary or any other circumstances whatsoever, and the Bank shall have no obligation whatsoever to make any factual determinations as to the correctness of any certificate of a beneficiary or as to any other matters before the Bank makes any payment under any Guarantee.

### **4. INTEREST**

- 4.1 The Client shall pay interest in all Total Liabilities from time to time at the rate set out in the relevant Facility Letter or, if not so set out, at such rate as the Bank may determine at its sole discretion and advise the Client from time to time. Except as the parties may otherwise agree in writing, such interest shall accrue based on the total days elapsed in a 360 or 365 day year (as determined by the Client in accordance with market practice for the currency of the Facility utilised) and shall be payable on demand.
- 4.2 The Bank will calculate and collect interest in accordance with prevailing market practice, unless otherwise stipulated in the relevant Facility Letter. Notwithstanding the foregoing, if in relation to any drawing thereunder and any period relating thereto:
- (a) the applicable interest rate or base interest rate is the Bank's Prime Lending Rate; and
  - (b) if the Cost of Funds for such drawing and period is higher than the Bank's Prime Lending Rate,

the Bank may elect at its sole discretion to substitute its Prime Lending Rate with such Cost of Funds as the interest rate or, as the case may be, base interest rate for such drawing and period.

### **5. DEFAULT INTEREST**

- 5.1 If the Client fails to pay any amount when due, default interest shall accrue on the overdue amount from the date of demand up to the date of actual payment (both before and after judgment) at the applicable default interest rate specified in, or imposed pursuant to, the relevant Facility Letter. If the default interest rate is not specified in the relevant Facility Letter, then the default interest rate shall be 3% above the interest rate (including the applicable margin) charged on the Facility. Any default interest accruing shall be payable immediately on the Bank's demand. If default interest is overdue, such overdue default interest shall be considered an additional overdue amount and, to the extent permitted by law, the whole shall bear interest at the default interest rate as provided in the relevant Facility Letter.

### **6. PAYMENT**

- 6.1 The Client shall pay each of the Total Liabilities under the Facility(ies) in accordance with the terms and conditions set out in the relevant Facility Letter or, if there are no such terms or conditions, upon demand. Notwithstanding any other provision of the relevant Facility Letter or any other Facility Document:
- (a) the Bank shall have the right at any time to withdraw and cancel any Facility and to demand immediate repayment of all Total Liabilities and any other sums for which the Client is liable under any Facility Document; and
  - (b) in relation to any contingent liability incurred by the Bank under or in connection with any Facility, the Client shall provide monies or a deposit with the Bank equivalent in amount to, or Assets acceptable to the Bank equivalent in value to, the aggregate of all such contingent liabilities to enable the Bank to meet such contingent liabilities upon their respective maturities.
- 6.2 If foreign exchange fluctuations cause the aggregate Total Liabilities (as calculated by the Bank based upon exchange rates determined in the Bank's absolute discretion) in relation to any or all of the Facility to exceed the Facility Amount and/or any applicable Limit specified in the relevant Facility Letter, the Bank will notify the Client and the Client shall immediately arrange to reduce the Total Liabilities to or below the Facility Amount and/or the relevant Limit.
- 6.3 The Client shall promptly indemnify the Bank against any Losses which the Bank may suffer as a result of any direct or indirect taxes in relation to any payment received or receivable under any Facility Document. However, this indemnity shall not apply to any tax imposed on the Bank by reference to the net income received by the Bank.

6.4 Any payment under the Facility Documents which is due to be made on a day which is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).

## **7. APPLICATION OF MONIES**

If any sum paid or recovered in respect of any part of the Total Liabilities is less than the Total Liabilities at such time, the Bank may apply that sum to expenses, interest, fees, commission, principal or any amount in such proportions and order and generally in such manner as the Bank thinks fit or may credit the same or part thereof to a suspense account if the Bank thinks fit.

## **8. TAXES**

8.1 All payments to be made by the Client to the Bank under the Facility Documents shall be made free and clear of and without any Tax Deduction unless the Client is required to make a Tax Deduction, in which case the sum payable by the client (in respect of which such Tax Deduction is required to be made) shall be increased to the extent necessary to ensure that the Bank receives a sum net of any deduction or withholding equal to the sum which it would have received had no such Tax Deduction been made or required to be made.

8.2 The Client shall promptly upon becoming aware that it must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Bank accordingly. If the Client is required to make a Tax Deduction, the Client shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.

8.3 If the Bank is required to make any payment of or on account of tax on or in relation to any sum received or receivable under the Facility Documents (including any sum deemed for the purposes of tax to be received or receivable by the Bank whether or not actually received or receivable) or if any liability in respect of any such payment is asserted, imposed, levied or assessed against the Bank, the Client shall, forthwith on demand of the Bank, promptly indemnify the Bank which suffers any Losses as a result against such payment or liability, together with any interest, penalties, costs and expenses payable or incurred in connection therewith.

8.4 The Client shall pay all stamp duty, registration and other similar taxes payable in respect of any Facility Document forthwith on demand of the Bank, and indemnify the Bank against any Losses that the Bank incurs in relation to any stamp duty, registration or other similar tax paid or payable in respect of any Facility Document.

## **9. COSTS AND EXPENSES**

9.1 The Client shall, forthwith on demand of the Bank, pay the Bank the amount of all costs and expenses (including legal fees) incurred by it in connection with the negotiation, preparation, printing and execution of the Facility Documents.

## **10. INDEMNITY**

10.1 The Client irrevocably undertakes to fully and unconditionally, as an independent obligation, indemnify the Bank from and against all Losses due to a New Money Credit Event and/or as a result of the occurrence of any Event of Default, termination of the Facility, repayment or prepayment, including any loss of bargain, break funding costs or any other loss, premium, penalty or expense which may be incurred in liquidating, obtaining, re-establishing or re-employing any swap, hedge or related trading positions. The Client shall, at the Bank's request, appear and defend at the Client's own cost and expense, any action which may be brought against the Bank in connection therewith.

10.2 The Client shall pay, or on demand, indemnify the Bank against any Losses the Bank may incur in relation to stamp duty, registration and similar taxes payable in respect of any Facility Document or the Facility.

10.3 The Client's obligations for all sums payable by the Client under or in connection with a Facility, including damages, shall be in the currency(ies) (the "**Currencies**") in which that Facility is denominated. If for any reason whatsoever, any payment made by the Client under or in connection with a Facility is made or is recovered in a currency other than the Currencies then, to the extent that the payment to the Bank when converted at the rate of exchange on the date of payment falls short of the amount unpaid under this Facility, the Client shall fully indemnify the Bank against the amount of the shortfall.

## **11. ILLEGALITY**

11.1 If it becomes illegal for the Bank to grant or to continue any Facility or to give or extend any credit or to charge any interest or fees thereon at the then applicable rates, the Bank may, at its sole discretion, cancel the Facility by notice to the Client and the Client shall on demand forthwith pay all amounts then outstanding together with interest accrued to the date of payment and all other sums then due under the Facility Documents.

## 12. REPRESENTATIONS AND WARRANTIES

12.1 In addition to any other representations and warranties in the Agreement and/or any Facility Document, the Client hereby represents and warrants to the Bank on behalf of itself and every other Security Party (as the case may be) at all times:

- (a) (where it is a corporation) it is a limited liability corporation, duly incorporated and validly existing under the laws of its country of incorporation and has the power to own its assets and carry on its business as it is being conducted and has all necessary power, capacity, authority, consents and approvals to enter into, perform and/or discharge its obligations under the Agreement, the Facility Documents and any other agreement with the Bank and the performance thereof and the obligations contained therein do not and will not:
  - ⓐ contravene any existing Applicable Laws or any judgment or order of a court or tribunal of any jurisdiction, or, decree or permit to which the Client and/or Security Party is subject; or
  - ⓑ conflict with or result in any breach of the terms or constitute any default under any agreement or other instrument to which the Client and/or Security Party is a party or is subject or by which any of the Client's and/or Security Party's assets are bound;
- (b) its obligations in each Facility Document are legal, valid, binding and enforceable and all acts, conditions and things (including the obtaining of all consents, licences, registrations or filings and the taking of all corporate action) required or desirable to enable it lawfully to enter into, exercise its rights and comply with its obligations under, each Facility Document, make each Facility Document admissible in evidence in its country of incorporation and in Hong Kong, enable it to create the security under each Security Document to which it is a party and ensure that the relevant security has and will have the priority and ranking which it is expressed to have in the relevant Security Document, have been taken, obtained, fulfilled and done and are in full force and effect;
- (c) its execution and delivery of, and performance of the Transactions contemplated by, the Facility Documents do not and will not conflict with or constitute a default or exceed any limitation under any Applicable Laws, judgment, order, licence, concession, permit or consent applicable to it, any provision or any powers granted under its constitutive documents or any agreement or instrument binding upon it or any of its assets, nor (except for any security created under any of the Security Documents) result in the existence of, or oblige it to create, any security over any of its assets;
- (d) there are no charges, mortgages, pledges or liens in respect of any of its assets except those which have been previously disclosed to the Bank in writing prior to its entry into the Facility Documents or for which the prior written consent of the Bank has been obtained;
- (e) no litigation, arbitration or administrative proceedings of or before any court, tribunal, arbitral or administrative body or government agency has been commenced or threatened against or otherwise affecting it; and
- (f) no legal or other proceedings has been initiated or threatened and no meeting has been convened for the bankruptcy, winding-up, liquidation, termination of existence or reorganisation of, or for the appointment of a receiver, manager (judicial or otherwise), trustee or similar officer of, it or in respect of any or all of its assets.

## 13. COVENANTS

13.1 In addition to any other undertakings in the Agreement and/or any Facility Document, the Client hereby undertakes that, at all times it shall, and shall procure that every other Security Party shall:

- (a) conduct its business in accordance with all Applicable Laws binding upon it and its operations or assets and shall promptly pay all taxes assessed against it or any of its assets;
- (b) promptly provide the Bank with its financial statements (including its last audited balance sheet and profit and loss account) and all other information and documents as may reasonably be required by the Bank after any request by the Bank (whether such request is made orally or otherwise) for the same;
- (c) promptly provide the Bank with such information concerning its assets and financial condition, as the Bank may from time to time reasonably request, and shall permit the Bank and its representatives at all reasonable times to inspect the assets secured under any of the Security Documents;
- (d) maintain and continue in full force and effect all governmental and other approvals, consent filings and recordings necessary or advisable in connection with the Facility and each of the Facility Documents, and shall obtain or make any additional governmental approvals, consents, filings or recordings that become necessary or advisable in connection herewith and therewith;
- (e) promptly give notice to the Bank of the occurrence of any Event of Default or any event which with the giving of notice or the passing of time or both would constitute an Event of Default;
- (f) save for any security created under any of the Security Documents, not pledge, mortgage, charge or encumber the assets secured under any of the Security Documents in favour of any third party or prejudice any of the assets secured under any of the Security Documents and shall ensure that the Bank shall at all times enjoy first priority to the same;
- (g) immediately notify the Bank of any change of the information provided to the Bank in connection with any Facility;

- (h) promptly, upon the Bank's request, execute, acknowledge, deliver, file, notarise and register at the Client's own expense, all such additional agreements, amendments, instruments, certificates, documents and assurances and perform such other acts as shall be necessary or appropriate to effectuate the purposes of the Facility Documents;
- (i) promptly notify the Bank in writing of any litigation, arbitration or administrative proceedings started or threatened against the Client or any of its subsidiaries or (in the case of a limited partnership) its general partner or (in the case of a general partnership) any of its partners which, if adversely determined, might reasonably be expected to have a material adverse effect upon the Client's ability to perform any of its obligations under the Facility Documents or in connection with the Facility;
- (j) if the Client or Security Party is a corporation, promptly notify the Bank in writing of any substantial change in its shareholders, management or constitutive documents; and
- (k) at all times ensure that its payment obligations under the Facility Documents will at all times rank at least equally and rateably in right of payment with all its other unsecured and unsubordinated indebtedness.

#### **14. EVENTS OF DEFAULT**

- 14.1 Without prejudice to any other rights of the Bank hereunder or otherwise at law, upon the occurrence of any Event of Default, the Bank shall (but is not obliged to) immediately or at any time thereafter be entitled to exercise its rights and do any one or more acts in Clause 12.2 of Section 1 in any order as the Bank shall in its absolute discretion deem fit, without notice (whether oral or otherwise) to the Client, any Security Party and/or any other person, and without providing any reasons for its actions to the Client, any Security Party and/or any other person.
- 14.2 No waiver of an Event of Default shall constitute a waiver of any other or any succeeding Event of Default or of the continuance of the Event of Default so waived except in accordance with the specified terms of such waiver.

#### **15. MISCELLANEOUS**

- 15.1 No failure or delay by the Bank to exercise any right, power or privilege under any Facility Document or any document contemplated hereby shall operate as a waiver thereof nor shall any single or partial exercise of such right, power or privilege preclude any further exercise thereof or of any other right, power or privilege. The rights and remedies provided herein and in the documents contemplated hereby are cumulative and not exclusive of any rights and remedies provided by law.
- 15.2 If any Facility is granted to more than one person:
- (a) each person is liable for all obligations of any other person outstanding under the Facility Documents regardless of any limitation imposed upon that person in utilising a Facility;
  - (b) no person may be indemnified by any other person or receive any payment or collateral from any other person in respect of their respective obligations under the Facility Documents;
  - (c) no person may claim any contribution from any other person for any payment made under the Facility Documents by reason of being jointly and severally liable for the obligations of that person;
  - (d) no person may make or enforce any claim or right against any other person or prove in competition with the Bank, whether in respect of any payment under the Facility Documents or otherwise;
  - (e) no person will claim, or have the benefit of, any set-off, counterclaim or proof against or dividend, composition or payment by, any other person or their estate; and
  - (f) no person will take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any of the Bank's rights in respect of any security taken pursuant to, or in connection with, the Facility Documents by the Bank.

**SECTION 7**  
**TERMS AND CONDITIONS FOR INTERNET BANKING SERVICE**  
**(the "T&Cs for Internet Banking Service")**

**1. RISKS OF USING ELECTRONIC CHANNELS IN TRANSMITTING INSTRUCTIONS**

1.1 The Client should consider all possible risks inherent in or associated with giving or transmitting instructions to the Bank by facsimile, telephone, mobile phone, E-mail or any other electronic channel. Principal risks include:

- (a) interruption, error, duplication, delay, disruption or failure in transmission of Instructions due to the public nature of the Internet, mechanical failure, power failure, malfunction, breakdown, default or inadequacy of the applicable electronic services, network facilities, equipment, installation or device;
- (b) risk of fraudulent or unauthorized instructions due to forgery, tampering or interruption by any person; and
- (c) risk of information or instruction being unclear, inaccurate or incomplete through its transmission by electronic means.

**2. CLIENT'S RESPONSIBILITY IN USING ELECTRONIC CHANNELS IN TRANSMITTING INSTRUCTIONS**

2.1 Without affecting the generality of the General T&Cs and these T&Cs for Internet Banking Service, with respect to the use of electronic means to communicate instructions to the Bank, the Client is solely responsible for:

- (a) ensuring that each Authorized User complies with any condition or restriction which may be prescribed by the Bank on such terms from time to time;
- (b) all the acts and omissions during any use from time to time by any individual, whether that individual is or purports to be an Authorized User;
- (c) monitoring and controlling any use by any Authorized User on ongoing basis;
- (d) taking appropriate measures to ensure that each Authorized User uses it in a responsible and proper manner; and
- (e) safeguarding against use by any person other than an Authorized User.

**3. DEFINITIONS AND INTERPRETATION**

3.1 In this Section 7, unless the context otherwise requires:

**"Authorized User(s)"** (if any) for Internet Banking, as the case may be, means the person(s) or each person approved by the Bank and authorized by the Client to have access to Internet Banking on behalf of the Client. For the avoidance of doubt, if the Client is an individual or consists of more than one person, the Authorized User(s) may include such individual or (as the case may be) any one or more of the persons comprising the Client;

**"Certificate"** means a record which:

- (a) is issued by a certification authority for the purpose of supporting a Digital Signature which purports to confirm the identity or other significant characteristics of the person who holds a particular key pair;
- (b) identifies the certification authority issuing it;
- (c) names or identifies the person to whom it is issued;
- (d) contains the Public Key of the person to whom it is issued; and
- (e) is signed by the certification authority issuing it;

**"Digital Signature"** means, in relation to an electronic record, an electronic signature of the signer generated by the transformation of the electronic record using an asymmetric cryptosystem and a hash function such that a person having the initial untransformed electronic record and the signer's Public Key can determine:

- (a) whether the transformation was generated using the Private Key that corresponds to the signer's Public Key; and
- (b) whether the initial electronic record has been altered since the transformation was generated;

<b>"Electronic Input"</b>	means any electronic signals which are given to the Bank through the internet by using a mobile phone, computer terminals or other equipment as the Bank may from time to time require or specify and which are received and recognizable by the computer or other systems of the Bank;
<b>"General User(s)"</b>	means Authorised Person(s);
<b>"Internet Banking"</b>	means the Private Banking E-Banking (Internet Banking) service provided by the Bank to the Client, which includes Mobile Banking, whereby the Client may carry out Transactions with or obtain Services from the Bank by giving Internet Banking Instruction (which is encrypted by way of Secure Socket Layer for safe transmission between the browser on the Client's computer and the server of the Bank's Internet Banking website) to the Bank;
<b>"Internet Banking Instruction"</b>	means any instruction given to the Bank by way of Electronic Input (including but not limited to instructions given through Mobile Banking) after the Client or (as the case may be) an Authorized User has complied with the requirements or procedures set out in Clause 6.3;
<b>"Internet Banking Transaction"</b>	means any type of Services which the Bank may from time to time in its absolute discretion designate as being accessible by means of Internet Banking;
<b>"User ID"</b>	if the Client is a corporate, then the User ID of the authorization administrator/general user is the Client's corporate ID. If the Client is an individual, then the User ID of the authorization administrator/general user is the Client's individual ID;
<b>"User Code"</b>	means the individual user code or code assigned by the Bank to the Client or (as the case may be) selected by or on behalf of the Client subject to change from time to time in such manner as the Bank may agree for the purpose of carrying out Internet Banking Transactions with the Bank by Internet Banking;
<b>"Mobile Banking"</b>	means the use of the Bank's Services by the Client through the internet on mobile phones, the access by which is deemed to be accessing Internet Banking and is subject to the relevant provisions of these T&Cs for Internet Banking Service;
<b>"Password"</b>	means the Internet Banking password;
<b>"Private Key"</b>	means the key of a key pair used to generate a Digital Signature;
<b>"Public Key"</b>	means the key of a key pair used to verify a Digital Signature; and
<b>"Settlement Account"</b>	means any Account from time to time nominated as such and particularized in the Agreement or such other document acceptable to the Bank for the purpose of Internet Banking (as the case may be). For the avoidance of doubt, Settlement Account in this Section is not necessarily the same as a Settlement Account under Clause 10 of Section 5.

#### **4. SCOPE OF INTERNET BANKING**

- 4.1 The Bank may from time to time and at any time designate or re-designate the nature, scope and operations of the Internet Banking Transactions which are accessible by Internet Banking.
- 4.2 The Bank may, at any time in its absolute discretion without prior notice and without giving any reason, refuse to execute any Internet Banking Instruction or withdraw any Internet Banking Transaction from being accessible by the Internet Banking and may, if it deems fit so to do, cancel or suspend the Internet Banking or any part thereof.
- 4.3 The Bank may at any time in its absolute discretion accept Internet Banking Instructions from the Client to act as the agent of the Client to effect Internet Banking Transactions on behalf of the Client with other third party. The only duty of the Bank thereunder is to transmit such Internet Banking Instructions to the third party and once such Internet Banking Instructions are given to the third party, the Bank shall be deemed to have fully discharged its duty to the Client. The Bank shall not in any way be liable or responsible howsoever, whether in contract or in tort, in law or in equity, for the act, default, omission, failure, non-performance, delay, fraud or negligence of such third party (including but not limited to any failure or delay of such third party in executing the Bank's instruction given on behalf of the Client). The Client acknowledges and confirms that such Internet Banking Transaction effected by the Bank as its agent with the third party is subject to the terms and conditions applicable to that specific transaction and for the purpose of effecting such

transaction with the third party the Bank is authorized to disclose any information relating to the Client to such third party.

- 4.4 The Client acknowledges that Internet Banking is a service provided by the Bank and in the event of Internet Banking or the media through which the Internet Banking Instruction may be given to or received by the Bank being suspended or cancelled for whatsoever reason, the Client shall have no claim whatsoever against the Bank and shall use other available means to effect the required Internet Banking Transaction.

## **5. TERMS & CONDITIONS FOR ANY SPECIFIC INTERNET BANKING TRANSACTION**

- 5.1 In using Internet Banking, in addition to these T&Cs for Internet Banking Service, the terms and conditions that govern the relevant type of Internet Banking Transaction (whether accepted by the Client in writing or by electronic or other means specified by the Bank from time to time) shall remain applicable in respect of such Internet Banking Transaction and the Client acknowledges that it shall continue to observe and is bound by the same.

- 5.2 In case of any conflict between such terms and conditions that regulate the relevant type of Internet Banking Transaction and these T&Cs for Internet Banking Service:

- (a) where the relevant specific terms and conditions for the Internet Banking Transaction provide for the priority between these T&Cs for Internet Banking Service and the relevant specific terms and conditions, such priority should be given effect to determine the question of which terms and conditions shall prevail; and
- (b) where the relevant specific terms and conditions for the Internet Banking Transaction do not provide for the priority between these T&Cs for Internet Banking Service and the relevant specific terms and conditions, the latter shall prevail.

- 5.3 Notwithstanding the respective Signing Arrangement at any one time in force for effecting the individual Internet Banking Transaction other than by Internet Banking, all documents and communications in relation to Internet Banking (as the case may be) and Internet Banking Transactions effected thereby shall be valid and effective if signed in accordance with the Signing Arrangement applicable to Internet Banking.

## **6. AUTHORIZED USER(S) AND USE OF INTERNET BANKING**

- 6.1 The Client shall at its own cost and expense obtain and maintain suitable equipment to obtain access to Internet Banking (at [www.cathaybk.com.tw/hongkong/private-bank](http://www.cathaybk.com.tw/hongkong/private-bank)). The Client shall also ensure access to the correct Bank's Internet Banking website, and (if necessary) make enquiries with the Bank.

- 6.2 Unless otherwise agreed between the Bank and the Client in writing, any one of the General User(s) for Internet Banking shall be an Authorized User of the Client for Internet Banking. The Client may disclose the relevant User ID, User Code and Password to the Authorized User(s) for the purpose of enabling the Authorized User(s) to have access to Internet Banking, subject to the terms and conditions herein.

- 6.3 All Internet Banking Instructions shall be given in the following manner:

- (a) only by such means of telecommunications and in such manner as the Bank may from time to time designate for the purpose of Internet Banking; and
- (b) by use of suitable computer terminals, machines or other equipment to obtain access to Internet Banking; and
- (c) at the request of the Bank (such request may be represented by electronic image or digitized voice or other electronic form, as the case may be), the Client or an Authorized User shall input by Electronic Input:
  - (i) the User ID;
  - (ii) the User Code;
  - (iii) the Password; and
  - (iv) any other information relating to the identity of the Client or the Authorized User (such as identity card number) as may be requested by the Bank;
- (d) at the request of the Bank (represented as aforesaid), the Client or the Authorized User shall select the type of Internet Banking Transaction required and shall input the information and details so requested by the Bank; and
- (e) for particular Internet Banking Transactions specified by the Bank from time to time, the Client or the Authorized User shall at the request of the Bank confirm the identity of the Client and/or the Authorized User by such means as requested by the Bank, including but not limited to the use of a Digital Signature or a digital or electronic certificate or encrypted software acceptable to the Bank from time to time.

When the Bank receives an Electronic Input, the Bank shall verify the identity of its sender and notify the Client of its authentication results. If the identity of its sender cannot be authenticated, such Electronic Input shall be treated as unsuccessful and undelivered. If the identity of its sender can be authenticated, the Bank shall notify the Client of any previous unsuccessful authentication of any Electronic Input.

- 6.4 Subject to the Bank's right not to accept any Internet Banking Instruction as set out in Clause 4.2, all Internet Banking Instructions once given pursuant to Clause 6.3 above shall be irrevocable and conclusively binding on the Client irrespective of whether or not such Internet Banking Instructions are given by the Client personally or by an Authorized User or by any other person on its or their behalf, whether authorized or unauthorized. The Bank retains the sole discretion to allow revocation or amendment of any such Instruction if such Instruction is intended to be executed in future dates.
- 6.5 Notwithstanding the respective Signing Arrangement at any one time in force for effecting the individual Internet Banking transaction other than by Internet Banking, the Bank is authorized to execute Internet Banking Instructions given by any Authorized User singly so long as it believes in good faith that such Instructions have been given by an Authorized User and all Internet Banking Transactions effected thereby shall be binding on the Client.
- 6.6 Subject to agreement by the Bank, an Authorized User acting singly shall have full authority on behalf of the Client to give Internet Banking Instructions of whatever nature (in the form of standing instruction or otherwise) relating to any matter whatsoever concerning or arising from any account or service accessible under Internet Banking.
- 6.7 The Client or subject to agreement by the Bank, (if the Client consists of more than one person) any one of the persons comprising the Client or the General User for Internet Banking having the requisite authority in accordance with Clause 6 of Section 1, shall have full authority on behalf of the Client to give Internet Banking Instructions for any change of the Consolidated Statement Address, correspondence address or contact numbers or other details of the Client.
- 6.8 Subject to agreement by the Bank, an Authorized User for Internet Banking shall have full authority on behalf of the Client to give Internet Banking Instructions for designation of any Account under the same name of the Client as sub-account of Internet Banking or as Account accessible under Internet Banking (for enquiries purpose only or otherwise). The Client acknowledges that once any Account is designated as such in accordance with the foregoing, in addition to the specific terms and conditions governing that account, these T&Cs for Internet Banking Service shall also apply.
- 6.9 Without prejudice to Clause 6.8, the General User(s) for Internet Banking when signed in accordance with the Signing Arrangement may from time to time and at any time authorize the Bank to include any of the Client's Account to be accessible under Internet Banking respectively so that such Account can be operated through Internet Banking irrespective of the Signing Arrangement in force for such Account(s).

## **7. ACCEPTANCE AND EXECUTION OF INSTRUCTIONS**

- 7.1 For any Internet Banking Instruction, upon receipt of the information set out in Clause 6.3(c) and (if applicable) Clause 6.3(e), the Bank shall be entitled to deem that the ensuing Internet Banking Instruction emanates from the Client. The Client shall be liable for all transactions effected and all liabilities incurred pursuant to such Internet Banking Instruction.
- 7.2 Unless otherwise agreed at the relevant time, only Internet Banking Instructions relating to the Internet Banking Transactions will be accepted or effected by the Bank. However, if Internet Banking Instruction is given in respect of other arrangements and is accepted or effected by the Bank for any reason whatsoever, such Internet Banking Instruction and the arrangements effected or executed pursuant thereto shall be binding on the Client.
- 7.3 Internet Banking Instructions would only be accepted and effected for any particular type of Internet Banking Transaction if:
- (a) such Internet Banking Instructions are received by the Bank within the time prescribed by the Bank from time to time for the purpose of accepting and effecting Internet Banking Instructions for that particular type of Internet Banking Transaction; and
  - (b) such Internet Banking Instructions are given with sufficient clarity and details required by the Bank. The Bank reserves the right to request for further information or clarification from the Client after receipt of an Instruction before accepting or effecting the Internet Banking Instruction. The Bank shall not howsoever be liable for any consequence arising out of the failure or delay by the Bank to effect any Internet Banking Instruction due to insufficient clarity or details. For the avoidance of doubt, the Client agrees and acknowledges that the Bank has no obligation to carry out any transaction immediately upon receipt or acceptance of an Internet Banking Instruction.
- 7.4 Notwithstanding any provision to the contrary governing the specific type of Internet Banking Transaction to be transacted, the Bank shall be entitled to place any order or enter into or execute any arrangement or effect any account entry for the purpose of carrying out any Internet Banking Instruction without first ascertaining (a) whether there is sufficient fund or available pre-arranged credit in the Account specified by the Client; and/or (b) the existence or adequacy in the Client's Account of the items which are the subject matter intended to be executed pursuant to the Internet Banking

Instruction.

- 7.5 Internet Banking Instruction will not be accepted or effected if there are insufficient funds or pre-arranged credit available in the Account specified by the Client in the Internet Banking Instruction. The Bank shall not howsoever be liable for any consequence arising out of the failure of the Bank to execute any Instruction due to insufficient funds and/or available pre-arranged credit.
- 7.6 Notwithstanding that there are insufficient funds or pre-arranged credit in the Account nominated by the Client, and irrespective of any terms and conditions of the specific type of Internet Banking Transaction intended to be transacted providing to the contrary, the Bank may, at its absolute discretion, accept and execute an Internet Banking Instruction without prior written notice to or approval of the Client. The Client shall be liable for the resulting debit balance or overdraft, advance or credit (or any increase in the same) and all standard charges of the Bank relating thereto. Such debt shall be repayable to the Bank on demand together with interest thereon, from the date of execution of the relevant Internet Banking Instruction to the date of actual repayment (whether before or after judgment), both days inclusive, at such rate as published by the Bank from time to time and compounded at such intervals as the Bank may determine from time to time.
- 7.7 Whilst any debt exists pursuant to Clause 7.6 above, the Bank shall be entitled without giving notice to the Client (but shall not be obliged) to enter into such other transaction at such time and for such pricing as it deems necessary to set off or counter the transaction effected pursuant to the Internet Banking Instruction. Any loss, damage, liability or reasonable expense suffered or reasonably incurred by the Bank as a result thereof shall be the Client's liability and debited to any Account of the Client as the Bank shall select, but any gain shall belong absolutely to and be retained by the Bank for its own use and benefit. The Bank's certificate in writing as to the amount of such loss, damage, liability or expense shall be binding and conclusive against the Client, save for manifest error.
- 7.8 Without prejudice to Clause 7.3 above, notwithstanding that an Internet Banking Instruction may be received by the Bank outside the normal banking hours in Hong Kong and be carried out immediately, the relevant transaction effected immediately pursuant to the Internet Banking Instruction may be deemed to take effect on the succeeding Business Day if the Bank so determines.

## **8. ADVICE AND CONCLUSIVE EVIDENCE**

- 8.1 The Client acknowledges that all Internet Banking Instructions may be recorded. The advice, books and records of the Bank in respect of any Instruction and/or the execution thereof shall be conclusive evidence (save and except manifest error) against the Client in all courts of law and for all purposes. All Internet Banking Instructions shall not be denied validity or enforceability on the sole ground that electronic records were used.
- 8.2 The Bank shall not assume responsibility for and does not warrant or represent that information, data and other materials supplied by third parties and made available through Internet Banking are accurate and complete.

## **9. PROCEEDS OF TRANSACTIONS EFFECTED BY MEANS OF INSTRUCTIONS**

- 9.1 Unless otherwise agreed by the Bank, the proceeds of any Internet Banking Transaction effected by an Internet Banking Instruction which is due to the Client shall only be credited to an Account or placed on deposit with the Bank in the same name as the Client.
- 9.2 If the Bank receives any query, claim or dispute (whether with good cause or otherwise) in respect of the proceeds of any transaction effected by an Internet Banking Instruction, the Bank may in its absolute discretion (but shall not be under any duty to do so) refuse to permit or effect any withdrawal of and/or dealing howsoever with such proceeds until the dispute or query in respect of the relevant transaction is clarified to the satisfaction of the Bank.

## **10. LIMITATION FOR MOBILE TECHNOLOGY**

- 10.1 The Client acknowledges that mobile communication is a new and rapidly advancing technology, and using Mobile Banking may carry additional risks and may not be as secure as using other banking channels.
- 10.2 The Client further acknowledges that technological failure and network traffic congestion are common and there are other factors beyond the Bank's reasonable control (including but not limited to any technological distortion caused by the inadequacies of the relevant supported mobile phones used by the Client) that may result in the Bank's failure or delay in the execution of Instructions. Instructions, personal data and information transmitted through Mobile Banking are subject to the risk of being read, intercepted, interrupted or misused by third party. The Client acknowledges that it shall fully consider all risks relating to Mobile Banking and read carefully these T&Cs for Internet Banking Service before using Mobile Banking.

## **11. USER CODE AND PASSWORD(S)**

- 11.1 The Client or the relevant General User(s) for Internet Banking (when signed in accordance with the applicable Signing Arrangement) shall select the User Code in such procedures as prescribed by the Bank, and the Bank shall issue the User Code and the Password(s) to the Client. The Client acting by himself or through any Authorized User shall re-select User Code and new Password(s) in such procedures as prescribed by the Bank within 1 month from the date of issuance of the User Code and the Password(s) by the Bank; otherwise they may be invalidated automatically. The Client can only access Internet Banking (as the case may be) with the use of the User ID, the re-selected User Code and the re-selected Password(s).
- 11.2 In case the Signing Arrangement of the relevant General User(s) for Internet Banking consists of more than one level of authorization, then only those General User(s) for Internet Banking having the highest level of authorization shall be entitled to act on behalf of the Client to select the User ID, new Code(s) and new Password(s) under Clause 11.1 above.
- 11.3 The Client is responsible for the proper use of the User Code and Password(s) and shall take reasonable steps to keep the User Code, the Password(s) and the Certificate secure and confidential. The Client shall not disclose the Password(s) to any other persons other than the relevant Authorized User(s). The Client undertakes to ensure that the Authorized User(s) will also comply with the aforesaid requirements as to the proper use of and the security and confidentiality of the User ID, User Code and Password(s) and that upon knowing or believing that there is a loss of the Password or any actual or possible unauthorized use or disclosure of the User ID, User Code or any Password, the Authorized User(s) shall notify the Client immediately without delay or notify the Bank on behalf of the Client in accordance with Clause 11.5 below.
- 11.4 The Client acknowledges that the Bank has no record of the Password(s) selected or re-selected by the Client or an Authorized User.
- 11.5 Upon knowing or believing that there is a loss of the Password or any actual or possible unauthorized use or disclosure of the User ID, User Code or any Password, the Client acting by himself or through any Authorized User shall notify the Bank as soon as possible in writing or by calling the Bank's designated telephone hotline as notified to the Client from time to time for reporting such incident(s). In the event of receiving any such notification, the Bank shall be entitled to take such action as it may think fit (including but not limited to issuing new User Code and/or Password to the Client) if the Bank accepts in good faith that such report is proper and genuine.
- 11.6 In addition to Clause 11.5 above, in the event of actual or possible unauthorized use or disclosure of any Password, the Client shall as soon as possible change such Password through Internet Banking.
- 11.7 The Client hereby acknowledges that the Authorized User(s), having full access to the User Code and the Password(s), may fully operate the Account or utilize the services accessible under Internet Banking on its behalf, and further acknowledges that there are risks of any of the Authorized User(s) mis-using Internet Banking for its/his/her/their own benefit and purpose and of any User ID, User Code and/or any Password being used by unauthorized persons or for unauthorized purposes. The Client hereby further acknowledges that it has duly and fully considered the associated risk when he agrees to allow any third party to act as an Authorized User.
- 11.8 The Bank is entitled to cancel the use of the User ID and Password and/or to withdraw, restrict or suspend the Internet Banking service (whether in whole or in part) and/or terminate the Internet Banking service at any time when the Bank considers necessary or advisable to do so in its absolute discretion without notice and without giving any reason and the Bank shall not be liable to the Client for any loss or damage resulting therefrom or in connection therewith.

## **12. LIABILITY OF THE BANK AND THE CLIENT**

- 12.1 Without prejudice to the Client's obligations under Clauses 11.3, 11.5 and/or 11.6, the Client acknowledges that the Client shall be responsible for any direct or indirect losses suffered or incurred by it as a result of unauthorized transactions effected by any Internet Banking Instructions or any unauthorized use of the User ID, User Code or any Password to access the Internet Banking service, provide any Internet Banking Instructions or effect any Internet Banking Transactions.
- 12.2 The Client acknowledges that the Client shall be bound by all Internet Banking Instructions and Internet Banking Transactions resulting from any Internet Banking Instructions given which are referable to any unauthorised use of the User ID, User Code or any Password, until such time as the Bank has received such notification from the Client and has taken such action as it may think fit, and accordingly, the Client agrees that the Client shall be liable for all Internet Banking Transactions processed by the Bank prior to or at the time of such actions taken by the Bank pursuant to Clause 11.5, or which the Bank, notwithstanding its reasonable endeavours, was unable to stop the processing of.

- 12.3 The Client agrees that the Bank shall not in any way be liable or responsible howsoever, whether in contract or in tort, in law or in equity, for any loss or damage whatsoever (whether direct or indirect, or whether foreseeable or not) suffered or incurred by the Client as a result of:
- (a) any Internet Banking Transaction resulting from any Internet Banking Instruction given by the Client or purportedly given by the Client and referable to any unauthorised use of the User ID, User Code or any Password and which was processed by the Bank prior to or at the time of such actions taken by the Bank pursuant to Clause 11.5, or which the Bank, notwithstanding its reasonable endeavours, was unable to stop the processing of; or
  - (b) any failure by the Bank to carry out any Internet Banking Instruction which was outstanding at the time the Bank took such actions pursuant to Clause 11.5 and which the Bank had stopped the processing of.

12.4 This Clause 12 above shall prevail if it conflicts with any other provisions of this Section.

### **13. GENERAL USER(S) FOR INTERNET BANKING**

- 13.1 In addition and without prejudice to Clause 6, the General User(s) for Internet Banking with general powers shall have the powers and authorities (to be exercised by such General User(s) for Internet Banking in accordance with the relevant signing arrangement) and the Bank shall be entitled to act thereon accordingly.
- 13.2 If the relevant signing arrangement of Internet Banking consists of more than one level of authorization, then only those General User(s) for Internet Banking having the highest level of authorization shall be entitled to exercise the powers under Clause 13.1 above.

### **14. INFORMATION**

- 14.1 All information quoted by the Bank through Internet Banking shall remain as a reference only and shall not be binding on the Bank until confirmed by the Client within the time prescribed by the Bank.

### **15. FEES AND CHARGES**

- 15.1 The Bank shall be entitled to charge fees for making Internet Banking and Mobile Banking available to the Client and/or the handling of Internet Banking Instructions as specified in any schedule of fees published by the Bank from time to time. Such schedule of fees shall be made available to the Client upon request. The Client hereby authorizes the Bank to deduct such fees from the applicable Settlement Account. Notwithstanding the foregoing provision, the Bank shall also be entitled, at its discretion, to debit any fee or charge to any one or more Account of the Client maintained with the Bank.
- 15.2 The Bank shall be entitled to retain for its own account and benefit all profits, rebates, commissions, fees, benefits or other advantage, if any, arising out of or in connection with the Bank's provision of Internet Banking, Mobile Banking and the transactions effected pursuant to Internet Banking Instructions.

### **16. E-CONSOLIDATED STATEMENTS AND E-NOTICE SERVICES**

- 16.1 The e-consolidated statements service ("E-consolidated Statement Service") is a service provided by the Bank under Internet Banking whereby all consolidated statements ("e-statements") from time to time issued by the Bank to the Client in respect of all of the Accounts can be viewed on the Bank's website, downloaded and/or printed out by an Authorized User. The Client acknowledges and agrees that once application for the E-consolidated Statement Service is accepted by the Bank, no physical copies of consolidated statements in respect of the Accounts will be issued and sent by the Bank to the Consolidated Statement Address unless the Client chooses to continue to receive physical copies or applies at any branch/sub-branch/office of the Bank or through such other means as designated by the Bank for discontinuance of the E-consolidated Statement Service and resumption of issue by the Bank of physical copy of consolidated statements.
- 16.2 The e-notice service ("**E-notice Service**") is a service provided by the Bank under Internet Banking whereby all notices (other than reminder notices referred to in Clause 16.5 below), advices, statements (other than consolidated statements), confirmations or other communication ("**e-notices**") from time to time issued by the Bank to the Client in respect of all of the Accounts can be viewed on the Bank's website, downloaded and/or printed out by an Authorized User. The Client acknowledges and agrees that once application for the E-notice Service is accepted by the Bank, no physical copies of such notices, advices, statements, confirmations or other communication in respect of the Accounts will be issued and sent by the Bank to the correspondence address unless the Client chooses to continue to receive physical copies or applies at any branch/sub-branch/office of the Bank or through such other means as designated by the Bank for discontinuance of the E-notice Service and resumption of issue by the Bank of physical copy of such notices, advices, statements, confirmations or other communication.

- 16.3 Notwithstanding any contrary provision in these these T&Cs for Internet Banking Service, each Authorized User is authorized to use the E-consolidated Statement Service and the E-notice Service. The Client acknowledges and agrees that the Authorized User(s) may view all transaction details of and receive all notices, advices, statements, confirmations or other communication in respect of all of the Accounts and the E-notice Accounts.
- 16.4 An e-statement or e-notice will only be available for checking through the E-consolidated Statement Service for 6 calendar months and the E-notice Service for 12 calendar months or such other period as the Bank may consider appropriate after being posted on the relevant webpage. Thereafter, it will be deleted by the Bank and physical copy will only be provided upon application at any branch/sub-branch/office of the Bank or through such other means as designated by the Bank and payment of a fee.
- 16.5 The Client shall ensure that the Client (a) will check for and view e-statements and e-notices through the E-consolidated Statement Service and the E-notice Service regularly and (b) will download and/or print out an e-statement or e-notice for record if it/he/she considers necessary before the same is deleted by the Bank. Without prejudice to the foregoing, the Bank may (but is not obliged to) from time to time send notices ("reminder notices") to the email address designated by the Client for the purpose of these T&Cs for Internet Banking Service so as to remind the Client of the posting of the latest e-statement or e-notice on the Bank's website. For the avoidance of doubt, it is always the obligation of the Client to ensure that all e-statements and e-notices are accessed through the E-consolidated Statement Service and the E-notice Service before the same are deleted by the Bank even if the Client has not received a reminder notice from the Bank for whatever reason.

## **17. MISCELLANEOUS**

- 17.1 Unless required by law, the Client and the Bank shall keep confidential any third party information obtained from exchange of electronic messages, or use or performance of the Internet Banking service, and shall not disclose the same to any third party, and shall not use the same for purposes other than the Internet Banking.
- 17.2 The Bank's notice available in the Bank's Internet Banking website shall also be kept confidential. In case of inconsistency of any confidentiality provisions, these T&Cs for Internet Banking Service shall prevail.
- 17.3 All information and tools the Bank provides via the Internet Banking services are proprietary to the Bank, its information providers and its other licensors, and are protected by Applicable Laws. The Client agrees not to sell, distribute or commercially exploit any such information or tools, and further agrees not to use such information or tools except for the Client's own personal use.

## **18. MODIFICATION OF SERVICE FUNCTIONS AND TERMS**

- 18.1 The Client acknowledges and agrees that:
- (a) The banking and other services made available through the Service are subject to limitations, and that the Bank may at its discretion add to, modify, restrict, suspend or terminate such services at any time.
  - (b) The Client shall be bound by the Bank's update or amendment to these Terms and any applicable policies, rules or regulations of the Bank in relation to the use of the Service (whether in relation to the launch of new products or related service items, or otherwise).
- 18.2 The Client agrees that the Bank may notify any revision to these Terms by written notice to the Client or by publication on the Bank's website (in-lieu of specific notice to the Client).
- 18.3 The Client shall be deemed to have accepted any revision to these Terms if the Client did not raise any objection in 7 days after receiving such a notice or by publication of the Bank's website.
- 18.4 However if the change in these Terms concerns the manner in which the Client notifies the Bank of any breach of security procedures, the Bank shall notify the Client at least 60 days in advance in writing or in email or by publication on the Bank's website to state the changes and the provisions before and after the change, and inform the Client that it may raise objection before the change takes effect and that the Client is deemed to accept the revision, addition or deletion if it did not raise any objection during said period of time.
- 18.5 The Client may change any of its customer or account information as well the designation of account(s) to be linked to the Service by completing and submitting to the Bank, such application form as the Bank may prescribe from time to time.

## **19. TERMINATION OF SERVICE**

- 19.1 The Client may terminate its access to or use of the Internet Banking services at any time by completing and submitting to the Bank, such application form as the Bank may prescribe from time to time.

- 19.2 The Bank is entitled to cancel the use of any security information and/or to withdraw, restrict or suspend the Internet Banking services (whether in whole or in part) and/or terminate the Service under these Terms at any time when the Bank consider necessary or advisable to do so in its discretion without notice and the Bank shall not be liable to the Client for any loss or damage resulting from or in connection therewith. The Bank shall nevertheless use its reasonable commercial endeavours to give the Client not less than 30 days' prior notice in writing or by publication on the Bank's website if the Bank intends to terminate these Terms or the provision of the Service, or the Client's right to access and use the Service.
- 19.3 Without prejudice to the foregoing, the Bank shall be entitled to terminate the Client's right to access and use the Internet Banking services immediately if:
- (a) The Client transfers or purports to transfer any of its rights or obligations under these Terms to a third party without the consent of the Bank.
  - (b) The Client is insolvent, has filed or is subject to any winding up, judicial management or debt restructuring proceedings under applicable laws.
  - (c) The Client has breached any provision of these Terms and has failed to remedy such breach after the Bank has demanded remedial action or requested performance within a given time period.
  - (d) The Client violates related regulations of Certificate authority.

---

The remaining space is intentionally left blank.

---