



**Terms and Conditions for  
Accounts under  
Wealth Management Investment Portfolio  
(Wealth Management Accounts)**

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These terms and conditions (“Terms and Conditions”) and the Account Opening Document (including the General Risk Disclosure Statement and Disclaimer and other risk disclosures) shall apply to and be binding on the Customer for the Accounts at DBS Bank (Hong Kong) Limited (the “Bank”. They shall apply together with the Bank Accounts and Services Terms and Conditions as well as other terms and conditions and requirements of the Bank applicable for any additional products, service and channels that the Customer from time to time uses (e.g. internet banking).

Upon new products, services and/or channels being introduced in the future, applicable terms and conditions will be introduced by the Bank and will be provided to Customers who wish to purchase those products and/or use those services and/or channels. For the avoidance of doubt, the Investment Products Consolidated Terms and Conditions do not apply to the Accounts.

The Bank is incorporated in Hong Kong with limited liability. It is an authorized institution within the meaning of the Banking Ordinance (Chapter 155 of the laws of Hong Kong) and a registered institution (CE Number: AAL664) under the Securities and Futures Ordinance carrying on Type 1 (dealing in securities), Type 4 (advising on securities), Type 6 (advising on corporate finance) and Type 9 (asset management) regulated activities .

## References

References to Paragraphs, Clauses and Sections in the terms and conditions are references to paragraphs, clauses, and sections of the terms and conditions respectively unless the context otherwise requires.

## Language

If there is any inconsistency between the English and Chinese versions of these Terms and Conditions and related documents, the English version shall prevail.

## **A. GENERAL RISK DISCLOSURE STATEMENT AND DISCLAIMER**

**Please read this General Risk Disclosure Statement and Disclaimer carefully. This statement forms an integral part of these Terms and Conditions. By executing the Account Opening Document the Customer acknowledges that he/she has read this General Risk Disclosure Statement and Disclaimer and understands the risks applicable to various services and products offered by the Bank.**

The intention of this General Risk Disclosure Statement and Disclaimer is to inform the Customer that the risk of loss in trading Securities and Other Investments can be substantial. Before considering any transaction involving financial products and services, the Customer must carefully consider whether the transaction is appropriate in the light of his/her experience, objectives for engaging in the transaction, financial condition and other relevant circumstances. The Customer should not deal in or utilize such products and services unless he/she has satisfied himself/herself of the foregoing. The Bank recommends that he/she obtains independent legal advice before entering into these Terms and Conditions with the Bank.

**THIS GENERAL RISK DISCLOSURE STATEMENT AND DISCLAIMER DOES NOT PURPORT TO DISCLOSE OR DISCUSS ALL OF THE GENERAL RISKS AND OTHER SIGNIFICANT ASPECTS OF ANY TRANSACTION. THE CUSTOMER SHOULD THEREFORE CONSULT HIS/HER OWN LEGAL, TAX AND FINANCIAL ADVISERS PRIOR TO ENTERING INTO ANY PARTICULAR TRANSACTION. IT IS IMPORTANT FOR THE CUSTOMER TO DETERMINE WHETHER ANY TRANSACTION IS SUITABLE FOR HIS/HER OPERATIONS, BUSINESS AND ORGANIZATION, AND THE CUSTOMER SHOULD BE AWARE THAT THIS IS HIS/HER SOLE RESPONSIBILITY.**

Additional risk factors in relation to Securities and Other Investments are set out in the relevant Offering Documents. The Customer should carefully read, understand and consider the risk factors in the Offering Documents before making any investment in Securities and Other Investments.

Unless otherwise defined capitalized terms used in this General Risk Disclosure Statement and Disclaimer shall have the same meaning given to them in Section B "General Terms and Conditions", or as applicable, Section F ("Structured Products Related Terms and Conditions").

### **1. Risks of Securities Trading**

- (i) The price of Securities and Other Investments can and does fluctuate, sometimes dramatically, and any individual Security or Other Investment may experience downward movements and may become valueless. There is an inherent risk that losses may be incurred rather than profits made as a result of Transactions, and it is as likely that such losses will be made as profits. The Customer carries the burden of all risks involved in Transactions and the Bank is not responsible for any losses whatsoever and howsoever arising from such Transactions. This is a risk which the Customer should be prepared and are able to accept.
- (ii) Under certain market conditions, the Customer may find it difficult to liquidate a position. Placing buy or sell orders will not necessarily limit his/her losses to the intended amounts, since market conditions may make it impossible to execute such orders at the designated price.
- (iii) The Customer will be exposed to risks of bad delivery of Securities purchased. There are also risks involved in not registering purchased Securities in his/her name or his/her nominee's or custodian's name.
- (iv) If the Customer's risk profile is of lower risk tolerances as recorded in the results of the Customer's financial needs and risk profile assessment conducted with the Bank, it may not be appropriate for him/her to trade certain securities including warrants, other derivative products or financial products of a higher-risk nature. Notwithstanding the above, if the Customer places orders on higher-risk products, he/she will be deemed to have adopted a higher risk-taking attitude.
- (v) The securities trading account and related services are provided only as a transaction execution service, the Bank is not the Customer's investment adviser.

### **2. Risk of Trading in Leveraged Foreign Exchange**

- (i) The risk of loss in leveraged foreign exchange can be substantial. The Customer may sustain losses in excess of his/her initial margin funds. 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. The Customer may be called upon at short notice to deposit additional margin funds. If the required funds are not provided within the prescribed time, the Customer's position may be liquidated. He/she will remain liable for any resulting deficit in his/her account. The Customer should therefore carefully

consider whether such trading is suitable in light of his/her own experience, financial position and investment objectives.

- (ii) Before entering into a contract, the Customer should study the foreign exchange market in great detail and, if necessary, seek independent financial advice. Under certain market conditions, the Customer may find it difficult or impossible to liquidate his/her position(s) and the high degree of leverage which is often obtainable in dealing with foreign exchange transactions can work for or against the customer, causing large losses as well as gains. For example, when the price moves drastically in a disorderly market. In these circumstances, the Customer's loss will not be limited to the Customer's margin and may be a substantial amount in addition to the margin.
- (iii) The high degree of leverage due to the small margin requirement that is often obtainable in currency trading can work against the Customer as well as for the Customer. The use of leverage can lead to large losses as well as gains.

### 3. Provision of Documentation

The Bank will, in appropriate cases, furnish the Customer with term sheets or confirmations setting out the material terms, associated obligations, underlying assumptions, pricing basis and sensitivity analysis to illustrate the impact of market movements on the proposed Transactions (in particular, the profit and loss which the Customer may be exposed to with fluctuations in market rates) and/or such other information regarding the Transaction as the Bank may think relevant. Any sensitivity analysis which may be provided is for the purpose of illustration only and is not to be treated as the Bank's view on how the market will move in the future. The Customer is strongly advised to study and should fully understand the relevant term sheet and/or confirmations before executing or entering into any Transaction. **The provision of such term sheets and/or confirmations shall not, however, detract from the Customer's duty to take all such steps and make all such enquiries as may be necessary or desirable to ensure the Customer fully understands and is familiar with the Transaction concerned.**

### 4. Margin / Collateral

- (i) The risk of loss in financing a transaction by deposit of collateral is significant. The Customer may sustain losses in excess of 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 Customer should fully understand these Terms and Conditions that are applicable to any Transaction to be effected on margin or overdraft or which involves a contingent liability. In particular, the Customer should be aware that:
  - (a) The Bank may call upon the Customer at short notice to provide additional margin as determined by the Bank in its sole discretion. This amount may be substantial and may exceed the amount originally committed as initial margin;
  - (b) if the required margin deposits or interest payments are not made within the prescribed time, the Bank may realize such part or all of the margin as the Bank deems necessary to satisfy the Customer's liabilities without notice to or consent from the Customer (or other party providing collateral); and
  - (c) The Bank may close out, liquidate, set off, realize or otherwise deal with any or all outstanding Transactions (notwithstanding that any of the same has not yet matured), (whether or not any additional loss may thereby arise). In the event a Transaction is liquidated at a loss and the loss exceeds the aggregate margin deposited, the Customer will remain liable for any resulting deficit in his/her account and interest charged on his/her account.
- (ii) If the Customer deposits collateral as security with the Bank, the way in which it will be treated will vary according to the type of Transaction and where it is traded. There could be significant differences in the treatment of the Customer's collateral depending on whether the Customer is trading at a recognized or designated Exchange, with the rules of that Exchange (and associated Clearing House) applying, or trading off-exchange.
- (iii) Deposited collateral may lose its identity as the Customer's property once dealings on the Customer's behalf are undertaken. Even if the Customer's dealings should ultimately prove profitable, the Customer may not get back the same Assets which he/she has deposited and may have to accept payment in cash. The Customer should ascertain from the Bank how his/her collateral will be dealt with, in a particular case.
- (iv) The Customer should therefore carefully consider whether such a financing arrangement is suitable in light of the Customer's financial position and investment objectives.

### 5. Margin Trading / Leveraged Transactions

The risk of loss in trading Securities, Other Investments and currencies without full payment can be substantial. The Customer should therefore carefully consider whether such trading is suitable for him/her in light of his/her financial position. In considering whether to trade, the Customer should be aware of the following:-

- (i) the Customer may sustain a total loss of the initial margin funds and any additional funds that he/she deposits with the Bank to maintain a position in Securities, Other Investments or currencies;

- (ii) While the amount of the initial margin deposit may be small relative to the value of the transactions, a relatively small market movement would have a proportionately larger impact on the funds deposited with the Bank as margin;
- (iii) if the market moves against the Customer's position and there is a decrease in the value of his/her Securities below the value required under the terms of the facilities, the Bank may call upon the Customer on short notice to make up the shortfall ("margin call") by depositing a substantial amount of additional margin funds. These decreases may be significant and very sudden and payment of a significant shortfall amount may be required on very short notice. Upon the making of a margin call by the Bank, the Customer will be required forthwith to deposit with the Bank an amount of additional funds in order to maintain the margin of the security or to sell the Securities or part thereof or to provide additional security to secure the facilities. If the Customer does not provide the required funds within the prescribed time, the Customer's position may be liquidated at a loss, and the Customer will be liable for any resulting deficit in his/her account. The Bank may also, consistent with these Terms and Conditions, require immediate repayment of all monies owing to the Bank under these Terms and Conditions or in connection with the facilities or take enforcement action including the sale of all or any part of the Securities held by the Bank as security for the facilities;
- (iv) The Customer will be exposed to the volatility of the various Exchanges and political and other risks in the various jurisdictions in which the Securities or Other Investments are traded. The securities market of such Exchanges is a determinant of the value of the listed securities comprised in the security for the facilities, notwithstanding that the Bank retains sole discretion in determining the amount which can be borrowed against the value of the Securities. The value of Securities or Other Investments may experience downward movements and may under some circumstances even become valueless. There is therefore an inherent risk that losses rather than profits may be incurred as a result of buying or selling Securities. Under certain market conditions, the Customer may find it difficult or impossible to liquidate a position. This can occur, for example, when the price moves over the permissible range as stipulated by the Exchange;
- (v) The high degree of leverage due to the small margin requirement that is often obtainable in currency trading can work against the Customer as well as for the Customer. The use of leverage can lead to large losses as well as gains;
- (vi) The Bank has no duty to monitor the Customer's leveraged position nor his/her use of margin / leverage in transactions. The Customer may obtain his/her margin / leveraged position from the relationship manager of the Bank upon request, however, the information is provided to the Customer for his/her information only, the Customer should only rely on information in his/her monthly statements. Furthermore, the Bank has no obligation nor duty to inform the Customer of his/her margin/leveraged position nor any change in his/her position, the Customer is responsible for monitoring and checking his/her own leveraged or financial position;
- (vii) The Bank retains the discretion to control the list of marginable Securities which may be used as security. The Bank may add to or delete from the list of marginable Securities at any time and from time to time without notice;
- (viii) Under certain market conditions, the Customer may find it difficult or impossible to liquidate an existing position, assess the value, determine a fair price or assess the Customer's risk exposure. Placing buy or sell orders will not necessarily limit the Customer's losses to the intended amounts, since market conditions may make it impossible to execute such orders at the designated price;
- (ix) placing contingent orders, such as "stop-loss" or "stop-limit" order, will not necessarily limit the Customer's losses to the intended amounts, since market conditions may make it impossible to execute such orders;
- (x) a "spread" position may not be less risky than a simple "long" or "short" position; and
- (xi) The interest rate payable by the Customer under the facilities, foreign exchange risks, the income received on the Securities, Other Investments and the time deposit(s) and any negative gearing are other variables which add to the risks to which the Customer will be exposed.

## 6. "Stop-loss" Limits and Orders

The Customer may place a "stop-loss" order with the Bank, whereby the Bank is instructed and authorized to close out relevant open positions without further notice as and when the mark-to-market loss on such open positions exceeds the pre-agreed levels (the "stop-loss" limit). Placing "stop-loss" orders will not necessarily limit the Customer's losses to the intended amounts as market conditions may make it difficult or even impossible to execute such orders. **The Bank does not accept liability for the non-execution of a "stop-loss" order and execution of such orders is strictly on the basis that the Customer releases the Bank from any liabilities and authorizes the Bank, in such circumstances, to execute such order at such rate and in such manner as the Bank may deem appropriate.**

## 7. Risks of Foreign Markets

Foreign markets may involve different risks to the Hong Kong markets. In some cases, the risks will be greater. The potential for profit or loss from transactions on foreign markets or in foreign currency-denominated contracts will be affected by fluctuations in foreign exchange rates.

## **8. Trading Facilities**

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 Customer'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. On request, the Bank will explain any protection provided to the Customer under an exchange or clearing house guarantee applicable to any on-exchange Transaction in which the Customer is dealing.

## **9. Exchange Traded Instruments and Electronic Trading**

(i) For Transactions involving underlying contracts or instruments which are traded at stock exchanges, disruption of the normal market operation or conditions of such exchanges and/or the rules of operation of such exchanges may increase the risk of loss by making it difficult or impossible to close out Transactions or illiquid positions. This may occur, for example, at times of rapid price movement if the price rises or falls in one trading session to such an extent that under the rules of the relevant exchange trading is suspended or restricted.

(ii) Trading on an electronic trading system may differ from trading on other electronic trading systems. If the Customer undertakes transactions on an electronic trading system, he/she will be exposed to risks associated with the system including the failure of hardware and software. The result of any system failure may be that the Customer's order is either not executed according to his/her instructions or is not executed at all, which may lead to losses to the Customer. It is likely that such losses will not be recoverable from the relevant exchange as the rules of the relevant exchanges may exempt them from liabilities. The Customer shall release the Bank from any liability for such losses.

## **10. Clearing House Protection**

On many Exchanges, the performance of a transaction by the Bank (or a third party with whom the Bank is dealing on the Customer's behalf) is "guaranteed" by the exchange or its Clearing House. However, this guarantee is unlikely in most circumstances to cover the Customer, and, if it does not, it will not protect the Customer if the Bank or another party defaults on its obligations to the Customer. On request, the Bank will explain any protection provided under an Exchange or Clearing House guarantee applicable to any on-exchange Transaction in which the Customer is dealing. There is no guarantee for traditional options, nor normally for off-exchange instruments which are not traded under the rules of a recognized or designated investment exchange.

## **11. Currency Risks**

The Customer should be aware that the profit or loss in transactions in foreign currency-denominated contracts (whether they are traded in the Customer's 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.

## **12. Client Assets**

The Customer's assets received or held by the licensed or registered person outside Hong Kong are subject to the applicable laws and regulations of the relevant overseas jurisdiction which may be different from the Securities and Futures Ordinance (Cap 571 of the laws of Hong Kong) and the rules made under it. Consequently, such assets may not enjoy the same protection as that conferred on assets received or held in Hong Kong.

## **13. Commission**

Before the Customer begins to trade, he/she should obtain details of all commissions and other charges for which he/she will be liable. If any charges are not expressed in money terms (but, for example, as a percentage of contract value), the Customer should obtain a clear written explanation, including appropriate examples, to establish what such charges are likely to mean in specific money terms.

## **14. Insolvency**

The Bank's insolvency or default, or that of any other broker involved with Transactions, may lead to positions being liquidated or closed without the Customer's consent. In certain circumstances, the Customer may not get back the actual assets which he/she lodged as collateral and the Customer may have to accept any available payment in cash. On request, the Bank will provide an explanation of the extent to which it will accept liability for any insolvency of, or default by, other brokers involved with the Customer's transactions.

## **15. Transactions in Other Jurisdictions**

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

## 16. Deposited Cash and Property

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

## 17. Transactions in Derivatives

This brief statement does not disclose all of the risks and other significant aspects of trading in derivatives. In light of the risks, the Customer should undertake such transactions only if he/she understands the nature of the contracts (and contractual relationships) into which the Customer is entering and the extent of his/her exposure to risk. Trading in derivatives is not suitable for many members of the public. The Customer should carefully consider whether trading is appropriate for him/her in light of his/her experience, objectives, financial resources and other relevant circumstances.

- (i) The risk of loss in trading derivatives is substantial. In some circumstances, the Customer may sustain losses in excess of his/her initial margin funds. 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. The Customer may be called upon at short notice to deposit additional margin funds. If the required funds are not provided within the prescribed time, the Customer's position may be liquidated. The Customer will remain liable for any resulting deficit in his/her account. The Customer should therefore carefully study and understand derivatives before he/she trades and carefully considers whether such trading is suitable in light of the Customer's own financial position and investment objectives.
- (ii) Strategies using combinations of positions, such as "spread" and "straddle" positions may be as risky as taking simple "long" or "short" positions.
- (iii) Whilst derivative instruments can be utilized for the management of investment risk, some instruments are unsuitable for many investors. Different instruments involve different levels of exposure to risk, and in deciding whether to trade in such instruments the Customer should be aware of the following points.
- (iv) Options
  - (a) There are many different types of options with different characteristics and subject to different conditions.
  - (b) Transactions involving options involve a high degree of risk. Option transactions are not suitable for many members of the public. Purchasers and sellers of options should familiarize themselves with the type of option (i.e. put or call) which they contemplate trading and the associated risks. The Customer should calculate the extent to which the value of the options must increase for his/her position to become profitable, taking into account the premium and all transaction costs.
  - (c) The Customer should inform himself/herself of exercise and expiration procedures and his/her rights and obligations upon exercise or expiry.
  - (d) The Customer is solely responsible for ensuring that the Bank receives adequate and timely instructions as to the exercise or abandonment of any options.
  - (e) Buying Options
    - (e1) The purchaser of options may offset or exercise the options or allow the options to expire.
    - (e2) Buying options involve less risk than selling options because the purchaser of options may offset or exercise the option 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 purchased options expire worthless, the purchaser will suffer a total loss of the investment which will consist of the option premium plus commissions and other transaction charges. If the Customer is contemplating purchasing deep-out-of-the-money options, he/she should be aware that the chance of such options becoming profitable ordinarily is remote.
    - (e3) The value of an option is partly dependent on the remaining period (the tenor) of the option prior to expiry date, an option may decline in value over time even if the value of the underlying instrument remains constant or performs favourably.
    - (e4) Certain options markets operate on a margined basis under which the purchaser does not pay the full premium on their option at the time they purchase it. If required margin from time to time is not paid the position may be closed or liquidated without references to the purchaser in the usual way.

(f) Selling (writing) Options

- (f1) Selling ("writing" or "granting") an option generally entails considerably greater risk than purchasing options. Although the premium received by the writer is fixed, the writer may sustain a loss well in excess of that amount. The writer will be liable for additional margin to maintain the position if the market moves unfavourably. The writer will also be exposed to the risk of the purchaser exercising the option and the writer will be obligated to either settle the option in cash or to acquire or deliver the underlying interest. 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 loss can be unlimited.
- (f2) Selling (writing) covered CALL Options. The writer of a covered CALL option sells (writes) the CALL option for an underlying instrument which he/she already owns. If the option is exercised by the purchaser, the writer will not profit from the price growth of the underlying instrument in excess of the exercise price but only receive the premium paid by the buyer. If the CALL option is not exercised by the purchaser, the Customer bears the full risk of the underlying instrument.
- (f3) Selling (writing) uncovered CALL options. The writer of an uncovered CALL option sells (writes) the CALL option without already owning the underlying instrument. In the event it has to be delivered and accordingly, the risk can be unlimited. The writer of an uncovered CALL option is required to deposit a security margin and if the price of the underlying instrument rises, the security margin increases. Where required margin from time to time is not paid the position may be closed or liquidated without reference to the Customer in the usual way.

**ONLY EXPERIENCED PERSONS SHOULD CONTEMPLATE WRITING UNCOVERED OPTIONS AND THEN ONLY AFTER SECURING FULL DETAILS OF THE APPLICABLE CONDITION AND RISK EXPOSURE.**

(f4) Selling (writing) PUT options

The writer of a PUT option is normally required to deposit a security margin. If the price of the underlying instrument falls, then the security margin to be provided will increase. Where required margin from time to time is not paid the position may be closed or liquidated without reference to the Customer in the usual way.

- (v) 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.

(vi) SWAPS

- (a) Different instruments may be swapped, resulting in an exchange of the source of future payment streams and occasionally also an exchange of principal on commencement and/or maturity date (more frequently if the transaction is an amortizing swap). The risk that one of the parties to the swap will default or otherwise fail to perform its obligations is typically greater in swaps where both principal and income streams are exchanged. For uncovered contracts, there is risk which is directly related to the risks of the different instruments swapped. It is important to note that these risks may not be off-setting in effect, and should be viewed instead in aggregate.
- (b) Risks of interest rate swaps:
- (b1) An Interest Rate Swap is an agreement between two parties to make reciprocal payments over a specific period of time. The payments are determined by reference to a notional principal amount and fixed or floating rates of interest. Floating rates are typically based on some published index of market rates.
- (b2) The Customer may be a receiver of fixed rate and payer of floating rate, or vice versa. In either case, movements in the referenced rates could have a significant impact on the Customer's cash flow as well as the cost of unwinding the swap position.
- (b3) For uncovered contracts, there is an unlimited interest rate risk, computed on the full amount(s) contracted.

(vii) Futures

The risk of loss in trading futures contracts is substantial. In some circumstances, the Customer may sustain losses in excess of his/her initial margin funds. Placing contingent orders, such as "stop-loss" or "stop-limit" orders, will not necessarily avoid loss. Market conditions may make it impossible to execute



such orders. The Customer may be called upon at short notice to deposit additional margin funds. If the required funds are not provided within the prescribed time, the Customer's position may be liquidated. The Customer will remain liable for any resulting deficit in his/her account. The Customer should therefore study and understand futures contracts before he/she trades and carefully considers whether such trading is suitable in the light of his/her own financial position and investment objectives. If the Customer trades options he/she should inform himself/herself of exercise and expiration procedures and his/her rights and obligations upon exercise or expiry.

(viii) Off-Exchange Transactions

- (a) It may not always be apparent whether or not a particular derivative is on or off-exchange. The Bank will normally make it clear to the Customer if he/she is entering into an off-exchange derivative transaction.
- (b) While some off-exchange markets are highly liquid, transactions in off-exchange or "non-transferable" derivatives may involve greater risk than investing in on-exchange derivatives because there is no exchange on which to close out an open position. It may be impossible to liquidate an existing position, to assess the value of the position arising from an off-exchange transaction, to determine a fair price or to assess the exposure to risk. Bid and offer prices need not be quoted and, even where they are, they will be made by individual dealers in these instruments rather than on an exchange and consequently it may be difficult to establish what a fair price is. Off-exchange transactions may be less regulated or subject to a separate regulatory regime. Before the Customer undertakes such transactions, he/she should familiarize himself/herself with applicable rules and attendant risks.

(ix) Terms and conditions of contracts

The Customer should ask about the terms and conditions of the specific futures or options which he/she is trading and associated obligations (e.g. the circumstances under which the Customer 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.

(x) Suspension or restriction of trading and Pricing Relationships

- (a) 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 loss by making it difficult or impossible to effect transactions or liquidate/ off set positions. If the Customer has sold options, this may increase the risk of loss.
- (b) Further, the normal pricing relationships between the underlying instruments and the financial derivatives may not exist in certain circumstances, in particular in "combined" or "structured" transactions or where the futures contract underlying the option is subject to price limits while the option is not. The absence of a "common" or "market" reference price may make it difficult, if not impossible, for the "fair" value of the Transaction to be assessed independently. Whilst the Bank may provide periodic mark-to-market valuations to the Customer's investment, the Customer acknowledges and agrees that the Bank's determination of the value of the Transaction in accordance with its normal practices from time to time shall be conclusive and binding. The Customer further acknowledges and agrees that he/she shall not have any access to and shall not query or require further particulars of the mode of calculation adopted by the Bank.

## 18. Warrants

The statements below do not disclose all of the risks and other significant aspects of warrants. The Customer should not deal in warrants unless he/she understands the nature of the transaction the Customer is entering into and the extent of the Customer's exposure to potential loss.

- (i) A warrant is a right to subscribe for shares, debentures, loan stock or government securities, and is exercisable against the original issuer of the securities. Warrants often involve a high degree of gearing, so that a relatively small movement in the price of the underlying security results in a disproportionately large movement in the price of the warrant. The prices of warrants can therefore be volatile.
- (ii) The Customer should not buy a warrant unless he/she is prepared to sustain a total loss of the money invested plus any commission or other transaction charges.
- (iii) Some other instruments are also called warrants but are actually options (for example, a right to acquire securities which is exercisable against someone other than the original issuer of the securities, often called a "covered warrant").

**19. Risk of Providing an Authority to Repledge the Customer's Securities Collateral, etc.**

- (i) There is risk if the Customer provides the Bank with an authority that allows it to apply the Customer's securities or securities collateral pursuant to a securities borrowing and lending agreement, repledge the Customer's securities collateral for financial accommodation or deposit the Customer's securities collateral as collateral for the discharge and satisfaction of the Bank's settlement obligations and liabilities.
- (ii) If the Customer's securities or securities collateral are received or held by the Bank in Hong Kong, the above arrangement is allowed only if the Customer consents in writing. Moreover, unless the Customer is a professional investor, the Customer's authority must specify the period for which it is current and be limited to not more than 12 months. If the Customer is a professional investor, these restrictions do not apply.
- (iii) Additionally, the Customer's authority may be deemed to be renewed (i.e. without his/her written consent) if the Bank Issues the Customer a reminder at least 14 days prior to the expiry of the authority, and the Customer does not object to such deemed renewal before the expiry date of the Customer's then existing authority. The Customer 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 Customer or to allow his/her securities or securities collateral to be lent to or deposited as collateral with third parties. If the Customer requires an explanation of the purposes for which one of these authorities is to be used, he/she should ask the Bank.
- (iv) If the Customer signs one of these authorities and his/her securities or securities collateral are lent to or deposited with third parties, those third parties will have a lien or charge on the Customer's securities or securities collateral. Although the Bank is responsible to the Customer for securities or securities collateral lent or deposited under the Customer's authority, a default by it could result in the loss of the Customer's securities or securities collateral.
- (v) If the Customer does not require margin facilities or do not wish his/her securities or securities collateral to be lent or pledged, do not sign the above authorities and ask to open this type of account.

**20. Growth Enterprise Market**

- (i) 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 volatile and illiquid.
- (ii) The Customer is aware of the potential risks of investing in such companies and understand that the Customer 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.
- (iii) The Customer should seek independent professional advice if he/she is uncertain of or have not understood any aspect of this risk disclosure statement or the nature and risks involved in trading of GEM stocks.
- (iv) The Customer acknowledges that the price of securities traded on GEM can and does fluctuate, and that any individual security may experience upward or downward movements, and may under some circumstances even become valueless. The Customer understands therefore that there is an inherent risk that losses may be incurred rather than profit made, as a result of buying and selling securities traded on GEM. This is a risk that the Customer should be prepared and be able to accept.
- (v) The Customer understands that GEM is designed to accommodate companies to which a high investment risk may be attached and in particular:
  - (a) There may be risks arising from the emerging nature of the companies listed on GEM, the business sectors and/or the countries in which they operate;
  - (b) Securities traded on GEM may experience higher market volatility than securities traded on the Main Board of the Exchange; and
- (vi) The Customer further understands that generally GEM listed companies do not issue newspaper announcements and that the main way of GEM listed companies to provide information is by publication on the internet website operated by the Exchange. Accordingly the Customer understands information source is limited and to obtain up-to-date information on GEM listed companies, the Customer must have regular access to the website of the Exchange.
- (vii) The Customer understands that he/she should exercise appropriate care and judgment and carefully assess the securities traded on GEM before committing to any trading activities. The Customer should also seek independent professional advice if he/she is uncertain about trading or if the Customer does not understand any aspect of this General Risk Disclosure Statement and Disclaimer, the nature and the risks involved in trading of the securities listed on GEM, or any other matters. The Customer acknowledges that this General Risk Disclosure Statement and Disclaimer does not disclose nor seek to disclose all the risks and other significant aspects of GEM listed securities.

**21. NASDAQ-AMEX Securities**

The Customer should understand that the securities under the NASDAQ-AMEX Pilot Program ("PP") are aimed at sophisticated investors. The Customer should consult his/her dealer and become familiarized with the PP before trading in the PP securities. The Customer 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.

**22. Equity Linked Instrument "ELI"**

The Customer should understand that the outcome of an ELI investment depends upon market conditions during the investment period. The price of the Linked Instrument may go up or down during such period and this will affect the amount of the proceeds and whether the proceeds will be in the form of cash or the Linked Instrument. The Customer should prepare to risk the money to invest in an ELI being returned in the form of the Linked Instrument or proceeds which may be less than the invested amount. The Customer should seek independent professional advice if he/she is uncertain about the risk of ELI or any other matter.

**23. Equity-Linked Deposits "ELD"**

- (i) **ELD not protected.** An ELD is a form of structured deposit that carries risks not normally associated with ordinary bank deposits. It is a non-traditional deposit and should not be treated as a proxy or substitute for a standard time deposit. It is NOT a protected deposit and is NOT protected by the Deposit Protection Scheme or any other deposit protection scheme in any other jurisdiction. Any payment or return on an ELD is not guaranteed by the Deposit Protection Scheme or the Hong Kong Investor Compensation Fund. The Customer must be prepared to risk the interest that the Customer might otherwise have earned on money invested as a deposit, as well as the Principal Amount.
- (ii) **Value.** The Customer should understand that the outcome of an ELD investment depends upon market conditions during the investment period and the performance of ELDs may fluctuate and the Customer may sustain a total loss of investment.
- (iii) **Independent advice.** The Customer should seek independent professional advice if he/she is uncertain about the risk of ELD or any other matter.
- (iv) **Refer to other documents.** The Customer understands that the risks in respect of an ELD will be set out in the relevant principal brochure and that the Customer must carefully read such risk disclosure and product features before deciding whether to invest in an ELD.

**24. Structured Investment Product ("SIP")**

- (i) **SIP not protected.** A SIP is a form of structured product that carries risks not normally associated with ordinary bank deposits. It should not be treated as a proxy or substitute for a standard time deposit. It is NOT a protected deposit and is NOT protected by the Deposit Protection Scheme or any other deposit protection scheme in any other jurisdiction. Any payment or return on an SIP is not guaranteed by the Deposit Protection Scheme or the Hong Kong Investor Compensation Fund. The Customer must be prepared to risk the interest that the Customer might otherwise have earned on money invested as a deposit, as well as the Principal Amount.
- (ii) **No early termination.** An SIP should be considered a "hold to maturity" financial product and the Customer should be prepared to hold the SIP until the Maturity Date. No early uplift, early withdrawal or early termination by the Customer is permitted unless agreed by the issuer. Any early termination agreed by the issuer will be subject to any break costs determined by the issuer in its sole and absolute discretion which may substantially reduce, or result in a total loss of, the Customer's original investment amount and any expected return of the SIP.
- (iii) **Value.** The value of a SIP may be affected by a number of factors, including changes in the value and volatility of any underlying asset, rate or index, changes in foreign exchange rates and economic, financial and political events that are difficult to predict, and thus may be subject to appropriate adjustments by the issuer. The total payout the Customer will receive may be less than the return or interest the Customer would otherwise receive from other investments.
- (iv) **Investment risk.** A SIP has investment risks. The Customer will receive a return (if any) determined in the manner set out in the Offering Documents and other offering documents, if any.
- (v) **Market Risk.** The return of an equity-linked SIP depends on market conditions during the contract period. In case of physical settlement, the value of the share received may be worthless and the Customer may lose the Customer's Principal Amount.
- (vi) **Reinvestment risks.** The Customer must be prepared to accept investment risk. That is, where a SIP is redeemed early for any unforeseen reasons, the Customer will have to seek reinvestment opportunities. The returns from such reinvestment may be less than the returns from the SIP, had they not been redeemed early.
- (vii) **Credit risks.** The Customer is subject to the credit risk of the issuer of the SIP. A SIP is not secured by any collateral. In the worst case scenario, where this issuer defaults on its payment obligations under the SIP, the Customer will receive no interest payment and may also lose the Customer's original investment.

## 25. Currency Linked Investment (CLI)

- (i) **Not a traditional deposit/time deposit.** The CLI is a form of structured product that carries risks not normally associated with ordinary bank deposits. The Customer should therefore not treat a CLI as a substitute for ordinary savings or time deposits. It is NOT a protected deposit and is NOT protected by the Deposit Protection Scheme or any other deposit protection scheme in any other jurisdiction and not guaranteed by the Deposit Protection Scheme or the Hong Kong Investor Compensation Fund.
- (ii) **Derivative risks.** A CLI is embedded with one or more currency options. An option transaction involves risks. All or part of the interest payable on the CLI represents the premium for the currency option. Although the amount of this premium (for selling an option) is fixed, the Customer may sustain a loss well in excess of such premium amount, and the Customer's loss could be very substantial.
- (iii) **Currency risk.** The potential return in respect of a CLI is generally higher than a time deposit in the Investment Currency. However, such opportunity also carries with the currency risk. The Customer must be prepared to receive the Principal Amount and the interest amount in either the Investment Currency or the Linked Currency. An investment in a CLI is subject to market fluctuations and the risks inherent in investments generally. In particular, the return of a CLI is linked to the exchange rate of the Investment Currency and the Linked Currency. Movements in exchange rates can be unpredictable, sudden and drastic, and affected by complex political and economic factors.
- (iv) **Limited potential gain.** The maximum potential return is limited to the pre-determined Interest Rate
- (v) **Maximum potential loss.** A CLI is not principal protected. The Customer could lose the entire Principal Amount.
- (vi) **Liquidity risks.** A CLI is a commitment by the Customer for the Tenor. No early uplift, early withdrawal or early termination by the Customer is permitted. The Customer must maintain the CLI with the Bank up to the Maturity Date. There is no secondary market for the CLI.
- (vii) **Credit risks.** A CLI is not secured by any collateral. If the Customer invests in a CLI, the Customer will be relying on the Bank's creditworthiness. If the Bank becomes insolvent or defaults on its obligations under a CLI, the Customer can claim only as an unsecured creditor of the Bank. In the worst case scenario, the Customer may lose all the original investment amount.

## 26. Major Risk Associated with RMB Products

- (i) The Customer is required to select an RMB savings account as the designated payment account for subscribing and/or trading in stocks denominated in RMB which are listed on the HKEx ("RMB Stocks"). To facilitate the subscription and trading via the Account of those RMB Stocks, when the Customer for the first time (a) subscribes or (b) places any order to trade any RMB Stocks via the Account, he/she shall be deemed to have agreed and provided instruction to the Bank that he/she designates the RMB savings account(s) (whose accountholder(s) are identical to that/those of the Account) then maintained at the Bank as the settlement account(s) for the subscription and trading via the Account of all RMB Stocks. Customers should ensure they have sufficient RMB for settlement and clearing purpose.
- (ii) In case the Customer does not have sufficient RMB funding to subscribe RMB products, subject to compliance with all applicable laws, rules and regulations, the Bank may assist the Customer to convert other currencies to RMB. However, the Bank does not guarantee that it can provide sufficient RMB funding for the Customer due to the limitation imposed upon the flow of RMB funds in Hong Kong. The Bank may unwind the Customer's trades due to insufficient RMB funding and the Customer's investment may be adversely affected if the Customer suffers losses due to settlement failure.
- (iii) RMB may not be freely convertible and is subject to exchange controls and restrictions.
- (iv) While offshore RMB and onshore RMB represent the same currency, they are traded in different and separate markets which operate independently. As such, offshore RMB does not necessarily have the same exchange rate and may not move in the same direction as onshore RMB.
- (v) There is no guarantee that RMB will not depreciate. If the Customer converts Hong Kong Dollar or any other currency into RMB so as to invest in a RMB product and subsequently converts the RMB sale proceeds back into Hong Kong Dollar or any other currencies, the Customer may suffer a loss if RMB depreciates against Hong Kong Dollar or other currencies.
- (vi) RMB products which are not denominated in RMB or RMB products with underlying investments which are not RMB-denominated will be subject to multiple currency conversion costs involved in making investments and liquidating investments, as well as the RMB exchange rate fluctuations and bid/offer spreads when assets are sold to meet redemption requests and other capital requirements (e.g. settling operating expenses).
- (vii) The PRC government has gradually liberalized the regulation of interest rates in recent years. Further liberalization may increase interest rate volatility. For RMB products which are, or may invest in RMB debt instruments, such instruments are susceptible to interest rate fluctuations, which may adversely affect the return and performance of the RMB products.

- (viii) For RMB products that do not have access to invest directly in the PRC, their available choice of underlying investments denominated in RMB outside the PRC may be limited. Such limitation may adversely affect the return and performance of the RMB products.
- (ix) For some RMB investment products, their return may not be guaranteed or may only be partly guaranteed. The Customer should read carefully the statement of illustrative return attached to such products and in particular, the assumptions on which the illustrations are based, including, for example, any future bonus or dividend declaration.
- (x) For RMB products which involve a long period of investment, if the Customer redeems the investment before the maturity date or during the lock-up period (if applicable), he/she may incur a significant loss of principal where the proceeds may be substantially lower than the invested amount. The Customer 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.
- (xi) RMB products are subject to the credit and insolvency risks of their issuers. The Customer should consider carefully the creditworthiness of the issuers before investing. RMB products may invest in derivative instruments, counterparty risk may also arise as the default by the derivative issuers may adversely affect the performance of the RMB products and result in substantial losses.
- (xii) When the guarantor and issuer become insolvent or go into liquidation, the Customer may lose their entire investment irrespective of the performance of the underlying or the terms of the product.
- (xiii) Some RMB products may invest in RMB debt instruments not supported by any collateral. Such products are fully exposed to the credit risk of the relevant counterparties. Where a RMB product invests in RMB debt instruments, the product is exposed to the credit risk of the relevant derivative counterparties.
- (xiv) RMB is less liquid than other currencies. RMB products may not be regularly traded or have an active secondary market. The Customer should be aware that payments and redemptions of RMB products may not always be made within the expected timescales, or he/she may have to sell at a deep discount to the product value.
- (xv) For RMB denominated underlying investments, there is a possibility of not receiving the full amount in RMB upon redemption. This may be the case if the issuer is not able to obtain sufficient amount of RMB in a timely manner due to the exchange controls and restrictions applicable to the currency.
- (xvi) In general, RMB products are exposed to the usual kinds of risks, such as market risk, credit risk, and counterparty risks, that might be associated with products denominated in other currencies. Customers should carefully consider whether the products are appropriate for them in view of their personal circumstances.

## **27. Risk relating to RMB being chosen as the Investment Currency or Linked Currency of a product**

- (i) The value of RMB against other foreign currencies fluctuates and will be affected by, amongst other things, the PRC government's control (for example, the PRC government regulates conversion between RMB and foreign currencies), which may adversely affect the Customer's return under this product when the Customer converts RMB into his/her home currency. RMB is currently not freely convertible and conversion of RMB in Hong Kong is subject to certain restrictions.
- (ii) As the offshore deliverable Chinese RMB market is currently in the developing phase, there is no market standard determination of the exchange rate involving deliverable RMB. Screen rate (if available) is for indication only and might not necessarily equal to market trading rate. The Customer must therefore be comfortable with the Bank's good faith determination of the Fixing Rate of this product. All determinations made by the Bank in good faith shall be conclusive and binding on the Customer.
- (iii) When the Customer converts RMB amount back to their home currency, exchange rate fluctuation risk may cause a loss on conversion of RMB back into such other currency.

For detailed RMB risks for Structured Products, the Customer should carefully read and understand the relevant Offering Documents.

## **28. Major Risks Associated with Exchange Traded Funds ("ETFs")**

- (i) ETFs are passively managed funds listed on an exchange designed to track, replicate or correspond to the performance of their underlying benchmarks (e.g. an index) and offer customers a way to obtain cost-effective exposure to a wide range of underlying market themes. ETFs can be broadly categorized as (1) physical ETFs and (2) synthetic ETFs. Physical ETFs directly buy all or a portion of the assets needed to replicate the composition and weighting of their benchmark. Synthetic ETFs do not buy the assets in their benchmark but typically invest in financial derivative instruments to replicate the benchmark's performance. Context of Synthetic ETF Product should include, among other things, the index that the synthetic ETF is tracking, the replication strategy, any embedded derivatives and collateral.

- (ii) ETF customers are exposed to the political, economic, currency, legal and other risks of a specific sector or market related to the index that it is tracking.
- (iii) Where a Synthetic ETF invests in derivatives to replicate the index performance, customers are exposed to the credit risk of the counterparties who issued the derivatives, in addition to the risks relating to the index. 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.
- (iv) Listing or trading on an exchange does not in and of itself, guarantee that a liquid market exists for an ETF. Besides, a higher liquidity risk is involved if an ETF invests in financial derivative instruments that are not actively traded in the secondary market and where price transparency is not as easily accessible as physical securities. This may result in a bigger bid and offer spread. These derivatives are also susceptible to more price fluctuations and higher volatility. Hence, they can be more difficult and costly to unwind early, especially when the derivatives provide access to a restricted market where liquidity is limited in the first place.
- (v) Tracking error refers to the difference between the performance of an ETF and its underlying benchmark. Tracking errors can arise owing to factors like the impact of transaction expenses and fees incurred to the ETF, changes in the composition of the underlying benchmark and changes of the type of ETF. Besides, an ETF may be traded at discount or premium to its net asset value. The price discrepancy is caused by supply and demand factors, and may be likely to emerge during periods of high market volatility and uncertainty. This phenomenon may also be observed for ETFs which track specific markets or sectors that are subject to direct investment restrictions.
- (vi) Where the index/market 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. Customers who buy an ETF at a premium may not be able to recover the premium in the event of termination.
- (vii) An ETF may be subject to tax imposed by the local authorities in the market related to the index that it tracks, emerging market risks and risks in relation to the change of policy of the reference market which may in the worst case scenario result in the termination of the ETF.

## 29. Risk of Derivatives Trading

- (i) The Customer is subject to the default risk of the derivative product issuer. If the derivative product issuer becomes insolvent or otherwise defaults on its obligations under the derivative product, the Customer may not receive any payment from the product issuer and will lose his/her entire investment in the derivative product.
- (ii) The prices of derivative products may fall as rapidly as they may rise and may become valueless. The prices of derivative products may not match their theoretical prices owing to external influences like market supply and demand factors. Their actual traded prices accordingly can be higher or lower than their theoretical prices.
- (iii) For listed derivative products, the HKEx requires derivative product issuers to appoint a liquidity provider for derivative products, who will provide two way quotes to facilitate trading of the derivative product. If the liquidity provider defaults or ceases to perform its role, the Customer may not be able to buy or sell the product until a new liquidity provider is appointed and performs.
- (iv) The Customer who is trading derivative products with underlying assets not denominated in Hong Kong Dollar are subject to exchange rate risk. Currency rate fluctuations will adversely impact the underlying asset value as well as the derivative product price. Furthermore, if the relevant foreign currency is subject to exchange control, the Customer will need to convert the local currency into the relevant foreign currency for investing in that derivative product and it remains possible that he/she may not receive the relevant foreign currency on redemption or sale of that derivative product.
- (v) Uncollateralized derivative products are not asset-backed. In the event of the product issuer’s insolvency, the Customer can lose his/her entire investment. The Customer should carefully read the listing/offering documents of each derivative product to determine if it is uncollateralized
- (vi) Callable Bull/Bear Contract (“CBBCs”) are structured products that track the performance of an underlying asset without requiring their holders to pay the full price requisite for owning the actual asset. They are issued either as Bull Contracts or Bear Contracts, all with a fixed expiry date, a call price and mandatory call feature. If the price of the underlying asset of a CBBC reaches the call price at any time before its expiry, the CBBC will be called by the issuer and trading of the CBBC will be terminated immediately. For Bull contracts, the call price must be at or above the strike price, where for Bear contracts, the call price must be at or below the strike price. Once a CBBC is called, it will not be listed for trading again notwithstanding the underlying asset price bounces back.

- (vii) Derivative Warrants (“DWs”) are derivative investment instruments which give the holders the right to buy or sell the underlying asset at a pre-set price within a prescribed time period. DWs are generally divided into call DWs and put DWs. Call DWs holders have the right (but not the obligation) to buy from the warrant issuer a specific amount of the underlying asset at a pre-set price within a prescribed time period. Conversely, put DWs holders have the right (but not the obligation) to sell to the warrant issuer a specific amount of the underlying asset at a pre-set price within a prescribed time period. DWs holders may sell the DWs before the expiry date. DWs are usually cash-settled at expiry.
- (viii) CBBCs and DWs are leveraged products. The prices of CBBCs and DWs fluctuate and may dramatically and swiftly change in value to a much greater extent than the underlying assets. Assuming all other factors remain unchanged, the prices of CBBCs and DWs will decrease over time as they approach their expiry dates and they should not be held as long term investments. CBBCs and DWs have expiry dates and can become valueless after their expiry.
- (ix) CBBCs have a mandatory call feature and are therefore subject to early termination, upon which the Customer can lose all of the investments.

**30. Risk of Investment Funds Trading**

- (i) Investment in unit trusts, mutual fund corporations or collective investment schemes involves risk and the Customer should read and understand the relevant constitutive documents, information memoranda, prospectuses and other offering documentation for further details. The Customer should make the decision to invest only after due and careful consideration have been given to them, in particular the product features, risk disclosures and fees to be charged.
- (ii) The price of units/shares/interests in unit trusts, mutual fund corporations or collective investment schemes and the income from them (if any) may go down as well as up. Any past performance figures or statistics quoted are not indicative of future performance.

**31. Risk of Trading Foreign Exchange Investment Products**

The risk of loss in foreign exchange investment products (e.g. currency linked SIP) can be substantial due to currency and market movements. The Customer may sustain substantial losses to his/her investment, especially where the linked currency experiences devaluation or weakens during the tenor of those products. In addition, where the Customer converted amounts from another currency (including the Customer's home currency) into the deposit currency in order to make the investment, the exchange rate fluctuation may cause a loss on conversion of the deposit currency (if the Bank pays the Customer the deposit currency at maturity) or the linked currency (if the Bank pays the linked currency at maturity) back into such other currency. Such potential loss from the product could offset (or even exceed) the potential gain if the deposit currency or the linked currency depreciates against the currency the Customer converted from (including the Customer's home currency).

**32. In respect of any Structured Investment Products that are specified to be authorized by the Securities and Futures Commission in the Offering Documents, such authorization does not imply official approval or recommendation.**

**33. Customers should NOT rely on leaflet alone in making any investment decision on any derivative product or investment product. Before making any such investment decision, investors should read and understand fully the listing/offering documentation of that derivative product or investment product (in particular the risk factors) and in case of doubt, seek independent professional advice.**

## B. GENERAL TERMS AND CONDITIONS

The following terms and conditions apply to the Accounts opened with or the Services (as defined below) provided by the Bank in the manner as provided for in the Account Opening Document.

### 1. Definitions and interpretation

- (i) The following words and expressions shall have the corresponding meanings wherever appropriate.

**"Account Opening Document"** means the account opening form for opening Wealth Management Accounts signed by the Customer containing the mandate to the Bank and any other document(s) for the purpose of opening an Account;

**"Accounts"** any accounts made available to the Customer by the Bank from time to time under the Account Opening Document and "Account" any one of such Accounts;

**"Affiliates"** 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 and "Affiliate" shall be construed accordingly;

**"Agent"** has the meaning ascribed to it in paragraph E7;

**"Agreement"** these Terms and Conditions and the Account Opening Document, as amended from time to time;

**"Assets"** means Securities, cash, precious metals, currencies, financial and debt instruments, commodities, financial futures, foreign exchange contracts, options, swaps and futures contracts of all kinds and any other of the Customer's assets, as may be delivered and transferred by the Customer to the Bank or to the Bank's order for management or safe-custody in accordance with this Agreement;

**"Bank"** means DBS Bank (Hong Kong) Limited, including its successors and assigns;

**"Bank Business Day"** means

- (a) In respect of Securities (except Investment Fund), SIP, CLI and in respect of any Investment Fund as far as any activities other than the subscription or application for, dealing and/or trading of Units are concerned, a day (other than a Saturday or Sunday) on which commercial banks are open for general business (including dealings in foreign exchange and foreign currency deposits) in Hong Kong and, for the purposes of payment by the Bank, a day on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) in the principal financial center for the relevant currency in which payment is to be made (which, if the currency of the payment obligation is the Euro, shall be a day on which the Trans-European Automated Real-Time Gross Settlement Express Transfer System (or any successor to such system) is open);
- (b) In respect of any Investment Fund as far as the subscription or application for, or the dealing and/or trading of Units is concerned, a day (other than a Saturday or Sunday) on which commercial banks are open for general business (including dealings in foreign exchange and foreign currency deposits) in Hong Kong and which is also a Dealing Day;
- (c) In respect of any other circumstances, a day on which the Bank is open for business in Hong Kong for at least 4 hours, other than on a Saturday, in each case as determined by the Bank;

**"Bank Charges Schedule"** the applicable schedules of fees, overdraft interest rates and other charges of the Bank, as determined from time to time by the Bank, copies and details of which are available from Customer Service Hotline, the Bank's website or Branches.;

**"Bank's Personnel"** the directors, managers, officers, employees, agents, consultants and advisers of the Bank;

**"Branch"** refers to any local branch of the Bank in Hong Kong as designated by the Bank from time to time or at any time;

**"CCASS"** the Central Clearing and Settlement System and any replacement or successor;

**"Clearing House"** The Hong Kong Securities Clearing Company Limited in relation to HKEx and, in relation of any other Exchange, the clearing house providing similar services to such Exchange;



**"Currency Linked Investment"** or **"CLI"** means a currency linked investment of a type which the Bank may, from time to time, make available in accordance with paragraph F6;

**"Customer"** means the person or each of the persons named in the Account Opening Document and/or the Agreement as the customer, and, where there are two or more such persons, mean each and all of them jointly and severally, and includes an individual, firm, company, corporation and an unincorporated body and any executor, personal representative, administrator, lawful successor of such person(s), and, in the case of a partnership, means each of the present and future partners of the partnership, and where the context permits, includes any Mandatees;

**"Customer Service Hotline"** the Bank's telephone service facility available to customers for the provision of banking services and related information;

**"Dealing Day"** means, in respect of Investment Fund, the day on which dealings take place in Units of that Investment Fund;

**"Deposit Protection Scheme"** means the Deposit Protection Scheme established under the Deposit Protection Scheme Ordinance (Chapter 581 of the laws of Hong Kong);

**"ELD"** means any equity-linked deposit which the Bank, from time to time shall make available;

**"Earmarked Amount"** at any time the sum mutually agreed between the Bank and the Customer or such sum as may be specified by the Bank from time to time;

**"Event of Default"** has the meaning ascribed to it in paragraph B24;

**"Exchange"** The Stock Exchange of Hong Kong Limited and/or any other foreign stock exchange;

**"Foreign Exchange Contracts"** has the meaning ascribed to it in paragraph E20;

**"HKEx"** Hong Kong Exchanges and Clearing Limited and any replacement or successor exchange;

**"Hong Kong"** the Hong Kong Special Administrative Region of the PRC;

**"Hong Kong Dollar"** means the lawful currency of Hong Kong;

**"Indebtedness"** all of the Customer's present or future indebtedness or that of any Security Provider owed to the Bank or its Affiliates and any other liabilities and obligations whatsoever of the Customer or any Security Provider to the Bank and its Affiliates, whether actual or contingent and whether or not matured or accrued due and whether incurred solely, severally or jointly with any other person and in whatever currency together with interest, commission, bank charges and any other costs charges and expenses charged or incurred by the Bank or its Affiliates;

**"Instructions"** any instructions deemed given to the Bank by the Customer through any communication method described in paragraphs D1 and D2 below, or such other method(s) as the Bank from time to time may determine and offer to the Customer;

**"Investment Fund"** means each unit trust or mutual fund which may be offered by the Bank;

**"Liabilities"** (a) all of the Customer's Indebtedness to the Bank, whether owing individually, jointly or jointly and severally, on any account with interest and bank charges; (b) all of the Customer's other liabilities whatsoever to the Bank whether owing individually, jointly or jointly and severally, present or future, actual or contingent, liquidated or unliquidated, primary or collateral; (c) all costs, charges and expenses howsoever incurred by the Bank in relation to this Agreement or such Indebtedness or liabilities on a full indemnity basis, and for the payment of interest on the foregoing day by day from demand until full discharge (after as well as before judgment) at such rate(s) as may from time to time be determined by the Bank notwithstanding any time or other indulgence being granted to the Customer in the Bank's discretion and any defect or deficiency or inadequacy of documents or undertakings that may be executed by the Customer in the Bank's favour and notwithstanding any omission by the Bank in obtaining proper documents from the Customer to secure any such indebtedness or liabilities; and (d) any amount wrongly credited to any of the Account(s) or to any other of the Customer's accounts with any other bank and which amount the Customer has failed to return to the Bank.

**"Losses"** any or all costs, expenses, taxes, charges, disbursements, liabilities, obligations, penalties, claims, demands, actions, proceedings, judgments, suits, losses or damages of whatsoever nature and "Loss" shall be construed accordingly;

**"Mandatee"** any person or entity appointed by a Customer and agreed by the Bank to give Instructions to the Bank in relation to any matter regarding the Account(s) of the Customer and its or their operation, as accepted by the Bank from time to time in such manner as the Bank requires;

**"Multi-Currency Settlement Account"** means the Settlement Account opened in accordance with paragraph C1;

**"Nominee"** has the meaning ascribed to it in paragraph E9(i);

**"Off-setting Contracts"** has the meaning ascribed to it in paragraph E20(iii);

**"Offering Documents"** means:

- (a) In respect of a CLI, these Terms and Conditions and the Important Facts Statement of the CLI;
- (b) In respect of a SIP, these Terms and Conditions, the Important Facts Statement, Term Sheet, and other relevant Offering Documents of such SIP;
- (c) In respect of a ELD, these Terms and Conditions, relevant principal brochure and other relevant Offering Documents of such ELD;
- (d) In respect of Investment Fund, the constitutive documents, information memoranda, prospectuses, term sheets, and other documentation of that Investment Fund;
- (e) In respect of any other circumstances, the relevant constitutive documents, information memoranda, prospectuses, term sheets (if any), and other relevant offering documentations;

**"Open Positions"** has the meaning ascribed to it in paragraph E20 (iii);

**"Other Investments"** includes, without limitation, stock index options, foreign exchange contracts and options or in respect of any indices relating to them, or in relation to any other contracts or financial instruments of any nature for the time being offered, traded or dealt in by the Bank on behalf of its Customers or on any Exchange and includes Currency Linked Investment;

**"PRC"** means People's Republic of China.

**"Purchase Costs"** in relation to any purchase of Securities or Other Investments, the aggregate of the purchase price of those Securities or Other Investments and all brokerage, commission, taxes, stamp duty, levies, fees, expenses, charges and the monies payable by the purchase in connection with such purchase;

**"Renminbi"** or **"RMB"** refer to the lawful currency of the People's Republic of China.

**"Securities"** all shares, stocks, warrants, covered warrants, bonds, debentures, debt securities, debt instruments, Investment Fund, interest in any collective investment scheme, Structured Investment Products and other securities which belong to the Customer and which from time to time are transacted and/or brought within the scope of this Agreement and which the Bank may from time to time allow to be held in, or traded through the Account(s);

**"Securities and Futures Ordinance"** means the Securities and Futures Ordinance (Chapter 571 of the laws of Hong Kong);

**"Security Provider"** any person or entity who may from time to time provide any security and/or assume the obligations of a surety or indemnifier for Indebtedness;

**"Service"** any services from time to time offered by the Bank subject to this Agreement; **"SFC"** or "Securities and Futures Commission" The Securities and Futures Commission of Hong Kong and/or any successor or other agency or authority performing or assuming its functions or substantially similar functions;

**"Structured Investment Product"** or **"SIP"** means any structured product as such term is provided in the Securities and Futures Ordinance and shall include any structured investment product offered by the Bank, from time to time, in accordance with paragraph F5 (whether in the form of a deposit, instrument or structured note) other than (a) an OTC derivative product (as may be defined in the Securities and Futures Ordinance from time to time); and (b) a regulated investment agreement (as defined in the Securities and Futures Ordinance);

**"Structured Products"** refers to Equity-Linked Deposits, Structured Investment Product and Currency Linked Investment which have the meaning ascribed to it in Section F;

**"Sub-Custodian"** has the meaning ascribed to it in paragraph E10(ii);

**"Transaction"** any treasury, Securities, foreign exchange, Structured Products and/or financial derivatives transactions entered into between the Customer and the Bank pursuant to this Agreement and any other document(s) and/or as a result of an Instruction and/or other confirming evidence exchanged between the parties or otherwise effective for the purpose of confirming or evidencing such transaction;

“Unit” means, in respect of Investment Fund, a unit / share / interest / deposit amount or other unit in or of that Investment Fund.

“Wealth Management Accounts” the accounts and sub-accounts under Wealth Management Investment Portfolio which include a Multi-currency Settlement Account, a Wealth Management Securities Account and a Time Deposit Account and includes any account opened under paragraph B2; and

“Wealth Management Securities Accounts” means an Account provided as part of the Services, as designated as such by the Bank.

- (ii) Where the Bank has any right to make any determination or to exercise discretion as regards any matter under this Agreement, such right or discretion may be exercised by the Bank in such manner as the Bank shall reasonably decide in its sole discretion.
- (iii) In this Agreement, where not inconsistent with the subject or context, words suggesting the singular shall include the plural and vice versa and words suggesting any gender shall include other genders.
- (iv) Headings are included for ease of reference only and shall not be taken into account in construing any provision of this Agreement.
- (v) Where the “Customer” is a sole proprietorship, any reference to the “Customer” in this Agreement shall be read to include each and every individual person and/or body corporate that trades under the name of, or constitutes the sole proprietorship.
- (vi) Reference to:
  - (a) Any reference to Account names in this Agreement is a reference to the Account product as identified in the Account Opening Documentation or otherwise identified in correspondence with the Customer;
  - (b) the description or marketing name of the Accounts, products and/or services contained in this Agreement include a reference to any subsequent changes in the description or marketing name of such Accounts, products and/or services;
  - (c) “including”, “such as” or “for example” when introducing an example does not limit the meaning of words to which the example relates to that example or examples of a similar kind; and
  - (d) A document includes any variation or replacement of it and any reference to any details set out in a document (for example, limits, fees, interest rates or repayment arrangements) is a reference to those details as varied in accordance with it or as otherwise agreed.

## 2. Mandate

- (i) The Customer authorizes the Bank at its absolute discretion to open or continue any Account(s) in the Customer's name and to open such Account(s) of whatever nature in the Customer's name as the Customer may direct and acknowledges that such Account(s) shall be governed by this Agreement. Such Account(s) may be opened after completion by the Customer of any other documentation required by the Bank.
- (ii) The Customer authorizes the Bank at its absolute discretion and until the Bank receives from the Customer notice in writing to the contrary, to act on any Instructions with regard to:-
  - (a) The opening, operation and closure of any of the Account(s);
  - (b) The deliver, disposal of or dealing with any Securities, deeds or documents or other property whatsoever from time to time in the Bank's possession for any of the Accounts, whether by way of security or safe custody or otherwise provided that the same are signed by the Customer;
  - (c) The sale and purchase of or other dealings in:-
    - (c1) Assets; and
    - (c2) Any other investment products or services as the Bank may agree; and
  - (d) Registering or holding the Assets purchased in the Customer's name, in the name of the Bank or its Nominee or Sub-Custodian.
- (iii) The Customer acknowledges that the transactions referred to above may be governed by separate terms and conditions established by the Bank, as may be amended from time to time and agrees to abide by such

terms and conditions. In the event of any conflict between those terms and conditions and this Agreement, those terms and conditions shall prevail in relation to that transaction.

### **3. Mandatees**

- (i) From time to time, a Customer may appoint one or more Mandatees or authorized signatories to give Instructions to the Bank in relation to any matter regarding the Account(s) and its or their operation. Any instruction shall only be acted upon at the discretion of the Bank. The Bank is authorized, until it is notified in writing by the Customer that such appointment is revoked, to accept such Instructions from the Mandatee(s) as if they were issued by the Customer, even if such Instructions would be inconsistent with or contradict the Customer's earlier Instructions. However, the Bank shall not be obliged to accept Instructions from the Mandatees in relation to:
  - (a) The closure of the Account(s);
  - (b) The issuance of any means or devices which may enable the Mandatee to have access to or operate any of the Account(s) in a manner other than by signature; or
  - (c) Any amendment to the Customer's particulars registered with the Bank, including the mailing or residential address.
- (ii) All appointments and revocations of appointment of Mandatees or authorized signatories shall be delivered to the Bank in writing and such appointments shall be made by using the form "Appointment of Mandatee(s) / Attorney(s)" available in the Account Opening Document, or if the Customer is a corporation, by way of a board resolution in the format provided in the Account Opening Document. Such appointment, revocation or amendment (e.g. change of personal particulars of existing Mandatee) shall only be effective upon expiry of five (5) Bank Business Days upon receipt and/or sufficient time has elapsed to allow the Bank to record the appointment, revocation or amendment on its operating system.
- (iii) The Customer and each Mandatee must comply with all applicable laws.

### **4. Eligibility**

For individual Customers, an Account may only be opened if the Customer has reached the age of 18 years.

### **5. Conflict**

Subject to the provisions set out in Section F, the Customer acknowledges that this Agreement shall apply to and govern the relationship between the Customer and the Bank in respect of the Account(s) and Services. Each financial product or service offered in conjunction with this Agreement shall be governed by these Terms and Conditions, the Bank Accounts and Services Terms and Conditions, Account Opening Document and the terms and conditions governing specific transaction as amended from time to time. In the event of conflict between any provision(s) found in the stated documents, the following order of priority shall prevail:-

- (i) Account Opening Document;
- (ii) The terms and conditions governing specific transactions;
- (iii) These Terms and Conditions;
- (iv) The Bank Accounts and Services Terms and Conditions.

### **6. Account Statement**

- (i) A monthly statement for all Accounts will be sent to the Customer by the Bank unless otherwise requested.
- (ii) The Customer shall examine each statement received and notify the Bank of any error or discrepancy within 90 days of delivery. Unless any errors or discrepancies are so notified within such period, the statement shall be deemed correct and shall be conclusive and, without further proof as against the Customer, the statement shall be deemed to be accurate and contains all entries that should be contained in the statement and the Customer shall be conclusively and irrevocably bound by the statement.
- (iii) The Bank shall have no liability in relation to claims in respect of any credit, debit, sale or purchase item shown in or any error in any statement other than any item or error that the Customer has objected to by notice to the Bank within the above prescribed time. Notwithstanding the foregoing, the Bank reserves the right upon notice to the Customer to add to and/or amend the entries and transactions reflected in any statement in the event of any omission, inaccuracy, discrepancy or error in any statement.

### **7. Dormant Accounts**

Upon designation by the Bank of any Account as dormant, the Bank shall be entitled to close such Account without notice and shall not be obliged to send any further statement on Account to the Customer.

**8. Deposits / Withdrawals**

- (i) No deposits of cash may be made into the Account.
- (ii) No withdrawals of cash may be made from the Account.
- (iii) If at its discretion, the Bank permits the Customer to draw against funds due to be transferred or credited to the Account and as a result the Account becomes overdrawn, the Customer shall forthwith on demand pay to the Bank the amount (including all charges and overdraft interest) by which the Account becomes overdrawn.

**9. Payment of Bank Charges, Fees, Costs, Interest and Commission**

- (i) The Customer shall on demand pay to the Bank:-
  - (a) The balance of any Account;
  - (b) Any charge incurred on the Account(s) either actually or contingently or in respect of negotiable instruments drawn, accepted or endorsed by or on the Customer's behalf and discounted, paid or held by the Bank either at the Customer's request or in the course of business or otherwise;
  - (c) Interest, commissions, charges, sums, costs and expenses owing in respect of monies advanced, paid to or for the Customer's use, any credit facilities or accommodation granted to Customer and any of its advances outstanding or sums overdrawn on any Account from time to time calculated at such rate and on such periodic rests as the Bank may prescribe;
  - (d) By way of reimbursement all taxes, charges and expenses, including all out-of-pocket expenses incurred and/or to be incurred by the Bank in performing its services under this Agreement. All reimbursements shall be made to the Bank in the respective currencies in which the expenses and other payments were incurred by the Bank as certified by it to the Customer or in such other currencies as the Bank shall reasonably require;
  - (e) Any charge in respect of monies which the Customer shall become liable to pay to the Bank in any manner whatsoever including but not limited to monies owing or liabilities incurred by the Customer on contracts for the sale or purchase of specie and whether any such monies or liabilities shall be owing or incurred by the Customer alone or jointly with any other person(s) or corporation together with interest at such rate and at such periodic rests as may from time to time be notified by the Bank to the Customer;
  - (f) Any charge which the Bank may impose on the Account(s) including dormant accounts where the credit balance falls below the minimum balance prescribed from time to time by the Bank for such Account(s) and on Account(s) closed within 3 months of opening; and
  - (g) Interest (before as well as after judgment) on any sums not paid to the Bank when due pursuant to this Agreement or any Transaction. Such interest shall be in the same currency as the overdue amount, for the period from (and including) the due date for payment to (but excluding) the date of actual payment (after as well as before any judgment in respect thereof) at the rate from time to time specified by the Bank in the Bank Charges Schedule. Such interest will be calculated and accrued on a daily basis and on the basis of actual number of days elapsed or as the Bank may determine. The Bank's certification of the interest payable shall be final and conclusive and not subject to review.
- (ii) Any amount received or recovered in a currency other than the relevant currency in which such amount is payable by the Customer under this Agreement (whether as a result of, or arising from the enforcement of, a judgment or order of a court of any jurisdiction, in the Customer's bankruptcy, insolvency, winding-up, dissolution or otherwise) in respect of any sum expressed to be due to the Bank from the Customer under this Agreement shall only constitute a discharge to the Customer to the extent of the relevant currency amount which the Bank is able, in accordance with its usual practice, to purchase with the amount so received or recovered in that other currency on the date of that receipt or recovery (or, if it is not practicable to make that purchase on that date, on the first date on which it is practicable to do so).
- (iii) If that relevant currency amount so recovered or received is less than the relevant currency amount expressed to be due to the Bank under this Agreement, the Customer shall indemnify the Bank against any Losses sustained by the Bank as a result. In any event, the Customer shall indemnify the Bank against the cost of making any such purchase. For the purpose of this paragraph B9(iii), it shall be sufficient for the Bank to demonstrate that it would have suffered a Loss had an actual exchange or purchase been made (whether or not a purchase is actually made).
- (iv) The Bank shall be entitled from time to time without notice to the Customer to debit from any Account all fees, charges, interests, default interests, costs, commissions and other amounts payable by the Customer under this Agreement or in any agreement between the Customer and the Bank, whether for credit facilities or otherwise whatsoever, notwithstanding that such debiting may result in the Account(s) becoming overdrawn. Unless a prior notice has already been given, the Bank should inform Customers of the nature and amount of charges debited to their account promptly after any such amount is debited.

- (v) Except as otherwise agreed in writing between the Bank and the Customer, every payment received for the Account(s) may be converted by the Bank in its absolute discretion at such rate of exchange as it may conclusively determine into the currency of the Account(s) for credit to such Account and the Customer shall bear the cost of such conversion. In addition, whenever payment is to be made in a different currency from the Customer's available funds for that payment, the Bank is authorized to effect necessary conversion of currency for the purpose of effecting that payment at the Bank's own rate of exchange then prevailing, and the Customer shall pay the Bank such commission or other fees as it may prescribe for effecting such conversion.
- (vi) All payments due to the Bank from the Customer shall be made in the currency in which they are due, in same day funds, to such Account(s) as the Bank shall notify the Customer, and without any set-off or counterclaim. They shall be paid (a) free of any restriction or condition; (b) free and clear of and without any deduction or withholding (except to the extent required by law) on account of any present or future tax, levy or other charges whatsoever, and (c) without deduction or withholding (except to the extent required by law) on account of any other amount, whether by way of setoff, counterclaim or otherwise and insofar as any deduction or withholding is required by law, the sum payable by the Customer shall be increased to the extent necessary to ensure that, after the making of that deduction, withholdings or payment, the Bank receives on the due date and retain (free from any liability in respect of any such deduction, withholding or payment) a net sum equal to what the Bank would have received and so retained had no such deduction, withholding or payment been required or made.

**10. Collection Costs**

- (i) The Bank may take reasonable actions to enforce any of the provisions of this Agreement or enforce or protect the Bank's rights or resolve any dispute relating to the Account(s) including employing lawyers and/or third party debt collection agents to collect any sums the Customer owes the Bank with advance written notice to the Customer. The Customer shall indemnify the Bank on demand for all legal and other costs and expenses reasonably incurred.
- (ii) The Customer also agrees and authorizes the Bank to disclose relevant information to such persons for these purposes. The total collection cost to be recovered shall not normally exceed 30% of the amount of the debt.

**11. Value Date**

The effective value date for all Account transactions will be determined by the Bank. The Bank may approve or reject any payment Instructions by reference to the actual or projected account balance as at the transaction date.

**12. Insufficient Funds**

Unless a specific facilities arrangement applies, the Bank may decline to carry out any payment, transfer, security or other Securities transaction or other Instructions if the funds held in the Account (together with any available credit facilities that are required to carry out the same) are insufficient. The Bank shall not be liable for any consequences resulting from delay in or non-implementation thereof.

**13. Overdrawn Accounts**

- (i) An Account will be considered to be overdrawn for at least one day even if the amount overdrawn is received by the Bank the next Bank Business Day.
- (ii) Overdraft interest and other charges are payable in accordance with the Bank Charges Schedule.
- (iii) The Customer shall repay the Bank upon demand any overdraft on any Account and all advances, loans or other financial accommodation, together with interest and charges thereon in accordance with the Bank Charges Schedule unless otherwise stipulated by the Bank.

**14. Foreign Exchange Transactions**

- (i) Foreign currency cash deposits to and cash withdrawal from Accounts are not accepted.
- (ii) For dealings in securities and for cash settlement in currencies other than the base currency of any Account, the Customer acknowledges that there may be profits or losses arising as a result of exchange rate fluctuations which shall be entirely for the Customer's account and at the Customer's risk.

**15. Right to Reject Transactions**

The Bank may reject a deposit, limit the deposit amount or return deposits or reject Instruction at its discretion at any time, without liability and with or without prior notice or giving reasons.

**16. Termination of Business Relationship and Closure of Accounts**

All Accounts must be operated in accordance with this Agreement and any other applicable requirements.

- (i) Upon termination of the business relationship between the Bank and the Customer, or upon closure of any Account, as the case may be:-

- (a) Any sums due and payable to the Bank arising out of this Agreement or any Services provided to the Customer shall immediately become due and payable and shall be paid to the Bank;
  - (b) If the Bank has effected any transaction that is likely to extend beyond the date of termination, the Bank shall at its discretion either close out or complete such transaction and shall be entitled to require funds to be paid and/or retain funds in a sufficient amount, as determined by the Bank, for this purpose; and
  - (c) All acts performed by the Bank prior to receipt of any notice resulting in termination will be valid and binding upon the Customer, its representatives, successors and assigns.
- (ii) After termination of the business relationship between the Customer and the Bank or closure of any Account, as the case may be, the Bank may liquidate or otherwise convert any of the Customer's Assets into monies in such manner as the Bank deems fit.
  - (iii) Any closure or suspension of Account or termination of all or any Services shall be without prejudice to any right or remedies which may then have accrued or still be accruing to the Bank in respect of any outstanding payments to it or of the Customer's preceding breach under this Agreement.

#### **17. Right of Set-Off and Consolidation**

- (i) In addition to any rights the Bank may be entitled to by law or otherwise, the Bank may at its discretion at any time and from time to time without notice to the Customer:-
  - (a) Retain as security and/or sell by public or private sale any of the Customer's funds, chattels, Securities and other valuables deposited with the Bank for safe custody to pay and discharge all or part of any Liabilities; or
  - (b) Combine, consolidate or merge the balances on all or any account(s) held by any Customer (whether in his sole name or jointly with any other Customer or person) with the Bank held at any of the Branches or the Bank's Affiliates whether located in Hong Kong or any other country (notwithstanding that any time deposit has not matured or any of the conditions applicable to any account have not been satisfied) and the Bank's right of set-off shall extend to include a continuing right at any time and without any prior notice or demand forthwith to transfer and set-off all or any part of any balance standing to the credit of such account(s) (including non-currency account(s) in the Customer's name with the Bank (the "Deposits") and to apply the same in or towards payment or satisfaction of the Liabilities.
- (ii) The Customer agrees that the authorization given in this paragraph B17 is irrevocable so long as the Customer has any Liabilities due to the Bank.
- (iii) The Customer shall be responsible to the Bank for any deficiency whatsoever and howsoever arising and for all costs, charges and expenses incidental to any sale, set-off or debit and will immediately upon demand from the Bank pay to it such amount.
- (iv) If any of the Liabilities is in a different currency from the credit in the Customer's account(s) over which the Bank may exercise a right of set-off, the Customer authorizes the Bank to effect any necessary conversion, at such rate of exchange as the Bank may conclusively determine, in order to exercise such right of set-off.
- (v) For the purpose of or with a view to the appropriation and application of the Deposits or any balance thereof in satisfaction of any of the Liabilities, the Customer authorizes the Bank to convert any monies now or hereafter standing to the credit of the account(s) at the Customer's expense, at such rate of exchange as the Bank may conclusively determine, into any currency other than that in which the same is held by the Bank.
- (vi) The Customer authorizes the Bank to extend or renew the Deposits on the Customer's behalf from time to time at the Bank's sole discretion and without reference to the Customer and for the removal of doubt the Customer confirms that in the event of the extension or renewal of the Deposits any renewed deposit advice or other renewed evidence of deposit shall continue to be held by the Bank on the same terms as the original advice or other original evidence of deposit.
- (vii) In addition and without prejudice to the Bank's general right of set-off under law, in this Agreement or otherwise, the Bank is deemed to have exercised its right of set-off upon the happening of any of the following events:-
  - (a) Upon the crystallization of any floating charge created by the Customer over his/her property, assets or undertaking; and
  - (b) If any execution is issued against or levied upon any of the Accounts.
- (viii) Without prejudice to the generality of the foregoing provisions, as a condition precedent to the Bank acting upon Instructions from the Customer, the Customer irrevocably authorizes the Bank (but does not oblige

the Bank) to earmark any stipulated amount in the Customer's Account(s) for the purpose of payment of sums payable by the Customer under this Agreement from time to time. The Customer covenants that:-

- (a) Notwithstanding the purpose stated above for such earmarking, the Customer will not withdraw the whole or any part of the earmarked amount from the Account(s) for any purpose (including sums under this Agreement) save with the Bank's express consent, and if the Customer seeks to make a withdrawal from the earmarked amount which has not been consented to by the Bank, the Bank may refuse to allow such withdrawal and may for all purposes act as if no request for such withdrawal has been made by the Customer; and
- (b) If at any time and for any reason (including a withdrawal approved by the Bank) the credit balance in the Account is or falls below the earmarked amount, the Customer shall forthwith deposit into the Account a sum equivalent to such shortfall in the earmarked amount.

#### **18. Right of Lien**

- (i) The Bank has the right of lien on all Assets it holds for the Customer account which (for any reason) is in the Bank's own custody or placed elsewhere in respect of all claims which the Bank may have against such Customer, regardless of the due dates of such claims or the currencies in which they are expressed and whether or not credit facilities have been granted unsecured or against special security. Immediately upon default, by the Customer, the Bank shall be entitled to dispose, either by enforced sale or in the open market of any assets over which the Bank has a right of lien, and to apply the proceeds of such disposal in or towards paying or satisfying any of the Liabilities of the Customer which shall (without limitation) include all costs, expenses and charges incidental to such disposal.
- (ii) In addition to any lien, right of set-off or other right which the Bank may have, the Bank shall be entitled at any time and without notice to the Customer to combine or consolidate all or any of the accounts of the Customer (whether in his sole name or jointly with any other Customer or person) and Liabilities with or to the Bank anywhere whether in Hong Kong or elsewhere or in any other respect whether such Liabilities be actual or contingent, primary or collateral, several or joint or such accounts be held by the Customer solely or jointly with any other Customer or person notwithstanding that the credit balances of such accounts and the Liabilities on any other accounts may not be expressed in the same currency and the Customer authorizes the Bank to effect any necessary conversions at its own rate of exchange then prevailing.
- (iii) The Customer shall pay to the Bank on demand all costs, expenses, fees and charges incurred in or incidental to the enforcement or protection of any of the Bank's rights or resolution of any dispute relating to the Accounts (whether by judicial proceeding or otherwise) including legal fees on a full indemnity basis.

#### **19. Death**

This Agreement shall be binding on and enforceable against the heirs, personal representatives, executors and successors in title of the Customer and be binding on and enforceable by the successors in title and assigns of the Bank.

#### **20. Exclusion and Limitation of Liability**

- (i) Unless any applicable law prohibits the Bank from excluding or limiting its liability or in cases of its negligence or wilful default, neither the Bank nor its Affiliates nor the Bank's Personnel shall have any liability or obligation to the Customer or any third party in respect of:
  - (a) Any liability to tax or similar charges payable in connection with the Customer's investment in any financial product or use of any financial services;
  - (b) Delay or loss or diminution in the value of any fund (including but not limited to any funds credited to the Customer's Account) due to any reason whatsoever and whether arising in Hong Kong or in any place in which the Bank has deposited such funds or otherwise;
  - (c) Mutilation, interruptions, omissions, failures, errors or delays in remittance or the issue or remittance of drafts, occurring in electronic transmission, wire, cable or mails, or on the part of any post authority, telegraph, cable or wireless company, or any employee of such authority or through any other cause;
  - (d) Any movement or change in the value of any Securities or Other Investments purchased under or pursuant to this Agreement;
  - (e) Any defect in ownership or title to any Securities or Other Investments delivered to the Bank for the Account;
  - (f) Any Losses suffered by the Customer or any other person in connection with any moratorium or restriction on dealings in or any forfeiture or cancellation of the Bank's rights or interests, or the Customer's rights or interests or those of any owner of any Securities or Other Investments imposed by or resulting from any applicable law or any regulation or directive of any government, government agency or any other authority or any restrictions on convertibility, requisition,



involuntary or compulsory transfers, distraints of any character, exercise of governmental or military powers, war, strikes or other causes beyond the Bank's control;

- (g) Any Losses (including consequential loss) incurred or suffered by the Customer as a result of or in connection with any of the acts or omissions of the Bank in the operation of any Account in respect of Securities or Other Investments or in relation to any matter whatsoever in connection with this Agreement and the transactions contemplated under this Agreement except where such Losses are directly attributable to the Bank's wilful default or negligence;
  - (h) Any diminution in the value of funds due to taxes or depreciation or any unavailability, forfeiture or loss of funds due to exchange or capital controls (temporary or otherwise) or any other restrictions imposed by any government, government agency or any other authority;
  - (i) Any information, advice or opinion provided by the Bank or any person on the Bank's behalf (whether or not provided at the Customer's request or relied upon by the Customer);
  - (j) The exercise or non-exercise of any powers and discretion conferred upon the Bank under this Agreement, as the Bank shall have sole and absolute discretion as to the exercise thereof;
  - (k) Any act, omission, information or recommendation in connection with this Agreement, the investment of monies in the Account(s) or any loss or damage suffered by the Account(s) arising directly or indirectly out of any error of judgment or oversight or mistake of law by the Bank or the Bank's Personnel made or committed in the performance of their duties under this Agreement, except in the case of their wilful misfeasance, bad faith or negligence; or
  - (l) Any disclosure authorized pursuant to the Bank's Data Policy Notice.
- (ii) Unless otherwise agreed by the Bank, the Bank shall not be responsible for or liable to the Customer for any Losses which may be suffered by the Customer in any way in relation to any transaction covered or contemplated under this Agreement, howsoever caused, except for any such Losses which are due to the Bank's negligence or wilful default.
  - (iii) The Bank shall be under no duty to examine or verify the validity or ownership of or title to any Securities or Other Investments delivered to the Bank for the Account.
  - (iv) None of the Branches and the Bank's Affiliates shall be responsible or liable for any of the Bank's liabilities or obligations under this Agreement or for its failure to meet the Customer's withdrawal demands of any amount on the Account(s) arising from any cause whatsoever whether or not beyond the Bank's control. Without limiting the generality of the foregoing, the Bank shall not be liable for any acts, errors, negligence or defaults, actions or omissions, insolvency or failure in business of any of the Bank's sub-agents or other agents or of their employees.
  - (v) The Bank shall not be required to take any legal action unless fully indemnified by the Customer to the Bank's satisfaction for all costs and liabilities nor shall the Bank be required to take or continue any legal action in circumstances which in the opinion of the Bank are detrimental to its interests.
  - (vi) This paragraph applies where the Loss arises for any reason and even if the Loss was reasonably foreseeable or the Bank had been advised of the possibility of the Loss.

## **21. Representations and Warranties**

- (i) The Customer represents and warrants to the Bank as of the date hereof and at all times during the term of this Agreement that:
  - (a) The Customer has the necessary power and authority to enter into and to perform this Agreement and each Transaction and this Agreement constitutes valid and legally binding obligations of the Customer;
  - (b) Any information in the Account Opening Document, the financial statement or other supporting documents delivered to the Bank is true and accurate and properly represents the position of the Customer as of the date hereof or on such date when the same is delivered and the Customer will notify the Bank immediately in writing of any material change in the information supplied or in the Customer's position;
  - (c) The Customer is acting on his/her own account and has reviewed carefully his/her specific financial needs and investment objectives before accepting any offer by the Bank of any financial product or service pursuant to this Agreement. The Customer has made his/her own independent decision to accept any financial product or service offered by the Bank and as to the legality, suitability and appropriateness of such product or service based on his/her own judgment and upon advice from such advisers as he/she has deemed necessary;

- (d) The Customer is not relying on any communication (written or oral) by the Bank or the Bank's Personnel as an investment advice or as a recommendation to enter into this Agreement or any transaction pursuant to this Agreement and the Customer understands that information and explanations related to the terms and conditions of this Agreement shall not be considered investment or legal advice or a recommendation to enter into any such transaction and no communication (written or oral) received from the Bank or the Bank's Personnel shall be deemed to be an assurance or guarantee as to the expected results of any transaction;
  - (e) The Customer is capable of assessing the merits of and understanding (on his/her own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of this Agreement and each transaction pursuant to this Agreement (and this Agreement does not include all risks) and the Customer is also capable of assuming and assumes, the risks of this Agreement and each transaction entered into pursuant to this Agreement;
  - (f) No person other than the Customer has an interest in the Account(s) and the Customer enters into this Agreement and will enter into each transaction as a principal and not as trustee or agent;
  - (g) The terms of this Agreement do not conflict with any obligations by which the Customer is bound whether arising by contract, operation of law or otherwise;
  - (h) Neither the Customer's execution and delivery of, nor the Customer's performance of obligations under this Agreement will violate any law, regulation, decree or legal restriction applicable to the Customer in any jurisdiction or any order or judgment of any court or other agency of government applicable to the Customer, any of the Customer's Assets or the terms of any material agreement to which the Customer or any of the Assets is subject;
  - (i) This Agreement and the execution and delivery thereof have been duly authorized by all necessary approvals and action, corporate or otherwise and the Customer shall maintain in full force, validity and effect all governmental and other approvals, authorities, licences and consents required in connection with this Agreement;
  - (j) (where the Customer is a sole proprietorship / partnership firm / association / limited company) all acts, conditions, things required to be done, performed and observed in order that this Agreement shall constitute the legal, valid and binding obligations of the Customer (whether a sole proprietorship / partnership firm / association / limited company) enforceable in accordance with its terms have been done, performed and observed in strict compliance with all applicable laws and the Memorandum and Articles of Association or other applicable constitutional documents of the Customer;
  - (k) There is not pending or, to the Customer's knowledge, threatened against him/her any action, suit or proceedings at law or in equity or before any court, tribunal, governmental body, agency, official or any arbitrator that purports to draw into question or is likely to affect the legality, validity or enforceability against the Customer of this Agreement or the Customer's ability to perform his/her obligations under this Agreement; and
  - (l) The Customer has read the terms of this Agreement (including without limitation the General Risk Disclosure Statement and Disclaimer or the contents of this Agreement have been fully explained in a language which the Customer understands and the Customer accepts this Agreement and that he/she has adequate financial expertise and resources to comply with its terms.
- (ii) Where the Customer is a body corporate or other association, the Customer certifies, represents and warrants that:
- (a) It is duly incorporated and validly existing under the laws of its place of incorporation and has the full corporate and legal power to execute, perform and effect this Agreement and the transactions contemplated herein, and to perform its obligations under this Agreement and to incur any Indebtedness; and
  - (b) The certified copy resolutions provided with the Account Opening Document were duly passed at a meeting of its directors duly convened or by way of written resolution of its directors and held or passed on or prior to the date hereof in accordance with its constitutional documents and were entered in its minute book and are in full force and effect.
- (iii) Where the Customer is an individual, the Customer represents and warrants that he/she is legally capable of validly entering into and performing this Agreement and that he/she has attained the age of 18 years and is of sound mind and legal competence and is not a bankrupt.
- (iv) Where the Customers are individuals who are joint account holders or a partnership, each individual or each of the partners (as the case may be) represents and warrants that:
- (a) The liability of each such person shall be joint and several;

- (b) Notwithstanding any other arrangements which may have been made between them and subject to any applicable laws on the death of a person who is one of Customers, the rule of survivorship shall apply to the Account and, on the death of any one of them, all properties for the time being standing to the credit of the Account and anything held by the Bank whether by way of security or otherwise shall be held to the order of the survivor;
- (c) Any one of them has full authority to give any Instruction with respect to any Account(s), including but without limitation Instructions with respect to buying or selling, transferring of funds and receipt of any, to receive demands, notices, confirmations, reports, statements and other communications of any kind, it being understood and agreed that such communications if addressed to the Customer shall be binding on each of them notwithstanding that they have not been sent to or received by every one of them; and generally to deal with the Bank in connection with this Agreement as fully and completely as if the other joint account holders had no interest therein; and
- (d) This Agreement continues to be valid and binding for all purposes notwithstanding any change in the partnership or constitution of the firm by the introduction of a new partner or by the death, insanity or bankruptcy or retirement of any partner.

## 22. Customer Acknowledgements

The Customer understands and acknowledges that in relation to any products or services provided by the Bank:

- (i) The Bank is not required to render any advice to the Customer for the Customer's trading or investment decisions;
- (ii) The Customer will not rely on any advice or representation or warranty given or made by the Bank, the Bank's Personnel or any person associated with or representing the Bank and the Customer will rely solely on his/her own judgment in making investment and/or trading decisions and the Bank assumes no responsibility for the performance or outcome of any investments made by the Customer, the Customer's reliance on the financial, investment information, suggestions or recommendations communicated by the Bank, its Affiliates or the Bank's Personnel;
- (iii) Any advice, recommendations or information communicated to the Customer by the Bank, although based upon information obtained from sources believed by the Bank to be reliable, may be incomplete, may be inaccurate, may not have been verified and may be changed without notice to the Customer;
- (iv) The Bank is not acting as a fiduciary or an adviser to the Customer in respect of this Agreement and any transaction entered into pursuant to this Agreement;
- (v) Prior to the Customer's acceptance of any offer made by the Bank and entering into this Agreement or any of the transactions pursuant to this Agreement, the Customer has read and understood all the terms and conditions of this Agreement or the relevant transaction;
- (vi) The Customer has read or has had explained to him/her the General Risk Disclosure Statement and Disclaimer and is aware of the risks of trading Securities, Other Investments and foreign exchange transactions and is financially able to bear any risks associated therewith;
- (vii) The Bank's obligations are limited to those expressly set out in this Agreement;
- (viii) The Bank shall have the absolute discretion to use such agents as it deems fit to carry out or procure the transactions which arise in the course of providing banking or other services to the Customer and the Bank and the Bank's Personnel shall not be liable in any way to the Customer for the use of any such agents or the actions, delays, omissions, neglect or default of any such agents;
- (ix) Any action, or omission taken or suffered, and any delay in acting, by the Bank or the Bank's Personnel, under or in connection with any relevant credit or drafts, documents or property, if in good faith and in conformity with such foreign or domestic laws, customs or regulations as the Bank or the Bank's Personnel may deem to be applicable to the Bank, shall be binding on the Customer;
- (x) As regards any powers and discretions conferred upon the Bank under this Agreement, the Bank shall have sole and absolute discretion as to the exercise of such powers and discretions and shall be in no way responsible for any Losses or inconvenience which may result from the exercise or non-exercise of such powers and discretions; and
- (xi) The Bank has no obligation to inquire into the purpose or propriety of any Instruction given or to see to the application of any funds delivered by the Customer in respect of the Account.
- (xii) without limiting the generality of the Bank's rights under these Terms and Conditions, where in the Bank's opinion it is required by, or failure to do so would be inconsistent with, any applicable law, rules, directions, orders, decrees or other regulatory requirement of any relevant authority or industry association to which the Bank or the Customer is subject to, including but not limited to, the Hong Kong Monetary Authority, the SFC or an Exchange, the Bank may:

- (a) Refuse to act on, process or complete any Instructions or Transaction;
- (b) Suspend the provision of any products or services to the Customer;
- (c) Refuse to allow or facilitate any of the Customer's assets held by the Bank to be dealt with;
- (d) Refuse to make any assets available to the Customer or any other person; or
- (e) Suspend or terminate these arrangements with the Customer.

The Bank shall not be obliged to give any reason nor be held responsible for taking any actions, or refusing to do so in accordance with this clause (xii);

- (xiii) If the Bank exercises its rights under clause (xii), the Customer must pay the Bank on demand any damages, losses, costs or expenses that it incurs in relation to any action taken under that clause or applicable law and regulations, including administrative costs, professional fees and/or costs of sale or purchase of any transaction or deal put in place for the purposes of meeting the Bank's obligations under these Terms and Conditions;
- (xiv) By offering the Service, the Bank is not acting as a principal, nor as an executing, clearing and/or prime broker with respect to any Transaction. The Bank is only acting as the Customer's agent in relation to any Transactions and any Instructions accepted by the Bank will be effected on the Customer's behalf (where applicable) through a broker selected by the Bank in its absolute discretion;
- (xv) None of the following gives rise to any fiduciary or equitable duties on the Bank's part in the Customer's favour:
  - (a) The relationship between the Customer and the Bank;
  - (b) The Service to be provided under these Terms and Conditions; or
  - (c) Any other matter.

In particular, there are no duties that would oblige the Bank to accept responsibilities more extensive than those set out in these Terms and Conditions or which would prevent or hinder the Bank in providing the Service; and

- (xvi) The Customer will not subscribe for Securities and Other Investments if the Customer is a restricted person as specified under the Offering Documents. If the Bank becomes aware that the Customer's status is or has become in breach of any selling restrictions provided in the offering documents, the Bank may decline to carry out the Customer's Instruction to subscribe for Securities or suspend the Accounts without prior notice and redeem the Securities held by the Customer.

### **23. Customer Undertakings**

The Customer undertakes to the Bank as of the date of this Agreement, so long as the Accounts are maintained with the Bank, and on the date of each Instruction given to the Bank by the Customer pursuant to this Agreement, if applicable:

- (i) To comply, at the Customer's cost, with all laws and government regulations required for all transactions contemplated under this Agreement, whether in Hong Kong or elsewhere;
- (ii) To execute such documents, provide such security to the Bank and do such acts or deeds at the Customer's own cost as may be required by the Bank at any time in connection with any transactions between the Bank and the Customer;
- (iii) That the Customer will use all reasonable efforts to maintain in full force and effect all consents of any government or other authority that are required to be obtained by the Customer with respect to this Agreement to which the Customer is a party and will use all reasonable efforts to obtain any that may become necessary in the future;
- (iv) Where the Customer is a corporation, it shall:-
  - (a) Supply immediately on request to the Bank all information (except that of a proprietary nature) regarding its operations and finances as the Bank may reasonably request;
  - (b) Submit audited balance sheet and profit and loss accounts together with its directors report every year immediately after their issuance but in any case not later than 6 months after the close of its financial year;
  - (c) Maintain a positive networth at all times; and

- (d) Immediately notify the Bank verbally of any petition filed or notice issued for passing of a resolution for the winding-up or appointment of a official receiver or liquidator, such verbal notification to be confirmed in writing within 24 hours;
- (v) Where the Customer is an individual, the Customer shall immediately notify the Bank verbally of any bankruptcy petition filed against the Customer, such verbal notification to be confirmed in writing within 24 hours, and shall also supply immediately on request to the Bank information regarding the Customer's personal finances as it may reasonably request; and
- (vi) Where the Customer is a firm (whether sole proprietorship or partnership firm or an association), the Customer shall advise the Bank of any change in the constitution or membership of the firm and unless expressly released in writing, the Customer and all persons signing any Bank documents/applications as the proprietor/partners/persons carrying on business in the name of the firm or association of the Customer shall continue to be liable hereunder irrespective of any such change.

**24. Events of Default**

- (i) The Customer shall be in default of the Customer's obligations and an event of default shall therefore arise should any of the following occur ("Event of Default"):
  - (a) The Customer fails to observe or perform any of the terms of this Agreement or any agreement with the Bank;
  - (b) Any other Indebtedness owing by the Customer becomes payable or capable of being declared payable prior to its stated maturity or is not paid when due;
  - (c) Any of the Customer's Indebtedness or that of any Security Provider becomes due or capable of being declared due before its stated maturity, any guarantee or similar obligation provided by the Customer or any Security Provider is not discharged at maturity or when called or the Customer or any Security Provider goes into default under, or the Customer or any Security Provider commits a breach of any instrument or agreement;
  - (d) Any security provided by the Customer to the Bank ceases to be in full force and effect or there is in the Bank's opinion any material depreciation in the value thereof whether actual or reasonably anticipated;
  - (e) Any attachment order, charge, assignment or any security interest (other than those provided under this Agreement) is made or created against the Customer or any Security Provider's deposits with the Bank or any part thereof;
  - (f) (where the Customer or the Security Provider is a corporation) a voluntary or involuntary proceeding is commenced against the Customer or any Security Provider seeking insolvency, liquidation, reorganization, judicial receivership or other relief under any insolvency or other similar laws or seeking the appointment of an official assignee, trustee, receiver, liquidator, custodian or other similar officer in respect of the Customer or any Security Provider's property or a substantial part of the Customer or any Security Provider's property, or any winding-up occurs in relation to the Customer or any Security Provider;
  - (g) The Customer or the Security Provider dies or in the Bank's reasonable judgment becomes incapable in law of managing the Customer and his/her affairs (whether by reason of mental incapacity or for any other reason whatsoever);
  - (h) A petition in bankruptcy (whether voluntary or otherwise) is filed by or against the Customer or a receiver, trustee in bankruptcy or person acting in similar capacity is appointed over all or any part of the property or Assets of the Customer;
  - (i) The Customer fails to make or take delivery of any documents, Securities, monies, commodities and/or margin when required under this Agreement or as specified in specific transaction agreement;
  - (j) Any representation or warranty made by the Customer or any Security Provider in or in connection with this Agreement or in any security document is incorrect or breached in any material respect;
  - (k) The Customer or any Security Provider enters into a general composition for his/her or their respective creditors benefit;
  - (l) The Customer suffers a material adverse change in his/her financial condition or position or ability to perform his/her obligations;
  - (m) If at any time and in the Bank's absolute discretion it considers that the continuation of this Agreement or any Transactions entered into or in respect of which it has received Instructions to

enter into would not be consistent with prudent banking practice or would place the Bank's position in jeopardy;

- (n) Due to change in any applicable law or change in interpretation by any court, tribunal or regulatory authority with competent jurisdiction, it becomes unlawful for either the Bank or the Customer to perform any of the obligations or to receive any payment in respect of any transaction entered into under this Agreement; or
  - (o) If any event or condition occurs which would with the giving of notice or lapse of time or both constitute any of the foregoing.
- (ii) Where an Event of Default has occurred or is continuing, in addition to and without prejudice to any other rights the Bank may have on termination of this Agreement, under general law or otherwise and without reference to the Customer, the Bank may take such action as the Bank in its absolute discretion considers necessary or desirable or expeditious (including the disposal of any Asset that the Bank or Agent holds or controls on behalf of the Customer) to comply with, perform, cancel or satisfy any transaction and to protect the Bank's position including:
- (a) Close and/or freeze all or any of the Accounts;
  - (b) Open any new Account in the Customer's name with the Bank or any third party, including any of the Bank's Affiliates;
  - (c) Allocate to any new Account opened any or part of any deposits, margin or other Assets for the time being held by the Bank, to be held as security for any Losses and to hold the same until such time as the Bank in its absolute discretion may determine that the same is no longer required as security for such Losses, or at such discretion to apply the same in settlement of any Losses;
  - (d) Cease to comply with all or any Instructions or requests from the Customer;
  - (e) Do all such acts and things as the Bank thinks necessary or appropriate to cancel, settle, redeem or terminate any unperformed contract between the Bank and the Customer or with any third party entered into by the Bank as agent for the Customer notwithstanding that the date fixed for performance of such contract may not have arrived or that the Indebtedness may be increased by such action including covering any short position or liquidating any long position, including without limitation termination (with immediate effect) of any outstanding contracts;
  - (f) Sell, realize, assign, transfer or otherwise dispose of any Assets or any security held by the Bank in such manner as the Bank may in its absolute discretion think fit and apply the net proceed thereof (after deduction of any expenses incurred in connection therewith) in or towards satisfaction of the Indebtedness in such manner as the Bank may determine;
  - (g) Borrow, buy or sell any currency;
  - (h) Borrow, buy or sell any Securities, futures contracts or Other Investments or enter into any foreign exchange transaction;
  - (i) In relation to any short sold position, in addition to the Abovementioned power, close out or give instructions on the Customer's behalf to close out any and all short sold position and for that purpose:
    - (i1) Acquire in any manner any Securities or Other Investments to which such Transaction relates;
    - (i2) Register, realize, sell, charge or borrow against margin as the Bank thinks fit and without the Bank being liable to Customer for any loss or diminution on price; and/or
    - (i3) Apply any monies or Assets in the Account in or towards satisfaction of or reimbursement to the Bank of all costs, damages, liabilities, expenses, incurred under or in respect of any short sold position or the exercise by the Bank of any rights under this Agreement;
  - (j) To terminate any transaction or facility or this Agreement and the foregoing notwithstanding, if an event specified in paragraph B24(i) shall occur, the date of occurrence of such event shall be deemed to be the date of termination without any notice or action being taken or required to be taken by the Bank hereunder; and
  - (k) Without prejudice to the generality of paragraphs B24(ii) and E23, close out all or any of the Open Positions of the Customer by off-setting existing foreign exchange contracts with Off-setting Contracts pursuant to paragraph E23.

- (iii) The Customer hereby irrevocably appoints any of the Bank's Personnel or any person duly authorized by the Bank in that behalf as the Customer's agent for the Customer and in the Customer's name and on the Customer's behalf and as the Customer's act and deed to make any such contract as may be required to give effect to the provisions of this paragraph B24.

**25. Force Majeure**

- (i) Without prejudice whatsoever to the generality of the express terms of this Agreement and any other right of review reserved by the Bank, the Bank may suspend operation of any Account(s) and all rights and powers of the Customer connected with the Account(s) in whole or in part if as a result of force majeure, whether due to or caused by any act of god, calamity, war, invasion, acts of a foreign enemy, hostilities (whether war has been declared or not), terrorism, natural disaster, aircraft or aerial objects, fire, explosion, floods, lightning or other adverse weather condition, strikes, industrial actions, civil war or strife, rebellion, revolution, insurrection, government restrictions, exchange or market rulings, suspension of trading, computer breakdown, failure of computer network or communication systems, power failures, sabotage, restrictions on convertibility or transferability, requisitions, involuntary transfers or any other reason whatsoever, the Account records or Accounts are not available or access to such records or Accounts is hindered or there shall occur or threaten to occur a debt moratorium (whether private or public), a material adverse change in the monetary, political, financial (including without limitation conditions in any financial markets) or economic conditions or exchange or capital controls or other restrictions internationally or in the Customer's country of residence or the country of any of the Exchanges which in the Bank's opinion prohibits or hampers or the result of which temporarily or permanently prevents or hampers the operation of the Account(s) as contemplated by the Bank or the Customer.
- (ii) All of the Bank's obligations under this Agreement and its performance of such obligations shall be excused by the aforementioned force majeure events or if the Bank so chooses, suspended whenever and to the extent the discharge and fulfilment of such duties and obligations are prevented, frustrated or impeded as a consequence of any such event, as a consequence of any statutes, rules, regulations or orders issued out of any such event or as a consequence of any statutes, rules, regulations or orders issued by any governmental department council or other duly constituted authority. The Bank shall not be liable for any Losses incurred by the Customer caused directly or indirectly by such force majeure events. In no event shall the Bank be responsible for consequential, indirect or special damages, even if advised as to the possibility of such damages.

**26. Indemnity**

- (i) The Customer undertakes to indemnify and hold harmless the Bank, its Affiliates and the Bank's Personnel, Nominees, sub-contractors and Agents against any and all Losses (including foreign exchange losses, taxes or other levies, interest, service charges) which may be brought against or incurred by any or all of them, including without limitation legal fees (on a full indemnity basis) and disbursements reasonably incurred by any of them, unless arising solely from the Bank's negligence or wilful default, arising either directly or indirectly out of or in connection with:
  - (a) the Bank or its Affiliates, Nominees, agents or subcontractors (as the case may be) accepting, acting or relying on or failing to act on any Instructions given by or on behalf of the Customer or otherwise in connection with the Bank's performance of or the Bank carrying out any Instructions purportedly given to it pursuant to this Agreement including without limitation acting on the Customer's or Mandatee's or authorized signatory's telephone, facsimile, and/or Instructions for conversion of Account(s);
  - (b) the Bank using any system or means of transmission, communication, transportation or otherwise in carrying out such Instructions (including without limitation, by reason of loss, delay, misunderstandings, mistakes, distorts or duplications);
  - (c) the Bank's provision of its Services to the Customer (including, without limitation, the transactions contemplated hereunder and in connection with all or any matters or transactions in respect of any Account);
  - (d) any default in repayment of any advances upon demand or interest accrued thereon or any sum payable under this Agreement or under any other agreement, security document or any other document whatsoever entered into pursuant to this Agreement or otherwise entered into by the Customer in relation to his/her obligations in favour of the Bank (including but not limited to any loss or expense sustained or incurred by the Bank in liquidating any of the Bank's time deposits (whether in Hong Kong Dollars or other foreign currencies) or any foreign exchange contracts, or any judgment debt or in taking proceedings hereunder or under any such agreement or security document or other document) at such rates and on such terms as the Bank may notify the Customer from time to time;
  - (e) any change in any existing laws, regulations or official directives relating to the Account or any provision of this Agreement;
  - (f) the collection of any cheque, bill, note, draft, dividend, warrant or other instrument presented by the Customer for collection or the guaranteeing of any endorsement or discharge on the same and in connection with all or any of the matters or transactions in respect of the Account;

- (g) the Bank acting hereunder prior to its receipt of written notice of the termination or revocation of this Agreement by operation of the law as to the Customer;
- (h) the Bank enforcing or attempting to enforce any rights it may have against the Customer pursuant to this Agreement;
- (i) any investment by the Customer in any financial products or the Customer's availing itself of any financial products pursuant to this Agreement
- (j) any disclosure authorized pursuant to the Bank's Data Policy Notice; and
- (k) any breach by the Customer of any provision of this Agreement or such other terms and conditions as are applicable to the Services provided or to be provided by the Bank to the Customer or transactions between the Bank and the Customer.

**27. Communication to Customers**

Bank's communications, notices or demands may be made by the Bank through any of its duly authorized officer(s) for the time being or by any person or firm for the time being acting as solicitor(s) for the Bank.

**28. Amendments**

The Bank reserves the right at its discretion to review, add to, alter, vary or modify all or any of the Services (as well as related operating and other requirements), any of the provisions of the Bank Charges Schedule and this Agreement at any time without giving any reason. When any of such changes increases the Bank charges and/or affect the liabilities and obligations of the Customer, the Bank shall give at least 30 days' notice to the Customer unless such changes are not within the Bank's control. In other cases, reasonable notice shall be given. Such notice may be given by such means as the Bank at its discretion sees fit. Any Customer who does not close his/her relevant Account(s) prior to the expiration of such notice shall be deemed to have agreed to such changes.

**29. Illegality and Severance**

- (i) Notwithstanding any provision in this Agreement, if by reason of any applicable law, regulation or regulatory requirement (where or not having the force of law), any change in, judicial decision relating to, or the interpretation, administration or application of any of them, it shall become (or it shall appear to the Bank that it has or will become) unlawful or otherwise prohibited for the Bank to maintain or give effect to any of the Bank's obligations in this Agreement, the Bank shall thereupon notify the Customer to that effect. The Customer shall immediately upon receipt of such notification from the Bank pay the whole of all monies owing by him/her to the Bank.
- (ii) If at any time any of the provisions of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity and enforceability of the remaining provisions contained in this Agreement nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired.

**30. Further Assurance**

The Customer hereby irrevocably and by way of security appoints the Bank with full power to appoint substitution or sub-delegates to be the Customer's attorney for the Customer in the Customer's name and on the Customer's behalf and as the Customer's act and deed or otherwise and subject to the provisions of this Agreement, to execute any document which the Bank may require for perfecting or enforcing any of the rights or powers conferred on the Bank under this Agreement and to do any other act or thing required to be done by the Customer under this Agreement. The Customer shall ratify and confirm any instrument, act or thing which the attorney may lawfully do by virtue of the authority under this paragraph.

**31. Assignment**

- (i) This Agreement shall be binding and ensure to the benefit of the Bank and the Customer and their respective successors and assigns, except that the Customer's rights and obligations in relation to the Account (including without limitation the credit balance of the Account) cannot in any way be assigned, transferred or charged to any third party whether by way of security or otherwise howsoever.
- (ii) The Bank may at any time and from time to time assign or transfer all of the Bank's rights and obligations herein, or in any instrument(s) in connection therewith or in connection with the Account(s) and may deliver all or any of the Assets then held as security therefore, to its transferee(s), who shall thereupon become vested with all the powers and rights in respect thereto given to the Bank herein or in the instrument(s) transferred, but the Bank shall retain all rights and powers hereby given with respect to any and all instrument(s), rights or Assets not so transferred.

**32. Remedies and Waiver**

- (i) Save as otherwise provided, time shall be of the essence but no failure or delay on the part of the Bank in exercising any:-
  - (a) Of the rights, powers or remedies provided under this Agreement or by law; or



- (b) Power of sale or any other rights or options under this Agreement and no notice or demand which may be given to or made upon the Customer by the Bank with respect to any power of sale or other right or option under this Agreement, shall:-
  - (b1) Constitute a waiver of such right, power, remedy or option;
  - (b2) Limit or impair the Bank's right to take any action or to exercise such right, power, remedy or option under this Agreement without notice or demand;
  - (b3) Prejudice the Bank's rights as against the Customer in any respect; or
  - (b4) Render the Bank responsible for any Losses arising from such delay; nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise of such right, power or remedy or the exercise of any other right, power or remedy.
- (ii) The rights, powers and remedies provided under this Agreement are cumulative and not exclusive of any rights or remedies provided by law.
- (iii) Without limiting the foregoing, no waiver by the Bank of any breach of any provision of this Agreement shall be deemed to be a waiver of any subsequent breach of that or any other provision of this Agreement.
- (iv) The Bank may grant time or other indulgence to the Customer or any other person, without impairing or affecting in any way any of the Bank's rights as against the Customer or any such other persons.
- (v) The Bank may accept late payment or partial payment in respect of amounts due to the Bank under this Agreement or as being settlement of any matters in dispute, without losing any of the Bank's rights under this Agreement or at law, and where the Bank accepts such payment, it shall not be treated as an amendment to this Agreement nor waiver thereof.
- (vi) No provision of this Agreement will be waived, altered, modified or amended in any respect by the Bank unless it is in writing. The Bank's rights, remedies and entitlements continue in full force and effect until they are specifically amended or waived in writing by the Bank.

**33. Changes in Status, etc**

The Customer's liability under this Agreement shall continue to be in full force and effect and be binding on the Customer notwithstanding:-

- (i) (In the case of individuals) death, insanity, bankruptcy or other legal disability of the Customer;
- (ii) (In the case of a corporation) winding up, insolvency, dissolution or other legal disability of the Customer;
- (iii) (In the case of a corporation) any change by amalgamation, reconstruction or otherwise which may be made in the Customer's constitution;
- (iv) The occurrence of any event, procedure or appointment equivalent or analogous to any of the above events under the law of any jurisdiction in which the Customer is incorporated, domiciled, resident, carries on business or has assets; or
- (v) Any change by amalgamation, reconstruction or otherwise which may be made in the constitution of the company by which the Bank's business may for the time being be carried on and this Agreement and all of the rights and interests of the Bank under this Agreement shall be available to the company carrying on the Bank's business for the time being.

**34. Governing Law and Jurisdiction**

- (i) This Agreement shall be governed by and construed in accordance with the laws of Hong Kong and the Customer hereby irrevocably submits to the non-exclusive jurisdiction of the Hong Kong courts but nothing shall limit the right of the Bank to take any suit, action or proceeding arising out of or in connection with this Agreement and the relations between the Bank and the Customer in any other courts or competent jurisdiction nor preclude the taking of such suit, action or proceeding in any other jurisdiction, whether concurrent or not.
- (ii) The Bank shall not be responsible for the effect of any laws, regulations, governmental measures or restrictions of any relevant country which may be applicable to any multi-currency account or to the assets of the Bank relating thereto; and the Customer accepts all the risks of or arising from any such laws, regulations, governmental measures and restrictions.
- (iii) If a Customer is or subsequent to the date of this Agreement becomes resident overseas and has no address for service in Hong Kong, unless otherwise agreed by the Bank, the Customer irrevocably designates as agent for service of process in any suit or proceedings arising in connection with any

Transaction or this Agreement the person nominated in the Account Opening Document and services of any such process by registered mail to such process agent shall be full, complete and effective service upon the Customer.

- (iv) The Customer agrees (but without limiting the Bank's rights) to services of legal process by registered mailing of copies thereof to the Customer's address and/or the address of the Customer's process agent shown in the Bank's records.

**35. Third Party Liability**

Unless expressly provided to the contrary in these Terms and Conditions, a person who is not a party to these Terms and Conditions may not enforce any of its terms under the Contracts (Rights of Third Parties) Ordinance (Cap 623 of the Laws of Hong Kong) and notwithstanding any term of these Terms and Conditions, the consent of any third party is not required for any variation (including any release or compromise of any liability), rescission or termination of these Terms and Conditions.

## C. ACCOUNT RELATED TERMS AND CONDITIONS

### 1. Multi-Currency Settlement Account (“Settlement Account”)

- (i) **Opening of Settlement Account.** The Customer hereby authorizes the Bank, if one is not already opened by him/her, to open a Settlement Account on his/her behalf, whether in Hong Kong Dollars or any other foreign currency, as the Bank deems necessary for settlement purposes in relation to any general banking transaction, service or investment product which the Customer may request or trade under this Agreement. Accordingly, the Bank shall be entitled to:-
- (a) Debit such Account for all:
- (a1) Transaction charges and fees which may be imposed in connection with the opening and operation of related Accounts and Services;
- (a2) Banking charges and levies imposed by the Bank in relation to any banking transaction, service and products; and
- (a3) Charges, fees, levies, subscriptions, Losses, remittances and any other payments whatsoever payable by the Customer in relation to any banking transaction(s); and
- (b) Credit such Account with the sale proceeds of any Securities or Other Investments sold, all dividend and interest income arising from the Customer's holdings and any other payments (whether in respect of securities, deposits, premium or otherwise).
- (ii) **Cash deposits and withdrawals.** Cash deposits into and cash withdrawals from the Settlement Account are not accepted.
- (iii) **Sums paid.** Sums paid from an Account (whether representing principal or interest) shall be in the currency of the Settlement Account or (at the discretion of the Bank) its Hong Kong Dollar equivalent at the Bank's prevailing exchange rate.
- (iv) **Withdrawal or transfer form.** Any withdrawal or transfer form purporting to be duly signed and or sealed or chopped by or on behalf of the Customer, shall have the same effect as if made by the Customer personally. The Customer shall produce such evidence as the Bank may require, if any, to prove the Customer's identity.
- (v) **Bank's right.** The Bank reserves the right (at its discretion) to:
- (a) Impose a limit on the amounts that may be withdrawn;
- (b) Set a minimum deposit amount;
- (c) Pay to the Customer any amount withdrawn from the Settlement Account by one or more of the following methods:
- (c1) Issue to the Customer a cashier's order drawn on the Bank; and/or
- (c2) By effecting a transfer to an account with any other bank(s) in the currency of the deposit in accordance with the Customer's written Instruction; and/or
- (c3) By converting the principal and accrued interest into Hong Kong Dollars at the Bank's then prevailing buying rate and paying the proceeds to the Customer; and/or
- (c4) By such other means as the Bank at its discretion thinks fit,
- (d) Levy a periodic service charge if the average monthly balance of the Account falls below any minimum balance requirement; and
- (e) Pay a lower rate of interest or no interest at all on balances below certain amounts to be determined by the Bank from time to time. The Bank will inform the Customer of the prevailing amount upon enquiry.
- (vi) **Cheque books.** No cheque books will be issued with respect to the Settlement Account.
- (vii) **Overdraft facility.** At the request of the Customer, the Bank may, at its discretion, grant an overdraft facility either secured against Assets the Customer places with the Bank or on an unsecured basis. Where the overdraft is secured against the Assets of the Customer, the overdraft limit may be adjusted at the Bank's discretion, upon changes in the valuation of such Assets.
- (viii) **Repayment on demand.** Any overdraft is subject to the Bank's overriding right of repayment on demand.

- (ix) **Insufficient funds.** Auto-debits drawn on the Settlement Account may be paid notwithstanding that there may be insufficient funds in the Settlement Account to meet the payments.

## 2. Time Deposit Account

This paragraph will ONLY apply if the Customer chooses to take out time deposit in the Account. Upon request, the Bank may at its discretion arrange a Time Deposit Account for the Customer, in respect of such currencies as the Bank may permit.

- (i) **Deposit period and maturity.** The deposit period is the duration of the deposit that the Customer agrees with the Bank prior to or at the time of making the deposit.
- (ii) **Maturity date.** If the maturity date for a deposit falls on a day other than a Bank Business Day, it shall be postponed to the next Bank Business Day and the interest shall accrue accordingly.
- (iii) **Interest rate.** The interest rate throughout the deposit period will be simple interest at the rate determined by the Bank on the first day of the deposit period. Interest is calculated up to but excluding the maturity date.
- (iv) **Payment on maturity.** On maturity, the proceeds of the deposit will be dealt with in accordance with any Instructions then held by the Bank, requesting that the proceeds be:
- (a) Renewed, either principal plus interest or principal only, for the same deposit period or for a different period;
  - (b) Credited, in whole or in part, to the Account(s) designated by the Customer or any other Account; or
  - (c) Disposed of in other ways agreed by the Bank as instructed.
- (v) **Automatic renewal.** Unless the Bank has received a valid Instruction, on or before the date of maturity of the deposit, the Bank reserves the right (but shall have no obligation) to re-deposit the total amount of the deposit including principal and interest for the same deposit period, at the then applicable interest rate.
- (vi) **Premature withdrawal.** If a Customer requests withdrawal of a deposit prior to its maturity date, the Bank may at its discretion permit such early withdrawal, subject to payment of such interest and other charges as determined by the Bank at its discretion.
- (vii) **Overdue deposit.** If the Bank receives no disposal Instructions by the maturity date on a deposit which is not to be renewed automatically, the Bank will either hold the deposit at the disposal of the Customer pending receipt of Instructions or credit the principal plus interest to the Account as shall be determined by the Bank. Interest on the maturity date and thereafter will accrue on the principal amount only, as follows:
- (a) For Hong Kong Dollar deposits, interest from maturity until disposal will be paid at the Bank's applicable prevailing standard savings rate;
  - (b) For foreign currency deposits, interest from maturity until disposal will be paid at the Bank's applicable foreign currency savings interest rates in respect of the relevant currency concerned; and
  - (c) The interest accrued will be paid or credited into such Account as the Customer may instruct.
- (viii) **Receipt.** The Bank will provide Customers with a receipt or advice for all time deposits.

## D. COMMUNICATIONS AND INSTRUCTIONS TO THE BANK AND INDEMNITY

### 1. Communications and Instructions to the Bank

- (i) The Customer may communicate with and give Instructions to the Bank on the operation of the Accounts (including making transfers of funds from the Account to any person). The Bank may accept any of the following Instructions given by the Customer provided that the specific communication channel(s) is/are made available by the Bank to the Customers from time to time:-
  - (a) By post or facsimile or in person - written instruction should bear the Customer's specimen signature and should be sent or faxed to DBS Treasures relationship manager of which the Account is held;
  - (b) By telephone - oral instructions may be given over the telephone; or
  - (c) Electronically through internet banking services in accordance with the Terms and Conditions for DBS iBanking Service (as amended from time to time).
- (ii) Any transactions effected by the Bank on the basis of:
  - (a) Such written instructions which apparently bear a signature corresponding to the Customer's specimen signature in the Bank's records;
  - (b) Such oral instructions (as understood by the Bank); or
  - (c) Such internet banking services;

Shall be binding upon the Customer, whether or not made by the Customer or Mandatee or with the Customer's authority, knowledge or consent and be subject to this Agreement or other relevant terms and conditions of use, rules, procedures or similar requirements and the Bank shall be under no obligation or duty to verify the identity of the person(s) giving such Instructions. Once given, such Instructions cannot be withdrawn or revoked unless the Bank at its discretion consents in writing. **The Bank may in good faith rely on such Instructions and shall not be liable for any resulting claim, obligation or Loss.**

- (iii) The Customer (if there is more than one account holder of Customer, jointly and severally) shall on demand indemnify the Bank and the Bank's Personnel against all Losses, (including legal costs and expenses) and any other liabilities of whatever nature and howsoever directly or indirectly suffered or incurred arising out of or in connection with the Bank in good faith acting upon or in reliance on the authenticity of any written or oral Instructions given as aforesaid.
- (iv) The Bank shall be entitled at any time, at its discretion, to refuse to carry out any Instruction, even if a Bank's Personnel may have indicated acceptance or willingness of the Bank to accept it. The Bank shall be under no duty to assess the prudence or otherwise of any Instruction. If the Bank determines that any Instruction from the Customer or other circumstances may expose or lead it (whether directly or indirectly) to suffer loss or incur expense, it has the right to suspend the operation of any or all of the Accounts by giving reasonable notice to the Customer and/or to require an indemnity from the Customer or any third party before continuing to operate the Accounts or complying with the Instruction.
- (v) In the event that any document sent or despatched by the Customer to the Bank in connection with the Account is for any reason undated, the time and date as shown on the Bank's chop as imprinted on such documents as the time of its receipt by the Bank or such other time as the Bank may determine shall be conclusive evidence of the time and date of such documents and the Bank is directed on behalf of the Customer to insert such time or date on such documents accordingly.
- (vi) Notices or other communications from the Customer to the Bank shall not be effective until actually received by the Bank and notices received by the Bank after normal working hours or not on a Bank Business Day may be treated by the Bank as received at 9:00 am on the next Bank Business Day.
- (vii) The Bank may not be able to effect certain Customer instructions during banking hours on Bank Business Days, in particular if that transaction has foreign element. Additionally, Instructions involving a foreign element can be effected by the Bank only on days when banks in applicable financial market are opened for business in the country concerned. We do not guarantee that the Customer's instructions will be effected even though they are received by the Bank.

### 2. Oral/Facsimile/Internet Instructions

- (i) The Customer hereby requests the Bank, if it sees fit, to rely upon and act in good faith on any instructions, requests and/or other communications (a "Remote Instruction") given by telephone, facsimile, internet banking services or such other communication device as the Bank may from time to time approve, which the Bank in good faith believes to have been given by the Customer or by the person(s) from time to time authorized to operate such Account(s) under the above account title(s) which is/are currently, or may hereafter from time to time be, opened by the Customer with the Bank (this "Authority").

- (ii) In consideration of the Bank agreeing to act on Remote Instructions, **the Customer acknowledges, accepts and agrees that use of such Remote Instructions involves some risk, in particular, that Remote Instructions may be given by unauthorized persons and/or for dishonest purposes.** Customer also acknowledges, agrees and undertakes:
- (a) **That Customer shall bear all risks arising from any Remote Instructions received by the Bank, and the Bank shall have no liability or responsibility for errors or omission in receipt, any delay in receipt or any non-receipt provided that the Bank has acted in good faith.** The Bank shall not be responsible for any matters beyond its control, including, but not limited to, error, failure or breakdown in any equipment or interference with or interception of any transmission;
  - (b) That the Bank shall not be liable for any Losses which the Customer may suffer in connection with the Bank acting in accordance with the Remote Instruction including without limitation any oral instruction of a person who is not the Customer or the Mandatee or the authorized signatory, or any facsimile instruction transmitted in accordance with paragraph D1 above upon which one or more of the signatures may be forged or is otherwise unauthorized;
  - (c) **That the Bank shall be entitled at any time, at its absolute discretion, to require confirmation of Remote Instructions before carrying them out, or refuse to carry out any Remote Instruction, even if the Remote Instruction has previously been accepted by (or on behalf of) the Bank or the Bank's Personnel and shall not be liable for any consequences.** In any such case, the Bank may at its sole discretion, cancel or otherwise determine the disposal of the Remote Instruction as it sees fit;
  - (d) That all Remote Instructions must comply with any pre-transaction, daily or other monetary limits, or such operating, procedural or other limits or requirements from time to time required by the Bank;
  - (e) (If the Bank gives written confirmation, other than advices or contract notes pursuant to paragraph E6, of any Remote Instructions) or that Customer must examine such confirmation and must notify the Bank within 3 days of its receipt of any error, discrepancy or unauthorized transaction arising from whatever cause (including forgery, fraud, lack of authority or negligence by Customer or by any other persons). Unless there is fraud or if the Bank has failed to act in good faith after such period, the Bank's confirmation will be deemed to be correct and conclusive evidence that the transaction is authorized and binding on Customer;
  - (f) That the Bank shall be entitled (but not obliged) to record any telephone conversations of the Customer with the Bank's Personnel and such recordings shall remain the property of the Bank and shall be conclusive evidence of the Instructions and shall be binding on the Customer. The Bank may retain such recordings for such period as the Bank thinks fit but shall not be obliged to keep any transcript;
  - (g) That a note made by any of the Bank's Personnel (or, as the case may be, any of the officers of any of the offices in any part of the world or the Bank's Affiliate) of any oral Instruction or as the case may be, a copy of any facsimile Instruction, shall be conclusive and binding evidence of such Remote Instruction, as the case may be, provided that the Bank and any of its Affiliates shall not be obliged to cause any of its officers or to make any note of any oral Instruction and the failure to make any such note shall not in any way affect the authorization contained in this Agreement or prejudice the rights of the Bank and its Affiliates under this Agreement;
  - (h) That if any written confirmation of any Remote Instruction is given by the Customer to the Bank, it must be clearly marked: "Confirmation only-do not duplicate". **If any confirmation is not clearly marked in this way, the Bank will not be liable for any consequences, including for all Losses if an Instruction is executed more than once;**
  - (i) (If there is more than one account holder of Customer, jointly and severally) to hold the Bank and the Bank's Personnel harmless and to keep the Bank and the Bank's Personnel indemnified on demand against any and all Losses (including legal costs and expenses) directly or indirectly suffered or incurred as a result of acting in good faith or in reliance on the authenticity of any Remote Instruction. Customer agrees to perform and ratify any obligation entered into or action taken by the Bank as a result of such instructions;
  - (j) That this Authority shall apply notwithstanding existing or future mandates and/or other agreements or course of dealings between the Bank and the Customer; and
  - (k) This Authority shall operate for the benefit of the Bank and its successors and assignees, notwithstanding any change by way of amalgamation, consolidation, merger or otherwise in the constitution of the Bank or any such successor or assignee. The Bank may assign or otherwise transfer any of its rights and interests under this Authority.
- (iii) If the Customer is a firm (whether sole proprietorship or partnership firm or an association), the Customer and the proprietor / partners / persons carrying on business in name of the firm or association concerned

now or at any time hereafter agree this Authority will remain in full force and effect and jointly and severally binding notwithstanding any change in the partnership's name, structure, membership, partnership deed (or other constitutional documents) or in the partners, in each case, whether due to death, bankruptcy, retirement, expulsion, admission of new partner(s), merger, cessation of business or otherwise.

- (iv) If the Customer is a limited company, a resolution of the board of directors of the company has duly passed to approve the entering into and delivery of this Authority to give Remote Instructions.
- (v) Any request to suspend or cancel this Authority must be given in writing and shall only become effective once the Bank has received and had a reasonable opportunity to act on such request.
- (vi) The Customer recognizes that telephone, facsimile, email and internet are not secure communication channels.
- (vii) The Customer acknowledges that it is relatively easy to adopt the identity of another person when sending information electronically. Intruders may be able to fraudulently take on the address or name of a familiar system vis-a-vis the recipient computer. The Customer shall bear all the risks and consequences which arise from the manipulation or misuse of the Customer's email address(es) or facsimile machine.
- (viii) The Customer acknowledges that e-mail Instruction (if permitted by the Bank) is only transmitted electronically and that processing and execution takes place by means of conventional means of communication (post or telephone) whereby normal business hours and normal business procedures are still observed. The Bank does not accept liability for information which is not processed on time (specifically orders which are not executed on time) or for damages incurred as a result, provided that it has exercised reasonable care.
- (ix) The Customer acknowledges that information transmitted by e-mail is carried on a publicly accessible network (the Internet) and that, under certain circumstances, third parties may discover that a relationship exists with the Bank. Furthermore, information is transmitted in unencrypted form, such that some of the contents of the e-mail can be read by anyone. Finally, there is the risk that information might be altered. The Bank is unable to verify the integrity of the information it receives. Information is transmitted regularly and without control across borders. The above applies even to information transfers where both the sender and the recipient are located in Hong Kong.

## **E. Securities Transactions**

“The Bank is a bank licensed under the Banking Ordinance (Cap 155 of the laws of Hong Kong) and is deemed by virtue of Schedule 10 to the Securities and Futures Ordinance to have been registered under section 119 (1) of the Securities and Futures Ordinance.”

For the avoidance of doubt, this Section E does not apply to Currency Linked Investment.

**The price of Securities can and does fluctuate. Any individual Security may experience downward movement and may under some circumstances even become valueless. There is an inherent risk that losses may be incurred rather than profit made as a result of buying and selling Securities. This is a risk which the Customer is prepared and able to accept.**

### **1. Applicable Rules and Regulations**

Each Transaction shall be subject to the constitution, rules, regulations, customs, usages, rulings and interpretations from time to time in force of the Exchange and the relevant Clearing House through which the transaction is conducted so that:

- (i) in the event of any conflict between any provision of this Agreement and any such constitution, rules, regulations, customs, usages, rulings, interpretations, and regulation, such provision shall be deemed to be modified or rescinded to the extent necessary to secure compliance; and
- (ii) the Bank may take or omit to take any action which it determines to be necessary in order to ensure compliance with the same, which shall bind the Customer, who shall at all times ensure his/her compliance with the same.

### **2. Title to Securities**

- (i) The Customer warrants that all Securities are held exclusively by the Customer with absolute and unencumbered title, that the Customer is trading on the Customer's own account only and no one else has any interest in any Securities and/or Other Investments held.
- (ii) The Customer shall on request provide details in writing to the Bank or its Agent(s) and/or the relevant regulatory and/or governmental bodies, of the ultimate beneficiary and of the person(s) originating any Instruction, or the person or entity that stands to gain the commercial or economic benefit of any transaction and/or bear its commercial or economic risk, as soon as possible but in any case within one Bank Business Day or any other period as required by the relevant regulatory or governmental body having jurisdiction (including without limitation the Exchange and SFC) whether or not the requirement has the force of law and consents to the Bank making such disclosures in respect of the Customer and/or Instruction, to any such person or body.
- (iii) If the Customer is aware that the person giving the Instruction is acting as intermediary for its underlying customers, and the Customer does not know the identity and contact details of the underlying customers for whom a transaction is effected, the Customer confirms that:
  - (a) The Customer has arrangements in place with that person which entitle him/her to obtain such information from that person immediately upon request; and
  - (b) The Customer will, on request from the Bank in relation to a Transaction, promptly request such information from that person on whose instructions the Transaction was effected, and provide the information to a competent regulatory authority as soon as received from that person.
- (iv) Securities traded and/or deposited through CCASS which are returned to the Customer may not have the same serial number or identification as those originally deposited or received by the Bank.
- (v) The provisions of paragraph E2(ii) shall continue in effect notwithstanding the termination of the Customer's relationship with the Bank.

### **3. Services**

The Bank may (but shall not be obliged) from time to time upon Instructions from the Customer do all or any of the following on behalf of the Customer and for the Customer's account:-

- (i) To purchase and/or sell or otherwise deal with Securities or Other Investments through such Agents (including the Bank's Affiliates) as the Bank may select or otherwise as the Bank shall deem appropriate, and deal and negotiate with such Agents or any other persons (including the Bank's Affiliates) engaged in the purchase or sale of any Securities or Other Investments on the Customer's behalf, and deal with any other matters relating to the Securities or Other Investments;



- (ii) To sell or otherwise dispose of Securities or Other Investments and to deal with the proceeds and to enter into any agreement or instrument on behalf of the Customer in connection with Securities or Other Investments;
- (iii) To deliver the documents of title and any other instruments relating to Securities or Other Investments to the Customer or to the order of the Customer;
- (iv) To register or hold the Securities or Other Investments purchased on the Customer's behalf in the Bank's name or any Nominee or custodian or Sub-Custodian selected by the Bank subject to compliance with all applicable laws, rules and regulations;
- (v) To collect interest, dividends and any other distributions or payments in cash or in kind in respect of the Securities or Other Investments;
- (vi) To deposit or keep the Securities or Other Investments in or with any custodian or Sub-Custodian or depository or securities account(s) with such Nominees, custodians, Sub-Custodian or depository agents as the Bank may select, and in any such case, the terms and conditions set by the relevant Nominees, custodians, Sub-Custodian or depository agents shall be binding on the Customer;
- (vii) To exercise all voting, subscription, conversion and other rights attaching to the Securities or Other Investments;
- (viii) To pay calls made or other expenses incurred in relation to the Securities or Other Investments;
- (ix) To subscribe, take up or otherwise dispose of such rights or new issues in relation to Securities or Other Investments which shall be binding on the Customer;
- (x) To grant a facility in such freely and internationally traded currencies which the Bank is prepared to trade ("**Foreign Currency**") and up to such limit as the Bank may from time to time agree with the Customer on and subject to this Agreement. The Bank may, at its absolute discretion, to increase or reduce the facility; and
- (xi) To provide such other services as the Bank may from time to time offer and which the Customer accepts or requests, in each case at the Customer's risk. The Bank reserves the right to reject Securities or Other Investments for deposit without giving any reason or prior notice.

#### **4. Other Services**

The Bank shall be entitled (but not obliged), without prior notice to or consent from the Customer, to take such steps as it may determine to be expedient to enable it to provide the services and exercise its powers under this Agreement including, without limitation, the following:

- (i) To comply with any law, regulation, order, directive, notice or request of any governmental or regulatory body (whether or not having the force of law) requiring the Bank to take or refrain from taking action including on behalf of the Customer, to withhold and/or to make payment of any taxes or duties payable on or in respect of Securities or Other Investments;
- (ii) To comply with all disclosure requests, rules and regulatory requirements of any Exchange, Clearing House or other securities industry organization;
- (iii) Where Securities or Other Investments are registered in the name of any Nominee, custodian or Sub-Custodian of the Bank (but not otherwise), to notify the Customer of notices and other communications received in relation to such Securities or Other Investments (but shall be under no obligation to forward the same to the Customer in sufficient time for instructions to be given to the Bank with regard to any matters referred to therein nor to take any other action except in accordance with Instructions from the Customer and subject to such conditions as the Bank may determine) and, in the absence of or delay in receiving Instructions, to act or refrain from acting as the Bank in its discretion sees fit;
- (iv) To surrender any Securities or Other Investments against receipt of the monies payable upon maturity or on redemption of any Securities or Other Investments if called prior to maturity;
- (v) To act on the advice of its legal advisers, accountants, brokers or other professional advisers; and
- (vi) Generally to do all acts and things which are reasonably necessary for or incidental to the provision of the services.

#### **5. Payment of Purchase Costs, Fees, Commissions, Proceeds Etc.**

- (i) The Customer shall be responsible for paying the full amount of purchase prices of the Securities and Other Investments, brokerage, commission, fees, charges and levies by the brokers, depositories, custodians, sub-custodians, nominees and/or the Exchange. If the Bank so requires, the Customer shall pay the Bank the purchase price of the Securities and Other Investments, brokerage, commission, charges and fees (in such currencies as the Bank shall require) at the full prevailing rate in the respective markets for

Transactions made on the Customer's behalf (even if the Bank charged a lower rate for or granted discounts or rebates on or deductions or waivers of such brokerage, commission, charges and fees).

- (ii) The Bank may charge fees or commissions on Transactions effected for the Customer as agent, a mark up or mark down on transactions effected with the Customer as principal and other fees and charges in connection with the services and facilities provided by the Bank to the Customer, as determined by the Bank from time to time.
- (iii) The Customer agrees to pay to the Bank all applicable taxes, duty, levy, fees, brokerage, transfer fees, registration fees and all other liabilities, charges, costs and expenses payable or incurred in connection with Transactions effected for or with the Customer.
- (iv) Every Transaction executed by the Bank for the Customer on any Exchange shall be subject to levies which such Exchange may from time to time impose and the Bank is authorized to collect any such levies from the Account. The rules of such Exchange and the Clearing House (including those relating to trading and settlement) shall be binding upon both the Bank and the Customer.
- (v) The Bank is authorized to debit the Account in payment of the Purchase Costs and all other monies payable under this Agreement by the Customer to the Bank including without limitation payments in respect of exercise of calls or any rights and benefits attached to the Securities or Other Investments or any other dealings (including without limitation share-splitting expenses) (the "Sum") and to make payment on the Customer's behalf, of the Purchase Costs and any other payments in connection with Transactions or dealings in or in connection with Securities or Other Investments. If no Account has been designated by the Customer or there are insufficient funds in the Account, the Bank may debit the Sum or any part thereof from any of the Account(s).

#### 6. Advice, Contract note and Confirmation Calls

- (i) The Bank will deliver to the Customer a combined advice or contract note in respect of every contract for the purchase, sale or exchange of Securities or Other Investments effected on the Customer's behalf within the time limit prescribed by law together with the debit advice for the related transaction charges. The above shall be conclusive evidence of the particulars of the relevant transaction and shall be binding on the Customer and deemed to be accepted if not objected to in writing or orally by the Customer within 90 days after delivery to the Customer. The Customer shall never treat the Bank's confirmation telephone call or e-mail as final notification or confirmation.
- (ii) The Bank shall have no liability in relation to claims in respect of any credit, debit, sale or purchase item shown in or any error in any advice or contract note other than any item or error that the Customer has objected to by notice to the Bank within the above prescribed time. Notwithstanding the foregoing, the Bank reserves the right upon notice to the Customer to add to and/or amend the entries and transactions reflected in any advice or contract note in the event of any omission, inaccuracy, discrepancy or error in any advice or contract note.

#### 7. Delegation

- (i) The Bank reserves the right to from time to time appoint any other person(s) as its nominee, broker or agent ("Agent") to perform any services for the Account on its behalf and the Bank may delegate any of its power under this Agreement to such person to be carried out in accordance with market practice and the normal dealing and operational practices of such Agent. **Save in the case of negligence or wilful default, the Bank shall not be liable for any act, omission, negligence or default of any such person and in any such case, such liability shall be strictly limited to direct and reasonably foreseeable loss directly and solely arising as a result of any of the foregoing.**
- (ii) The Bank is authorized to disclose information about the Customer, the Account and the related services to any other person appointed by the Bank in connection with the performance of such services and as may be required, to any regulatory body.
- (iii) The Bank may pay to, or receive from, any counterparty, Agent or from an Affiliate charges, commissions, fees or rebates (as the case may be) in any form, in respect of any trades or Transactions effected or services provided for the Customer.

#### 8. Transactions

- (i) Transactions will usually only be effected during normal working hours of the Bank on a Bank Business Day but the Bank may, in its absolute discretion, effect a Transaction at other times or days.
- (ii) The Bank reserves the right to impose a transaction limit for trading of Securities or Other Investments from time to time at its discretion.
- (iii) If any relevant Exchange, Clearing House or counterparty or Agent on which or through whom any Transaction has been entered into by the Bank on the Customer's behalf, requires any alteration in any of the terms and conditions of any Transaction, the Bank may at its discretion agree to amend or vary the terms and conditions of any Transaction which has been entered into and the Customer shall be bound by the terms and conditions of Transactions, as so amended or varied.

- (iv) **The Bank shall have no obligation or liability to the Customer, whatsoever and howsoever arising, for failing or being unable to comply with the terms of any Instructions of the Customer or inability to effect Transactions at the prices or rates quoted at any specific time or any delay in executing transactions unless within the Bank's reasonable control.** If the Bank (or its Agent) is not able to perform the Customer's order in full, the Bank (or its Agent) may (unless otherwise instructed by the Customer) enter into a transaction for any quantity of Securities or Other Investments which is less than the amount specified in the Customer's instructions and/or otherwise may affect partial performance only and the Customer shall be bound by Transactions so entered into.
- (v) Unless the Bank agrees to the contrary or the Customer gives specific Instructions to the Bank, the Customer and the Bank acknowledge that each Instruction may be treated by the Bank as good for the day only and as lapsed at the end of the official trading day of the relevant Exchange or trading facility in respect of which the Instruction is given.
- (vi) The Bank may without reference to the Customer aggregate transactions on the Customer's behalf with Transactions of the Bank, its Affiliates and/or other Customers, where the Bank reasonably believes that it should be able to obtain a better price than if the Customer's Transaction had been executed separately (but without any warranty or liability by the Bank to Customer that such better price can be obtained). Where Transactions are aggregated through dealings but execution is effected in an amount less than the aggregate amount the Bank reserves discretion in allocating the amount executed.
- (vii) Unless the Customer has instructed the Bank to the contrary in writing, the Bank may at its discretion effect Transactions for the Customer on any Exchange or market or trading forum whether in Hong Kong or other parts of the world, and in or through any Clearing House and the Bank may affect Transactions on a non-regulated Exchange or where the Transaction is not regulated by the rules of any Exchange or market.

## 9. Nominee

- (i) The Customer authorizes the Bank to hold any Securities and Other Investments on behalf of the Customer in its own name or through a nominee ("**Nominee**"). Any such Nominee shall have all requisite powers and authorities to carry out such nominee duties (as from time to time determined by the Bank) including, without limitation:
  - (a) To request payment of and receive all interest, dividends and other payments or distributions in respect of the Securities or Other Investments;
  - (b) To complete and deliver any document, application or other instruments in connection with the Securities or Other Investments;
  - (c) At their discretion to comply with any existing or future laws, regulations or orders in respect of any of the Securities and Other Investments or the holders; and
  - (d) To hold, dispose of or otherwise deal in Securities or Other Investments on the Instructions of the Customer and may require such Instructions to be in writing or in any form satisfactory to them.
- (ii) The Nominee shall have no duty or responsibility in respect of proxies received by them in respect of the Securities or Other Investments and/or for sending any proxies or giving any notice of the receipt of such proxies to the Customer.
- (iii) The Nominee may retain or deal with the Securities or Other Investments in accordance with the provisions of any charge or mortgage to secure the payment of any amounts due from the Customer to the Bank, including fees, charges and expenses, as from time to time directed by the Bank.
- (iv) The Customer shall perform such acts and sign and execute all such agreements, proxies, authorities or documents whatsoever as may from time to time be required by the Nominee for the performance or implementation of these and all other applicable terms and conditions.
- (v) Every officer of the Nominee for the time being is hereby irrevocably appointed to be the attorney of the Customer, for all of the foregoing purposes with power to sign and execute all documents and perform all acts in the name and on behalf of the Customer or as otherwise required.
- (vi) The Customer agrees to indemnify the Nominee on demand in respect of all expenses, liabilities, claims and demands arising out of the Securities or anything lawfully done hereunder.

## 10. Custodian

- (i) The Bank is authorized (but not obliged) to provide custodian services to the Customer unless the Bank receives Instructions to the contrary, to register all Securities (except bearer stock) deposited by the Customer with the Bank or purchased by the Bank for the Customer, either in the name of the Customer or in the name of the Bank's nominee or a sub-custodian selected by the Bank and to cause any documents of title (including bearer stock) to be held in safe custody by the Bank or its nominees or Agents providing appropriate facilities for safe custody of documents.

- (ii) The Bank may, without notice to the Customer, appoint one or more sub-custodians, nominees, or agents ("**Sub-Custodians**" and each a "**Sub-Custodian**") as the Bank may think proper or convenient to do all acts and things which the Bank may do in relation to any money, Securities or Other Investments, held by the Bank in the Account, on such terms and conditions as the Bank may in its absolute discretion consider appropriate. The Sub-Custodians may be located outside of Hong Kong and subject to the laws, rules, directions, orders and practices of the place of custody. The Bank accepts responsibility for the obligations of the Bank's Sub-Custodians appointed for the purposes of paragraph E10(i). The Bank and any Sub-Custodian shall have the right to hold any Securities or Other Investments on the Customer's behalf in accordance with their respective normal nominee or custody arrangements, including specific or general pooling arrangements. The Bank, or Sub-Custodians, shall not be bound to re-deliver to the Customer identical scrips, certificates or other documents representing those Securities or Other Investments received from or for the Customer but may re-deliver to the Customer securities or investments or like quantity, type and description and ranking pari passu with those originally held (subject to appropriate adjustment for any intervening capital reorganization). For the avoidance of doubt, nothing in this paragraph shall be taken as transferring to the Bank the beneficial interest in any Securities or Other Investments.
- (iii) In connection with the Transactions, the Bank is requested and authorized to:
- (a) Collect all interest and dividends or other distributions of income and payments whether in cash or in kind on any Securities or Other Investments;
  - (b) Credit to the Account such dividends, distributions or accretions of whatever nature arising in respect of Securities or Other Investments and any Transactions;
  - (c) Present or surrender for payment any of the Securities and Other Investments and/or documents of title which are called, redeemed or retired or otherwise become payable and all coupons or other income items which fall for payment upon presentation provided that where any Securities or Other Investments are called for redemption prior to maturity, the Bank shall have no duty or responsibility to present the Securities or Other Investments for redemption unless, after the call is made, the Customer instructs the Bank to do so;
  - (d) Credit proceeds of a Transaction to and debit all payments, costs and other amounts arising as a result of a Transaction (on such date as the Bank may determine for the purpose of effecting such Transaction) from such Account(s) as the Bank may determine, or agree with the Customer;
  - (e) credit any Securities or Other Investments purchased on behalf of the Customer to, and withdraw any Securities or Other Investments pursuant to or as a result of a Transaction (on such date as the Bank may determine for the purpose of effecting such Transaction) from the Account unless the Bank has received contrary Instructions;
  - (f) Exchange interim receipts or temporary securities for definitive documents of title;
  - (g) Notify the Customer of any rights, entitlement or fractional interest resulting from a rights issue, dividends or stock split bearing an expiration date and, in the absence of timely Instructions from the Customer, sell any such rights and entitlements or fractional interest;
  - (h) Execute in the Customer's name when the Bank deems appropriate such documents or other certificates as may be required to obtain any payment from Securities or Other Investments or to dispose thereof or to exercise any right including voting rights relating to Securities or Other Investments;
  - (i) Pay taxes, levies, management, Sub-Custodian, Nominee, secretarial fees or other expenses including (without limitation) any brokerage fees, commissions, registrations and settlement expenses payable in connection with any Securities or any Other Investments, the Account or this Agreement, and debit the same to the Account;
  - (j) Not place or withdraw an Instruction, if there are insufficient funds or pre-arranged credit is not available in the relevant Account. However The Bank may at its discretion act on such Instruction without approval of or giving prior notice to the Customer; and
  - (k) Place order(s) or enter into Transaction(s) at its discretion to set off order(s) which has been placed or entered into, for the purpose of effecting an Instruction which is subsequently not effected due to insufficiency of funds in the Account. Any resulting Loss shall be borne by the Customer but any resulting gain shall belong to the Bank. The Bank's certificate in writing as to such Loss shall in the absence of manifest error be conclusive and binding.
- (iv) The Customer acknowledges and agrees that:
- (a) The Bank (and its Sub-Custodians) shall have no obligation to send the Customers notices, communications, proxies and other documents relating to Securities or Other Investments of the Customer held in the Account to the Customer, or otherwise give notice of receipt of such documents to the Customer and where the Bank agrees to do so, it shall not have any liability to the Customer for any delay in doing so;

- (b) Unless instructed by the Customer, the Bank shall not be bound to exercise or cause to be exercised any conversion, subscription or voting rights nor will it proceed on the Customer's behalf in any mergers or offers, or capital reorganizations, consolidation, receivership, bankruptcy or insolvency or similar matters effecting the Customer's Account, so that where the Customer fails to give the Bank Instructions, the Bank may take no action.
- (c) Securities and documents of title held by the Bank for safe custody are held by the Bank at the risk of the Customer as regards any matters outside of the Bank's reasonable control. Without prejudice to the generality of paragraph B20 the Bank shall not be responsible for or liable in respect of any Loss suffered by the Customer in connection with the Securities or Other Investments and documents of title held by the Bank on the Customer's behalf for safe custody purpose unless such Loss has been caused as a direct consequence of any negligence, wilful default or fraud on behalf of the Bank or its Sub-Custodians.
- (d) Neither the Bank nor any Sub-Custodian is under any duty to examine or verify the validity of the ownership of, or title to any, Securities or Other Investments or be liable in respect of any defect in ownership or title;
- (e) Where a foreign Sub-Custodian is appointed, neither the Bank nor any Sub-Custodian will be responsible or liable in the event that foreign laws, rules or requirements, make it impossible or difficult to return the Securities or Other Investments custodised offshore;
- (f) Neither the Bank nor any Sub-Custodian are involved in the distribution, offer or provision of any advice relating to the Securities or Other Investments. Neither the Bank nor any Sub-Custodian are responsible for any follow up action in respect of the Securities or Other Investments and responsible for undertaking due diligence, assessing suitability or otherwise assessing the Securities or Other Investments;
- (g) Neither the Bank nor any Sub-Custodian are responsible for or liable for any Loss that results from the transfer or investment in the Securities or Other Investments; and
- (h) Securities or Other Investments held or administered by the Bank or the Sub-Custodians are subject to the set-off and lien provisions as set out in paragraph B17 and B18 and as otherwise apply between the Customer and the Bank.

#### 11. Short Selling

The Customer agrees to immediately notify the Bank when a sale order relates to Securities or Other Investments which the Customer does not own (i.e. involving short selling) and agrees to indemnify the Bank on demand from any liability, claim, damages, costs and expenses the Bank may suffer or incur as a result of the Customer's short selling instruction.

#### 12. New Issue Application

- (i) Whenever the Customer asks the Bank to apply for new issues on the Customer's behalf, the Customer represents and warrants to and agrees with the Bank that:
  - (a) (If the application is made for the Customer's account) no other application is being made for the Customer's account by the Customer or by anyone applying as the authorized representative or by any other person;
  - (b) (If the application is made by the Customer as agent for the account of another person) no other application is being made by the Customer as agent for or for the account of that person or by that person or by any other person as agent for that person;
  - (c) The applicants under such application are fully entitled to make such application and hold the Securities applied for and no breach of any law, regulation or other requirement in any part of the world will arise or result from the making or approval of any such application; and
  - (d) The Bank is irrevocably authorized to sign and deliver an application and all other necessary documents on the Customer's behalf.
- (ii) The Customer acknowledges that if application is made by an unlisted company that does not carry any business other than dealing in shares and in respect of which the Customer exercises control, such an application shall be deemed one made for the Customer's benefit.
- (iii) The Customer declares that the Customer's application through the Bank will be the only application made and the only application intended by the Customer to be made, for the Customer's account or for the persons for whose account the Customer is applying.
- (iv) The Customer understands that the foregoing declaration or representation will be relied upon by the Bank in making the application, and by the issuer in deciding whether to make allotment to such application.

**13. Loss of Loyalty Bonuses or Other Entitlements**

The Customer accepts that any loyalty bonuses or other entitlements arising from or conditional on the Customer's holding certain Securities or Other Investments in the Customer's own name(s) will be lost upon such Securities and/or Other Investments being deposited with the Bank. It is the Customer's sole responsibility to check on any such conditions before depositing Securities and/or Other Investments with the Bank.

**14. Derivatives Position**

If the Customer instructs the Bank to effect transactions in derivatives, the Customer understands and acknowledges that the Exchange or market (if any) on which the transaction is effected, the Clearing House or the relevant counterparty will from time to time call to put up initial or supplementary margin or collateral to cover liabilities which have been incurred or may be incurred. To meet a call the Bank is hereby authorized by the Customer to deduct from the Account any money and/or to sell any Securities or Other Investments (including collateral) held in the Account and put up the proceeds thereof or to put up any such Securities or Other Investments and/or require the Customer to put up margin or collateral in the form of cash or, with the agreement with the Bank, Securities or Other Investments, and if the Customer fails to meet the call then the Bank may close out any open derivatives position of the Customer and charge all expenses in so doing to the Customer or at the Customer's risk leave the position open. If the Customer is asked to put up collateral for an open derivatives position, the Bank is authorized to pledge, charge or make other security arrangements over such collateral in favour of the relevant Exchange or markets (if any) or Clearing House or counterparty and it is not necessary for the Exchange, market or Clearing House or counterparty to register the collateral in the Customer's name or in the name of the Bank or its Nominee or Agent.

**15. Counterparty Risk**

If the counterparty (or any person acting on its behalf) to a Transaction effected by the Bank on the Customer's behalf shall for any reason whatsoever and howsoever fail to make all or any part of any payment or to deliver all or any part of the documents of title relating to the Securities or Other Investments being the subject matter of such Transaction, or any documents of title so delivered shall not be authentic, as required by the provisions of any rules and regulations of any relevant Exchange, Clearing House or regulatory authority or any applicable laws or the terms and conditions, the Bank's obligation to make payment or delivery in respect of such Transaction to the Customer shall thereupon and by virtue of such failure become an obligation to make payment of such amount or delivery of such documents of title as the Bank shall have received from such counterparty (or person acting on its behalf).

**16. Dealings by the Bank**

- (i) When the Customer purchases any Securities, the Bank and the Nominee may act as agent or as principal (i.e. as the Customer's counterparty), or as both agent and principal unless it is unambiguously clear from the terms of the accepted order or the rules of an Exchange that the Bank or the Nominee shall act in a specific capacity. In addition, in certain circumstances and in respect of the Structured Investment Products, the Bank and the Nominee may purchase such Structured Investment Products as principal for on-sale to the Customer as a principal whereby the Customer will bear the risk of any failure by the third-party issuer or counterparty to meet its obligations under any such Structured Investment Products. The Customer accepts that the Bank, and/or any of the Bank's Affiliates, may have a material interest in any Transaction or in any Service provided under this Agreement and/or may have an interest which conflicts with the Customer's interest and may owe duties to the other customers which would otherwise conflict with the Bank's duties to the Customer.
- (ii) Nothing herein contained shall restrict and prevent the Bank or its Affiliates from acting in any capacity for the Bank or on behalf of any other person:
  - (a) From holding or dealing in any Securities or Other Investments for the Bank's or its Affiliate's account or for the account of the Bank's other clients notwithstanding that similar Securities or Other Investments may be comprised in any Account;
  - (b) From purchasing for the Customer's account Securities or Other Investments held by the Bank or its Affiliates (in any capacity);
  - (c) From buying Securities where the Bank or its Affiliates is involved in a new issue, rights issue, takeover or similar transaction concerning the issuer or the Bank or its Affiliates is providing corporate finance advice to, or underwriting a new issue or placing, holding a position or dealing in the securities of an issuer in whose Securities the Customer is dealing;
  - (d) From taking the opposite position in a Transaction to Instructions of the Customer, whether for their own account or on behalf of other customers of the Bank or its Affiliate; or
  - (e) From purchasing for the Bank's or its Affiliates' account or for the account of the Bank's other clients, Securities or Other Investments forming part of the Customer Account (provided that in any such case the terms of purchase are not less favourable to the Customer than they would have been had the transactions been entered into at arm's length on the day in question).
- (iii) Neither the Bank nor its Affiliates shall be liable to account to the Customer for any emoluments, commission, profits or any other benefits whatsoever resulting from the Bank or its Affiliates doing any of the aforementioned things.

- (iv) The Bank shall be under no duty to the Customer to disclose to the Customer any information which may come to the Bank's notice in the course of acting in any capacity for any other customer or person.

## **17. Investment Information**

- (i) Any information provided is for reference only and no reliance should be placed on any conversations that take place with the Bank's Personnel. Customers should seek their own investment advice from a suitably qualified adviser.
- (ii) The Bank may from time to time make available to the Customer for inspection or collection at its designated office, or available through the relevant website as provided by the Bank from time to time, materials and information in respect of the Securities and/or Other Investments. The Customer fully understands and agrees:
  - (a) That the Bank is under no obligation to make such materials or information available to the Customer or to provide the Customer with any financial, material or investment information or suggestion;
  - (b) If the Bank so acts, that the Bank is not providing such materials, information or suggestion as a required service to the Customer;
  - (c) That the investment is made safely upon the Customer's judgment and at the Customer's discretion notwithstanding any such materials, information or suggestion the Bank may have provided to the Customer;
  - (d) That the Bank assumes no responsibility for the accuracy and completeness of any such materials or information provided by the Bank; and
  - (e) That the Bank assumes no responsibility for the performance or outcome of any investment made by the Customer after receipt of such materials or information and any risk associated with any Losses suffered as a result of the Customer entering to any investment are for the account of the Customer.
- (iii) If the Customer wishes to raise any questions or seek further details in respect of such materials or information provided, the Customer may address such questions to the Bank and the Bank may (but is not bound to) use all reasons and endeavours to obtain a response to such questions from the appropriate institution concerned.
- (iv) The Bank shall upon request provide the Customer with product specifications, any prospectus or other offering document covering derivative products, including futures contracts or options (if available). Where the Bank so acts, the Customer fully understands and agrees paragraphs E17(ii)(b) - (e).
- (v) The Customer acknowledges and agrees that the Customer will make an independent analysis and decision with respect to all dealings in all the Assets and investments.

## **18. Settlement**

- (i) All the Instructions from the Customer accepted by the Bank and all Transactions are effected by the Bank on the Customer's behalf on the understanding that both the Bank and the Customer contemplate actual performance of each Transaction and, as between the Bank and the Customer, are deemed to contain an obligation on the Customer to make settlement and/or delivery of the documents of title relating to the subject matter of such transaction, as the case may be. The Customer shall promptly take all such action necessary to enable due settlement and/or delivery by the Bank in respect of such purchase and sale in accordance with the provisions of the rules and regulations of any relevant Exchange, Clearing House, regulatory authority and any applicable laws and/or other terms and conditions applicable to the Transaction. If the Customer fails to make such payment or delivery then, without prejudice to paragraphs B9, B24, B31, E5 and E23, the Bank may (a) in the case of purchase, transfer or sell such purchased Securities or Other Investments; or (b) in the case of a sale, borrow or purchase such sold Securities or Other Investments in order to settle or deliver in respect of such purchase or sale, and the Customer shall be responsible for any Loss in connection with so doing and shall indemnify the Bank accordingly.
- (ii) The Customer will not acquire or instruct the Bank to effect a transaction unless the Customer has made arrangements satisfactory to the Bank in relation to settlement of the transaction including all Purchase Costs paid or payable in connection with such Transaction. Accordingly, prior to carrying out any Transaction the Customer shall:
  - (a) place the Bank in funds sufficient as determined by the Bank for the purpose of completing the same and for paying all Purchase Costs in connection with such Transaction; and/or
  - (b) arrange facilities with the Bank sufficient as determined by the Bank for the purpose of completing the same and for paying all Purchase Costs in connection with such transaction; and/or

- (c) make payments of margin in cash in Hong Kong Dollars or other prescribed foreign currency, Securities or other customer property agreed to be accepted by the Bank to the amount or value determined by the Bank from time to time, for the purpose of securing the due completion of the Transaction and discharge of all obligations and liabilities of the Customer in respect of the Transaction and towards the Bank under this Agreement or otherwise howsoever
- (iii) Notwithstanding the foregoing, the Bank shall be entitled to (but shall not be obliged to) from time to time at its discretion temporarily advance monies to the Customer to enable the completion of purchase contracts and payment obligations to take place on or as soon as may be practicable after any due settlement date or to meet charges which fall to be debited to the Accounts. Such advances shall be repaid on demand (and may at the Bank's discretion be debited from any Account) together with accrued interest which shall be charged at such rate as may be determined by the Bank.
- (iv) With regard to any Transaction affecting the Customer's monies, Securities and Other Investments held in any Account, the Bank is expressly authorized and directed to debit any Account in any currency whatsoever (converted if necessary, at such exchange rate as shall be determined by the Bank) with the relevant amount. The Customer shall pay the Bank immediately on demand the amount of any shortfall, where there are insufficient funds in the Account.

**19. Margin**

- (i) Margin in a form of Securities or other property (other than margin in cash in Hong Kong Dollars or a prescribed foreign currency) will only be accepted entirely at the discretion of the Bank. If the Bank agrees with the Customer to effect a Transaction on a margin basis, the Customer shall charge assets acceptable to the Bank and maintain with the Bank a margin of the percentage notified by the Bank from time to time of the current market value from time to time of the investment held or to be purchased pursuant to the Transaction and/or the amount as determined by the Bank of the aggregate liability of the Customer under a Transaction involving an open position or contingent liability.
- (ii) Any credit advance made to the Customer pursuant to this paragraph E19 is repayable on demand. The Customer shall pay the Bank on demand interest on the principal amount of any credit advance outstanding from the Bank commencing from the date of the advance until and including the date of final repayment at the rate per annum specified by the Bank from time to time and notified to the Customer.
- (iii) The margin required by the Bank may exceed any margin requirements prescribed by any Exchange or Clearing House and may be changed by the Bank from time to time without prior consultation with the Customer. The Bank may demand from the Customer from time to time such additional margin as the Bank may consider fit.
- (iv) Margin calls must be met immediately or within such time limit as may be specified by the Bank from time to time. If the Customer shall fail to comply with any margin call by the end of a Bank Business Day on which such demand is due, the Bank may effect any transaction at the Customer's expense without notice or reference to the Customer for the purpose of protecting the Bank's position (including closing out any short sold position of the Customer) and may take such other action pursuant to this paragraph E19 and/or paragraphs B24 and E23 as the Bank in its absolute discretion may determine. Any amount due to the Bank as a result of closing out any short sold position of the Customer will be payable by the Customer to the Bank on demand and the Customer irrevocably authorizes the Bank to debit any Account of the Customer selected by the Bank by such amount.
- (v) The Customer warrants to the Bank (for itself and as trustee for any relevant Exchange or Clearing House) that the Customer is the absolute and sole beneficial owner of any margin provided to the Bank and that such margin is provided to the Bank free and clear from all charges, claims, liens and encumbrances and restrictions on transfer whatsoever and the Bank shall have a first charge over the same in priority to any other person and otherwise on such further terms and conditions as the Bank may specify. The Customer shall indemnify the Bank on demand against any and all Losses which the Bank may suffer or incur as a result of any such warranty not being true and accurate in all respects.
- (vi) Margin, or any part thereof, shall not be withdrawn by the Customer unless and until the Bank determines that the amount of margin, after taking into account the proposed withdrawal, will not be less than the margin required by the Bank. The Customer agrees and acknowledges that to the fullest extent permitted by law, the margin shall not be repayable to the Customer or any other person unless and until such time as all Indebtedness to the Bank has been unconditionally and irrevocably paid and discharged in full.
- (vii) The Customer shall at all times ensure that the Securities or other property placed with the Bank in respect of the margin required by the Bank is readily realizable. If the Bank is of the opinion any such Securities or other property is not sufficiently readily realizable, the Customer shall forthwith upon demand pay to the Bank a sum equivalent in value to the amount of the shortfall or loss, or such greater sum as the Bank may have notified the Customer towards the margin required by the Bank; and entitled to require the Customer to provide further security or other margin.
- (viii) The Customer shall from time to time at the request of the Bank, and at the Customer's expense, execute and do all such deeds, documents, acts and things as the Bank may require in order to perfect the Bank's rights in respect of any security provided by the Customer by way of margin. The Customer hereby irrevocably and by way of security for his/her obligations under this Agreement appoints the Bank and the



Bank's Personnel as the agent and the attorney of the Customer and in his/her name and on his/her behalf and as his/her act and deed to make any contract and to do or execute all such deeds, assurances, agreements, instruments, notices, acts and things which may be lawfully required to give full effect to this Agreement. The Customer hereby ratifies and confirms and agrees to ratify and confirm any instrument, act or thing which such attorney may execute or do.

- (ix) The Customer shall not without the agreement of the Bank in writing create or allow to subsist any mortgage, charge, pledge, option or other third party right of encumbrance over the Account or any Securities, Other Investments, receivables or monies held in or for the Account (other than encumbrance in favour of the Bank or its Affiliates).

## 20. Foreign Exchange Contracts

- (i) The Bank as principal may from time to time enter into any contract or contracts with the Customer (a "Foreign Exchange Contract", and which expression shall include where the context permits, an "Off-setting Contract" or a "Net Contract", respectively defined below) in which the Customer agrees to buy and the Bank agrees to sell, or the Customer agrees to sell and the Bank agrees to buy, one or more Foreign Currencies in exchange for other Foreign Currency(ies), including Hong Kong Dollars, on a spot basis or forward basis. An offer by the Customer to enter into a contract, once made, shall be irrevocable and binding upon the Customer. The Bank shall have the right to refuse to enter into a Foreign Exchange Contract with the Customer without giving reasons.
- (ii) The Customer or his/her Mandatee shall be entitled to request from the Bank indications of rates of exchange for any foreign exchange provided that the Bank shall at no time be under any obligation to enter into Foreign Exchange Contracts at such rates of exchange. The Customer shall be bound by and indemnify the Bank for any Foreign Exchange Contract the Bank may enter into upon the belief that the Customer or its Mandatee had wished to purchase or sell foreign exchange rather than request an indication of rates of exchange.
- (iii) A Foreign Exchange Contract (or any part thereof) involving a position (an "Open Position") which is still outstanding and has not been off-set or matched by an Off-setting Contract shall be fully off-set prior to the relevant Settlement Date by an Off-setting Contract. In this Agreement, an "Off-setting Contract" shall mean, in relation to a Foreign Exchange Contract (or any part thereof), a contract between the parties which is the same as that Foreign Exchange Contract (or part) except that (i) the positions of the Customer and the Bank as buyer or seller of one or more Foreign Currencies in exchange for other Foreign Currency(ies) shall be reversed and (ii) the purchase or sale price of such Foreign Currency(ies) shall be based on the exchange rate(s) quoted by the Bank at the date on which that Foreign Exchange Contract (or part) is to be off-set and on the basis the contract has the same Settlement Date (defined below) as that Foreign Exchange Contract (or part).
- (iv) At least one Bank Business Day immediately preceding the date of settlement (the "Settlement Date") specified in the written confirmation of a Foreign Exchange Contract:
  - (a) If such Foreign Exchange Contract involves an Open Position which is not already fully matched by an Off-setting Contract; or
  - (b) Any request for security to maintain or increase the margin required by the Bank is not immediately satisfied, the Bank shall be entitled to either:
    - (b1) Rollover such Foreign Exchange Contract by effecting an Off-setting Contract and a new Foreign Exchange Contract matching such Foreign Exchange Contract using the current exchange rate(s) quoted by the Bank at such Settlement Date; or
    - (b2) Effect the necessary Off-setting Contract or Off-setting Contracts as the Bank determines to be appropriate.
- (v) Without prejudice to the generality of paragraphs E20(iii) and E20(iv), if the Foreign Exchange Contract has been entered into on a spot basis, the Bank shall be entitled to off-set the existing Foreign Exchange Contract by an Off-setting Contract upon such Settlement Date as it shall determine. Upon such Settlement Date, the Off-setting Contract shall, in addition to the purchase or sale price of the foreign currency(ies) take into account such adjustments to the foreign exchange rates necessary in consequence of interest rate or swap point differentials arising during the term of the spot Foreign Exchange Contract and which the Bank shall have notified to the Customer as being applicable in respect of such spot Foreign Exchange Contract. The Customer shall be entitled to allow a spot Foreign Exchange Contract to continue from one Bank Business Day to the next (so that it becomes a spot Foreign Exchange Contract for the next Bank Business Day) and shall be deemed to have requested the Bank to allow such Foreign Exchange Contract to continue if the Bank has not received Instructions to close out the Foreign Exchange Contract within the specified time limits, or, if no time limit is specified at the end of normal business hours of the Bank on the relevant Bank Business Day.
- (vi) If a Foreign Exchange Contract is continued from one Bank Business Day to the next, the Bank shall credit or debit to the Account such amount as it conclusively certifies as being the profit or loss (as the case may be) made or incurred by the Customer by reason of the continuation of the Foreign Exchange Contract.

- (vii) A contract (a **"Net Contract"**) shall immediately come into existence between the parties in respect of the respective positions of the parties after a Foreign Exchange Contract is off-set in full or in part, as the case may be, by an Off-setting Contract. The only obligation of the Bank or the Customer under a Net Contract arising from any action or step taken by the Bank pursuant to paragraphs E20(iii) to E20(xi) inclusive or otherwise shall be to pay or receive with good value the net amount arising which will be credited or debited, as the case may be, to the running account which may be replaced by any other account(s) determined by the Bank in such currency(ies), including Hong Kong Dollars, as the Bank considers appropriate, and based upon the exchange rate for such currency(ies) quoted by the Bank on the relevant Settlement Date or otherwise.
- (viii) All Net Contracts with the same Settlement Date shall be continuously and automatically netted by adding or subtracting the currency amounts to be paid or received by the Customer in a running account to be maintained by the Bank in its records on each Settlement Date.
- (ix) If the Customer obtains a foreign exchange gain as a result of the effecting of an Off-setting Contract, the Customer shall not be entitled to withdraw the amount of such gain from the running account referred to in paragraph E20(vii) until the Settlement Date of the Off -setting Contract.
- (x) If the Customer suffers a loss as a result of the effecting of an Offsetting Contract, the following provisions shall apply:
  - (a) If such loss is less than the margin required by the Bank at any time, an amount of margin equivalent to such loss shall, upon such loss becoming realized on the Settlement Date of the Off-setting Contract, be taken and applied by the Bank in making good such loss owed by the Customer to the Bank;
  - (b) If such loss exceeds the margin required by the Bank, the whole of the margin required by the Bank shall, upon such loss being realized on the Settlement Date of the Off-setting Contract, be taken and applied by the Bank in making good such loss and, in addition, the Customer shall forthwith upon demand pay to the Bank a sum equivalent in value to the account of the Customer's loss, or such greater sum as the Bank may have notified the Customer towards the margin required by the Bank; and
  - (c) Until the Settlement Date referred to in paragraphs E20(x)(a) and (b) above, the Customer shall not be entitled to use the amount of the margin required by the Bank described in these paragraphs to support any new Foreign Exchange Contract or any other Foreign Exchange Contract.
- (xi) If on any date there are any amounts which would otherwise be payable hereunder in the same currency by the Bank to the Customer and by the Customer to the Bank, if the Bank so determines and directs on such date, each party's obligation to make payment or any such amount will be 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 whom the larger aggregate amount would have been payable to pay the other party the excess of the larger aggregate amount over the smaller aggregate amount.
- (xii) For the purposes of netting, Foreign Exchange Contracts shall be matched against each other in the order agreed between the Customer and the Bank or, if there is no agreement, on a first-in-first-out basis.

## 21. Earmarking of Designated Account and Right of Set Off

Without prejudice to the generality of the foregoing provisions in this section, as a condition precedent to the Bank acting upon Instructions from the Customer, the Bank is irrevocably authorized (but not obliged) to earmark the Earmarked Amount, in the designated account for the purpose of payment of sums payable by the Customer under this Agreement from time to time. The Customer covenants and undertakes that:-

- (i) Notwithstanding the purpose stated above for such earmarking, the Customer will not withdraw the whole or any part of the Earmarked Amount from the designated account (or other account so earmarked) for any purpose (including sums payable under this Agreement) save with the express consent of the Bank, and if the Customer seeks to make a withdrawal from the Earmarked Amount which has not been consented to by the Bank, the Bank may refuse to allow such withdrawal and may for all purposes act as if no request for such withdrawal, had been made by the Customer; and
- (ii) If at any time and for any reason (including a withdrawal approved by the Bank) the credit balance in the designated account is or falls below the Earmarked Amount, the Customer shall forthwith deposit into the designated account a sum equivalent to such shortfall in the Earmarked Amount.

## 22. Currency of Payment

If against the Customer a judgment or order is rendered by a court or tribunal of any jurisdiction for the payment of the amounts owing under this Agreement or any or for the payment of damages in respect of such amounts and such judgment or order being expressed in a currency (the **"Judgment Currency"**) other than that in which such amounts then owing under any or this Agreement are payable (the **"Contractual Currency"**), the Customer shall indemnify and hold the Bank harmless against any deficiency arising or resulting from any variation in rates of exchange between the

Judgment Currency and the Contractual Currency occurring between (i) the date as of which any amount expressed in the Contractual Currency is converted, for the purposes of such judgment or order, into an equivalent amount in the Judgment Currency, and (ii) the date or dates of discharge of such amount (or part thereof) or of discharge of such first-mentioned judgment or order (or part thereof), as appropriate. The above indemnity shall constitute a separate and independent obligation of the Customer from his/her other obligations under this Agreement, shall give rise to a separate and independent cause of action against the Customer, shall apply irrespective of any indulgence granted by the Bank from time to time and shall continue in full force and effect notwithstanding any judgment or order. Any such deficiency as aforesaid shall be deemed to constitute a loss suffered by the Bank and no proof or evidence of any actual loss shall be required by the Bank.

### **23. Closing Out**

- (i) Notwithstanding anything in this Agreement to the contrary and whether or not an Event of Default has occurred, if in the opinion of the Bank any Transaction or series of Transactions entered into has or have given rise or may be liable to give rise to Losses of any nature (and whether secured or not) which in the Bank's opinion should not, in accordance with prudent banking principles, be allowed to continue or which should be limited, then, without notice to the Customer, the Bank may in its absolute and unfettered discretion and without being liable to the Customer take all actions it considers to be necessary in the circumstances, including but not limited to the following:
  - (a) Cause such Transaction or Transactions to be terminated (whether or not any additional Loss may thereby arise); and/or
  - (b) Open any new Account or Accounts in the name of the Customer and to allocate to the same any part or parts of any assets for the time being held by the Bank pursuant to this Agreement, to be held by the Bank as security for such Losses and to hold the same until such time as the Bank in its absolute discretion may determine that the same is no longer required as security for such Losses, or at the Bank's discretion, to apply the same in settlement of such Losses.
- (ii) In order to close out an Open Position, an Off-setting Contract shall be deemed to have been effected by the Bank at the time of closing out. Thereafter, the only obligations remaining shall be, pursuant to the resulting Net Contract, obligations of either:
  - (a) The Customer to pay to the Bank on the relevant Settlement Date an amount in such currency as the Bank may consider appropriate equal to the prospective foreign exchange loss, and the Customer irrevocably authorizes the Bank to debit any Account of the Customer selected by the Bank by such amount for such purpose; or
  - (b) The Bank after satisfying all debts due from the Customer to the Bank in any Account whatsoever to pay to the Customer on the relevant Settlement Date an amount in such currency as the Bank may consider appropriate equal to the prospective foreign exchange gain, which would have been realized on the Settlement Date of the Foreign Exchange Contract involving such an Open Position and the deemed Off-setting Contract.

### **24. Other Documents**

The Customer shall provide the following documents or information in addition to those required in the Account Opening Document:

- (i) Other forms and documents required by the Bank to set up the Account and any other accounts with the Bank, executed and completed by the Customer as appropriate;
- (ii) If any authorizations, consents and approvals of any authority is required, all such authorizations, consents and approvals;
- (iii) The names and details of any Mandatees and any other person(s) appointed to act on behalf of the Customer; and
- (iv) If the Customer is a corporation, copies of resolutions and all other necessary corporate authorizations authorizing the Customer to enter into a Transaction, the Account Opening Document, these Terms and Conditions and true copies of the Customer's constitutional documents and Business Registration Certificate or any similar document.

### **25. Acknowledgements**

The Customer acknowledges, agrees and accepts that

- (i) The Bank shall be under no duty to investigate or participate in the exercise of any rights or other matter relating to the Securities or Other Investments or take any action in connection with such Securities or Other Investments if it does not receive written Instructions from the Customer to do so and, subject to paragraph E21, the Bank may impose such conditions including the giving of any indemnity to it and provision for fees and charges, as it may require for taking any such action;

- (ii) The Bank shall not recognize any trust or equitable interest in respect of the Securities or Other Investments (except any trust arising from the Bank or its Nominee holding the Securities on the Customer's behalf);
- (iii) The Bank and the Nominee may act as agent or as principal (i.e. as the Customer's counterparty), or as both agent and principal as specified in paragraph E16(i) and the Customer shall remain principally liable for all dealings, negotiations and transactions entered into, under or pursuant to this Agreement by the Bank on the Customer's behalf, even if such dealings, negotiations and transactions are conducted in the Bank's name without disclosure of such agency, and no fiduciary or equitable duties to the Customer will arise on the Bank's part or prevent it from acting as principal in the sale to the Customer of Securities owned by the Bank; and
- (iv) When the Bank undertakes a Transaction for the Customer, it or its Affiliates could:-
  - (a) Be dealing as principal for its own account by selling the Securities concerned to the Customer or buying it from the Customer;
  - (b) Be matching the Customer's transaction with that of another of the Bank's customers or its Affiliate by acting on behalf of that other customer as well as on the Customer's behalf or otherwise;
  - (c) Be entering into arrangements with brokers or other persons under which the Bank or its Affiliate receive a share of any commission, brokerage or other fees charged by such broker or other person or other benefit and the Customer authorizes the Bank and its Affiliate to retain any fees, discounts, profits, commissions or rebates or other benefits arising in connection with any such Transactions;
  - (d) Be sponsoring or underwriting a new issue of the Securities to be bought or sold under that Transaction;
  - (e) Be giving advice and providing other services to another person about or concerning the Securities or Other Investments to be bought or sold under that Transaction; and/or
  - (f) Have any other interest in or a conflict of duty in relation to the Transaction concerned.
- (v) The Bank may cancel or reverse any Instruction or Transaction without contacting the Customer where the relevant Exchange has recommended or required a cancellation or reversal for market integrity reasons, where the market was operating under an error or where the cancellation or reversal is permitted under the relevant market rules for that Exchange; and
- (vi) By offering the Service, the Bank is not acting as a principal, nor as an executing, clearing and/or prime broker with respect to any Transaction. The Bank is only acting as the Customer's agent in relation to any Transactions and any Instructions accepted by the Bank will be effected on the Customer's behalf (where applicable) through a broker selected by the Bank in its absolute discretion.

## **26. Rebate and commission**

- (i) The Bank may receive, either directly or indirectly, remunerations, commissions, retrocession fees, monetary or other non-monetary advantages from third parties (including any entities belonging to the Bank's Affiliates) in connection with the provision of Services and/or the handling of Transactions. The nature, amount and method of calculating these remunerations, commissions, retrocession fees, monetary or other non-monetary advantages may vary over time, depending on the third parties and/or investments and transactions carried out.
- (ii) The Bank or any Affiliates of the Bank may receive certain benefits from the product issuer for distribution of an investment product. The Bank may also receive monetary benefit from distributing its own investment products. When the Bank distributes investment products issued by an Affiliate of the Bank, the Bank may not explicitly receive monetary benefits for doing so, but the Bank and/or any Affiliate of the Bank may nevertheless benefit indirectly from the origination and distribution of such investment products. Accordingly, the benefits which might be received by the Bank include: (i) non-explicit monetary benefits for distributing an investment product which is issued by the Bank or any Affiliate of the Bank; (ii) monetary benefits which are not quantifiable prior to or at the point of sale such as trailer fees and rebates; (iii) retrocession fees; and (iv) non-monetary benefits such as research and advisory services, market analysis, portfolio analysis, training and seminars.
- (iii) The Customer hereby consents to the Bank receiving such remunerations, commissions, retrocession fees, monetary or other non-monetary benefits.

## **27. Certain Structured Investment Products**

This Section E applies if the Customer purchases any Structured Investment Products from the Bank or place an order for a SIP which is linked to an underlying asset that is an equity security. Any such Structured Investment Products will be held in the Customer's Wealth Management Securities Account (unless otherwise specified in the Offering Documents or notified to the Customer by the Bank).

**28. Delivery of Securities**

If the Bank is at any time under an obligation to deliver Securities to the Customer, the Bank shall be entitled to arrange for such delivery obligation to be fulfilled in any manner that it deems fit. The Bank may itself deliver or procure a third party to deliver the relevant Securities to the Customer. Where such Securities are delivered to the Customer, the Customer shall have no claim against the Bank with respect to the delivery of such Securities.

**29. Hedging by the Bank**

The Customer acknowledges that, in respect of any trade or transaction entered into with the Customer, the Bank may (but need not) enter into funding, hedging and/or other supporting arrangements. If the Customer does not perform all of his/her obligations under any such trade or transaction, the Customer shall reimburse the Bank (on a full indemnity basis) for any loss or cost reasonably incurred by the Bank (which shall be determined by the Bank in good faith) in varying and/or terminating such arrangements.

## F. STRUCTURED PRODUCTS RELATED TERMS AND CONDITIONS

This Section will ONLY apply if the Customer chooses to enter into Structured Product transactions.

### 1. Conflict

Each of the Structured Products offered in conjunction with this Agreement shall be governed by these Terms and Conditions, the Bank Accounts and Services Terms and Conditions, Confirmation (if any), Order Form (if any), Term Sheet (if any), terms and conditions governing specific transaction (if any) and Account Opening Document as amended from time to time. In the event of conflict between any provision(s) found in the stated documents, the following order of priority shall prevail:-

- (i) Confirmation;
- (ii) Order Form;
- (iii) Term Sheet / terms and conditions governing specific transaction;
- (iv) Account Opening Document;
- (v) these Terms and Conditions; and
- (vi) the Bank Accounts and Services Terms and Conditions.

### 2. Definitions

- (i) In addition to those set out at paragraph B1(i) above, for the purposes of this section the following words and expressions shall have the following meanings, unless the context otherwise requires:-

**"Confirmation"** means a written confirmation or a contract note issued by the Bank showing the final terms of a Transaction and confirming successful execution of an Order;

**"Conversion Rate"** means, in respect of a CLI, the exchange rate shown in the Confirmation, at which the Bank has the right to convert the Principal Amount and Interest Amount of the CLI from the Investment Currency to the Linked Currency on the Maturity Date;

**"Exchange"** means HKEx and/or any other stock exchange or exchange or quotation system on which the Bank may conduct dealings on the Customer's behalf;

**"Final Redemption Amount"** means, in respect of a SIP, the amount specified in, or calculated in accordance with the provisions set out in the Term Sheet and, in respect of a CLI, the Principal Amount and Interest Amount in respect of the Interest Period that are payable either in (a) the Investment Currency or (b) the Linked Currency, as set out in the Confirmation;

**"Fixing Date"** means, in respect of a SIP, the date on which the Bank determines the relevant amounts, prices, values or rates as specified in the relevant Confirmation; and, in respect of a CLI, the Maturity Date;

**"Fixing Rate"** means, in respect of a CLI, the spot rate in the inter bank foreign exchange market (which may be determined by reference to a rate source) at or about the Fixing Time for which the Investment Currency may be exchanged for the Linked Currency, all determined by the Bank in its sole and absolute discretion;

**"Fixing Time"** means, in respect of CLI, approximately 11:00 a.m. Hong Kong time, provided that with respect to any currency pair that has a different fixing time determined in accordance with market convention for such currency pair as determined by the Bank in its sole and absolute discretion, the Fixing Time shall be determined by the Bank in its sole and absolute discretion in accordance with such market convention;

**"Government Authority"** any nation, state or government, any province or other political subdivision thereof, any body, agency, department or ministry, any taxing, monetary, foreign exchange or other authority, court, tribunal or other instrumentality and any other entity exercising, executive, legislative, judicial, regulatory or administrative functions of or pertaining to government;

**"HKEx"** means Hong Kong Exchanges and Clearing Limited and any replacement or successor exchange;

**"Important Facts Statement"** means a document or other evidence containing terms and particulars of a CLI or SIP issued by the Bank as amended by the Bank from time to time;

**"Interest Amount"** means, in respect of a SIP, such amount (if any) specified in, or calculated in accordance with the provisions set out in, the relevant Offering Documents and, in respect of a CLI, such amount calculated in accordance with the provisions set out in the Important Facts Statement and as set out in the Confirmation;

"**Interest Payment Date**" means, in respect of a SIP, such date(s) (if any) as specified in, or determined in accordance with the provisions set out in, the relevant Offering Documents and, in respect of a CLI, the Maturity Date;

"**Interest Period**" means, in respect of a SIP, such period(s) (if any) as specified in, or determined in accordance with the provisions set out in, the relevant Offering Documents and in respect of a CLI, the period from (and including) the Investment Value Date to (but excluding) the Maturity Date;

"**Interest Rate**" means, in respect of a SIP, such rate (if any) as provided in the relevant Offering Documents; and in respect of a CLI, the rate per annum specified in the Confirmation;

"**Investment Currency**" means, in respect of a CLI, the original currency that the Customer places as a CLI (as specified in the relevant Order Form and Confirmation);

"**Investment Period**" means, in respect of a SIP, such period (if any) as provided in the relevant Offering Documents; and in respect of a CLI, the period from (and including) the Investment Value Date to (but excluding) the Maturity Date, as specified in the Confirmation;

"**Investment Value Date**" means, in respect of a CLI or a SIP, the date specified as such in the Confirmation;

"**Linked Currency**" means the currency into which the Investment Currency of the CLI may be converted;

"**Maturity Date**" means:

- (a) In relation to a CLI, the date on which the Bank will pay the Final Redemption Amount as specified in the Confirmation; and
- (b) In relation to a SIP, the date specified in the Confirmation on which the Bank shall, subject to the relevant terms and conditions of such SIP, pay the Final Redemption Amount to the Customer;

"**Order**" means, in respect of a Structured Product, an order validly placed on an Order Form, which upon acceptance by the Bank and execution in the market by the Bank will be confirmed by a Confirmation;

"**Order Form**" means, in respect of a Structured Product, an Order Form for any Structured Product in the Bank's format (which, in case of Order given via the Customer's Instruction, will include the Bank's record of such Instruction);

"**Principal Amount**" means:

- (a) In respect of a SIP, the amount to be invested by the Customer in the Bank as set out in the relevant Confirmation or, as the case may be, which has been invested by the Customer in, and accepted by, the Bank in accordance with these Terms and Conditions;
- (b) In respect of a CLI, the amount invested in a CLI as set out in the relevant Confirmation or, as the case may be, which has been invested by the Customer in, and accepted by, the Bank in accordance with these Terms and Conditions;
- (c) In respect of an ELD, the amount specified as such in the terms and conditions in respect of such ELD;

"**Relevant Currency**" means, in respect of a SIP, the currency(ies) specified in the Term Sheet and, in respect of a CLI, the Investment Currency and/or the Linked Currency;

"**Tenor**" means, in respect of a SIP, the tenor as provided in the Order Form and the Confirmation; and in respect of a CLI, the total number of calendar days from and including the Investment Value Date to and excluding the Maturity Date; and

"**Term Sheet**" means a document or other evidence containing terms and conditions and particulars of a Structured Product. **In the event of any inconsistency between the provisions of the Term Sheet and these Terms and Conditions, the Term Sheet will prevail.**

### 3. Rebate and commission

The Bank may receive, either directly or indirectly, remunerations, commissions, retrocession fees, monetary or other non-monetary advantages from third parties (including any entities belonging to the Bank's Affiliates) in connection with the provision of Services and/or the handling of Transactions. The nature, amount and method of calculating these remunerations, commissions, retrocession fees, monetary or other non-monetary advantages may vary over time, depending on the third parties and/or investments and transactions carried out.

The Bank or any Affiliates of the Bank may receive certain benefits from the product issuer for distribution of an investment product. The Bank may also receive monetary benefit from distributing its own investment products. When the Bank distributes investment products issued by an Affiliate of the Bank, the Bank may not explicitly receive monetary benefits for doing so, but the Bank and/or any Affiliate of the Bank may nevertheless benefit indirectly from the origination and distribution of such investment products. Accordingly, the benefits which might be received by the Bank include: (i) non-explicit monetary benefits for distributing an investment product which is issued by the Bank or

any Affiliate of the Bank; (ii) monetary benefits which are not quantifiable prior to or at the point of sale such as trailer fees and rebates; (iii) retrocession fees; and (iv) non-monetary benefits such as research and advisory services, market analysis, portfolio analysis, training and seminars.

The Customer hereby consents to the Bank receiving such remunerations, commissions, retrocession fees, monetary or other non-monetary benefits.

#### 4. Equity-Linked Deposit (“ELD”)

If the Customer is to enter into or hold any ELD, the product terms and conditions in respect of the ELD shall be set out in the relevant principal brochure notified by the Bank to the Customer, as supplemented by the relevant Confirmation in respect of such ELD.

#### 5. Structured Investment Product (“SIP”)

This paragraph F5 is applicable to SIP. In addition, the SIP shall be subject to terms and conditions set out in the relevant Offering Documents of SIP and such other document as notified by the Bank to the Customer.

##### a. Introduction

- (i) A SIP is a structured investment product involving derivatives and intended to provide a potentially higher return than a normal time deposit. A SIP may be linked to the performance of a currency, an interest rate, an equity security or other underlying asset, rate or index. The terms of a SIP are set out in the Offering Documents and the Confirmation in respect of such SIP.
- (ii) The Customer should note that a SIP is subject to risks as set out in the Offering Documents. SIP is NOT a protected deposit and is NOT protected by the Deposit Protection Scheme or any other deposit protection scheme in any other jurisdiction.
- (iii) The Bank may from time to time originate or offer new SIP for the benefit of its customers generally. In the event that the Customer may wish to invest in any such product or utilize such services, the Bank may request the Customer to sign or acknowledge receipt of additional documentation in relation thereto.
- (iv) The product terms and conditions, subscription and redemption process and details relating to payments applicable to a SIP are set out in the relevant Offering Documents and shall be deemed to be incorporated herein with effect from the date on which they are signed or acknowledgement of receipt received by the Bank or the date of the first transaction to which they relate (whichever is earlier), and in the event of any conflict between their terms and these Terms and Conditions, the former shall prevail.
- (v) Upon the Customer's request, the Bank will provide to the Customer product or service specifications and any prospectus or other offering documents relating to derivative products and a full explanation of margin procedures (where relevant).
- (vi) Investment in any SIP may involve special risks. By investing in a SIP, the Customer confirms that he/she has received a copy of or been provided with the relevant Offering Documents of the SIP and he/she has read and understood the information contained therein and have carefully considered the terms of and risks set out in such documents.

##### b. Placing and acceptance of Orders for a SIP

Unless otherwise provided in the Offering Documents of a SIP, the following provisions shall apply.

- (i) All Orders must be placed by Order Forms, where applicable, duly completed and signed by the Customer or Instructions given by the Customer to the Bank. Once submitted to the Bank, the Order is binding on the Customer and cannot be amended or withdrawn without the written agreement of the Bank.
- (ii) Orders are subject always to acceptance by the Bank and to final execution. The Bank shall have no obligation or liability in respect of any Order that is not accepted or executed.
- (iii) The Customer agrees to deposit the Principal Amount in an account specified by the Bank for such purpose, on or before the Investment Value Date.
- (iv) **The Principal Amount must be received by the Bank on or before the close of business on the Investment Value Date. Once the Principal Amount has been so received, it may not be withdrawn prior to the Maturity Date.** The Customer hereby authorises the Bank to direct debit his/her Settlement Account for payment of the Principal Amount when the Customer places an Order for a SIP.
- (v) The Bank reserves the right, in its sole discretion on or before the Investment Value Date not to accept any funds received (or to accept only part of such funds) as the Principal Amount for a relevant SIP. In such event, the Bank will notify the Customer as soon as practicable and any funds received but not accepted as the Principal Amount will be paid to such account as notified by the Customer or if the Bank has not been notified of such account or that such account notified by the Customer has ceased to be operative, to any account for the Customer as the Bank shall in its absolute discretion determine. The Bank is not obliged to pay any interest on such funds.



- (vi) The Bank will not accept and will not execute any Orders of a SIP unless the aggregate of all the Orders in respect of such SIP received on or before the closing date for subscription of such SIP is of a minimum offer amount as prescribed by the Bank in its sole and absolute discretion.
- (vii) If the market moves significantly before the closing date for subscription of such SIP, the Bank may shorten the period of subscription of such SIP and stop accepting new orders for the SIP prior to the closing date. If an Order for such SIP has not yet been confirmed by the Bank as being successfully executed ("Pending Orders"), the Bank will on a best effort basis seek to execute such Pending Orders, but the Bank will otherwise have no obligation with respect to the Pending Orders.

**c. Confirmation**

The Bank will, as soon as practicable after the terms of the SIP have been agreed and the Principal Amount deposited, issue and send to the Customer a Confirmation, duly issued on behalf of the Bank confirming that the Principal Amount has been placed as a SIP.

**d. Early withdrawal**

- (i) **The Customer may not terminate or withdraw all or any part of the Principal Amount in respect of a SIP before the Maturity Date.**
- (ii) **The Bank may in its sole and absolute discretion agree to terminate a SIP prior to the Maturity Date, if the Customer shall so request. In such circumstances the Customer will bear the costs and losses incurred by the Bank in relation to such termination; and the Customer understands that the costs and losses incurred by the Bank in relation to such termination may substantially reduce, or result in a total loss of, the Interest Amount, the Final Redemption Amount and/or the Principal Amount and the earnings thereon, and the Customer may bear further costs and expenses in addition to a loss of the Interest Amount, the Final Redemption Amount or the Principal Amount and the earnings thereon.**

**e. Interest**

- (i) Interest shall accrue on the Principal Amount at the Interest Rate during the interest period and shall be calculated as set out in the Term Sheet.
- (ii) The Interest Amount (if any) shall be subject to all applicable withholding taxes and shall be payable in arrears on the Interest Payment Date, or, if such day is not a Bank Business Day, the Bank Business Day immediately following such Interest Payment Date, to such account as notified by the Customer, or if the Bank has not been notified of such account or such account notified by the Customer has ceased to be operative, to any account for the Customer as the Bank shall in its absolute discretion determine. The Bank shall not be responsible for any further interest or other payment in respect of such delay.

**f. Payment to Customer on Maturity Date**

- (i) The Final Redemption Amount will be paid on the Maturity Date or, if such day is not a Bank Business Day, the Bank Business Day immediately following the Maturity Date, to such account as notified by the Customer to the Bank at least 2 Bank Business Days prior to the Maturity Date or, if the Bank has not been notified of such account or such account notified by the Customer has ceased to be operative, to any account for the Customer as the Bank shall in its absolute discretion determine. The Bank shall not be responsible for any loss or damage suffered by the Customer for any delay in effecting the said payment if the notice is not received within the time period stipulated herein.
- (ii) In the event that the Maturity Date is not a Bank Business Day, the Customer shall not be entitled to any payment of interest on the Final Redemption Amount from, and including, the Maturity Date.

**g. Undertaking/Warranties**

- (i) If the security underlying the SIP is an equity security, the Customer undertakes and warrants that he/she:
  - (a) has obtained necessary employer consent if he/she is a registered person under the Securities and Futures Ordinance as a dealer, adviser, representative or in any other capacity; and
  - (b) will on request provide details in writing to the Bank or to the relevant regulatory or governmental body, of the ultimate beneficiary and of the person originating any instruction for an Order, within one Business Day or any other period as required by the relevant regulatory or governmental body having jurisdiction (including without limitation the Exchange) whether or not the requirement has the force of law.

**h. Certain specific SIPs**

- (i) If the offer of a SIP requires authorisation from the Securities and Futures Commission, then the Bank will only offer such SIP after obtaining such authorisation. A copy of the Offering Documents of such SIP will be

available on the SFC website. The Customer has to read and understand the information contained in the Offering Documents and carefully considers the terms of and risks set out in such Offering Documents.

- (ii) If an asset underlying a SIP is an equity security, the Customer (by applying for such SIP) undertakes and warrants that the Customer will on request provide details in writing to the Bank or to the relevant Government Authority or regulatory body of the ultimate beneficiary and of the person originating any instruction for an Order, within one Bank Business Day or any other period as required by the relevant Government Authority or regulatory body having jurisdiction (including HKEx or any other relevant stock exchange) whether or not the requirement has the force of law.
- (iii) Any SIP linked to an underlying asset that is an equity security will also be subject to the provisions set out in Section E of these Terms and Conditions (unless otherwise specified in the Offering Documents or notified to the Customer by the Bank).

#### i. Alternate Currency Event

- (i) This paragraph F5(i) shall only apply to a SIP if it is made applicable in the relevant term sheet in respect of a SIP and/or the Relevant Currency of the SIP includes CNY(offshore). References to "CNY(offshore)" in this paragraph F5(i) shall refer to the lawful currency of the People's Republic of China that are deliverable offshore outside of the People's Republic of China, and for this purpose, excluding Hong Kong, the Macau Special Administrative Regions and Taiwan.
- (ii) Upon the occurrence of an Alternate Currency Event at any time from and including the Investment Value Date to and including the Maturity Date, the Bank may (but shall not be obliged to) give notice to the Customer designating the occurrence of such Alternate Currency Event ("Mandatory Redemption Notice"). The Mandatory Redemption Notice may be given by the Bank at any time (even if such Alternate Currency Event is no longer continuing at such time) so long as it is given not later than two (2) Bank Business Days after the Maturity Date. Upon designation of an Alternate Currency Event by the Bank, the Bank will pay the Mandatory Redemption Amount (which may be payable in CNY(offshore) or an alternate currency as selected by the Bank in its sole and absolute discretion) to the Customer on the Mandatory Redemption Date and no Interest Amount shall be payable to the Customer. The Mandatory Redemption Amount is likely to be substantially less than the Principal Amount and, in the worst case scenario, the Mandatory Redemption Amount may be zero.

Where:

"Alternate Currency Event" means one of the following:

- (a) Banking Event;
- (b) Currency Event;
- (c) Currency Hedging Disruption Event; and
- (d) Governmental Event.

"**Banking Event**" means a declaration of a banking moratorium or any suspension, waiver, deferral or repudiation of payments by banks with respect to indebtedness or deposits in the Relevant Jurisdiction; the imposition by any Governmental Authority of any moratorium on or any suspension, waiver, deferral, repudiation or required rescheduling of, or the required approval of, the payment of any amount of principal, interest or other amount of indebtedness of banks, or restriction on withdrawal of any deposited funds from banks, in the Relevant Jurisdiction; any general disruption in the bank payments system in the Relevant Jurisdiction which prevents banks from receiving or paying in any currency payable under the SIP; or any condition created by or resulting from any action or failure to act by a Governmental Authority which, in the opinion of the Bank, has an analogous effect.

"**Currency Event**" means the occurrence of any event or existence of any condition (including, without limitation, any such event or condition that occurs as a result of the enactment, promulgation, execution, ratification, interpretation or application of, or any change in or amendment to, any law, rule or regulation by any Governmental Authority) that generally makes it impossible, illegal or impracticable, or materially hinders the ability of any person, (a) to convert CNY(offshore) into United States Dollars and/or Hong Kong Dollars or, in each case, vice versa through customary legal channels; or (b) to effect currency transactions on terms as favourable as those available to residents of the Relevant Jurisdiction; or (c) to transfer any funds (i) from accounts inside the Relevant Jurisdiction to accounts outside the Relevant Jurisdiction; or (ii) between accounts inside the Relevant Jurisdiction, except to the extent any such restrictions or conditions are already in force and applicable to any person of the Relevant Jurisdiction as of the Investment Value Date.

"**Currency Hedging Disruption Event**" means the Bank is either (a) unable, after using commercially reasonable efforts, or (b) would incur a materially increased (as compared with circumstances existing on the Investment Value Date) amount of tax, duty, expense or fee to (i) acquire, establish, re-establish, substitute, maintain, unwind or dispose of any transaction(s) or asset(s) it deems necessary to hedge the currency risk (or any other relevant risk including, but not limited to, interest rate risk) of entering into and performing its obligations with respect to the SIP, or (ii) freely realise, recover, receive, repatriate, remit or transfer the proceeds of such transaction(s) or asset(s).

**"Governmental Authority"** means any de facto or de jure government (or any agency, instrumentality, ministry or department thereof), court, tribunal, administrative or other governmental authority or any other entity (private or public) charged with the regulation of the financial markets (including the central bank) of the Relevant Jurisdiction.

**"Governmental Event"** means any expropriation, confiscation, freezing, requisition, nationalisation or other action by any Governmental Authority, which directly or indirectly deprives any person or entity of any of its assets (including rights to receive payments) in the Relevant Jurisdiction.

**"Hedging Costs"** means the losses, expenses and costs (if any) incurred by the Bank of unwinding, terminating, liquidating, adjusting, obtaining, replacing or re-establishing any underlying or related hedging arrangements (including, but not limited to, any options or selling or otherwise realising any instruments of any type whatsoever which the Bank may hold as part of such hedging arrangements), all as calculated by the Bank acting in good faith and in a commercially reasonable manner.

**"Mandatory Redemption Amount"** means an amount in Chinese CNY(offshore) or an alternate currency to be determined by the Bank acting in good faith and in a commercially reasonable manner, adjusted downward to account fully for all Hedging Costs. The Mandatory Redemption Amount is likely to be substantially less than the Principal Amount and, in the worst case scenario, the Mandatory Redemption Amount may be zero.

**"Mandatory Redemption Date"** means the date designated as such in the Mandatory Redemption Notice, which shall be a date falling not less than two Bank Business Days after the date of the Mandatory Redemption Notice.

**"Relevant Jurisdiction"** means The People's Republic of China (for the purpose of this paragraph F5(i), including the Hong Kong Special Administrative Region but excluding the Macao Special Administrative Region and/or the Republic of China (Taiwan)).

## 6. **Currency Linked Investment ("CLI")**

This Section is applicable to the CLI Services.

### **a. Introduction**

- (i) A CLI is a structured investment product involving a currency option. A CLI is intended to produce a yield higher than that of a conventional time deposit. Part of or the entire yield on a CLI represents the premium on the underlying currency option. For a CLI, the Customer may choose an Investment Currency and a Linked Currency and agree with the Bank a Conversion Rate and the Tenor.
- (ii) If, during the Investment Period, the Linked Currency appreciates or remains constant against the Investment Currency (measured by comparing the Fixing Rate at the Fixing Time on the Maturity Date and the Conversion Rate), the Customer will receive, for value on the Fixing Date, the Principal Amount and the Interest Amount in the Investment Currency (being the original currency of the Customer's investment).
- (iii) If, during the Investment Period, the Linked Currency depreciates against the Investment Currency (measured by comparing the Fixing Rate at the Fixing Time on the Fixing Date and the Conversion Rate), the Customer will receive the Principal Amount and the Interest Amount in the Linked Currency, converted at the Conversion Rate.
- (iv) The Customer should note that a CLI is subject to risks as set out in the Offering Documents. A CLI is NOT a protected deposit and is NOT protected by the Deposit Protection Scheme or any other deposit protection scheme in any other jurisdiction.

### **b. Terms of acceptance of a Currency Linked Investment**

- (i) **Currency Conversion.** The Bank reserves the right to convert the Investment Currency into the Linked Currency on the Maturity Date of a CLI at the Conversion Rate without notifying the Customer.
- (ii) **Investment Period.** A CLI may be placed for an Investment Period of 1 week, 2 weeks, 1 month, 2 months, 3 months or such other Investment Period as the Bank may from time to time allow.
- (iii) **No Automatic Renewal.** A CLI will not under any circumstances be automatically renewed upon its maturity. A new Order must be agreed and placed for any subsequent CLI.
- (iv) **The Bank's discretion to accept a CLI.** The Bank reserves the right not to accept any Order received (or to accept only part of any Order) in respect of a CLI. In such event, or if the Order cannot be effected in the market, the Bank will notify the Customer as soon as practicable and any funds received by the Bank in respect of such CLI will be placed in the Settlement Account and the Bank is not obliged to pay any interest on such funds.

**c. No early withdrawal/termination**

**A CLI, or any part thereof, cannot in any circumstances be withdrawn or terminated by the Customer prior to the Maturity Date.**

**d. Placing and acceptance of Orders**

- (i) All Orders must be placed via Order Forms, where applicable, duly completed and signed by the Customer or Remote Instructions given by the Customer to the Bank. Once submitted to the Bank, the Order is binding and cannot be amended or withdrawn without the explicit written agreement of the Bank.
- (ii) Orders are subject always to acceptance by the Bank and to final execution. The Bank shall have no obligation or liability in respect of any Order that is not accepted or executed.
- (iii) The Conversion Rate will be calculated by reference to the actual spot price achieved upon execution of the Order. Such Conversion Rate will be notified to the Customer in the Confirmation.
- (iv) The Customer shall deposit the Principal Amount in an account specified by the Bank for placing an Order for a CLI on or before the Investment Value Date.
- (v) The Principal Amount must be received by the Bank on or before the close of business on the Investment Value Date. Once the Principal Amount has been so received, it may not be withdrawn prior to the Maturity Date. The Customer hereby authorises the Bank to direct debit his/her Settlement Account for payment of the Principal Amount when the Customer places an Order for a CLI.
- (vi) The Bank reserves the right, in its sole and absolute discretion, on or before the Investment Value Date not to accept any funds received (or to accept only part of such funds) as the Principal Amount for a relevant CLI. In such event, the Bank will notify the Customer as soon as practicable and any funds received but not accepted will be paid to his/her Settlement Account and the Bank is not obliged to pay any interest on such funds.
- (vii) The Bank reserves the right not to accept and execute any Orders in respect of a CLI unless the aggregate of all the Orders in respect of such CLI received on or before the closing date for subscription of such CLI is of a minimum offer amount as prescribed by the Bank in its sole and absolute discretion.
- (viii) For Orders executed in accordance with Remote Instructions given by the Customer, a Confirmation will be posted to the Customer no later than 2 Bank Business Days after execution of the relevant Order.

**e. Proceeds on Maturity Date**

- (i) The Final Redemption Amount shall be calculated and paid to the Customer on the Maturity Date in the manner set out in the Order Form and Confirmation.
- (ii) The Interest Amount on the CLI shall be calculated and paid to the Customer on the Maturity Date in the manner set out in the Important Facts Statement and Confirmation.
- (iii) As soon as practicable after the Maturity Date, the Bank will normally notify the Customer whether the Final Redemption Amount will be paid in Investment Currency or Linked Currency and the maturity advice of the CLI will be sent to Customer by post.

**f. Disposal on Maturity Date**

- (i) In the absence of any Instructions (to be received by the Bank no later than 2 Bank Business Days before the Maturity Date) the Final Redemption Amount and any other amounts due (each amount either in the Investment Currency or the Linked Currency, as the case may be) shall be credited to the Settlement Account on the Maturity Date, or, if such day is not a Bank Business Day, the Bank Business Day immediately following the Maturity Date. In the event that the Maturity Date is not a Bank Business Day, the Customer shall not be entitled to any interest on the Final Redemption Amount from, and including, the Maturity Date.
- (ii) If the Customer's Settlement Account has ceased to be operative, the Bank will credit the Final Redemption Amount to any other account of the Customer as the Bank shall in its discretion determine. The Bank shall not be responsible for any loss or damage suffered by the Customer for any delay in effecting the said payment if the Customer does not notify the Bank within the time period stipulated herein of the account to which the Bank should make payment.
- (iii) The Bank may in its discretion, accept Remote Instructions, to place the Final Redemption Amount payable to the Customer (or part thereof) on the Maturity Date in respect of one CLI

immediately in another CLI on terms to be agreed between the Customer and the Bank as if set out in a new Order Form.

**g. Market disruption**

- (i) If any event occurs, making it impossible for the Bank to obtain a Fixing Rate at the Fixing Time on the Maturity Date, the Bank will, acting in good faith and in a commercially reasonable manner, determine the Fixing Rate; and all determinations of the Bank will, in the absence of manifest error, be binding and conclusive on the Customer.
- (ii) Notwithstanding the above paragraph F6(g)(i), if there is a No. 8 typhoon signal or a black rainstorm that affects or occurs at or around the Fixing Time on the Maturity Date causing the Bank to be unable to obtain the Fixing Rate, the Bank will determine a fixing rate in its sole and absolute discretion in respect of the relevant CLI and inform the Customer of such rate pursuant to the above paragraph F6(e)(iii) on the following Bank Business Day.

**h. Indemnity and set-off upon early withdrawals/termination**

**In the event of an early termination of the CLI pursuant to paragraphs B16 and/or B24, or by the Customer with the Bank's consent, the Customer shall indemnify the Bank on demand for all costs and losses incurred by the Bank in unwinding any related underlying hedging arrangements (including but not limited to, selling or otherwise realising any options, futures contracts in relation to the CLI) as a result of or arising from such early termination. The Bank shall be entitled to set-off all such costs and losses incurred from the Final Redemption Amount (or any other account of the Customer) and pay to the Customer the remaining balance thereof. The Customer understands that the costs and losses incurred by the Bank in relation to such termination may substantially reduce, or result in a total loss of, the Principal Amount and the earnings thereon, and the Customer may bear further costs and expenses in addition to a loss of the Principal Amount and the earnings thereon.**

**i. Alternate Currency Event**

- (i) This paragraph F6(i) shall only apply to a CLI that has an Investment Currency or a Linked Currency in CNY(offshore). References to "CNY(offshore)" in this paragraph F6(i) shall refer to the lawful currency of the People's Republic of China that are deliverable offshore outside of the People's Republic of China, and for this purpose, excluding Hong Kong, the Macau Special Administrative Regions and Taiwan.
- (ii) Upon the occurrence of an Alternate Currency Event at any time from and including the Investment Value Date to and including the Maturity Date, the Bank may (but shall not be obliged to) give notice to the Customer designating the occurrence of such Alternate Currency Event ("Mandatory Redemption Notice"). The Mandatory Redemption Notice may be given by the Bank at any time (even if such Alternate Currency Event is no longer continuing at such time) so long as it is given not later than two (2) Bank Business Days after the Maturity Date. Upon designation of an Alternate Currency Event by the Bank, the Bank will pay the Mandatory Redemption Amount (which may be payable in CNY(offshore) or an alternate currency as selected by the Bank in its sole and absolute discretion) to the Customer on the Mandatory Redemption Date and no Interest Amount shall be payable to the Customer. The Mandatory Redemption Amount is likely to be substantially less than the Principal Amount and, in the worst case scenario, the Mandatory Redemption Amount may be zero.

Where:

**"Alternate Currency Event"** means one of the following:

- (a) Banking Event;
- (b) Currency Event;
- (c) Currency Hedging Disruption Event; and
- (d) Governmental Event.

**"Banking Event"** means a declaration of a banking moratorium or any suspension, waiver, deferral or repudiation of payments by banks with respect to indebtedness or deposits in the Relevant Jurisdiction; the imposition by any Governmental Authority of any moratorium on or any suspension, waiver, deferral, repudiation or required rescheduling of, or the required approval of, the payment of any amount of principal, interest or other amount of indebtedness of banks, or restriction on withdrawal of any deposited funds from banks, in the Relevant Jurisdiction; any general disruption in the bank payments system in the Relevant Jurisdiction which prevents banks from receiving or paying in any currency payable under the CLI; or any condition created by or resulting from any action or failure to act by a Governmental Authority which, in the opinion of the Bank, has an analogous effect.

**"Currency Event"** means the occurrence of any event or existence of any condition (including, without limitation, any such event or condition that occurs as a result of the enactment, promulgation, execution, ratification, interpretation or application of, or any change in or amendment to, any law, rule or regulation by any Governmental Authority) that generally makes it

impossible, illegal or impracticable, or materially hinders the ability of any person, (a) to convert CNY(offshore) into United States Dollars and/or Hong Kong Dollars or, in each case, vice versa through customary legal channels; or (b) to effect currency transactions on terms as favourable as those available to residents of the Relevant Jurisdiction; or (c) to transfer any funds (i) from accounts inside the Relevant Jurisdiction to accounts outside the Relevant Jurisdiction; or (ii) between accounts inside the Relevant Jurisdiction, except to the extent any such restrictions or conditions are already in force and applicable to any person of the Relevant Jurisdiction as of the Investment Value Date.

**"Currency Hedging Disruption Event"** means the Bank is either (a) unable, after using commercially reasonable efforts, or (b) would incur a materially increased (as compared with circumstances existing on the Investment Value Date) amount of tax, duty, expense or fee to (i) acquire, establish, re-establish, substitute, maintain, unwind or dispose of any transaction(s) or asset(s) it deems necessary to hedge the currency risk (or any other relevant risk including, but not limited to, interest rate risk) of entering into and performing its obligations with respect to the CLI, or (ii) freely realise, recover, receive, repatriate, remit or transfer the proceeds of such transaction(s) or asset(s).

**"Governmental Authority"** means any de facto or de jure government (or any agency, instrumentality, ministry or department thereof), court, tribunal, administrative or other governmental authority or any other entity (private or public) charged with the regulation of the financial markets (including the central bank) of the Relevant Jurisdiction.

**"Governmental Event"** means any expropriation, confiscation, freezing, requisition, nationalisation or other action by any Governmental Authority, which directly or indirectly deprives any person or entity of any of its assets (including rights to receive payments) in the Relevant Jurisdiction.

**"Hedging Costs"** means the losses, expenses and costs (if any) incurred by the Bank of unwinding, terminating, liquidating, adjusting, obtaining, replacing or re-establishing any underlying or related hedging arrangements (including, but not limited to, any options or selling or otherwise realising any instruments of any type whatsoever which the Bank may hold as part of such hedging arrangements), all as calculated by the Bank acting in good faith and in a commercially reasonable manner.

**"Mandatory Redemption Amount"** means an amount in CNY(offshore) or an alternate currency to be determined by the Bank acting in good faith and in a commercially reasonable manner, adjusted downward to account fully for all Hedging Costs. The Mandatory Redemption Amount is likely to be substantially less than the Principal Amount and, in the worst case scenario, the Mandatory Redemption Amount may be zero.

**"Mandatory Redemption Date"** means the date designated as such in the Mandatory Redemption Notice, which shall be a date falling not less than two Bank Business Days after the date of the Mandatory Redemption Notice.

**"Relevant Jurisdiction"** means The People's Republic of China (for the purpose of this paragraph F6(i), including the Hong Kong Special Administrative Region but excluding the Macao Special Administrative Region and/or the Republic of China (Taiwan)).

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