

Sample Documents of 80% and 90% Guarantee Product under  
the SME Financing Guarantee Scheme (SFGS) provided by  
HKMC Insurance Limited ('HKMCL')

1. Below are the **sample** documents of DBS Bank (Hong Kong) Limited (the "**Bank**", which shall include its successors and assigns) with the terms and conditions of 80% and 90% Guarantee Product under the SME Financing Guarantee Scheme (SFGS) provided by HKMC Insurance Limited ('HKMCL') (the "**Loan**").
  - a. Facility Letter;
  - b. Standard Terms and Conditions Governing Facilities and Services;
  - c. General Commercial Agreement;
  - d. Guarantee & Indemnity;
  - e. Rental Assignment;
  - f. Mortgage (2 Party);
  - g. Mortgage (3 Party);
  - h. Charge on Cash Deposit(s) (own);
  - i. Charge on Cash Deposit(s) (3 party); and
  - i. Assignment of Insurance Policy.
2. The Borrower may also be required to execute application form and accept terms and conditions from the HKMC Insurance Limited. These may include:
  - a. SME Financial Guarantee Scheme Application Form (Form No.: SFGS102); and
  - b. SME Financing Guarantee Scheme Acceptance of Conditions (Form No.: SFGS108)
3. The Bank is making available the documents for the sole purpose of the Borrower's consideration to apply for the Loan and therefore the documents are not supposed to be used for other purpose.
4. Offering of the Loan (if any) and the terms applicable to the Loan (including amount, tenor of and interest rate applicable to the Loan) shall be subject to the review of your application and at the sole discretion of the Bank. Please note that there may be additional terms and conditions in the Bank's offer. The Borrower should review the terms and conditions of the Loan in the offer before acceptance.
5. The Bank reserves its rights, at its sole discretion, to update or amend any of the documents without notice.
6. No representation, warranty or undertaking is made by the Bank in making available any of the documents.
7. Legal documentation is available in English only. By filling in or signing on any documentation, the Borrower agrees to use English as the agreed form of language and confirms that it understands all its contents of the documentation. 法律文件只備有英文版本。貸款人明白，貸款人填寫或簽署文件，即表示貸款人同意以英語為文件的語言並明白文件內之全部內容。

Date:

Our ref:

Dear Sirs,

### **BANKING FACILITIES**

DBS Bank (Hong Kong) Limited (the "Bank", which expression shall include its successors and assigns) is pleased to advise that it is prepared to consider making available or continuing to make available the banking facilities detailed below (each a "Facility" and together the "Facilities") to the Borrower described below, solely for the purpose stated below and subject to the provisions of this letter and the attached "Standard Terms and Conditions Governing Facilities and Services" ("Standard Conditions").

#### **A. BORROWER:**

#### **B. PURPOSE:**

#### **C. DEFINITIONS :**

In this letter, the following expressions shall, except where the context otherwise requires, have the meanings given to them below:-

**"Operating Procedures"** means the detailed procedures for the operation of HKMC Insurance Limited (formerly known as The Hong Kong Mortgage Corporation Limited) ("HKMCI") SME Financing Guarantee Scheme as may be amended from time to time by notice in writing by HKMCI to the Bank.

**"Related Entity"** unless the context otherwise requires, shall be construed so that a person (A), being a sole proprietor, partnership or company, and another person (B), being a sole proprietor, partnership or company, are Related Entities of each other if any one or more persons, individually or jointly, directly or indirectly, hold, beneficially own or control 30% or more of the business interest in each of A and B.

For the purpose of the foregoing, "business interest" in relation to a company means the shares or equity interest of such company, and in relation to a partnership means the aggregate or overall rights or entitlements to participate in a distribution of profits of such partnership.

**"Security"** means a mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, assignment, security interest, cash collateral arrangement or other encumbrance of any kind securing, or a right conferring a priority of payment in respect of, any obligation to pay of any person or any other agreement or arrangement having a similar effect, but does not include any lien arising in the ordinary course of trading by operation of law and not by contract (but shall include, in relation to any finance lease or hire purchase contract, the vesting of beneficial ownership of the relevant asset in the finance lessor or hire purchase seller, and shall include, in relation to any factoring or other receivables purchase facility, the vesting of beneficial ownership of the factored or purchased receivables in the factor or purchaser).

**"Subsidiary"** has the same meaning given to that expression in the Companies Ordinance of the Laws of Hong Kong.

#### **D. FACILITY LIMITS:**

**Facilities under HKMC Insurance Limited SME Financing Guarantee Scheme (the “Scheme”)**

| Type(s) of Facility |                                                                                                            | Facility Limit(s) |
|---------------------|------------------------------------------------------------------------------------------------------------|-------------------|
| 1.                  | Overdraft                                                                                                  | HKD               |
| 2.                  | Term Loan                                                                                                  | HKD               |
| 3.                  | [Revolving Term Loan]                                                                                      | HKD               |
| 4.                  | Letter of Credit                                                                                           | HKD               |
| 5.                  | Letter of Credit (Cargo Receipt)                                                                           | HKD               |
| 6.                  | Back to Back Letter of Credit                                                                              | HKD               |
| 7.                  | Trust Receipt                                                                                              | HKD               |
| 8.                  | Account Payable Financing                                                                                  | HKD               |
| 9.                  | Documents against Acceptance ("D/A") Bills Purchased and Documents against Payment ("D/P") Bills Purchased | HKD               |
| 10.                 | Negotiation under Documentary Credit with discrepancies (with recourse)                                    | HKD               |
| 11.                 | Advance against Export Bills                                                                               | HKD               |
| 12.                 | Account Receivable Financing                                                                               | HKD               |
| 13.                 | Account Receivable Loan                                                                                    | HKD               |
| 14.                 | Packing Loan                                                                                               | HKD               |
| 15.                 | Hire Purchase / Lease Facility                                                                             | HKD               |

**Important Condition(s) Governing Facility Limits:-**

- The aggregate outstanding of Facilities [ ] to [ ] shall not at any time exceed HKD[ ].
- The aggregate outstanding of Facilities [ ] to [ ] shall not at any time exceed HKD[ ], and under which the aggregate outstanding of Facilities [ ] to [ ] shall not at any time exceed HKD[ ].

**E. PRICING AND CONDITIONS:**

Unless otherwise provided herein, interest and commission(s) on the Facilities will be charged at the Bank's standard rate that may be varied from time to time at the Bank's discretion.

|           |                                                                                                                                                                                                                                                                                                                                                                                                                 |
|-----------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Overdraft | <p><u>Interest:</u> [ ]% per annum [ ] [ ], on the outstanding amount from drawdown until repayment in full, as conclusively calculated by the Bank.</p> <p><u>Interest:</u> (i) [ ]% per annum [ ] [ ] for HKD drawing; and (ii) [ ]% per annum [ ] [ ] for USD drawing, on the outstanding amount from drawdown until repayment in full, as conclusively calculated by the Bank.</p> <p><u>Condition:</u></p> |
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|           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
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|           | <p>Without prejudice to the rights of the Bank under this letter, the Overdraft facility will have a Term-Out Date of 18 months before the expiry of the guarantee issued by HKMCI (defined as “the Expiry Date of the Guarantee”). All outstanding amount will be converted on the Term-Out Date to a term loan and interest will be charged at a rate which is to be absolutely determined by the Bank and notified to the Borrower. Principal together with accrued interest will be repayable by 18 equal monthly installments starting one month after the conversion (except final payment which shall be the then outstanding balance and accrued interest). If the interest rate changes, the installment amount will be varied without prior notice and under no circumstances should the final repayment date of the term loan fall beyond the Expiry Date of the Guarantee.</p> <p><u>Prepayment of term loan:</u></p> <ul style="list-style-type: none"> <li>• one month prior written notice.</li> <li>• if full prepayment is not on an installment due date, interest shall be calculated and payable up to upcoming installment due date.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| Term Loan | <p><u>Purpose:</u></p> <p><u>Drawdown:</u> The Bank is authorized (but is not obliged) to, without further notification or instruction from the Borrower, draw down the full amount of the Term Loan on the Borrower’s behalf on a date determined by the Bank and to credit loan proceeds into the (same currency) current account or such other account maintained by the Borrower with the Bank. For the avoidance of doubt, the Bank will not execute such draw down before the Security and Conditions Precedent set out in section F below are completed to the Bank’s satisfaction.</p> <p><u>Interest:</u> []% per annum [] [] on the outstanding amount from drawdown until repayment in full, as conclusively calculated by the Bank.</p> <p><u>Repayment:</u> Principal together with accrued interest will be repayable by [] equal monthly installments (except final payment which shall be the then outstanding balance and accrued interest). If the interest rate changes, the installment amount will be varied without prior notice. The first installment shall be paid one month after the date of advance of the loan and the subsequent installments shall be paid on the corresponding day of each succeeding month until the loan and all accrued interest are repaid in full. Under no circumstances should the final repayment date of the installment loan fall beyond the expiry date of the guarantee issued by HKMCI. The actual number of installment may be adjusted at the Bank's discretion and under no circumstances should the final repayment date of the term loan fall beyond the expiry date of the guarantee issued by HKMCI.</p> <p><u>Prepayment:</u></p> <ul style="list-style-type: none"> <li>• one month prior written notice.</li> </ul> |

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|                     | <ul style="list-style-type: none"> <li>• partial prepayment not allowed.</li> <li>• if full prepayment is not on an installment due date, interest shall be calculated and payable up to upcoming installment due date.</li> <li>• <u>Fee on [] Prepayment</u><br/>5% of amount prepaid</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Revolving Term Loan | <p><u>Drawdown:</u> In a minimum amount of HKD[] [] for a period of [] ] as may be approved by the Bank. Unless otherwise agreed by the Bank, drawdown notice shall be delivered to the Bank at or before 10:00 a.m. on the proposed drawdown date.</p> <p><u>Interest:</u> [] plus []% per annum (as calculated by the Bank) and on the outstanding amount from drawdown until repayment in full, as conclusively calculated by the Bank, payable [].</p> <p><u>Interest:</u> (i) [] plus []% per annum for HKD advance (as calculated by the Bank) and (ii) [] plus []% per annum for [] advance (as calculated by the Bank), on the outstanding amount from drawdown until repayment in full, as conclusively calculated by the Bank, payable [].</p> <p><u>Repayment:</u> Each advance shall be repayable on the maturity date of that advance. [] Subject to the discretion of the Bank, any amount repaid will be allowed for re-borrowing.</p> <p><u>Prepayment:</u> Partial prepayment not allowed.</p> <p><u>Condition:</u><br/>Without prejudice to the rights of the Bank under this letter, the Revolving Term Loan facility will have a Term-Out Date of 18 months before the expiry of the guarantee issued by HKMCI (defined as “the Expiry Date of the Guarantee”) All outstanding amount will be converted on the Term-Out Date to an installment loan denominated in HKD and interest will be charged at []. The Bank is entitled to effect any necessary conversions at its own rate of exchange then prevailing on the Term-Out Date and the Borrower must reduce the outstanding of the Revolving Term Loan facility with and to such an amount as determined by the Bank (such determination to be conclusive and binding on the Borrower) if, as a result of such conversions, the Facility Limit(s) has/have been exceeded. Principal together with accrued interest will be repayable by 18 equal monthly installments starting one month after the conversion (except final payment which shall be the then outstanding balance and accrued interest). If the interest rate changes, the installment amount will be varied without prior notice and under no circumstances should the final repayment date of the installment loan fall beyond the Expiry Date of the Guarantee.</p> <p><u>Prepayment of installment loan:</u></p> <ul style="list-style-type: none"> <li>• one month prior written notice.</li> <li>• if full prepayment is not on an installment due date, interest shall be calculated and payable up to upcoming installment due date.</li> </ul> |

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| <p>Letter of Credit ("L/C")</p> <p>Letter of Credit (Cargo Receipt)</p> | <p><u>Validity:</u> 6 months and under no circumstances should the L/C expiry date fall beyond 19 months before the expiry of the guarantee issued by HKMCI.</p> <p><u>Tenor:</u> at sight or usance up to [ ] days.</p> <p>[ ]</p> <p><u>L/C Opening Commission/ Handling Commission</u></p> <table border="0"> <tr> <td>1st USD50,000.-</td><td>1/4%</td></tr> <tr> <td>USD50,001.- to USD100,000.-</td><td>1/8%</td></tr> <tr> <td>Balance</td><td>1/16%</td></tr> </table> <p><u>Commission in Lieu of Exchange</u></p> <table border="0"> <tr> <td>1st USD50,000.-</td><td>1/4%</td></tr> <tr> <td>Balance</td><td>1/8%</td></tr> </table>                                                                                                                                                                                                                                                                                                                                                                | 1st USD50,000.- | 1/4% | USD50,001.- to USD100,000.- | 1/8% | Balance | 1/16% | 1st USD50,000.- | 1/4% | Balance | 1/8% |
| 1st USD50,000.-                                                         | 1/4%                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                 |      |                             |      |         |       |                 |      |         |      |
| USD50,001.- to USD100,000.-                                             | 1/8%                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                 |      |                             |      |         |       |                 |      |         |      |
| Balance                                                                 | 1/16%                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                 |      |                             |      |         |       |                 |      |         |      |
| 1st USD50,000.-                                                         | 1/4%                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                 |      |                             |      |         |       |                 |      |         |      |
| Balance                                                                 | 1/8%                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                 |      |                             |      |         |       |                 |      |         |      |
| <p>Back to Back Letter of Credit</p>                                    | <p><u>Validity:</u> 6 months and under no circumstances should the L/C expiry date fall beyond 19 months before the expiry of the guarantee issued by HKMCI.</p> <p>Terms and conditions of the master letter of credit must be acceptable to the Bank, must be strictly complied with and not varied or waived without the Bank's prior written consent.</p> <p><u>L/C Opening Commission/ Handling Commission</u></p> <table border="0"> <tr> <td>1st USD50,000.-</td><td>1/4%</td></tr> <tr> <td>USD50,001.- to USD100,000.-</td><td>1/8%</td></tr> <tr> <td>Balance</td><td>1/16%</td></tr> </table>                                                                                                                                                                                                                                                                                                                                                                                                       | 1st USD50,000.- | 1/4% | USD50,001.- to USD100,000.- | 1/8% | Balance | 1/16% |                 |      |         |      |
| 1st USD50,000.-                                                         | 1/4%                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                 |      |                             |      |         |       |                 |      |         |      |
| USD50,001.- to USD100,000.-                                             | 1/8%                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                 |      |                             |      |         |       |                 |      |         |      |
| Balance                                                                 | 1/16%                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                 |      |                             |      |         |       |                 |      |         |      |
| <p>Trust Receipt ("T/R")</p>                                            | <p><u>Maximum Tenor:</u> [ ] days.</p> <p><u>Maximum Tenor</u> (T/R plus Acceptance): [ ] days.</p> <p><u>Interest:</u> [ ]% per annum over [ ] on the outstanding amount from drawdown until repayment in full, as conclusively calculated by the Bank.</p> <p><u>Interest:</u> (i) [ ]% per annum over [ ] for HKD bills; and (ii) [ ]% per annum over [ ] for [ ] bills, on the outstanding amount from drawdown until repayment in full, as conclusively calculated by the Bank.</p> <p><u>Condition:</u><br/>Without prejudice to the rights of the Bank under this letter, the T/R facility will have a Term-Out Date of at least 18 months before the expiry of the guarantee issued by HKMCI (defined as "the Expiry Date of the Guarantee") which is to be absolutely determined by the Bank. () All outstanding amount will be converted on the Term-Out Date to an installment loan denominated in HKD and interest will be charged at [ ] [ ] [ ] The Bank is entitled to effect any necessary</p> |                 |      |                             |      |         |       |                 |      |         |      |

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|---------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|------|---------|-------|
|                           | <p>conversions at its own rate of exchange then prevailing on the Term-Out Date and the Borrower must reduce the outstanding of the T/R facility with and to such an amount as determined by the Bank (such determination to be conclusive and binding on the Borrower) if, as a result of such conversions, the Facility Limit(s) has/have been exceeded. Principal together with accrued interest will be repayable by 18 equal monthly installments starting one month after the conversion (except final payment which shall be the then outstanding balance and accrued interest). If the interest rate changes, the installment amount will be varied without prior notice and under no circumstances should the final repayment date of the installment loan fall beyond the Expiry Date of the Guarantee.</p> <p><u>Prepayment of installment loan:</u></p> <ul style="list-style-type: none"> <li>• one month prior written notice.</li> <li>• minimum prepayment amount: HKD[ ].</li> <li>• if full prepayment is not on an installment due date, interest shall be calculated and payable up to upcoming installment due date.</li> <li>• Prepayment Fee. A fee will apply for a prepayment during the stipulated period after drawdown:</li> </ul> <p><u>Fee on Full Prepayment</u></p> <p>Within 1st year: [ ]% of amount prepaid or HKD[ ], whichever is higher</p> <p>Within 2nd year: [ ]% of amount prepaid or HKD[ ], whichever is higher</p> <p><u>Fee on Partial Prepayment</u></p> <p>Within 1st year: [ ]% of amount prepaid or HKD[ ], whichever is higher</p> <p>Within 2nd year: [ ]% of amount prepaid or HKD[ ], whichever is higher</p> |                 |      |         |       |
| Account Payable Financing | <p><u>Financing percentage:</u> [ ]% of invoice value against original or copy of supplier's invoice duly certified as a true copy by the Borrower.</p> <p><u>Maximum Tenor:</u> [ ] days, less: (i) supplier's credit period (if any); and (ii) in case payment is made to the supplier after the payment due date, the period already lapsed.</p> <p><u>Interest:</u> [ ]% per annum over [ ] on the outstanding amount from drawdown until repayment in full, as conclusively calculated by the Bank.</p> <p>[ ]</p> <p><u>Account Payable Financing Commission</u></p> <table data-bbox="667 1839 1046 1906"> <tr> <td>1st USD50,000.-</td><td>1/8%</td></tr> <tr> <td>Balance</td><td>1/16%</td></tr> </table> <p>The suppliers and each of the individual facility limits are subject to the Bank's approval on a case-by-case basis. The Bank may from time to time carry out at the Borrower's expense updated searches of</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | 1st USD50,000.- | 1/8% | Balance | 1/16% |
| 1st USD50,000.-           | 1/8%                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                 |      |         |       |
| Balance                   | 1/16%                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                 |      |         |       |

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|                                                                                                                   | <p>the said suppliers and all related costs and fees may be debited to the Borrower's account.</p> <p><u>Condition:</u><br/>Without prejudice to the rights of the Bank under this letter, the Account Payable Financing facility will have a Term-Out Date of at least 18 months before the expiry of the guarantee issued by HKMCI (defined as "the Expiry Date of the Guarantee") which is to be absolutely determined by the Bank. () All outstanding amount will be converted on the Term-Out Date to an installment loan denominated in HKD and interest will be charged at [ ] [ ] [ ]. The Bank is entitled to effect any necessary conversions at its own rate of exchange then prevailing on the Term-Out Date and the Borrower must reduce the outstanding of the Account Payable Financing facility with and to such an amount as determined by the Bank (such determination to be conclusive and binding on the Borrower) if, as a result of such conversions, the Facility Limit(s) has/have been exceeded. Principal together with accrued interest will be repayable by 18 equal monthly installments starting one month after the conversion (except final payment which shall be the then outstanding balance and accrued interest). If the interest rate changes, the installment amount will be varied without prior notice and under no circumstances should the final repayment date of the installment loan fall beyond the Expiry Date of the Guarantee.</p> <p><u>Prepayment of installment loan:</u></p> <ul style="list-style-type: none"> <li>• one month prior written notice.</li> <li>• minimum prepayment amount: HKD[ ].</li> <li>• if full prepayment is not on an installment due date, interest shall be calculated and payable up to upcoming installment due date.</li> <li>• Prepayment Fee. A fee will apply for a prepayment during the stipulated period after drawdown:</li> </ul> <p><u>Fee on Full Prepayment</u><br/>Within 1st year: [ ] % of amount prepaid or HKD[ ], whichever is higher<br/>Within 2nd year: [ ] % of amount prepaid or HKD[ ], whichever is higher</p> <p><u>Fee on Partial Prepayment</u><br/>Within 1st year: [ ] % of amount prepaid or HKD[ ], whichever is higher<br/>Within 2nd year: [ ] % of amount prepaid or HKD[ ], whichever is higher</p> |
| <p>Documents against Acceptance Bills Purchased ("D/A") and Documents against Payment Bills Purchased ("D/P")</p> | <p>D/A: [ ]</p> <p><u>Financing percentage:</u> [ ] % of bill amount.</p> <p><u>Maximum Tenor:</u> [ ] days.</p> <p>D/P: [ ]</p> <p><u>Financing percentage:</u> [ ] % of bill amount.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |

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|                                                                     | <p><u>Maximum Tenor:</u> at sight.</p> <p><u>Interest:</u> [ ]% per annum over [ ] on the outstanding amount from drawdown until repayment in full, as conclusively calculated by the Bank.</p> <p><u>Condition:</u><br/>Without prejudice to the rights of the Bank under this letter, the D/A and D/P facility will have a Term-Out Date of at least 18 months before the expiry of the guarantee issued by HKMCI (defined as “the Expiry Date of the Guarantee”) which is to be absolutely determined by the Bank. () All outstanding amount will be converted on the Term-Out Date to an installment loan denominated in HKD and interest will be charged at [ [ ]% [ ] ]. The Bank is entitled to effect any necessary conversions at its own rate of exchange then prevailing on the Term-Out Date and the Borrower must reduce the outstanding of the D/A and D/P facility with and to such an amount as determined by the Bank (such determination to be conclusive and binding on the Borrower) if, as a result of such conversions, the Facility Limit(s) has/have been exceeded. Principal together with accrued interest will be repayable by 18 equal monthly installments starting one month after the conversion (except final payment which shall be the then outstanding balance and accrued interest). If the interest rate changes, the installment amount will be varied without prior notice and under no circumstances should the final repayment date of the installment loan fall beyond the Expiry Date of the Guarantee.</p> <p><u>Prepayment of installment loan:</u></p> <ul style="list-style-type: none"> <li>• one month prior written notice.</li> <li>• minimum prepayment amount: HKD[ ].</li> <li>• if full prepayment is not on an installment due date, interest shall be calculated and payable up to upcoming installment due date.</li> <li>• Prepayment Fee. A fee will apply for a prepayment during the stipulated period after drawdown:</li> </ul> <p><u>Fee on Full Prepayment</u><br/>Within 1st year: [ ]% of amount prepaid or HKD[ ], whichever is higher<br/>Within 2nd year: [ ]% of amount prepaid or HKD[ ], whichever is higher</p> <p><u>Fee on Partial Prepayment</u><br/>Within 1st year: [ ]% of amount prepaid or HKD[ ], whichever is higher<br/>Within 2nd year: [ ]% of amount prepaid or HKD[ ], whichever is higher</p> |
| <p>Negotiation under Documentary Credit [ ] (with recourse) [ ]</p> | <p>[ ]</p> <p><u>Interest:</u> [ ]% per annum over [ ] on the outstanding amount from drawdown until repayment in full, as conclusively calculated by the Bank.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |

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|                              | <p><u>Condition:</u><br/>Without prejudice to the rights of the Bank under this letter, the Negotiation under Documentary Credit [ ] (with recourse) [ ] facility will have a Term-Out Date of at least 18 months before the expiry of the guarantee issued by HKMCI (defined as “the Expiry Date of the Guarantee”) which is to be absolutely determined by the Bank.</p> <p>() All outstanding amount will be converted on the Term-Out Date to an installment loan denominated in HKD and interest will be charged at [ ]% per annum [ ] [ ]. The Bank is entitled to effect any necessary conversions at its own rate of exchange then prevailing on the Term-Out Date and the Borrower must reduce the outstanding of the Negotiation under Documentary Credit [ ] (with recourse) [ ] facility with and to such an amount as determined by the Bank (such determination to be conclusive and binding on the Borrower) if, as a result of such conversions, the Facility Limit(s) has/have been exceeded. Principal together with accrued interest will be repayable by 18 equal monthly installments starting one month after the conversion (except final payment which shall be the then outstanding balance and accrued interest). If the interest rate changes, the installment amount will be varied without prior notice and under no circumstances should the final repayment date of the installment loan fall beyond the Expiry Date of the Guarantee.</p> <p><u>Prepayment of installment loan:</u></p> <ul style="list-style-type: none"> <li>• one month prior written notice.</li> <li>• minimum prepayment amount: HKD[ ].</li> <li>• if full prepayment is not on an installment due date, interest shall be calculated and payable up to upcoming installment due date.</li> <li>• Prepayment Fee. A fee will apply for a prepayment during the stipulated period after drawdown:</li> </ul> <p><u>Fee on Full Prepayment</u><br/>Within 1st year: [ ]% of amount prepaid or HKD[ ], whichever is higher<br/>Within 2nd year: [ ]% of amount prepaid or HKD[ ], whichever is higher</p> <p><u>Fee on Partial Prepayment</u><br/>Within 1st year: [ ]% of amount prepaid or HKD[ ], whichever is higher<br/>Within 2nd year: [ ]% of amount prepaid or HKD[ ], whichever is higher</p> |
| Advance against Export Bills | <p><u>Financing percentage:</u> [ ]% of the value of purchase order from or sale invoice to buyers approved by the Bank.</p> <p><u>Maximum Tenor:</u> [ ] days or expiry date of the relevant letter of credit, whichever is earlier.</p> <p>The proceeds obtained from relevant export letter of credit must be used for repayment of this Facility.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |

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|                             | <p>Presentation of the following documents, each in a form acceptable to the Bank, are required:</p> <ol style="list-style-type: none"> <li>1) a certified copy of invoice addressed to buyers approved by the Bank.</li> <li>2) a payment instruction to the approved buyers that sales proceeds must be made to the Borrower's account maintained with the Bank.</li> <li>3) a copy of bills of lading.</li> <li>4) a copy of packing list.</li> </ol> <p><u>Interest:</u> [ ]% per annum over [ ] on the outstanding amount from drawdown until repayment in full, as conclusively calculated by the Bank.</p> <p><u>Commission/ Handling Commission</u></p> <table> <tr> <td>1st USD50,000.-</td><td>1/4%</td></tr> <tr> <td>USD50,001.- to USD100,000.-</td><td>1/8%</td></tr> <tr> <td>Balance</td><td>1/16%</td></tr> </table> <p><u>Condition:</u></p> <p>Without prejudice to the rights of the Bank under this letter, the Advance against Export Bills facility will have a Term-Out Date of at least 18 months before the expiry of the guarantee issued by HKMCI (defined as “the Expiry Date of the Guarantee”) which is to be absolutely determined by the Bank. () All outstanding amount will be converted on the Term-Out Date to an installment loan denominated in HKD and interest will be charged at [ [ ]%] [ ]]. The Bank is entitled to effect any necessary conversions at its own rate of exchange then prevailing on the Term-Out Date and the Borrower must reduce the outstanding of the Advance against Export Bills facility with and to such an amount as determined by the Bank (such determination to be conclusive and binding on the Borrower) if, as a result of such conversions, the Facility Limit(s) has/have been exceeded. Principal together with accrued interest will be repayable by 18 equal monthly installments starting one month after the conversion (except final payment which shall be the then outstanding balance and accrued interest). If the interest rate changes, the installment amount will be varied without prior notice and under no circumstances should the final repayment date of the installment loan fall beyond the Expiry Date of the Guarantee.</p> <p><u>Prepayment of installment loan:</u></p> <ul style="list-style-type: none"> <li>• one month prior written notice.</li> <li>• minimum prepayment amount: HKD[ ].</li> <li>• if full prepayment is not on an installment due date, interest shall be calculated and payable up to upcoming installment due date.</li> <li>• Prepayment Fee. A fee will apply for a prepayment during the stipulated period after drawdown:</li> </ul> <p><u>Fee on Full Prepayment</u></p> <p>Within 1st year: [ ]% of amount prepaid or HKD[ ], whichever is higher</p> | 1st USD50,000.- | 1/4% | USD50,001.- to USD100,000.- | 1/8% | Balance | 1/16% |
| 1st USD50,000.-             | 1/4%                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                 |      |                             |      |         |       |
| USD50,001.- to USD100,000.- | 1/8%                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                 |      |                             |      |         |       |
| Balance                     | 1/16%                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                 |      |                             |      |         |       |

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|                              | <p>Within 2nd year: [ ]% of amount prepaid or HKD[ ], whichever is higher</p> <p><u>Fee on Partial Prepayment</u></p> <p>Within 1st year: [ ]% of amount prepaid or HKD[ ], whichever is higher</p> <p>Within 2nd year: [ ]% of amount prepaid or HKD[ ], whichever is higher</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Account Receivable Financing | <p><u>Financing percentage:</u> [ ]% of the value of export invoice drawn on buyers approved by the Bank.</p> <p><u>Maximum Tenor:</u> [ ] days.</p> <p>Presentation of the following documents, each in a form acceptable to the Bank, are required:</p> <ol style="list-style-type: none"> <li>1) a certified copy of invoice addressed to buyers [ ]. ()</li> <li>2) [ ]. ()</li> <li>3) a payment instruction to the buyers that sales proceeds must be made to the Borrower's account maintained with the Bank.</li> </ol> <p><u>Interest:</u> [ ]% per annum over [ ] on the outstanding amount from drawdown until repayment in full, as conclusively calculated by the Bank.</p> <p><u>Commission/ Handling Commission</u></p> <p>1st USD50,000.- [ ]%</p> <p>Balance [ ]%</p> <p><u>Condition:</u></p> <p>Without prejudice to the rights of the Bank under this letter, the Account Receivable Financing facility will have a Term-Out Date of at least 18 months before the expiry of the guarantee issued by HKMCI (defined as “the Expiry Date of the Guarantee”) which is to be absolutely determined by the Bank. () All outstanding amount will be converted on the Term-Out Date to an installment loan denominated in HKD and interest will be charged at [ [ ]% ] [ ]. The Bank is entitled to effect any necessary conversions at its own rate of exchange then prevailing on the Term-Out Date and the Borrower must reduce the outstanding of the Account Receivable Financing facility with and to such an amount as determined by the Bank (such determination to be conclusive and binding on the Borrower) if, as a result of such conversions, the Facility Limit(s) has/have been exceeded. Principal together with accrued interest will be repayable by 18 equal monthly installments starting one month after the conversion (except final payment which shall be the then outstanding balance and accrued interest). If the interest rate changes, the installment amount will be varied without prior notice and under no circumstances should the final repayment date of the installment loan fall beyond the Expiry Date of the Guarantee.</p> <p><u>Prepayment of installment loan:</u></p> <ul style="list-style-type: none"> <li>• one month prior written notice.</li> </ul> |

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|                                  | <ul style="list-style-type: none"> <li>• minimum prepayment amount: HKD[ ].</li> <li>• if full prepayment is not on an installment due date, interest shall be calculated and payable up to upcoming installment due date.</li> <li>• Prepayment Fee. A fee will apply for a prepayment during the stipulated period after drawdown:<br/> <u>Fee on Full Prepayment</u><br/> Within 1st year: [ ]% of amount prepaid or HKD[ ], whichever is higher<br/> Within 2nd year: [ ]% of amount prepaid or HKD[ ], whichever is higher<br/> <u>Fee on Partial Prepayment</u><br/> Within 1st year: [ ]% of amount prepaid or HKD[ ], whichever is higher<br/> Within 2nd year: [ ]% of amount prepaid or HKD[ ], whichever is higher </li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Account Receivable Loan<br><br>0 | <u>Nature:</u> [ ] / [ ]<br><br><u>Advance Percentage:</u> [ ]%<br><br><u>Maximum Financing Period:</u> up to [ ]days from date of invoice [ ]<br><br><u>Service Charge:</u> [ ]% on invoice amount<br><br><u>Discounting Charge:</u> [ ]% per annum over [ ] on the outstanding amount from drawdown until repayment in full, as conclusively calculated by the Bank.<br><br>Presentation of the following documents, each in a form acceptable to the Bank are required: <ol style="list-style-type: none"> <li>1) Copy of invoices addressed to buyers approved by the Bank which shall not include accounts receivables payable by a buyer who is an associate (as defined under the Schedule attached hereto) of the Borrower.</li> <li>2) Documents evidencing the delivery of the relevant goods (including but not limited to delivery notes or bill of lading) up to the satisfaction of the Bank.</li> <li>3) A payment instruction or notification to the approved buyers as prescribed by the Bank.</li> </ol> <p>The Borrower is advised that there are specific sanctions and regulations imposed on and enforced by authorities against certain countries, entities and/or individuals (“Measures”). Under these Measures, the Bank may be unable to process or engage in transactions which involve a breach or non-compliance of the Measures and the authorities may require disclosure of information from the Bank. The Borrower acknowledges and accepts that, except for cases of negligence and willful misconduct, the Bank assumes no liability for (i) rejecting or not proceeding with any submission of document that it in its own discretion considers may violate the Measures and (ii) any loss, damages or delay arising directly or indirectly in connection with the aforesaid matters. The</p> |

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|              | <p>Borrower undertakes not to engage in transactions which may involve a breach or non-compliance of the Measures. In the event that the Bank has given financing for such transactions, it has the right to terminate the financing. The Bank has the right to report to relevant authorities as it considers necessary.</p> <p><u>Condition:</u><br/>Without prejudice to the rights of the Bank under this letter, the Account Receivable Loan facility will have a Term-Out Date of at least 18 months before the expiry of the guarantee issued by HKMCI (defined as “the Expiry Date of the Guarantee”) which is to be absolutely determined by the Bank. () All outstanding amount will be converted on the Term-Out Date to an installment loan denominated in HKD and interest will be charged at [ [ ]% ] []. The Bank is entitled to effect any necessary conversions at its own rate of exchange then prevailing on the Term-Out Date and the Borrower must reduce the outstanding of the Account Receivable Loan facility with and to such an amount as determined by the Bank (such determination to be conclusive and binding on the Borrower) if, as a result of such conversions, the Facility Limit(s) has/have been exceeded. Principal together with accrued interest will be repayable by 18 equal monthly installments starting one month after the conversion (except final payment which shall be the then outstanding balance and accrued interest). If the interest rate changes, the installment amount will be varied without prior notice and under no circumstances should the final repayment date of the installment loan fall beyond the Expiry Date of the Guarantee.</p> <p><u>Prepayment of installment loan:</u></p> <ul style="list-style-type: none"> <li>• one month prior written notice.</li> <li>• minimum prepayment amount: HKD[ ].</li> <li>• if full prepayment is not on an installment due date, interest shall be calculated and payable up to upcoming installment due date.</li> <li>• Prepayment Fee. A fee will apply for a prepayment during the stipulated period after drawdown:</li> </ul> <p><u>Fee on Full Prepayment</u><br/>Within 1st year: [ ]% of amount prepaid or HKD[ ], whichever is higher<br/>Within 2nd year: [ ]% of amount prepaid or HKD[ ], whichever is higher</p> <p><u>Fee on Partial Prepayment</u><br/>Within 1st year: [ ]% of amount prepaid or HKD[ ], whichever is higher<br/>Within 2nd year: [ ]% of amount prepaid or HKD[ ], whichever is higher</p> |
| Packing Loan | <p><u>Financing percentage:</u> [ ]% against export letters of credit deposited with the Bank.</p> <p><u>Maximum Tenor:</u> [ ] days or expiry date of the related letter of credit, whichever is earlier.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |

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|                                | <p><u>Interest:</u> [ ]% per annum over [ ] on the outstanding amount from drawdown until repayment in full, as conclusively calculated by the Bank.</p> <p><u>Repayment:</u> The Loan will be repayable from the proceeds on negotiation of the related export bills.</p> <p><u>Condition:</u><br/>Without prejudice to the rights of the Bank under this letter, the Packing Loan facility will have a Term-Out Date of at least 18 months before the expiry of the guarantee issued by HKMCI (defined as “the Expiry Date of the Guarantee”) which is to be absolutely determined by the Bank. () All outstanding amount will be converted on the Term-Out Date to an installment loan denominated in HKD and interest will be charged at [ [ ]% ] [ ] ]. The Bank is entitled to effect any necessary conversions at its own rate of exchange then prevailing on the Term-Out Date and the Borrower must reduce the outstanding of the Packing Loan facility with and to such an amount as determined by the Bank (such determination to be conclusive and binding on the Borrower) if, as a result of such conversions, the Facility Limit(s) has/have been exceeded. Principal together with accrued interest will be repayable by 18 equal monthly installments starting one month after the conversion (except final payment which shall be the then outstanding balance and accrued interest). If the interest rate changes, the installment amount will be varied without prior notice and under no circumstances should the final repayment date of the installment loan fall beyond the Expiry Date of the Guarantee.</p> <p><u>Prepayment of installment loan:</u></p> <ul style="list-style-type: none"> <li>• one month prior written notice.</li> <li>• minimum prepayment amount: HKD[ ].</li> <li>• if full prepayment is not on an installment due date, interest shall be calculated and payable up to upcoming installment due date.</li> <li>• Prepayment Fee. A fee will apply for a prepayment during the stipulated period after drawdown:</li> </ul> <p><u>Fee on Full Prepayment</u><br/>Within 1st year: [ ]% of amount prepaid or HKD[ ], whichever is higher<br/>Within 2nd year: [ ]% of amount prepaid or HKD[ ], whichever is higher</p> <p><u>Fee on Partial Prepayment</u><br/>Within 1st year: [ ]% of amount prepaid or HKD[ ], whichever is higher<br/>Within 2nd year: [ ]% of amount prepaid or HKD[ ], whichever is higher</p> |
| Hire Purchase / Lease Facility | <p><u>Financing percentage:</u> [ ]% of the purchase price of the machinery financed by the Bank.</p> <p><u>Interest:</u> [ ]% per annum [ ] Prime Rate quoted by the Bank from time to time, payable monthly in arrears on the outstanding amount</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |

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|  | <p>from drawdown until repayment in full, as conclusively calculated by the Bank.</p> <p><b>Flat rate</b></p> <p><u>Interest:</u> Payable at the flat rate of [ ]% per [ ] [()] calculated on a monthly basis or such other periodic basis as the Bank shall determine in its absolute discretion, and on the original loan amount until repayment in full, as conclusively calculated by the Bank.</p> <p><u>Repayment:</u> Repayable, together with accrued interest, by [ ] monthly installments on reducing balance basis. 0</p> <p>0</p> <p><u>Full and Partial Prepayment allowed subject to:</u></p> <ul style="list-style-type: none"> <li>• one month prior written notice;</li> <li>• prepayment made on interest payment date;</li> <li>• handling fee of 3% charged on amount of partial or full prepayment.</li> </ul> <p>If there is any conflict or inconsistency between the terms and conditions set out in this letter and those contained in the [ ] / [ ] Agreement(s) duly executed by the Borrower, the latter shall prevail.</p> |
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| Guarantee Fee of Facilities: | Guarantee Fee in an amount to be determined by the Bank will be payable upfront / annually in respect of the guarantee issued by HKMCI so long as the Facilities are continuing. Such fee will be debited to any of the Borrower's account maintained with the Bank . |
| Handling Fee of Facilities:  | A handling fee in an amount to be determined by the Bank will be payable in respect of the annual review to be carried out by the Bank so long as the Facilities are continuing. Such fee will be debited to any of the Borrower's account maintained with the Bank.  |
| Set Up Fee/ Review Fee       | HKD [ ] /<br>[ ]% per annum on HKD[ ]                                                                                                                                                                                                                                 |

#### F. SECURITY AND CONDITIONS PRECEDENT:

Unless otherwise approved by the Bank, the Facilities will be made available or continue to be made available to the Borrower provided that the Bank has received each of the following, in a form and substance satisfactory to the Bank:

1. This letter duly executed by the Borrower.
2. General Commercial Agreement duly executed by the Borrower.
3. Guarantee issued by HKMCI for an amount equivalent to [ ] of the amounts to be granted by the Bank to the Borrower under the Facilities (“HKMCI Guarantee”).
4. Guarantee and Indemnity [ ] duly executed by [ ].

7. ☐ Deed of Floating Charge ☐ over the Borrower's present and future book debts duly executed by the Borrower.
8. All monies Deed of Fixed Charge on the Borrower's present and future book debts for specific debtors stipulated by the Bank duly executed by the Borrower.
9. Commercial Credit Reference Agency consent form duly executed by the Borrower.
10. Legal opinion will be obtained to confirm the validity, legality and enforceability of ☐ / ☐. The legal costs and expenses in relation thereto will be payable by the Borrower. The Borrower hereby authorizes the Bank to debit the above fees and expenses from any of the accounts of the Borrower with the Bank.
11. Evidence on acceptance of appointment as process agent for ☐ in respect of service of legal process under the documents to which ☐ a party.
12. All documents and/or other requirements (including but not limited to copy of identification document of all authorized signers) for complying with customer acceptance policies or similar requirements imposed by governing authorities and/or the Bank.
13. Original or Certified copies of all necessary consents, approvals and other authorizations (including but not limited to those required by relevant governing authorities and/or the resolutions of the directors and shareholders of the Borrower and/or any security provider(s)) in connection with the execution, delivery, performance and enforcement of this letter and all other documents mentioned above, if applicable.
14. Original or Certified copies of all necessary registrations and filings as may be required by relevant governing authorities in connection with the execution, delivery, performance and enforcement of this letter and all other documents mentioned above, if applicable.
15. Such other documents, items or evidence that the Bank may request from time to time.

#### **G. COVENANTS AND UNDERTAKINGS:**

In addition to the undertakings specified in the "Standard Conditions", the Borrower undertakes to the Bank that it will:

- ☐
- ensure that all consents, licenses, approvals, registrations and filings (as appropriate) in connection with the Facilities, guarantee or securities as may be provided in relation to the Facilities granted hereunder are duly obtained, completed and will remain in full effect throughout the period if any amount is or may become outstanding under the Facilities.
- not create, or permit to be created or subsist, any subsequent Security ranking in priority to or *pari passu* with any Security that may be given to or held by the Bank for the Facilities (whether exclusively or otherwise).
- not do or permit to be done anything which would prejudice or jeopardize the rights of the Bank or HKMCI, or both, in respect of the Facilities.

- give representations, warranties and undertakings in favour of the Bank on terms which are substantially the same as, but in no respect derogate from or are otherwise inconsistent with, those set out in the Schedule attached hereto.
- not sell, sub-lease, charge, part with possession of or otherwise deal with (whether in whole or in part) any business installations and equipment and/or other assets to be acquired with any proceeds of the relevant Facility without the prior written consent of the Bank, and, if the foregoing has not been complied with, the Borrower shall ensure that all proceeds or sums realized or generated as a result shall be paid direct to the Bank for application in or towards payment and discharge of the Indebtedness (as defined in the Operating Procedures) due and owing to the Bank (which shall be reduced by the relevant amount accordingly).
- at all times comply with all requirements under the Scheme, from time to time in force including all eligibility criteria contained in the Operating Procedures.
- []
- []
- without prejudice to the aforesaid, use the proceeds of the Facilities for a purpose which is specified in the guarantee product eligibility criteria contained in Appendix A-2 of the Operating Procedure.
- provide such information and take all steps as requested by the Bank, to enable the Bank to ensure that it is in compliance at all times with its duties and obligations under or in connection with the Scheme or under any Scheme document, including but not limited to allowing representatives and appointed agents of HKMCI to inspect the books, records, accounts and any other information relating to its business, whether in paper, electronic or any other form of medium, at the request of HKMCI.
- At all times promptly disclose all material facts and information and make available all documents records and information that the Bank may require.
- promptly submit to the Bank:
  - a) with reasonable promptness, details of any litigation, arbitration or administrative proceeding current or, to its knowledge, threatened or commenced against it; and
  - b) other information that the Bank may request from time to time.
- immediately inform the Bank of:
  - a) []
  - b) any factor which may inhibit, impair or delay performance by the Borrower or the security provider(s), if any, of the obligations under any loan and security documents to which they are a party.
  - c) the failure to continue to obtain consents, licences, approvals, registrations and filings (as appropriate) in connection with the granting of the Facilities and/or the provision of securities (including without limitation guarantee(s)) in relation to the Facilities granted hereunder throughout the period when there is outstanding under the Facilities.

The Borrower further acknowledges, agrees and authorizes :-

- a) the Bank to disclose and/or transfer the Borrower's personal data and other information from time to time in its possession to HKMCI in relation to the Facilities, the application for the issue

of a HKMCI Guarantee, the HKMCI Guarantee, the Borrower and/or any guarantor of the Borrower in respect of the Facilities who is an individual and for other related purposes;

- b) that HKMCI may use such personal data and information for the purpose stated in a) above, and disclose and/or transfer any such personal data and information received or held by it to the Trade and Industry Department or the Hong Kong Government or provider(s) of credit protection for such purposes as considered appropriate by HKMCI. The Borrower hereby declares and confirms that it has obtained consent from, and is authorized by, each individual (including each partner where the Borrower is a partnership) whose personal data may be required for the purpose stated in a) above to provide the relevant acknowledgment, agreement and authorization on his/her behalf as if any reference to the Borrower's personal data is a reference to his/her personal data.

Each of the Borrower, and the guarantor and/or security provider in respect of the Facilities granted to the Borrower under this letter ("Security Provider(s)") acknowledges that all the rights of HKMCI under the Scheme, including but not limited to its right of subrogation, shall at all times rank in priority to the rights and remedies, if any, of the Security Provider(s). Each of the Security Provider(s) further undertakes that (a) it will not exercise in any manner or to any extent its rights or remedies against the Borrower or the other Security Provider(s) or in relation to any such Security, including but not limited to any right of subrogation, indemnity or contribution which it has or may have in law or equity or under, pursuant to or in connection with the security documents, unless and until HKMCI has fully and unconditionally recovered the amount paid by HKMCI under the HKMCI Guarantee or unless and until HKMCI otherwise consents in writing; and (b) it will not assert against HKMCI any right of contribution or any analogous rights or remedies.

Each of the Borrower and the guarantor(s) referred to in Section F above agrees to (a) make available to HKMCI or its appointed agent, free of charge, all documents, records and information in connection with the rights, interests, obligations or liabilities of HKMCI under the Scheme or the Scheme document, including but not limited to all documents and information submitted by the Borrower to the Bank; and (b) grant (or authorize the Bank to grant) the requisite right of access, inspection, copying or similar right to HKMCI.

## **H. OTHER TERMS AND CONDITIONS:**

The Facilities are available at the sole discretion of the Bank and are in all respects uncommitted. The Bank may at any time immediately modify, terminate, cancel or suspend the Facilities or any part of it, or otherwise vary the Facilities or any part of it, without the consent of the Borrower or any other person. Provided always that the Bank shall obtain HKMCI's prior written consent if it varies, releases, waives or discharges any obligations of the Borrower and/or any Security Provider or any other right or interest under or pursuant to any security document which may adversely affect any of the rights, interest, obligations or remedies of HKMCI in connection with the Borrower or otherwise in relation to any guarantee or Security for any Facilities under this letter. Unless the changes are not within the Bank's control, the Bank shall give reasonable notice to the Borrower for any variation to the Facilities affecting the interest, fees and charges and the liabilities or obligations of the Borrower, and such variation shall take effect after the expiration of such notice which may be given by the Bank by such means as the Bank may at its discretion see fit.

Notwithstanding any provisions stated in this letter, the Facilities are repayable on demand by the Bank. The Bank has the overriding right at any time to require immediate payment of all principal, interest, fees and other amounts outstanding under this letter or any part thereof and/or to require cash collateralisation of all or any sums actually or contingently owing to it under the Facilities.

For the purpose of this [], where the Facilities made available to the Borrower include Hire Purchase/Lease facility, if there is any inconsistency between the provisions set out in this [] and the terms and conditions

set out in the Hire Purchase Agreement/Lease Agreement, the terms and conditions set out in the Hire Purchase Agreement/Lease Agreement shall prevail.

Payment by the Borrower to the Bank shall be in the currency of the relevant liability. The Borrower hereby authorizes the Bank to debit any sum which may be required to meet the payment of principal, interest, default interest, handling fee, commissions, fire insurance premium and other fees and charges in relation to (i) the Facilities or (ii) such other loan(s) into which the Facilities may from time to time be converted, consolidated and /or replaced from (unless otherwise specified by the Borrower) any of the current account(s) / savings account(s) maintained by the Borrower with the Bank and in case such account(s) is/are not in the same currency as the liability, the Borrower hereby authorizes the Bank to perform relevant foreign exchange based on the prevailing exchange rate of the Bank in order to settle the relevant payment in the currency of the liability.

The "Standard Conditions" attached and/or referred to in this letter form an integral part of this letter and the Borrower agrees to observe and be bound by them. In the event of any conflict or inconsistency between the "Standard Conditions" and the provisions of this letter, this letter shall prevail. The Bank may, at its absolute discretion vary, amend or supplement any of the terms of the "Standard Conditions". Such variation, amendment or supplement shall take effect not less than 30 days after the date of the notice to the Borrower setting out details of such variation, amendment or supplement or, if later, the date specified in the notice. The Borrower agrees to be bound by any such amended or revised "Standard Conditions".

This letter and the Facilities shall be governed by the laws of the Hong Kong Special Administrative Region and the parties hereto hereby submit to the non-exclusive jurisdiction of the Hong Kong Courts.

The Bank recognises that banks have an important role to play in promoting responsible environmental, social and governance ("ESG") behaviour of our customers and is committed to practising responsible financing. We trust that the information, including ESG information based on publicly available information as well as any information provided by your company representatives, to be true and accurate and is covered by the Undertakings given by you to us in the "Standard Conditions" and any other agreements relating to banking facilities granted by us to you.

Please signify your understanding and acceptance of this offer by signing and returning to us the duplicate copy of this letter and provide each of the items under the section headed "Security And Conditions Precedent" above, for the attention of [] ("Designated Relationship Manager"), within one month from the date of this letter, otherwise the offer will lapse at the discretion of the Bank. By accepting this offer, you are deemed to have confirmed to the Bank that you are not a Connected Person as set out in clause 21 of the "Standard Conditions".

We enclose a set of documents which should also be completed and returned to us. If you have any queries, please contact the Designated Relationship Manager.

We are pleased to be of service to you.

Yours faithfully,  
For and on behalf of  
**DBS Bank (Hong Kong) Limited**

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Authorized Signatories

Encl.

**IMPORTANT NOTE**

Interest rates which are used as “benchmarks”, including LIBOR, EURIBOR or SIBOR, are the subject of recent international regulatory guidance and proposals for reform. These reforms may cause such benchmarks to perform differently than in the past or to discontinue entirely, or have other consequences which cannot be predicted. As at the date hereof, the discontinuation of various benchmarks and their replacement(s) and other knock-on impact are all still being considered by the relevant authorities and industry.

The elimination, or changes in the manner of administration, of any such benchmarks, could require an adjustment to the terms and conditions, or result in other consequences, in respect of this Facility(ies) if it is linked to or references such benchmarks.

Any of the above changes or any other consequential changes as a result of international reforms or other initiatives or investigations in respect of benchmarks, could have an adverse effect on the cost of borrowing if it is linked to or references such benchmarks.

We hereby confirm that we have been advised (i) to note and understand the declaration and notes contained in the Application Form, the Acceptance of Conditions and the related legal documentation under the Scheme; and (ii) to seek independent legal advice if necessary before execution of this letter.

We hereby confirm our understanding and acceptance of all the terms and conditions set out in (i) this letter and (ii) the "Standard Conditions" attached to this letter and our agreement to be bound by all of them.

Signed for and on behalf of  
[]

Signature of Witness:

\_\_\_\_\_  
Authorised Signature

\_\_\_\_\_  
Name of Witness:  
Hong Kong Identification /  
Passport No:

Signature of Witness:

\_\_\_\_\_  
[]

\_\_\_\_\_  
Name of Witness:  
Hong Kong Identification /  
Passport No:

Signed by

Signature of Witness:

\_\_\_\_\_  
[]

\_\_\_\_\_  
Name of Witness:  
Hong Kong Identification /  
Passport No:

Signed for and on behalf of

\_\_\_\_\_  
[]

Signature of Witness:

\_\_\_\_\_  
Authorised Signature

\_\_\_\_\_  
Name of Witness:  
Hong Kong Identification /  
Passport No:

We have verbally confirmed with the Bank upon the Facility application that this Facility application from us was not referred by third party (means all kinds of engagement including having the facility application referred by and/or channeled through and/or acted through third party), and hereby repeat and declare the same in writing.

We have verbally confirmed with the Bank upon the Facility application that this Facility application from us was referred by<sup>#</sup> [] with no related fee charged or to be charged by this third party for referring<sup>#</sup> the application to the Bank, and hereby repeat and declare the same in writing.

<sup>#</sup> means all kinds of engagement including having the facility application referred by and/or channeled through and/or acted through third party

Signed for and on behalf of

\_\_\_\_\_  
[]

\_\_\_\_\_  
Authorised Signature

\_\_\_\_\_  
[]

## Schedule

### 1. Representations

The representations and warranties set out in Clause 1.1 (*Status*) to Clause 1.15 (*Compliance*) of this Schedule are made by the Borrower as of the date of the Facility Letter and the Borrower acknowledges expressly that the Bank enters into the Facility Letter in reliance on all those representations and warranties. In addition, the Borrower acknowledges expressly that each of the representations and warranties set out in Clause 1.1 (*Status*) to Clause 1.8 (*Claims Pari Passu*), Clause 1.10 (*No Immunity*) to Clause 1.15 (*Compliance*) shall be deemed to be repeated by the Borrower by reference to the facts and circumstances then existing on each date on which a drawdown is made under the relevant Facility and on each date on which any amount is payable by the Borrower under the relevant Facility.

#### 1.1 Status

The Borrower makes all those representations and warranties relating to its status as an eligible borrower as set out in the Guarantee Product Eligibility Criteria (i.e. the eligibility criteria contained in the Operating Procedures setting out, among other things, requirements for any borrower and facility to be eligible under the Scheme).

#### 1.2 Governing Law and Judgments

In any proceedings taken in its jurisdiction of incorporation or establishment in relation to the Facility Letter, the choice of Hong Kong law as the governing law of the Facility Letter and any judgment obtained in Hong Kong against the Borrower with respect to such the Facility letter will be recognized and enforced.

#### 1.3 Binding Obligations

The obligations expressed to be assumed by it in the Facility Letter are legal and valid obligations binding on it and enforceable against it in accordance with the terms thereof.

#### 1.4 Execution of the Facility Letter

Its execution of the Facility Letter, its exercise of its rights and performance of its obligations thereunder and the transactions contemplated thereby do not and will not:

- 1.4.1 contravene any agreement, mortgage, bond or other instrument or treaty to which it is a party or which is binding upon it or any of its assets;
- 1.4.2 conflict with its memorandum and articles of association or any other constitutional documents;  
or
- 1.4.3 conflict with any applicable law or regulation.

It has the power to enter into the Facility Letter and all corporate and other action required to authorise the execution of the Facility Letter and the performance of its obligations thereunder has been duly taken. No limit on its powers will be exceeded as a result of the borrowing or other assumption of obligations, or any grant of security or giving of indemnities, contemplated by the Facility Letter.

## **1.5 No Material Proceedings**

No litigation, arbitration, administrative proceedings or labour controversy before any court, tribunal, arbitrator or other relevant authority is current or, to the knowledge and belief of a senior officer of it, pending or threatened against it which would have a Material Adverse Effect, save for any such legal proceedings commenced by a third party which (i) are frivolous or vexatious, (ii) have no reasonable cause of action or (iii) which are being contested in good faith by appropriate proceedings and against which adequate reserves are maintained.

## **1.6 No Material Adverse Change**

Since the date of its most recent financial statements (or audited financial statements in case where the Borrower is a limited company), there has been no material adverse change in the business or financial condition of the Borrower.

## **1.7 Validity and Admissibility in Evidence**

All acts, conditions and things required to be done, fulfilled and performed and all authorizations (governmental or otherwise) required to be obtained in order (a) to enable it lawfully to enter into, exercise its rights and perform and comply with its obligations in the Facility Letter, (b) to ensure that its obligations in the Facility Letter are legal, valid, binding and enforceable and (c) to make the Facility Letter admissible in evidence in its jurisdiction of incorporation or establishment have been done, fulfilled, performed and obtained and in full force and effect.

## **1.8 Claims Pari Passu**

Under the laws of the jurisdiction of incorporation or establishment in force at the date hereof, the claims of the Bank against it under the Facility Letter will rank at least *pari passu* with claims of all its other unsecured and unsubordinated creditors save those whose claims are mandatory preferred by law applying to companies generally.

## **1.9 No Filing or Stamp Taxes**

Under the laws of its jurisdiction of incorporation or establishment in force at the date hereof, it is not necessary that the Facility Letter be filed, recorded or enrolled with any court or other authority in such jurisdiction or that any stamp, registration or similar tax be paid on or in relation to the Facility Letter or the transactions contemplated by the Facility Letter.

## **1.10 No Immunity**

In any proceedings taken in its jurisdiction of incorporation or establishment in relation to the Facility Letter, it will not be entitled to claim for it or any of its assets immunity from suit, execution, attachment or other legal process.

### **1.11 No Winding-up**

It has not taken any corporate action nor have any other steps been taken or legal proceedings (save for any such legal proceedings commenced by a third party which are (i) frivolous or vexatious, (ii) which are being contested in good faith by appropriate proceedings and against which adequate reserves are maintained and, in each case, are unconditionally discharged or dismissed within one hundred and eighty (180) days) been started or threatened against the Borrower for its winding-up, dissolution, administration or reorganization (whether by voluntary arrangement, scheme of arrangement or otherwise) or for the appointment of a receiver, administrator, administrative receiver, compulsory or interim manager, conservator, custodian, trustee or similar officer of it or of any or all of its assets or revenues.

### **1.12 Written Information**

All material written information supplied by the Borrower is true, complete and accurate in all material respects as at the date it was given and it not misleading in any respect.

### **1.13 Solvency**

The Borrower is able to pay its debts as they fall due and has not commenced negotiations with any one or more of its creditors with a view to the general readjustment or rescheduling of its indebtedness or made a general assignment for the benefit of or a composition with its creditors.

### **1.14 Taxes**

The Borrower has filed or caused to be filed all tax returns which are required to be filed by it and has paid all taxes shown to be due and payable by it on such returns or any assessment received by it, save for taxes which are being contested in good faith by appropriate proceedings and in respect of which adequate reserves have been set aside by the Borrower.

### **1.15 Compliance**

It is, to the knowledge and belief of a senior officer of the Borrower, in compliance with the requirements of all applicable laws, rules and regulations and orders of governmental or regulatory authorities save those which are not material to its business and the effect of such non-compliance is not significantly adverse to the Borrower.

## **2. Covenants**

### **2.1 Maintenance of Legal Validity**

The Borrower shall obtain, comply with the terms of and do all that is necessary to maintain in full force and effect all authorisations, approvals, licences and consents required in or by the laws of its jurisdiction of incorporation or establishment to enable it lawfully to enter into and perform its obligations under the Facility Letter and to ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation of the Facility Letter.

## **2.2 Notification of Events of Default**

The Borrower shall promptly inform the Bank after it becomes aware of the occurrence of any default or event of default under the Facility Letter or of any event which might reasonably be expected to have a Material Adverse Effect.

## **2.3 Claims Pari Passu**

Subject to Clause 2.13 below, the Borrower shall ensure that at all times the claims of the Bank against it under the Facility Letter rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors save those whose claims are mandatorily preferred by law applying to companies generally.

## **2.4 Taxes**

The Borrower shall duly and punctually file all tax returns when due and pay and discharge all taxes prior to the date on which penalties are attached thereto except for such taxes which are being contested in good faith by appropriate proceedings and for which adequate reserves have been set aside and payment of which can be lawfully withheld.

## **2.5 Information**

The Borrower shall promptly deliver to the Bank copies of all its audited and unaudited financial statements and such other reports and information relating to the Borrower as the Bank may reasonably request from time to time.

## **2.6 Maintenance of Records**

The Borrower shall maintain all books of records and accounts with respect to itself and its business in good order.

## **2.7 Inspection**

The Borrower shall, upon reasonable prior written notice from the Bank and during normal working hours, permit and arrange for the Bank or its other authorized representatives to inspect all financial records and books of accounts and discuss the Borrower's business affairs with its officers and advisors all as the Bank may reasonably request.

## **2.8 Use of Proceeds**

The Borrower shall apply the Facilities solely for the acquisition of assets (such as industrial or commercial properties, machinery and equipment, but excluding residential properties) to facilitate its business operations or of general working capital for its business operations and/or such other purposes as may be specified in the Operating Procedures and applicable to the relevant Guarantee Product (as defined in the Operating Procedures).

## **2.9 Compliance**

The Borrower shall comply in all respects with the requirements of all applicable laws, rules and regulations and orders of governmental or regulatory authorities if failure to comply with such requirements would (either individually or in aggregate) have a Material Adverse Effect.

## **2.10 Insurance**

The Borrower shall maintain insurances on and in relation to its business and assets, in each case, with reputable underwriters or insurance companies against such risks and to such extent as is usual for companies carrying on a business such as that carried on by the Borrower and is commercially available.

## 2.11 Business

The Borrower shall ensure that:

- 2.11.1 it has power to own its assets and carry on business as conducted from time to time;
- 2.11.2 it has good title (free from any restrictions or onerous covenants) to all of the assets required for carrying on its business; and
- 2.11.3 it has obtained or effected all authorizations, approvals, consents, exemptions, filings, licenses, notarizations, permits and registrations which are required in connection with its business; and that all such authorizations, approvals, consents, exemptions, filings, licenses, notarizations, permits and registrations are in full force and effect, except where the failure to obtain or effect the same or, as the case may be, the cessation of the force and effect of the same would not reasonably be expected to, have a Material Adverse Effect.

## 2.12 Obligations

Without prejudice to the performance of the Borrower's other obligations under the Facility Letter, the Borrower shall perform all its obligations under all of the material agreements or contracts to which it is a party.

## 2.13 Security and Further Assurance

If by the terms of the Facility Letter, security is given by the Borrower in favour of the Bank, the Borrower shall ensure that each security document confers valid security, of the type which such security document purports to create, in favour of the Bank, over each asset, right and benefit expressed to be subject to such security and ensure that the Bank enjoys the priority which such security is expressed to have. The Borrower shall promptly execute all documents and do all things that the Bank reasonably specifies for the purpose of enabling the Bank to exercise its rights under each security document or preserving the priority and effectiveness of such security. (For the avoidance of doubt, the Borrower confirms that all sums from time to time owing by it to the Bank under the Facility Letter are and shall be secured by all and any security created by it, before or at the date of the Facility Letter or at any time after that date, which is by its terms expressed (in any manner whatsoever) to secure all monies owing by the Borrower to the Bank, and the Borrower will not seek to claim or assert anything to the contrary.)

## 3. DEFINITIONS

In this Schedule, "**Material Adverse Effect**" means (a) a material adverse effect on the business, assets, operations or condition (financial or otherwise) of the Borrower; (b) a material impairment of the ability of the Borrower to perform any of its obligations under the Facility Letter; or (c) a material impairment of the rights of, or benefits available to, the Bank under the Facility Letter.

To: DBS Bank (Hong Kong) Limited

In consideration of DBS Bank (Hong Kong) Limited (the "**Bank**" which expression shall include all its branches and offices wherever situated, its successors, assigns and transferees) at any time in its sole and absolute discretion providing or continuing banking facilities (the "**Facilities**" as defined below) or other accommodation or services to the Customer (as defined below) to such extent and in such manner as the Bank thinks fit, the Customer agrees to be bound by this Agreement.

#### Part A: General Provisions

### 1. Definitions and Interpretation

#### 1.1 Definitions: In this Agreement:

"**assets**" includes present and future properties, revenues and rights of every description;

"**Customer**" means the person or person(s) specified as "Customer" in Schedule 1 of this Agreement, and where the Customer comprises two or more persons, all references to the "**Customer**" herein shall mean all such persons or any one or more of them;

"**Cost of Funds**" means the rate as determined by the Bank from time to time to be the prevailing cost to the Bank for granting or funding any facilities or advance from whatever source that the Bank may in its absolute discretion determine;

"**Documents**" means any documents, drafts, bills of exchange, documents of title, transport documents, insurance policies, agreements, contracts, invoices, purchase orders and any other documents handled by or passed through the Bank, including those under import or export transactions;

"**Exchange Rate**" means the rate for converting one currency into another currency which the Bank determines to be prevailing in the relevant foreign exchange market at the relevant time, such determination to be conclusive and binding on the Customer;

"**Facilities**" means any or all of the credit, loan and other banking facilities of whatever type and nature at any time and from time to time granted by the Bank to the Customer, including any trade finance facilities and services;

"**Facilities Documents**" means this Agreement and any other agreement between the Bank and the Customer in relation to the Facilities including application and request forms;

"**HIBOR**" means the Hong Kong Interbank Offered Rate determined by the Bank for the relevant period;

"**LIBOR**" means the London Interbank Offered Rate determined by the Bank for the relevant period;

"**Pledged Goods**" means the goods and products to which the Documents relate which are now or may in the future be in the Bank's actual or constructive possession;

"**Sanctions Regulations**" means all sanctions, anti-money laundering and counter-terrorist laws and regulations issued by the United Nations, the European Union, Australia, the United Kingdom and the United States (as well as all laws and regulations applicable to the Bank and its correspondent banks, if any);

"**Security Interest**" means any mortgage, charge, assignment, pledge, lien, rights of set-off, arrangements for retention of title or hypothecation or trust arrangement for the purpose of, or which has the effect of, granting or conferring security; and

"**Security Provider**" means any chargor, guarantor, mortgagor or any person (in whatever capacity) who guarantees or provides security, indemnity or other credit support (however named) in respect of any obligations and liabilities of the Customer to the Bank.

#### 1.2 General interpretation: Unless contrary indication appears, any reference in this Agreement to:-

- (a) a person includes an individual, a company, partnership, trust or body unincorporated and its successors and assigns;
- (b) a banking day means a day (other than Saturday or Sunday) on which banks are open for general business in Hong Kong and a time of a day is a reference to Hong Kong time and time is of essence of the Facilities Documents;
- (c) the "**Facilities Documents**", this "**Agreement**" or any other agreement, document or instrument is a reference to the Facilities Documents, this Agreement or other agreement, document or instrument as amended, supplemented, novated and/or replaced from time to time.

#### 1.3 Multiple Customers: Where there are more than one Customer under the Facilities Documents, each Customer is jointly and severally liable with the other Customer(s) for all sums payable or owing to the Bank under the Facilities (whether incurred by that Customer or not). Each Customer further agrees that the Bank is not required to make any reference to the other Customer in relation to the utilisation of the Facilities by any Customer. The Bank may release, compound with or otherwise vary or agree to vary the liability of, or grant time or indulgence to, or make other arrangement with, any one or more of the Customer and/or Security Provider without prejudicing or affecting its rights and remedies against the other or others.

#### 1.4 All liabilities: The obligations and liabilities of the Customer to the Bank include all its past, present and future, actual and contingent obligations and liabilities to the Bank.

### 2. Application

#### 2.1 Applicability: This Agreement shall apply to credit, loan and other banking facilities and/or services which the Bank, at its sole discretion, may agree to make available to such extent and in such manner as the Bank thinks fit.

#### 2.2 Conflict: This Agreement shall be subject to such other terms and conditions which may be specified by the Bank from time to time in other agreements or documents relating to the Facilities. In the event of any inconsistency between the provisions of such agreements or documents and this Agreement, the former shall prevail to the extent of the inconsistency.

#### 2.3 Nature of Facilities: Subject to other specific arrangements agreed between the Customer and the Bank, the Bank has no obligation or commitment to provide any Facilities to the Customer and may cancel any of the Facilities at any time at the sole discretion of the Bank without giving any reason.

### 3. Repayment

**Repayment:** The Customer shall pay to the Bank on demand or, as the case may be, on their respective due dates all sums advanced by the Bank at the Customer's request and all other sums for which the Customer may be indebted or liable to the Bank, whether actually or contingently and whether alone or jointly with any other person from time to time.

### 4. Security

#### 4.1 Continuing security: The Bank holds all assets of the Customer including those assets held in the Bank's name or to the Bank's order or for account of the Customer (whether for safe custody, collection, security or for any specific purpose or generally) as continuing security for the payment and discharge of all the Customer's obligations and liabilities to the Bank.

#### 4.2 Dealing with assets: The Bank may at any time sell, dispose of or otherwise deal with any of the assets subject to the security.

#### 4.3 Net proceeds: The Bank may apply the net proceeds of any sale, disposition or dealing of any security in or towards discharge of the Customer's obligations and liabilities to the Bank in whatever priority the Bank may determine.

#### 4.4 Further security: The Customer shall, upon demand by the Bank:

- (a) provide such further security in form and value as may be required in the opinion of the Bank sufficient to secure any of the Customer's obligations and liabilities to the Bank (including the deposit of cash to meet the liability of the Bank under any guarantees, performance bonds, documentary credits, standby documentary credits, indemnities and/or undertakings (however named) issued or countersigned by the Bank at the request or for the account of the Customer); and
- (b) execute and deliver to the Bank any documents in form and substance satisfactory to the Bank over any of the Customer's assets as the Bank specifies in any such demand.

## 5. Costs and Expenses

- 5.1 **Payment of fees:** The Customer shall pay to the Bank the fees, commissions and charges in connection with the banking facilities and/or services provided by the Bank to the Customer at the rate and in the amount and manner stipulated by the Bank from time to time.
- 5.2 **Cost Indemnity:** The Customer shall indemnify the Bank against all reasonable costs and expenses (including the legal fees on a full indemnity basis) incurred by the Bank in connection with the Facilities, including all costs and expenses incurred by the Bank as a result of:
  - (a) the performance, perfection or enforcement of, or the preservation of rights under the Facilities Documents or any security or guarantee provided in relation to the Facilities;
  - (b) the preparation, execution or amendment of any documents in connection with the Facilities or any security or guarantee in relation to the Facilities; and/or
  - (c) conducting any search against the Customer, Security Provider or any other person relating to the Facilities.
- 5.3 **Protection:** The costs and expenses are payable by the Customer notwithstanding that the Customer's applications for the Facilities are not accepted or the Facilities are modified, cancelled or terminated at any time before completion of the relevant transaction.
- 5.4 **Recovery Action:** Without prejudice to other provisions, the Bank may at its absolute discretion take such action as it deems fit to enforce the terms and conditions in the Facilities Documents or otherwise in connection with the Facilities including without limitation to the employment of third party agencies to collect any sums owing to the Bank. The Customer shall indemnify the Bank in full for all reasonable costs and expenses including legal fees and the charges of any third party agencies incurred by the Bank in respect of any such enforcement action.

## 6. Interest

- 6.1 **Interest:** The Bank may charge interest on any sum(s) outstanding or owing by the Customer from time to time under the Facilities and/or any transaction(s) contemplated under the Facilities. Unless otherwise specified, such interest shall accrue on a daily basis and shall be calculated payable and compounded on such basis and in such manner as the Bank may determine at its absolute discretion. Except as otherwise specified, interest will be calculated on the basis of the actual number of day elapsed and a 365-day year for the outstanding amount(s) in Hong Kong Dollars or a 360-day year for the outstanding amount(s) in United States Dollars or according to the market practice for calculation of the outstanding amount(s) in other currencies.
- 6.2 **Default interest:** The Bank may charge default interest on any monies not paid by the Customer when due. The obligation of the Customer to pay default interest on overdue amounts shall continue until all sums owing by the Customer to the Bank have been paid in full. Unless otherwise stipulated, the applicable default interest rate for any sum not paid when due shall be the Bank's prevailing interest rate determined by the Bank at its sole and absolute discretion.
- 6.3 **Cost of Funds:** If the interest rate in respect of any Facilities is expressed to be a margin over a base rate (including, for example, HIBOR or LIBOR), the Bank shall be entitled, at its absolute discretion, at any time to substitute the Bank's Cost of Funds in place of the base rate in calculating the interest payable under such Facilities. If the interest rate in respect of any Facilities is expressed to be the base rate minus a certain percentage, the Bank shall be entitled, at its absolute discretion, at any time to replace such interest rate by the Bank's Cost of Funds plus a margin determined by the Bank and notified to Customer as the applicable interest rate in respect of such Facilities.

## 7. Payments and Gross-up

- 7.1 **Clear fund:** All payments by the Customer to the Bank shall be made without any set-off, counterclaim, deduction, withholding or condition of any kind. If the Customer is compelled by law to make any withholding or deduction, the sum payable by the Customer shall be increased so that the amount actually received by the Bank is the amount it would have received if there had been no such withholding or deduction. The Customer shall upon request of the Bank provide an official receipt of the relevant taxation authority for the withholding or deduction.
- 7.2 **Currency:** Payment by the Customer to the Bank shall be in the currency of the relevant liability or, if the Bank so agrees in writing, in a different currency, in which case the conversion to that different currency shall be made at the Exchange Rate.
- 7.3 **Timing of payment:** Any obligation which is payable on a non-banking day shall, unless otherwise agreed between the Customer and the Bank, be payable on the next succeeding banking day in the same calendar month or on the immediately preceding banking day if there is no such succeeding banking day in that calendar month and interest shall accrue thereon accordingly.
- 7.4 **Application of monies:** Any monies paid to the Bank in respect of the Customer's obligations and liabilities may be applied by the Bank in or towards satisfaction of the same (in such order and manner as the Bank may determine) or placed to the credit of a suspense account with a view to preserving the Bank's rights to prove for the whole of the Customer's outstanding obligations and liabilities.
- 7.5 **Claw back:** If any payments paid to the Bank in respect of the Customer's obligations and liabilities are required to be repaid by virtue of any law relating to insolvency, bankruptcy or liquidation or for any other reason, the Bank shall be entitled to recover such sums from the Customer as if such monies had not been paid.
- 7.6 **Increased Costs:** If as a result of (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation or (ii) compliance with any law or regulation made after the date of the related Facilities Document or any request from or requirement of any central bank or other fiscal, monetary or other authority:-
  - (a) the Bank is unable to obtain the rate of return on its capital which it would have been able to obtain but for the Bank's providing, funding or maintaining the Facilities; or
  - (b) the Bank incurs an additional or increased cost as a result of the Bank's providing, funding or maintaining the Facilities, then the Customer will on demand pay to the Bank an amount sufficient to indemnify the Bank for such reduction in return or increased cost.
- 7.7 **Right to reverse erroneous entries:** The Bank shall have the right at all times to reverse any erroneous entries to any account of the Customer with effect back-valued to the date upon which the correct entry (or no entry) should have been made.

## 8. Set-off and Consolidation

- 8.1 **Account set-off:** The Bank may, at any time and without notice, combine or consolidate all the Customer's accounts with the Bank and apply any credit balance to which the Customer is entitled, either alone or jointly, in or towards satisfaction of any obligation (whether or not matured, actual, future, contingent, unliquidated or unascertained) owed by the Customer to the Bank, regardless of the currency, the place of payment or the office through which the Bank is acting.
- 8.2 **Right of set-off:** The Bank may, at any time without notice or demand, set-off any obligation owed by the Customer to the Bank against any obligation (whether or not matured) owed by the Bank to the Customer, regardless of the place of payment, the branch through which the Bank is acting or currency of either obligation.
- 8.3 **Foreign currency:** The Bank is authorised to purchase, at the Exchange Rate, such other currencies as may be necessary to effect the set-off in Clause 8.1 (Account set-off). If the obligations referred to in Clause 8.2 (Right of set-off) are in different currencies, the Bank is also authorised to convert either obligation at the Exchange Rate for the purposes of exercising its set-off right.

- 8.4 **Unliquidated amount:** If any of the obligations referred to in Clauses 8.1 (*Account set-off*) and 8.2 (*Right of set-off*) is unliquidated or unascertained, the Bank may set off an amount estimated by it in good faith to be the amount of that obligation.
- 8.5 **Account debit:** The Bank is authorised to debit any account(s) of the Customer maintained with the Bank for any amount payable or owing by the Customer to the Bank.
9. **Lien and Power of Sale**
- The Bank shall have a lien on all assets of the Customer coming into the possession or control of the Bank, for custody or any other reason and whether or not in the ordinary course of banking business, with power for the Bank to sell, deal with, realise or otherwise dispose of such assets to satisfy any obligations owed by the Customer to the Bank.
10. **Indemnity**
- 10.1 **On demand indemnity:** The Customer shall on demand indemnify the Bank and the Bank's delegates (on a full indemnity basis) against any losses, damages, liabilities, payments, costs, expenses, tax, fees, claims, proceedings or other consequences which may arise or result from providing any Facilities or banking services to the Customer.
- 10.2 **Payment undertaking:** The Customer shall indemnify and forthwith reimburse the Bank for all liabilities, losses, payments, damages, demands, claims, expenses and costs (including legal fees), proceedings or actions incurred or suffered by the Bank arising out of or in connection with the Bank giving any documentary credit, guarantee, performance bond, standby documentary credit, indemnity and/or other payment undertaking (however named) issued at the request or for the account of the Customer. Without prejudice to the generality of the foregoing, the Customer shall refund or reimburse the Bank for all sums paid by the Bank under the aforesaid documentary credit, guarantee, performance bond, standby documentary credit, indemnity and/or other payment undertaking no later than the date of payment by the Bank.
- 10.3 **Currency Indemnity:** If the Bank receives any sum in a currency (the "**Relevant Currency**") other than the currency in which such sum is due (the "**Currency of Account**") and that amount, when converted into the Currency of Account at the Exchange Rate on the date of receipt or recovery, is less than the amount in the Currency of Account due to the Bank, the Customer shall indemnify the Bank on demand against any cost and loss sustained by it as a result of such conversion notwithstanding that such payments are made pursuant to any judgment or court order.
- 10.4 **Proceedings:** The Customer shall, upon request by the Bank, forthwith appear and defend at its own cost and expense any action which may be brought against the Bank in connection with any banking services or the Facilities to the Customer.
11. **Data Policy**
- 11.1 The Customer agrees that the applicable data policies, notices and other communications to customers concerning their data ("**Data Policy Notice**") from time to time issued by the Bank (a member of the DBS group) shall apply. The Customer acknowledges that the Bank has given it a copy of the Bank's current Data Policy Notice before its entry into this Agreement. The Customer also acknowledges that it can obtain a copy of the Data Policy Notice which applies from time to time at any branch or from the Bank's website ([www.dbs.com.hk](http://www.dbs.com.hk)). The Customer acknowledges that the Bank's Data Policy Notice applies to any information that the Customer gives the Bank or which the Bank receives from any other sources or which arises from the relationship of the Customer with the Bank or any of the members of DBS group.
- 11.2 The Customer confirms that each individual whose personal data the Customer gives the Bank has provided the Customer with their consent to the Bank's receiving, holding and processing those personal data in accordance with the Data Policy Notice.
12. **Sanctions**
- The Bank would not process and would reject any transaction which may violate or breach any Sanctions Regulations without any liability on the part of the Bank.
13. **Bank's Statements**
- Any statement, advice, confirmation or determination by the Bank relating to any amount owing by the Customer under the Facilities or particulars of a transaction under the Facilities Documents or any other matters relating to the Facilities Documents or the Facilities is, in the absence of manifest error, conclusive of the matters to which it relates.
14. **FATCA**
- FATCA Requirements:** The Customer agrees to keep to the terms relating to tax reporting, withholdings and any associated requirements which are shown in the Tax Requirements Notice that the Bank issues from time to time. This notice forms part of this Agreement. A copy of the Tax Requirements Notice can be obtained at any branch of the Bank or from the website at [www.dbs.com.hk](http://www.dbs.com.hk).
15. **Insurance**
- 15.1 **Maintain insurance:** The Customer shall, at the request of the Bank, maintain insurance coverage against loss and damages on such terms and with such insurance company(ies) acceptable to the Bank with respect to assets in which the Bank has interest failing which the Bank may take out insurance at the cost of the Customer. The Bank's interest shall be duly noted on the relevant insurance documents.
- 15.2 **Default:** If the Customer fails to effect or maintain any insurance as required by the Bank or in producing any policy to the Bank or if any insurance effected by the Customer is, in the Bank's opinion, insufficient or inadequate, the Bank may effect such insurance in such sum and manner as it thinks fit. The Bank is entitled to debit the Customer's account(s) for any monies expended by the Bank for such insurance.
16. **Limitation on Liability**
- 16.1 **Limitation on liability:** The Bank shall not be liable to the Customer for any action taken or not taken by it unless directly caused by the Bank's negligence or wilful misconduct.
- 16.2 **Instruction subject to applicable law:** Notwithstanding that the Customer may have given instructions to the contrary, the Bank shall not be liable to the Customer for any loss or damage which may have caused by the Bank acting in accordance with applicable laws, regulations or rules or with the terms and conditions of the Bank's agreements with other financial institutions regarding the business dealings with those institutions.
- 16.3 **Risk of transaction:** Each transaction will be undertaken by the Customer solely in reliance on its own judgment and at its own risk. The Bank shall not be responsible in any manner for advising the Customer.
17. **Change in Constitution**
- All agreements, collaterals, obligations given or assumed by the Customer shall continue to be valid and binding notwithstanding any change in constitution of the Customer or the Bank, by re-organisation, amalgamation, consolidation, reconstruction, take-over or otherwise.
18. **Change of Business**
- The Customer shall notify the Bank in writing immediately upon cessation of its business or any change in its business name or nature.
19. **Partnership**
- 19.1 **Customer in partnership:** Where the Customer is a partnership or otherwise consists of two or more persons, references to the Customer, where the context admits, are references to the persons who constitute the Customer for the time being, and each of these persons shall be jointly and severally liable for the Customer's obligations and liabilities to the Bank.
- 19.2 **Change in partnership:** If the Customer is a partnership, the Facilities Documents and any document executed and signed by the Customer to the Bank shall continue to bind the partnership notwithstanding any change in the constitution, name or membership of the partnership by reason of death,

bankruptcy, retirement, disability, or admission of new partners or the occurrence of any other event which may dissolve the partnership or otherwise affect its obligations to the Bank.

- 19.3 **Death or retirement of partner:** In the case of the death or retirement of a partner, the liability of the partner or his estate to the Bank shall cease only with regard to transactions made with the Bank subsequent to the receipt by the Bank of written notice of the retirement or death of the deceased partner.

## 20. Continuing Agreement, Waivers and Remedies

- 20.1 **Continuing agreement** This is a continuing agreement and all the rights, powers and remedies under the Facilities Documents shall apply to all the Customer's obligations to the Bank and shall be binding on the Customer and its respective successors and assigns notwithstanding any event affecting the capacity of the Customer to be bound by the Facilities Documents including death, incapacity, bankruptcy, receivership, liquidation, reconstruction amalgamation or change in constitution.

- 20.2 **Exercise of rights:** The rights of the Bank hereunder:

- (a) may be exercised as often as necessary;
- (b) are cumulative and not exclusive of its rights under the general law and any other agreement; and
- (c) may be waived only in writing and specifically.

Delay in exercising or non-exercise of any such rights is not a waiver of that right.

## 21. Authorisation and Delegation

- 21.1 **Power of Attorney:** To secure due performance and discharge of the obligation and liabilities of the Customer to the Bank under the Facilities and/or the Facilities Documents, the Customer irrevocably and unconditionally by way of security appoints the Bank as the attorney of the Customer (acting in the Customer's name or otherwise), with full power of delegation and substitution, to carry out any of the Customer's obligations under the Facilities Documents or for protecting or exercising the Bank's rights under the Facilities Documents. The Customer shall from time to time ratify and confirm whatsoever the Bank shall lawfully do or cause to be done by virtue of the power of attorney granted under this Clause.

- 21.2 **Delegation:** The Customer hereby authorises the Bank to appoint any other person (including correspondent, agent or third party contractor) in relation to the banking services and Facilities and the Bank may delegate any of its powers in the Facilities Documents to such person.

- 21.3 The power of attorney under this Clause 21 and Clause 29 (*Back-to-Back Documentary Credit*) is given by way of security and shall be irrevocable (despite the bankruptcy, liquidation or other incapacity of the Customer whatsoever) as long as the Customer's liabilities and obligations to the Bank under the Facilities are not totally discharged.

## 22. Assignment

The Customer may not assign or transfer any of its rights or obligations under the Facilities Documents. The Bank may assign or transfer any of its rights or obligations hereunder to any other person and disclose to its professional advisers and any actual or potential assignee any information in connection with the Facilities Documents.

- 22.1 **Risks in sending notices:** All notices or other communications in connection with the Facilities Documents are to be sent at the Customer's risk. The Bank does not assume any responsibility for any inaccuracy, interruption, error or delay or total failure in transmission or delivery by post, facsimile or other written form of electronic communication.

- 22.2 **Deemed receipt:** All notices or other communications from the Bank to the Customer must be given in writing and unless otherwise stated, may be made by letter, facsimile or e-mail. Any such notice will be deemed to be given as follows:

- (a) if by letter, when delivered personally or if sent by prepaid post, two or seven banking days following that on which it was so posted to an address in Hong Kong or overseas respectively; and
- (b) if by fax or e-mail, when confirmed by an activity report confirming the fax number or e-mail address to which such notice was successfully sent.

- 22.3 **Contact details:** The address, fax number or e-mail address of the Customer for all notices under or in connection with the Facilities Documents are

- (a) those set out in Schedule 1 of this Agreement; or
- (b) any other notified by the Customer to the Bank by not less than 5 banking days' notice or last known to the Bank.

- 22.4 **Notices to the Bank:** Any notice or other communication given to the Bank must be given in writing and shall be deemed to have been given only on actual receipt.

## 23. Variation

The Bank may, at its sole discretion and at any time, by notice to the Customer vary, amend, cancel or supplement any terms and conditions of the Facilities Documents and such variation, amendment, cancellation or supplement shall take effect on the date of the notice or, if later, the date specified in the notice. Without prejudice to the clause above, any such notice shall be deemed to be received by the Customer when it has been displayed in the Bank's banking hall or at the Bank's website for 5 consecutive banking days in Hong Kong. The Customer's utilization of any of the Facilities and/or services provided by the Bank after the effective date shall be deemed to be an acceptance of such variation, amendment, cancellation or supplement.

## 24. Severability

If any provision of this Agreement or becomes illegal, invalid or unenforceable in any jurisdiction, that will not affect:

- (a) the validity or enforceability in that jurisdiction of any other provision of this Agreement; or
- (b) the validity or enforceability in other jurisdictions of that or any other provision of this Agreement.

## 25. Governing Law and Jurisdiction

- 25.1 **Governing law and jurisdiction:** This Agreement shall be governed by and shall be construed in accordance with the laws of the Hong Kong Special Administrative Region of the People's Republic of China ("**Hong Kong**") and the parties agree to submit to the non-exclusive jurisdiction of the Hong Kong courts. Notwithstanding the foregoing, the Bank shall have the right to bring legal proceedings against the Customer in any other court with jurisdiction. To the extent allowed by law, the Bank may take concurrent proceedings in any number of jurisdictions.

- 25.2 **Process agent appointment:** If the Customer is not an ordinarily resident in Hong Kong or is not a company incorporated under the laws of Hong Kong or is a non-Hong Kong company which is not registered under the Companies Ordinance (Laws of Hong Kong), without prejudice to any other mode of service, the Customer:

- (a) irrevocably appoints a person named in Schedule 2 as its agent for service of process in relation to any proceedings before the Hong Kong courts in connection with the Facilities Documents; and
- (b) agrees that if the appointment of any person mentioned in sub-clause (a) above ceases to be effective, the Customer shall immediately appoint another person to accept service of process on its behalf in Hong Kong and, failing such appointment within 15 days, the Bank is entitled to appoint any person as the Customer's process agent by notice to the Customer.

## 26. Third Party

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

## Part B : Trade Finance Provisions

### 27. **Governing rules and conflict:** In this Agreement:

- (a) The following terms and conditions shall be subject to such other terms and conditions which may be specified by the Bank in relation to any documentary credit and any particular banking facilities;
- (b) Each documentary credit shall be subject to the Uniform Customs and Practice for Documentary Credits ("UCP") of the International Chamber of Commerce ("ICC") (and where documentary credit permits reimbursement by the nominated bank, such reimbursement is subject to Uniform Rules for Bank-to-Bank Reimbursement under Documentary Credit ("URR")) as are in effect from time to time;
- (c) Each standby documentary credit shall be subject to (i) the UCP or (ii) International Standby Practices ("ISP") of ICC (as stipulated in the relevant application form(s) or the text of the instrument) as are in effect from time to time;
- (d) Each guarantee, bond or payment undertaking issued by the Bank shall be subject to (i) ISP, (ii) Uniform Rules for Demand Guarantees ("URDG") of ICC as are in effect from time to time and/or (iii) the governing law (as stipulated in the relevant application form(s) or the text of the instrument, if any);
- (e) Collection (either documentary or clean) shall be subject to the Uniform Rules for Collections ("URC") of ICC as are in effect from time to time; and
- (f) In the event of any conflict or inconsistency between the Facilities Documents and the UCP, ISP, URC, URDG or any ICC rules, the Facilities Documents shall prevail.

### 28. **Documentary Credit / Standby Documentary Credit / Guarantee / Bond / Indemnity or the like issued at the request or for the account of the Customer (collectively, the "Undertakings")**

- 28.1 **Documents acceptance and payment:** The Bank is authorised to accept and pay for all Documents presented or negotiated under each of the Undertakings issued by the Bank.
- 28.2 **Nomination:** The Bank may nominate any of its own offices or correspondent banks to be the advising, confirming, paying, negotiating, accepting or deferred payment undertaking bank of the Undertakings.
- 28.3 **Duty to reimburse:** The Customer shall pay and reimburse the Bank on demand any sum in connection with each of the Undertakings issued by the Bank. Such sum includes, but not limited to, interest, costs, expenses, commissions, reimbursement claims from any nominated bank or confirming bank and any payment, prepayment or purchase effected by the Bank in connection with any Undertaking, all irrespective of any alleged discrepancies in the presented documents and/or any fraud that may be alleged at any time or discovered subsequent to such payment, negotiation, prepayment or purchase by any nominated bank, confirming bank or the Bank. The Customer shall pay the Bank no later than the applicable due date an amount equal to the amount due under each of the Undertakings issued by the Bank.
- 28.4 **Set-off:** The Customer hereby irrevocably authorises the Bank to block or debit the Customer's account(s), without making prior demand or notice, all sums that may be paid by the Bank or by the Bank's correspondents/agents or any sums owing or payable by the Customer to the Bank in respect of the Undertakings or other obligations and liabilities.
- 28.5 **Amend or cancel undertakings:** The Bank may (at any time, without notice or consent from the Customer) amend and/or cancel the whole or the unused balance of any of the Undertakings issued by the Bank.
- 28.6 **Bank's discretion override Customer's instructions:** Notwithstanding the Customer's instruction to settle the relevant drawing under any of the Undertakings irrespective of all the discrepancies of the presented documents, it is the Bank's sole and absolute discretion to determine whether to accept or reject such presented documents.
- 28.7 **Enforceability:** The Customer agrees and acknowledges that it is the sole responsibility of the Customer to (i) ensure clarity, enforceability or effectiveness of any terms or requirements incorporated in each Undertaking; (ii) comply with all applicable laws and regulations regarding the underlying transaction to which each Undertaking relates; (iii) obtain all necessary documents and approvals from any governmental or regulatory bodies; and (iv) produce such documents or approvals to the Bank upon request. The Bank is not responsible for advising and has no duty whatsoever to advise the Customer on such issues. The Bank shall not be liable to the Customer for any direct, indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever which may arise out of such issues.
- 28.8 **Amend terms:** The Customer agrees that the Bank may, at its sole discretion and without prior reference to the Customer, amend the terms and conditions submitted by the Customer and/or insert additional terms and conditions into the Undertakings as the Bank thinks appropriate and the Customer's obligation to reimburse the Bank under the Facilities Documents shall not be affected.
- 28.9 **Customer copy:** The Customer agrees and undertakes to examine the customer copy of each of the Undertakings issued by the Bank and irrevocably agrees that failure to give a notice of objection about the contents of the Undertakings within 5 banking days after the customer copy of the Undertakings or the subsequent amendment(s) is sent by the Bank shall be deemed to have agreed to the contents of the Undertakings or the amendment(s) and to waive any rights to raise objections or pursue any remedies against the Bank in respect thereof.

### 29. **Back-to-Back Documentary Credit**

- 29.1 **Identical terms:** A back-to-back documentary credit (each, a "Back-to-Back DC") must be issued against the support of a master documentary credit (each, a "Master DC") and all the terms and conditions of the Back-to-Back DC must be identical to that of the Master DC except as otherwise approved by the Bank.
- 29.2 **Authorization:** The Bank is irrevocably authorised (but is not obliged) to (i) utilise the presented documents under the Back-to-Back DC for drawing of the Master DC; (ii) negotiate the presented documents, prepay the deferred payment undertaking incurred by the Bank or purchase the draft accepted by the Bank (collectively, the "Financing") under the Master DC; and (iii) directly apply the Financing proceeds of, or the payment proceeds received under, the Master DC to settle the corresponding drawing(s) under, and/or the Customer's obligations and liabilities owed to the Bank arising out of or in connection with, the Back-to-Back DC without first crediting such proceeds to the Customer's account with the Bank. If necessary, the Bank may convert such proceeds at the Exchange Rate for effecting the aforesaid settlement, irrespective of discrepancies that may appear on the presented documents under the Back-to-Back DC (all of which, if any, are hereby waived).
- 29.3 **Power of attorney:** To secure due performance and discharge of the obligations and liabilities of the Customer to the Bank under the Facilities and/or the Facilities Documents, the Customer irrevocably and unconditionally by way of security appoints the Bank as the attorney of the Customer (with full power of substitution and delegation) in the Customer's name or otherwise from time to time to do all or any of the following acts, deeds, matters and things as the Bank shall think fit:-
  - (a) prepare, complete, amend, draw, endorse (in the Bank's favour or otherwise), sign, execute, issue, send, present, apply for and/or otherwise deal with (in such manner as the Bank deems fit) all and any statements, certificates, contracts, indemnities, agreements, undertakings, invoices, bills of exchange, drafts, promissory notes, documents of title, insurance policies, notices of assignment, export or import licences, certificates of origin, any relevant certificates or licences and other documents of whatever nature and do all other things considered by the Bank to be necessary or desirable in connection with the claim and collection of payment in respect of each Master DC;
  - (b) request waiver of compliance with any requirement of any Master Credit, including, to tender discrepant documents or give any indemnity or undertake any other obligations to the issuing bank or other relevant persons;

- (c) initiate, put forward, consent to and/or reject any proposal for amendment or cancellation of any Master DC or any Back-to-Back DC;
- (d) waive compliance of any requirement and/or to cancel the whole or any unused balance of any Back-to-Back DC, including to accept and/or to effect payment under any Back-to-Back DC irrespective of discrepancies or irregularities in the presented documents;
- (e) utilise any documents, if applicable, presented under any Back-to-Back DC for the purpose of drawing the corresponding Master DC;
- (f) keep and/or utilise the Master DC or any document delivered by the Customer to the Bank in connection with any Master DC and/or Back-to-Back DC;
- (g) exercise all the rights of the Customer in connection with each Master DC and each Back-to-Back DC and generally to present and file any claims or take any lawful action or institute any proceedings in relation to each Master DC; and
- (h) sign or execute (using the company seal where appropriate) any document, or take any action, in each case which the Customer is obliged to sign, execute or take under this Agreement or which the Bank may consider incidental or conducive to the realisation, collection or enforcement of any Master DC.

The power of attorney under this Clause shall be in addition, and without prejudice, to the generality of any power of attorney created under this Agreement. The Customer shall from time to time ratify and confirm whatsoever attorney does or purports to do pursuant to its appointment under this Clause.

### 30. Export Transactions

30.1 **Recourse:** Notwithstanding the provisions of the UCP or other ICC rules and unless the Bank agrees otherwise in writing, the Customer hereby expressly agrees and consents that the Bank will have full recourse against it for any advances (including purchase, discounting, prepayment, negotiation or financing of any kind) provided by the Bank against any Documents or drawings under any export related transaction (including but not limited to any documentary credits and documentary collections (including D/A or D/P transactions)) (each, an "Export Transaction"). The Customer further acknowledges and agrees that it shall repay the Bank on demand for any advance obtained from the Bank plus any applicable interest, discount and charge, without raising any defence or objection. The Customer also undertakes to repay any advance plus any applicable interest, discount and charges, without further demand if the Bank, due to whatever reasons, does not receive full and punctual payment(s) under the relevant Export Transaction.

30.2 **Currency indemnity:** If the amount (if any) actually received by the Bank under the relevant Export Transaction is insufficient for discharge of the advance plus any applicable interest, discount and charges in full, the Customer shall immediately pay to the Bank any shortfall amount. Without prejudice to the generality of the foregoing, where the amount received under the relevant Export Transaction is in the currency other than the currency of the advance, the Bank may convert the amount received into the currency of the advance at the Exchange Rate determined by the Bank at the time of conversion, and the Customer shall indemnify the Bank against any shortfall if the converted amount is less than the advance plus any applicable interest, discount and charges.

30.3 **Indemnity given by the Bank:** The Customer shall refund to the Bank on demand for any monies received by the Customer under any guarantee or indemnity countersigned or issued by the Bank covering discrepancies of the Documents if such Documents are subsequently not accepted or are unpaid due to whatever reasons.

### 31. Import and Export Financing

31.1 **Duty to present required documents:** In respect of any financing application, the Customer undertakes to present to the Bank all the documents required by the Bank and in any case not later than the time limits prescribed by the Bank.

31.2 **Default:** Subject to the Bank's sole and absolute discretion, if the Customer fails to deliver the required documents to the Bank on or before the agreed date mentioned in Clause 31.1 (*Duty to present required documents*), the Customer shall immediately pay to the Bank in full all advances made by the Bank pursuant to the relevant financing together with all interest accrued and all costs and expenses incurred.

### 32. Pledge of Goods

32.1 **Pledge of goods:** In consideration of the banking facilities extended by the Bank, the Bank shall have a pledge on the Documents and the Pledged Goods until all the obligations and liabilities owed by the Customer to the Bank have been fully discharged.

32.2 **Continuing security:** The pledge mentioned in Clause 32.1 (*Pledge of Goods*) shall be a continuing security, in addition to any other security held by the Bank.

32.3 **Dealing with goods:** The Bank is authorised to sell, dispose of or otherwise deal with any of the Pledged Goods or Documents.

32.4 **Risks in goods:** The risks in the Pledged Goods shall be with the Customer and the Bank shall not be responsible for any loss or damage or depreciation in value of any Pledged Goods or Documents held by the Bank as security.

### 33. Release of Pledged Goods

If any Pledged Goods or Documents are released to the Customer or to its order before satisfaction of the Customer's obligations:-

- (a) the Customer shall execute and deliver to the Bank trust receipts in form and substance satisfactory to the Bank together with any other documentation that the Bank may require;
- (b) the Document(s) and the Pledged Goods shall continue to be in pledge to the Bank as a continuing security;
- (c) the Document(s) are released to the Customer exclusively for the purpose of taking delivery of the Pledged Goods and/or selling the Pledged Goods for the Bank to buyer(s) at market value on normal trade terms;
- (d) the Customer shall hold the Document(s), the Pledged Goods and the relevant sale proceeds in trust for the Bank and solely to the Bank's order, and the Bank may at any time take possession of the Pledged Goods and/or the Document(s) at the Bank's sole discretion; and
- (e) the Bank is entitled to demand and receive the sale proceeds of the Pledged Goods from buyer(s) or any person(s) directly and give valid receipt for the same.

### 34. Shipping Guarantees / Release of Bills of Lading

34.1 **Customer's undertaking:** If the Bank, at the request of the Customer, releases any bill of lading to the Customer or endorses any transport document or countersigns letters of guarantee or indemnity covering the release of any goods without production to shipping companies, carriers or forwarders the relevant bills of lading, or other transport or title documents, the Customer undertakes that:

- (a) it shall use its best endeavours to obtain the relevant bills of lading, transport or title documents;
- (b) upon receipt of the bills of lading, transport or title documents, it shall forthwith deliver them to the Bank and procure the release of the Bank from any shipping guarantee or indemnity given and the return of the relevant shipping guarantee or indemnity to the Bank for cancellation;
- (c) it shall waive all discrepancies that may appear in the import documents and accept all such Documents presented under the relevant documentary credit;
- (d) it shall, on demand by the Bank, deposit with the Bank such sum of money or security equal to the Bank's obligations and liabilities in respect of the shipping guarantees or indemnity given by the Bank (until they are released and returned to the Bank) and/or in respect of the Bank's obligations and liabilities under the relevant documentary credit; and

- (e) it shall reimburse the Bank for any amount paid by the Bank under the letter of indemnity, shipping guarantee or the relevant documentary credit.

34.2 **Documents examination and payment:** The Customer authorises the Bank to honour any relevant drawings without examining the presented Documents and to endorse or countersign in the Customer's name or otherwise all relevant bills of lading, title documents, transport documents, insurance documents or any negotiable instruments as the Bank thinks appropriate.

### 35. Undertakings

The Customer undertakes that:

- (a) it is the sole beneficial owner of the Pledged Goods and Documents;
- (b) it shall pay all costs of and incidental to the transportation, insurance and storage of the Pledged Goods;
- (c) it shall not encumber, transfer, sell, dispose of or otherwise deal with the Documents and/or the Pledged Goods except as directed by or with the prior written consent of the Bank;
- (d) it shall keep the Pledged Goods and/or the sale proceeds of the Pledged Goods separate from any other assets or accounts respectively of the Customer or other persons;
- (e) it shall not take any action which might prejudice the value of the Pledged Goods and/or the effectiveness of the pledge and the Facilities Documents;
- (f) it shall, at the request of the Bank, provide the Bank with such information concerning the Documents, the Pledged Goods and any sale proceeds holding in trust for the Bank and arrange the Bank or its delegates/agents to inspect or take possession of the Pledged Goods;
- (g) it shall not, without the Bank's prior written consent, accept or reject any amendments to any master documentary credit, back-to-back documentary credit or export documentary credit under which any pre-shipment loan or pre-export facilities are provided;
- (h) it shall keep the Bank informed of the whereabouts of the Pledged Goods and of any change in the condition, market price, quality or quantity of the Pledged Goods;
- (i) it shall execute such documents and perform such acts as the Bank may consider expedient in connection with the exercise of its powers and rights hereunder; and
- (j) it shall not present any purchase order, sale contract, commercial invoice, transport document, cargo receipt and any other related document already submitted to the Bank for export loan financing to any other banks or financial institutions for financing or borrowing whatsoever.

### 36. Authorizations

Without prejudice to any power of attorney created under this Agreement, the Customer hereby expressly authorises the Bank:

- (a) to collect, transport, land, ship, store and/or insure the Pledged Goods and to inspect the Pledged Goods at any time;
- (b) to notify any other person of its interest in the Documents and the Pledged Goods;
- (c) to make payment forthwith when due or on demand under any Undertaking issued by the Bank and to debit the Customer's accounts for such payment without reference to the Customer or any other person; and
- (d) to apply any proceeds or monies received by the Bank for the Customer (whether under any documentary credits, documentary collections or other import and export related transactions) to discharge any sum owing or payable to the Bank by the Customer in such order and manner as determined by the Bank at its absolute discretion.

### 37. Limitation on Liability

37.1 **Honour payment in good faith:** The Customer irrevocably agrees and undertakes that notwithstanding the Customer and the Bank may hold a different view on whether a presentation complies with the terms of any Undertaking, the Customer shall reimburse the Bank for the amount paid by the Bank under such Undertaking without delay.

37.2 **Limitation on liability:** The Bank is not responsible for any goods, documents or items in its possession beyond the exercise of reasonable care and shall not be held liable for the default or negligence of any selected agent or correspondent or for any losses incurred in transit.

This Agreement has been executed by me/us as a deed:-

Dated \_\_\_\_\_ day of \_\_\_\_\_.

#### Schedule 1 Customer

Name of Customer:

Address of Customer:

Fax number of Customer:

Email address of Customer:

#### Schedule 2 Process Agent

Name of Process Agent (if any):

Address of Process Agent (in Hong

Kong):

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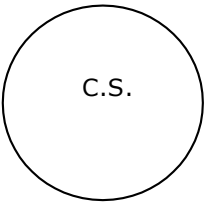
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SAMPLE

This Agreement is an important legal document. Before signing, you should read it carefully and if necessary seek independent legal advice to make sure you understand your commitment and the full consequences of signing. You should only sign this document if you agree to be legally bound by its terms.

Corporate Signatory

The Common Seal of )  
)  
)  
)  
)  
)  
)



was affixed hereto in the presence of:

\_\_\_\_\_  
Director/Authorised Signatory

Name: \_\_\_\_\_

[OR]

Executed and Delivered as a **DEED** by )  
)  
)  
)  
)  
)  
)

and **SIGNED** by

\_\_\_\_\_  
Director

Name: \_\_\_\_\_

\_\_\_\_\_  
Director/Secretary/Authorised Signatory

Name: \_\_\_\_\_

\_\_\_\_\_  
Director/Company Secretary

Name: \_\_\_\_\_

[OR]

**This Agreement is an important legal document. Before signing, you should read it carefully and if necessary seek independent legal advice to make sure you understand your commitment and the full consequences of signing. You should only sign this document if you agree to be legally bound by its terms.**

Individual Signatory

Signed Sealed and Delivered by

L.S

\_\_\_\_\_  
(Name of Signatory in Block Letters)

\_\_\_\_\_  
(Signature)

I.D. Card / Other Identification  
Document No. of Signatory: \_\_\_\_\_

in the presence of:

Name of Witness: \_\_\_\_\_

Occupation of Witness: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Signature of Witness)

Signed Sealed and Delivered by

L.S

\_\_\_\_\_  
(Name of Signatory in Block Letters)

\_\_\_\_\_  
(Signature)

I.D. Card / Other Identification  
Document No. of Signatory: \_\_\_\_\_

in the presence of:

Name of Witness: \_\_\_\_\_

Occupation of Witness: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Signature of Witness)

Signed Sealed and Delivered by

L.S

\_\_\_\_\_  
(Name of Signatory in Block Letters)

\_\_\_\_\_  
(Signature)

I.D. Card / Other Identification  
Document No. of Signatory: \_\_\_\_\_

in the presence of:

Name of Witness: \_\_\_\_\_

Occupation of Witness: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Signature of Witness)

DATED \_\_\_\_\_

to

**DBS Bank (Hong Kong) Limited**

\_\_\_\_\_

**ASSIGNMENT OF RENTALS**

of

\_\_\_\_\_

THIS ASSIGNMENT OF RENTALS dated this  
is made BETWEEN :-

day of

20

(1)

(hereinafter called "the Mortgagor"); and

(2) **DBS Bank (Hong Kong) Limited** whose registered office is situate at 11<sup>th</sup> Floor, The Center, 99 Queen's Road Central, Hong Kong (hereinafter called "the Lender").

WHEREAS :-

- (A) The Mortgagor has applied to the Lender for the grant of general banking facilities and the Lender has agreed to grant the same to such extent and upon and subject to such terms and conditions as shall from time to time be mutually agreed between the Mortgagor and the Lender or be stipulated by the Lender ("the general banking facilities").
- (B) As one of the conditions of the grant of the general banking facilities, the Mortgagor (as mortgagor) has entered into a First Legal Charge/Mortgage for \_\_\_\_\_ dated \_\_\_\_\_ ("the Mortgage") over the Mortgagor's property more particularly described in the First Schedule hereto ("the Property") as security for the Secured Indebtedness (as hereinafter defined).
- (C) It is a further condition of the grant of the general banking facilities that the Mortgagor should execute an assignment of all rental derived from the Property in favour of the Lender as security for the Secured indebtedness.
- (D) Expressions defined in the Mortgage shall, unless re-defined herein or the context otherwise requires, have the same meanings when used in this Assignment of Rentals.
- (E) Unless otherwise stated, references to Clauses, Schedule and Appendices are to Clauses of, Schedule and Appendices to this Assignment of Rentals.
- (F) References in this Assignment of Rentals to any Ordinance shall (except where the context otherwise requires) be deemed to include any statutory re-enactment

thereof or any statutory modification thereof having substantially the same legal effect but not having retrospective effect.

- (G) Words importing the singular number only shall include the plural and vice versa, and words importing the masculine gender shall include the feminine and neuter genders and vice versa, and words importing persons shall include firms and corporations and vice versa.

NOW THIS ASSIGNMENT OF RENTALS WITNESSETH AND IT IS HEREBY AGREED AND DECLARED as follows :-

1. In this Assignment of Rentals, the following expressions shall have the following meaning :-

“Deposits” means the deposits paid or to be paid by any Lessees under the terms of Leases;

“Hong Kong” means the Hong Kong Special Administrative Region of the People’s Republic of China;

“Lease(s)” means any letting (including any lease, tenancy agreement, agreement for lease or tenancy, contractual licence and letter of intent to create lease or tenancy or contractual licence) of the Property or any part thereof;

“Lessee(s)” means any lessee or tenant or licensee of the Property or any part thereof;

“Rental Proceeds” means all rental, licence fees and all other moneys (other than the Deposits and excluding management fee or utility charges where the Mortgagor is receiving the same as receiving agent only for the purpose or passing on to the beneficiary) payable at any time hereafter by the Lessees to the Mortgagor in its capacity as lessor or licensor under the terms of their respective Leases; and

“Secured Indebtedness” means all sum from time to time advanced, granted and outstanding together with interest thereon and all other moneys and obligations in

respect of moneys which the Mortgagor covenants to pay to the Lender under the terms of the Mortgage; and

“Event of Default” means default in payment of any of the moneys secured by the Mortgage or the interest for the same or any part thereof or in payment of any moneys for the time being due or claimed by the Lender to be due under any of the covenants terms or conditions contained in the Mortgage or any breach non-observance or non-performance by the Mortgagor of any covenants terms or conditions under the Mortgage.

2. As security for the discharge of the Secured Indebtedness and the observance and performance by the Mortgagor of the agreements covenants and conditions contained in the Mortgage, the Mortgagor as legal and beneficial owner hereby ASSIGNS and AGREES TO ASSIGN to the Lender all the Mortgagor's right, title, interest, and benefit to and in any moneys whatsoever payable (whether now or in the future) to the Mortgagor by present or future Lessees (including, without limitation, the Deposits and the Rental Proceeds) and all other rights and benefits whatsoever securing (whether now or in the future) to the Mortgagor, in the Mortgagor's capacity as lessor/licensor, from present or future Lessees TO HOLD the same unto the Lender absolutely SUBJECT to the proviso for cesser hereinafter contained; and
3. Upon payment to the Lender of the whole of the Secured Indebtedness and the observance and performance by the Mortgagor of the agreements covenants and conditions contained in the Mortgage, the Lender shall, as soon as practicable, at the request and cost of the Mortgagor, reassign and discharge the subject matter of this Assignment of Rentals to the Mortgagor or as it shall direct.
4. (a) The Mortgagor hereby undertakes with the Lender that the Mortgagor shall :-
  - (i) at its own cost and expense take all necessary steps to procure the due performance by all lessees of their obligations under the Leases;
  - (ii) promptly and diligently :-
    - (1) perform the obligations on its part contained in any Lease;

- (2) notify the Lender in writing of any default or breach by the Mortgagor and/or a Lessee under any Lease; and
  - (3) institute and maintain all such proceedings as may be necessary or expedient to preserve or protect the interests of the Mortgagor and the Lender in any Lease;
- (iii) forthwith upon the occurrence of an Event of Default or upon request of the Lender, give notice of this Assignment of Rentals to all Lessees in the form set out in the Second Schedule or in such other form as may from time to time be required by the Lender and shall pay and procure that the Lessees shall so do, all payment of Deposits and Rental Proceeds becoming due thereafter direct to the Lender or into such account as the Lender shall from time to time direct or to such person and in such manner as the Lender shall from time to time direct;
- (iv) in the event that notice has been or should have been given by the Mortgagor pursuant to sub-clause (iii) above, hold all payments of Rental Proceeds and Deposits thereafter received from the Lessees by the Mortgagor or its agents in trust for the Lender and shall forthwith upon receipt pay the same over to the Lender or into such account as the Lender shall from time to time direct or to such person and in such manner as the Lender shall from time to time direct;
- (v) in the event of the Mortgagor at any time hereafter entering into any Lease, (1) furnish promptly to the Lender all particulars and information the Lender may require in respect of such Lease, (2) by virtue of this Assignment of Rentals, be deemed to have entered into and executed an assignment in favour of the Lender in like terms to those contained in this Assignment of Rentals in respect of such Lease;
- (vi) upon request of the Lender, forthwith deliver to the Lender an up-date list of all Leases and/or the original duly stamped counterparts thereof;

- (vii) upon request of the Lender, promptly and duly execute and deliver any and all such further instruments and documents and documents as the Lender may require for the purpose of obtaining the full benefit of this Assignment of Rentals and of the rights and powers hereby granted.
- (b) The Mortgagor hereby further undertakes with the Lender that the Mortgagor will not without the prior written consent of the Lender :-
- (i) assign, mortgage, charge, pledge, otherwise encumber or transfer, otherwise deal with, grant or suffer to arise any third party rights on or against the Rental Proceeds or any of the Mortgagor's right, title, interest and benefit thereto and therein, or any rights of the Mortgagor under any Lease, to anyone other than the Lender or purport to do any of the foregoing or enter into any agreement to do any of the foregoing;
  - (ii) assign, mortgage, charge, pledge, otherwise encumber or transfer, otherwise deal with, grant or suffer to arise any third party rights on or against the Deposits or any of the Mortgagor's right, title, interest and benefit thereto and therein to anyone other than the Lender or purport to do any of the foregoing or enter into any agreement to do any of the foregoing;
  - (iii) take or omit to take any action, the taking or omission of which might result in any alteration or impairment of any Lease or this Assignment of Rentals or of any of the rights created by any Lease or this Assignment of Rentals;
  - (iv) waive or amend any of its rights or the Lender's rights in any Lease or permit or agree to cancellation or any alteration of any Lease or purport so to do, or enter into any agreement to do any of the foregoing;
  - (v) (save and except as expressly provided under the Lease) demand or receive from any Lessee any rent or licence fee more than one (1) month in advance, or purport or agree so to do.

5. (a) All payments of Deposits and/or Rental Proceeds to be paid to the Lender or to be paid as the Lender shall otherwise direct pursuant to Clause 4(a)(iii) may (at the absolute discretion of the Lender and the Mortgagor hereby irrevocably authorizes the Lender so to do) be applied by the Lender in or towards payment of the Secured Indebtedness (and in the event of deficiency, in and towards such part(s) thereof as the Lender may at its absolute discretion determine). Pending application as aforesaid, any Rental Proceeds so received shall be placed by the Lender in a suspense account for such period as the Lender may in its discretion determine and, subject always to the Lender's right of application hereinbefore contained, all sums standing to the credit of such account shall be released by the Lender to the Mortgagor when the subject matter of this Assignment of Rentals is reassigned to the Mortgagor pursuant to Clause 3.
- (b) Upon payment to the Lender of the whole of Secured Indebtedness, the Lender shall, as soon as practicable upon written request of the Mortgagor, pay to the Mortgagor or other person entitled all remaining sums (whether representing Rental Proceeds, Deposit or otherwise) in the hands of the Lender received pursuant to this Assignment of Rentals.
6. Notwithstanding anything herein contained to the contrary, the Mortgagor shall remain liable under all Leases to perform all the obligations assumed by it thereunder and the Lender shall not be under any obligation or liability thereunder by reason of this Assignment of Rentals or anything arising therefrom nor shall the Lender be required to assume or be under any obligation in any manner to perform or fulfil any obligation of the Mortgagor under or pursuant to any Lease or to make any payment thereunder or to enforce against any Leasee any term or condition of a Lease or to make any enquiries as to the nature or sufficiency of any payment received by the Lender by virtue of this Assignment of Rentals.
7. In order to enable the Lender to collect and received and give a good discharge and (if it deems expedient) to sue for any and all moneys and claims for moneys due and to become due under or arising out of any Lease in the name of the Mortgagor, the Mortgagor hereby irrevocably and by way of security appoints the Lender (with full power of substitution) as the Mortgagor's attorney to execute, sign, seal, as its act and deed deliver, do and perform in the name of the

Mortgagor all such deeds acts and things as the Lender might do in its own name under this Assignment of Rentals and to give notices of this Assignment of Rentals to the Lessees.

8. (a) The security hereby constituted is to be a continuing security and accordingly shall remain in operation until all of the Secured Indebtedness has been paid off or satisfied in full.  
  
(b) The security hereby constituted shall not be affected or discharged by the taking, holding, varying, non-enforcement or release by the Lender of any other security for all or any of the sums of payment of which is hereby covenanted to be made or is hereby secured, or by any other thing done or omitted or neglected to be done by the Lender in relation to any such other security, and is in addition to and not in substitution for any other security which the lender may at any time hold for the payment of such moneys or any of them and may be enforced without first having recourse to any such other security.
9. (a) This Assignment of Rentals shall be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns (as the case may be), except that the Mortgagor may not assign or transfer any of its rights, benefits, duties, or obligations hereunder.  
  
(b) Any representation, warranty, undertaking and arrangement on the part of the Mortgagor shall survive the change in the name of the Lender or its amalgamation with or absorption by any other corporation limited.
10. (a) This Assignment of Rentals may only be varied or modified by supplemental agreement or other document executed by all the parties hereto.  
  
(b) No provision hereof may be amended, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the amendment, waiver, discharge or termination is sought.
11. (a) Any notice, request, certificate, demand or other communication to the Mortgagor in connection herewith is to be sent to it at its address herein mentioned or to such other address in Hong Kong as may have been

notified in writing by the Mortgagor to the Lender in accordance with this Clause 11(a).

(b) Any notice or other communication to the Lender in connection herewith is to be sent to it at its address herein mentioned or to such other address as may have been notified in writing by the Lender to the Mortgagor in accordance with this Clause 11(b).

(c) Any notice, request, certificate, demand or other communication delivered personally shall be deemed to have been given at the time of such delivery. Any notice, request, certificate, demand or other communication dispatched by letter postage prepaid shall be deemed to have been given forty-eight (48) hours after posting. Any notice, request, certificate, demand or other communication sent by telex or facsimile transmission shall be deemed or to have been given at the time of dispatch and any notice, request, certificate, demand or other communication sent by cable shall be deemed to have been given twenty-four (24) hours after dispatch Provided however that any notice, request or other communication to the Lender shall only be effective upon actual receipt thereof by the Lender.

(d) Any legal process including any writ or originating summons or otherwise and any other summons or notice to be served on the Mortgagor by the Lender or by the Mortgagor on the Lender in any legal proceeding or action in any court or tribunal shall be deemed to be sufficiently and duly served forty-eight (48) hours after having been left or sent by ordinary pre-paid post to the addressee's registered office or usual place of business in Hong Kong and in proving such service it shall be sufficient to prove that the legal process or summons or notice was properly addressed and posted or properly left (as the case may be) irrespective of whether the same is returned through the post undelivered to the addressee.

12. (a) No waiver of any of the rights or powers of the Lender or any consent by the Lender shall be valid unless signed by the Lender in writing.

(b) Time shall be of the essence of this Assignment of Rentals but no failure or delay by the Lender in exercising or enforcing any right, remedy, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or

partial exercise or enforcement of any right, remedy, power or privilege preclude any further exercise or enforcement thereof or the exercise or enforcement of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers or privileges provided by law.

13. Any provision of this Assignment of Rentals prohibited by or unlawful or unenforceable under any applicable law actually applied by any court of competent jurisdiction shall, to the extent required by such law, be severed from this Assignment of Rentals and rendered ineffective so far as is possible without modifying the remaining provisions of this Assignment of Rentals. Where however the provisions of any such applicable law may be waived, they are hereby waived by the parties hereto the full extent permitted by such law to the end that this Assignment of Rentals shall be a valid and binding agreement enforceable in accordance with its terms.
14. Unless expressly provided to the contrary in this Assignment of Rentals, a person who is not a party to the Assignment of Rentals 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 this Assignment of Rentals, the consent of any third party is not required for any variation (including any release or compromise of any liability), rescission or termination of this Assignment of Rentals.
15. (a) This Assignment of Rentals shall be governed by and construed in all respects in accordance with laws of Hong Kong and the parties hereby irrevocably submit to the non-exclusive jurisdiction of the Hong Kong Courts.  
  
(b) The submission of the Mortgagor to the jurisdiction of the Hong Kong Courts shall not restrict the right of the Lender to take proceedings against the Mortgagor in any other court(s) having, claiming or accepting jurisdiction over the Mortgagor or any of its assets, nor shall the taking of proceedings in any one or more jurisdiction(s) preclude the taking of proceedings in any other jurisdiction(s), whether concurrently or not.  
  
(c) The Mortgagor agrees that in any legal action or proceedings against it or its assets in connection with this Assignment of Rentals, no immunity from such legal action or proceedings shall be claimed by or on behalf of the

Mortgagor or with respect to its assets, and the Mortgagor irrevocably waives any such right of immunity which its or its assets now has/have or may hereafter acquire or which may be attributed to its assets and consents generally in respect of any such legal action or proceedings to the giving of any relief or the issue of any process in connection with such action or proceedings including, without limitation, the making, enforcement or execution against any properly whatsoever, of any order or judgment which may be made or given in such action or proceedings.

16. The Mortgagor shall be liable for and shall fully reimburse the Lender in respect of all costs, charges and expenses (including legal fees on a solicitor-and own-client basis) incurred and to be incurred by the Lender in connection with the negotiation, preparation, execution and enforcement of this Assignment of Rentals.
17. This Assignment of Rentals may be executed in any number of counterparts and by the different parties hereto and separate counterparts, each of which when so executed and delivered shall be an original but all of which shall together constitute one and the same instrument.

IN WITNESS whereof the Mortgagor has duly executed this Assignment of Rentals the day and year first above written.

THIS FIRST SCHEDULE ABOVE REFERRED TO

SAMPLE

THIS SECOND SCHEDULE ABOVE REFERRED TO  
ASSIGNMENT OF RENTAL PROCEEDS

To : (the Tenant)

Re :

We hereby give you notice that by an Assignment of Rentals dated the day of , there has been assigned to DBS Bank (Hong Kong) Limited ("the Lender") all rights, title, interest and benefit to and in any moneys whatsoever payable to us by you in respect of the above Tenancy.

Accordingly, until further written notice from the Lender, we hereby authorise and instruct you to pay all payments of rent, licence fees and other moneys due and to become due and payable to us under the terms of the Tenancy directly to Lender into such account as the Lender shall from time to time direct. Please note that these instructions are not to be revoked or varied in any way without prior written consent of the Lender.

Please countersign one copy of this Notice to record your acknowledgement of receipt and to record that you will act in accordance with the terms hereof.

Date this day of .

\_\_\_\_\_  
(the Mortgagor)

I / We acknowledge receipt of the above notice of assignment and I / We agree to act in accordance with its terms.

\_\_\_\_\_  
(the Tenant)

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DATED

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to

**DBS Bank (Hong Kong) Limited**

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**ASSIGNMENT OF RENTALS**

of

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THIS ASSIGNMENT OF RENTALS dated this  
is made BETWEEN :-

day of

20

(1)

(hereinafter called "the Mortgagor"); and

(2) **DBS Bank (Hong Kong) Limited** whose registered office is situate at 11<sup>th</sup> Floor, The Center, 99 Queen's Road Central, Hong Kong (hereinafter called "the Lender").

WHEREAS :-

(A) \_\_\_\_\_ ("the Borrower") has applied to the Lender for the grant of general banking facilities and the Lender has agreed to grant the same to such extent and upon and subject to such terms and conditions as shall from time to time be mutually agreed between the Borrower and the Lender or be stipulated by the Lender ("the general banking facilities").

(B) As one of the conditions of the grant of the general banking facilities to the Borrower, the Mortgagor (as mortgagor) has entered into a First Legal Charge/Mortgage for \_\_\_\_\_ dated \_\_\_\_\_ ("the Mortgage") over the Mortgagor's property more particularly described in the First Schedule hereto ("the Property") as security for the Secured Indebtedness (as hereinafter defined).

(C) It is a further condition of the grant of the general banking facilities that the Mortgagor should execute an assignment of all rental derived from the Property in favour of the Lender as security for the Secured indebtedness.

(D) Expressions defined in the Mortgage shall, unless re-defined herein or the context otherwise requires, have the same meanings when used in this Assignment of Rentals.

(E) Unless otherwise stated, references to Clauses, Schedule and Appendices are to Clauses of, Schedule and Appendices to this Assignment of Rentals.

- (F) References in this Assignment of Rentals to any Ordinance shall (except where the context otherwise requires) be deemed to include any statutory re-enactment thereof or any statutory modification thereof having substantially the same legal effect but not having retrospective effect.
- (G) Words importing the singular number only shall include the plural and vice versa, and words importing the masculine gender shall include the feminine and neuter genders and vice versa, and words importing persons shall include firms and corporations and vice versa.

NOW THIS ASSIGNMENT OF RENTALS WITNESSETH AND IT IS HEREBY AGREED AND DECLARED as follows :-

1. In this Assignment of Rentals, the following expressions shall have the following meaning :-

“Deposits” means the deposits paid or to be paid by any Lessees under the terms of Leases;

“Hong Kong” means the Hong Kong Special Administrative Region of the People’s Republic of China;

“Lease(s)” means any letting (including any lease, tenancy agreement, agreement for lease or tenancy, contractual licence and letter of intent to create lease or tenancy or contractual licence) of the Property or any part thereof;

“Lessee(s)” means any lessee or tenant or licensee of the Property or any part thereof;

“Rental Proceeds” means all rental, licence fees and all other moneys (other than the Deposits and excluding management fee or utility charges where the Mortgagor is receiving the same as receiving agent only for the purpose or passing on to the beneficiary) payable at any time hereafter by the Lessees to the Mortgagor in its capacity as lessor or licensor under the terms of their respective Leases; and

"Secured Indebtedness" means all sum from time to time advanced or granted to and outstanding by the Borrower together with interest thereon and all other moneys and obligations in respect of moneys which the Mortgagor covenants to pay to the Lender under the terms of the Mortgage; and

"Event of Default" means default in payment of any of the moneys secured by the Mortgage or the interest for the same or any part thereof or in payment of any moneys for the time being due or claimed by the Lender to be due under any of the covenants terms or conditions contained in the Mortgage or any breach non-observance or non-performance by the Mortgagor of any covenants terms or conditions under the Mortgage.

2. As security for the discharge of the Secured Indebtedness and the observance and performance by the Mortgagor of the agreements covenants and conditions contained in the Mortgage, the Mortgagor as legal and beneficial owner hereby ASSIGNS and AGREES TO ASSIGN to the Lender all the Mortgagor's right, title, interest, and benefit to and in any moneys whatsoever payable (whether now or in the future) to the Mortgagor by present or future Lessees (including, without limitation, the Deposits and the Rental Proceeds) and all other rights and benefits whatsoever securing (whether now or in the future) to the Mortgagor, in the Mortgagor's capacity as lessor/licensor, from present or future Lessees TO HOLD the same unto the Lender absolutely SUBJECT to the proviso for cesser hereinafter contained; and
3. Upon payment to the Lender of the whole of the Secured Indebtedness and the observance and performance by the Mortgagor of the agreements covenants and conditions contained in the Mortgage, the Lender shall, as soon as practicable, at the request and cost of the Mortgagor, reassign and discharge the subject matter of this Assignment of Rentals to the Mortgagor or as it shall direct.
4. (a) The Mortgagor hereby undertakes with the Lender that the Mortgagor shall :-
  - (i) at its own cost and expense take all necessary steps to procure the due performance by all lessees of their obligations under the Leases;

- (ii) promptly and diligently :-
- (1) perform the obligations on its part contained in any Lease;
  - (2) notify the Lender in writing of any default or breach by the Mortgagor and/or a Lessee under any Lease; and
  - (3) institute and maintain all such proceedings as may be necessary or expedient to preserve or protect the interests of the Mortgagor and the Lender in any Lease;
- (iii) forthwith upon the occurrence of an Event of Default or upon request of the Lender, give notice of this Assignment of Rentals to all Lessees in the form set out in the Second Schedule or in such other form as may from time to time be required by the Lender and shall pay and procure that the Lessees shall so do, all payment of Deposits and Rental Proceeds becoming due thereafter direct to the Lender or into such account as the Lender shall from time to time direct or to such person and in such manner as the Lender shall from time to time direct;
- (iv) in the event that notice has been or should have been given by the Mortgagor pursuant to sub-clause (iii) above, hold all payments of Rental Proceeds and Deposits thereafter received from the Lessees by the Mortgagor or its agents in trust for the Lender and shall forthwith upon receipt pay the same over to the Lender or into such account as the Lender shall from time to time direct or to such person and in such manner as the Lender shall from time to time direct;
- (v) in the event of the Mortgagor at any time hereafter entering into any Lease, (1) furnish promptly to the Lender all particulars and information the Lender may require in respect of such Lease, (2) by virtue of this Assignment of Rentals, be deemed to have entered into and executed an assignment in favour of the Lender in like terms to those contained in this Assignment of Rentals in respect of such Lease;

- (vi) upon request of the Lender, forthwith deliver to the Lender an up-date list of all Leases and/or the original duly stamped counterparts thereof;
  - (vii) upon request of the Lender, promptly and duly execute and deliver any and all such further instruments and documents and documents as the Lender may require for the purpose of obtaining the full benefit of this Assignment of Rentals and of the rights and powers hereby granted.
- (b) The Mortgagor hereby further undertakes with the Lender that the Mortgagor will not without the prior written consent of the Lender :-
- (i) assign, mortgage, charge, pledge, otherwise encumber or transfer, otherwise deal with, grant or suffer to arise any third party rights on or against the Rental Proceeds or any of the Mortgagor's right, title, interest and benefit thereto and therein, or any rights of the Mortgagor under any Lease, to anyone other than the Lender or purport to do any of the foregoing or enter into any agreement to do any of the foregoing;
  - (ii) assign, mortgage, charge, pledge, otherwise encumber or transfer, otherwise deal with, grant or suffer to arise any third party rights on or against the Deposits or any of the Mortgagor's right, title, interest and benefit thereto and therein to anyone other than the Lender or purport to do any of the foregoing or enter into any agreement to do any of the foregoing;
  - (iii) take or omit to take any action, the taking or omission of which might result in any alteration or impairment of any Lease or this Assignment of Rentals or of any of the rights created by any Lease or this Assignment or Rentals;
  - (iv) waive or amend any of its rights or the Lender's rights in any Lease or permit or agree to cancellation or any alteration of any Lease or

purport so to do, or enter into any agreement to do any of the foregoing;

- (v) (save and except as expressly provided under the Lease) demand or receive from any Lessee any rent or licence fee more than one (1) month in advance, or purport or agree so to do.

- 5. (a) All payments of Deposits and/or Rental Proceeds to be paid to the Lender or to be paid as the Lender shall otherwise direct pursuant to Clause 4(a)(iii) may (at the absolute discretion of the Lender and the Mortgagor hereby irrevocably authorizes the Lender so to do) be applied by the Lender in or towards payment of the Secured Indebtedness (and in the event of deficiency, in and towards such part(s) thereof as the Lender may at its absolute discretion determine). Pending application as aforesaid, any Rental Proceeds so received shall be placed by the Lender in a suspense account for such period as the Lender may in its discretion determine and, subject always to the Lender's right of application hereinbefore contained, all sums standing to the credit of such account shall be released by the Lender to the Mortgagor when the subject matter of this Assignment of Rentals is reassigned to the Mortgagor pursuant to Clause 3.

- (b) Upon payment to the Lender of the whole of Secured Indebtedness, the Lender shall, as soon as practicable upon written request of the Mortgagor, pay to the Mortgagor or other person entitled all remaining sums (whether representing Rental Proceeds, Deposit or otherwise) in the hands of the Lender received pursuant to this Assignment of Rentals.

- 6. **Notwithstanding anything herein contained to the contrary, the Mortgagor shall remain liable under all Leases to perform all the obligations assumed by it thereunder and the Lender shall not be under any obligation or liability thereunder by reason of this Assignment of Rentals or anything arising therefrom nor shall the Lender be required to assume or be under any obligation in any manner to perform or fulfil any obligation of the Mortgagor under or pursuant to any Lease or to make any payment thereunder or to enforce against any Lessee any term or condition of a Lease or to make any**

**enquiries as to the nature or sufficiency of any payment received by the Lender by virtue of this Assignment of Rentals.**

7. In order to enable the Lender to collect and receive and give a good discharge and (if it deems expedient) to sue for any and all moneys and claims for moneys due and to become due under or arising out of any Lease in the name of the Mortgagor, the Mortgagor hereby irrevocably and by way of security appoints the Lender (with full power of substitution) as the Mortgagor's attorney to execute, sign, seal, as its act and deed deliver, do and perform in the name of the Mortgagor all such deeds acts and things as the Lender might do in its own name under this Assignment of Rentals and to give notices of this Assignment of Rentals to the Lessees.
8. (a) The security hereby constituted is to be a continuing security and accordingly shall remain in operation until all of the Secured Indebtedness has been paid off or satisfied in full.  
  
(b) The security hereby constituted shall not be affected or discharged by the taking, holding, varying, non-enforcement or release by the Lender of any other security for all or any of the sums of payment of which is hereby covenanted to be made or is hereby secured, or by any other thing done or omitted or neglected to be done by the Lender in relation to any such other security, and is in addition to and not in substitution for any other security which the lender may at any time hold for the payment of such moneys or any of them and may be enforced without first having recourse to any such other security.
9. (a) This Assignment of Rentals shall be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns (as the case may be), except that the Mortgagor may not assign or transfer any of its rights, benefits, duties, or obligations hereunder.  
  
(b) Any representation, warranty, undertaking and arrangement on the part of the Mortgagor shall survive the change in the name of the Lender or its amalgamation with or absorption by any other corporation limited.

10. (a) This Assignment of Rentals may only be varied or modified by supplemental agreement or other document executed by all the parties hereto.
- (b) No provision hereof may be amended, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the amendment, waiver, discharge or termination is sought.
11. (a) Any notice, request, certificate, demand or other communication to the Mortgagor in connection herewith is to be sent to it at its address herein mentioned or to such other address in Hong Kong as may have been notified in writing by the Mortgagor to the Lender in accordance with this Clause 11(a).
- (b) Any notice or other communication to the Lender in connection herewith is to be sent to it at its address herein mentioned or to such other address as may have been notified in writing by the Lender to the Mortgagor in accordance with this Clause 11(b).
- (c) Any notice, request, certificate, demand or other communication delivered personally shall be deemed to have been given at the time of such delivery. Any notice, request, certificate, demand or other communication dispatched by letter postage prepaid shall be deemed to have been given forty-eight (48) hours after posting. Any notice, request, certificate, demand or other communication sent by telex or facsimile transmission shall be deemed or to have been given at the time of dispatch and any notice, request, certificate, demand or other communication sent by cable shall be deemed to have been given twenty-four (24) hours after dispatch Provided however that any notice, request or other communication to the Lender shall only be effective upon actual receipt thereof by the Lender.
- (d) Any legal process including any writ or originating summons or otherwise and any other summons or notice to be served on the Mortgagor by the Lender or by the Mortgagor on the Lender in any legal proceeding or action in any court or tribunal shall be deemed to be sufficiently and duly served forty-eight (48) hours after having been left or sent by ordinary pre-paid post to the addressee's registered office or usual place of business in Hong

Kong and in proving such service it shall be sufficient to prove that the legal process or summons or notice was properly addressed and posted or properly left (as the case may be) irrespective of whether the same is returned through the post undelivered to the addressee.

12. (a) No waiver of any of the rights or powers of the Lender or any consent by the Lender shall be valid unless signed by the Lender in writing.

(b) Time shall be of the essence of this Assignment of Rentals but no failure or delay by the Lender in exercising or enforcing any right, remedy, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise or enforcement of any right, remedy, power or privilege preclude any further exercise or enforcement thereof or the exercise or enforcement of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers or privileges provided by law.

13. Any provision of this Assignment of Rentals prohibited by or unlawful or unenforceable under any applicable law actually applied by any court of competent jurisdiction shall, to the extent required by such law, be severed from this Assignment of Rentals and rendered ineffective so far as is possible without modifying the remaining provisions of this Assignment of Rentals. Where however the provisions of any such applicable law may be waived, they are hereby waived by the parties hereto the full extent permitted by such law to the end that this Assignment of Rentals shall be a valid and binding agreement enforceable in accordance with its terms.

14. Unless expressly provided to the contrary in this Assignment of Rentals, a person who is not a party to the Assignment of Rentals 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 this Assignment of Rentals, the consent of any third party is not required for any variation (including any release or compromise of any liability), rescission or termination of this Assignment of Rentals.

15. (a) This Assignment of Rentals shall be governed by and construed in all respects in accordance with laws of Hong Kong and the parties hereby

irrevocably submit to the non-exclusive jurisdiction of the Hong Kong Courts.

- (b) The submission of the Mortgagor to the jurisdiction of the Hong Kong Courts shall not restrict the right of the Lender to take proceedings against the Mortgagor in any other court(s) having, claiming or accepting jurisdiction over the Mortgagor or any of its assets, nor shall the taking of proceedings in any one or more jurisdiction(s) preclude the taking of proceedings in any other jurisdiction(s), whether concurrently or not.
  - (c) The Mortgagor agrees that in any legal action or proceedings against it or its assets in connection with this Assignment of Rentals, no immunity from such legal action or proceedings shall be claimed by or on behalf of the Mortgagor or with respect to its assets, and the Mortgagor irrevocably waives any such right of immunity which its or its assets now has/have or may hereafter acquire or which may be attributed to its assets and consents generally in respect of any such legal action or proceedings to the giving of any relief or the issue of any process in connection with such action or proceedings including, without limitation, the making, enforcement or execution against any properly whatsoever, of any order or judgment which may be made or given in such action or proceedings.
16. The Mortgagor shall be liable for and shall fully reimburse the Lender in respect of all costs, charges and expenses (including legal fees on a solicitor-and own-client basis) incurred and to be incurred by the Lender in connection with the negotiation, preparation, execution and enforcement of this Assignment of Rentals.
17. This Assignment of Rentals may be executed in any number of counterparts and by the different parties hereto and separate counterparts, each of which when so executed and delivered shall be an original but all of which shall together constitute one and the same instrument.

IN WITNESS whereof the Mortgagor has duly executed this Assignment of Rentals the day and year first above written.

THIS FIRST SCHEDULE ABOVE REFERRED TO

SAMPLE

THIS SECOND SCHEDULE ABOVE REFERRED TO  
ASSIGNMENT OF RENTAL PROCEEDS

To : (the Tenant)

Re :

We hereby give you notice that by an Assignment of Rentals dated the day of , there has been assigned to DBS Bank (Hong Kong) Limited ("the Lender") all rights, title, interest and benefit to and in any moneys whatsoever payable to us by you in respect of the above Tenancy.

Accordingly, until further written notice from the Lender, we hereby authorise and instruct you to pay all payments of rent, licence fees and other moneys due and to become due and payable to us under the terms of the Tenancy directly to Lender into such account as the Lender shall from time to time direct. Please note that these instructions are not to be revoked or varied in any way without prior written consent of the Lender.

Please countersign one copy of this Notice to record your acknowledgement of receipt and to record that you will act in accordance with the terms hereof.

Date this day of .

\_\_\_\_\_  
(the Mortgagor)

I / We acknowledge receipt of the above notice of assignment and I / We agree to act in accordance with its terms.

\_\_\_\_\_  
(the Tenant)

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Dated \_\_\_\_\_

to

**DBS Bank (Hong Kong) Limited**

\_\_\_\_\_  
**MORTGAGE**  
of

\_\_\_\_\_

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## **MORTGAGE**

### **DATED**

### **PARTIES**

(1)

(the "**Mortgagor**").

(2) **DBS Bank (Hong Kong) Limited** whose registered office is situate at 11<sup>th</sup> Floor, The Center, 99 Queen's Road Central, Hong Kong (the "**Lender**" which shall include any branch in any location, and its successors and assigns).

### **WHEREAS**

- (1) The Mortgagor is the registered owner of the Property (as hereinafter defined) which is held from The Government of the Hong Kong Special Administrative Region under and by virtue of the Government Grant referred to in Schedule I hereto subject to the payment of the premium (if any) and Government rent and to the performance and observance of the covenants terms and conditions by and in the said Government Grant reserved and contained.
- (2) The Mortgagor has applied to the Lender to grant or to continue to grant to the Mortgagor Facilities (as defined below) to such extent as the Lender may from time to time determine at its absolute discretion and the Lender has agreed to grant the same subject as hereinafter mentioned upon the Mortgagor entering into the covenants and obligations contained in these presents and upon the Mortgagor charging to the Lender the Property as security for the due payment of all moneys payable or which may at any time hereafter or from time to time become payable by the Mortgagor to the Lender whether under or pursuant to any of the covenants terms and conditions hereinafter contained or otherwise howsoever.

### **PROVISIONS**

#### **1. INTERPRETATION**

- 1.1 In this Mortgage including the Recitals, the following expressions shall have the meanings except where the context otherwise requires:-

**"Deed of Mutual Covenant"**

the Deed of Mutual Covenant and Management Agreement (if any) referred to in Schedule I and any variation or modification thereof;

**"Dispose" and "Disposal"**

any sale, assignment, exchange, transfer, concession, loan, lease, surrender of lease, tenancy, licence, direct or indirect reservation, waiver, compromise, release, dealing with or in or granting of any option, right of first refusal or other right or interest whatsoever or any agreement for any of the same;

**"Encumbrance"**

any mortgage, charge, pledge, lien (otherwise than arising by statute or operation of law), hypothecation or other encumbrance, priority or security interest, whatsoever over or in the Property;

**"Event of Default"**

any event set out in Clause 7.1;

**"Facilities"**

the general banking facilities made available or to be made available to the Mortgagor by the Lender or any other transactions entered or to be entered into between the Mortgagor and the Lender, in each case from time to time (including but not limited to all types of loans, advances, banking or credit facilities, treasury facilities, foreign exchange dealings and transactions, interest rate or other swap transactions, options or forwards trading facilities, any derivative transactions and all other facilities, accommodation, transactions or arrangements of whatever nature);

**"Fixtures"**

all fixed plant, fixed machinery and fixtures (including trade fixtures), fittings, goods and materials (other than those being personal chattels within the Bills of Sale Ordinance (Cap.20)) from time to time on or in the Property;

**"Government"**

the Government of the Hong Kong Special Administrative Region;

**"Government Lease"**

the Government Lease or Conditions referred to in Schedule I and any variation or modification thereof under which the Property is held from the Government at the date hereof by the Mortgagor;

**"Interest"**

interest at such rate(s) per annum as is/are applicable under the terms relating to the Facilities or as determined by the Lender (which determination shall be conclusive and binding on the Mortgagor);

**"Mortgage"**

this Mortgage as from time to time supplemented, amended or modified;

**"Obligations"**

all principal, interest and other amounts (whether present, future, actual and/or contingent) from time to time owing by the Mortgagor to the Lender on any current and/or other account and all other liabilities and obligations

whatsoever (whether present, future, actual and/or contingent) of the Mortgagor to the Lender whether as principal or guarantor;

**"Property"**

the property registered or to be registered in the name of the Mortgagor and the Mortgagor's interest therein and more particularly described in Schedule I and, where the context so admits, it shall also mean any part of such property;

**"Receiver"**

a receiver or a receiver and manager for the time being appointed by the Lender hereunder and includes any permitted delegate or sub-delegate of the same;

**"Regulations"**

all planning, building, fire and other laws, regulations and directives affecting the Property;

**"Security Documents"**

this Mortgage, any facility letters, master agreements and other documentation in respect of the Facilities and all other documents supplemental to, collateral with or derived from them.

1.2 References in this Mortgage to :-

- (a) the Lender includes the Bank specifically named and its successors and assigns;
- (b) the Mortgagor includes, in the case of a natural person the person specifically named and his executors, administrators and assigns and in the case of a body corporate the body corporate specifically named and its successors and assigns; in the case of persons holding as tenants in common it includes the persons specifically named and their respective executors, administrators and assigns and in the case of persons holding as joint tenants it includes the persons specifically named and the survivors or survivor of them and the executors and administrators of such survivor, his or their assigns; and if the Mortgagor consists of two or more persons, any reference to the Mortgagor herein shall (except as otherwise specified in this Mortgage) be construed as reference to any one or more or all of such persons (as the case may be);
- (c) clauses and the Schedules are references to clauses hereof and the Schedule hereto;
- (d) sub-clauses and paragraphs are, unless otherwise stated, references to sub-clauses and paragraphs of the clause and sub-clause in which the reference appears;
- (e) words denoting the singular shall include the plural and vice versa and words denoting one gender shall include all genders; and

- (f) any laws, Ordinances, rules or regulations will, as required, be deemed also to include any amendment, re-enactment, consolidation, replacement and/or successor thereof.
- 1.3 Where the Mortgagor comprises two or more persons, each covenant and agreement herein on the part of the Mortgagor shall be deemed to have been given or made by such persons jointly and severally to the intent that each of the Mortgagor can be held fully responsible for complying with the obligations contained in this Mortgage even if this Mortgage cannot be enforced against the other of the Mortgagor.
- 1.4 Headings are inserted for convenience and for reference only and in no way define, limit or describe the scope of this Mortgage or the intent of any provision hereof, and shall be disregarded in construing this Mortgage.

## **2. COVENANT TO DISCHARGE OBLIGATIONS**

- 2.1 In consideration of the Lender agreeing to make available to or enter with the Mortgagor the Facilities upon such terms and subject to such conditions as the Lender and the Mortgagor may from time to time agree, the Mortgagor covenants to pay on demand all Obligations to the Lender.
- 2.2 The Lender shall not be bound to make advances or payment or to incur liabilities in respect of the Facilities beyond such sum as the Lender shall in its absolute discretion from time to time consider to be safe.

## **3. CHARGING CLAUSE**

- 3.1 In consideration of the premises and with the object and intention of affording to the Lender a continuing security for the discharge of the Obligations and the due observance and performance by the Mortgagor of the agreements covenants and conditions contained in this Mortgage, the Mortgagor hereby :-
- (a) (i) as beneficial owner CHARGES the Property to the Lender by way of first fixed mortgage SUBJECT as is more particularly specified in Schedule I and to and with the benefit of all leases, tenancies, rights, licences, covenants, conditions and other incidents of tenure affecting the Property provided that insofar as the Property comprises a legal estate in land the charge herein contained shall be a legal charge over the Property;
- (ii) HEREBY ASSIGNS or agrees to assign unto the Lender the full benefit and all rights of all the terms and conditions more particularly specified in Schedule I and of any payment, covenant, agreement, undertaking or indemnity contained in any sale and purchase agreement, lease or other document, agreement or undertaking whatsoever in respect of or relating to the Property now subsisting or to be created hereafter TO HOLD the same unto the Lender absolutely

SUBJECT to the proviso for redemption hereinafter contained.

- (b) (i) ASSIGNS to the Lender all the interest of the Mortgagor in and the benefit to the Mortgagor arising out of all insurances relating to the Property or any part thereof and the right to receive any sums payable to the Mortgagor in respect thereof;
- (ii) AGREES TO ASSIGN legally to the Lender by a document in a form and substance required by the Lender all insurances relating to the Property of which the Mortgagor is entitled to the benefit forthwith upon notice by the Lender;
- (c) ASSIGNS to the Lender, (and agrees to assign to the Lender and will, if so required, execute a separate assignment or separate assignments in such form and substance as the Lender may require of), the sale proceeds, the rents and other sums of money and deposits now or to become payable by virtue of each sale agreement, lease, tenancy agreement or other Disposal now or hereafter concluded in respect of the Property or any part thereof together with power for the Lender to sue for recovery and give effectual discharges for the same in the name of the Mortgagor.

3.2 Notwithstanding the provision of Clause 3.1, the Property is charged only to the extent of providing security for the amount (if any) shown in the Schedule II, as well as in respect of all interest, costs, charges and expenses mentioned herein. For the avoidance of doubt, if the said Schedule II is not completed, this Mortgage shall secure all monies owed by the Mortgagor to the Lender.

#### **4. RELEASE**

If the Mortgagor shall repay to the Lender the Obligations hereby secured in accordance in all respects with the covenants in that behalf herein contained and observe and perform the covenants terms and conditions herein contained and on the part of the Mortgagor to be observed and performed then the Lender shall at the request and cost of the Mortgagor (including the expense of making a certified true copy of any Power of Attorney under which the Lender shall have executed or signed any deed or instrument) sign or execute a receipt for the Obligations hereby secured or otherwise discharge or release the security constituted by this Mortgage.

#### **5. REPRESENTATIONS AND WARRANTIES**

The Mortgagor represents and warrants to the Lender that :-

- (a) the Mortgagor is the beneficial owner of, has a good and marketable title to the Property and he/it has good right to charge the Property in manner aforesaid free from all Encumbrances save as may be specified herein;
- (b) the Government Lease and the Deed of Mutual Covenant are valid and subsisting and not voidable;

- (c) none of the Property has been Disposed of and, subject as disclosed to the Lender in writing prior to the date hereof, the Property is free from all Encumbrances;
- (d) in respect of existing tenancies of the Property as disclosed to the Lender in writing prior to the date hereof, no option to renew or purchase has been granted to the tenant(s) or any of them other than as disclosed to the Lender in writing and no advance payment of rent has been or will be demanded, accepted or paid other than the monthly rent as and when it falls due each calendar month;
- (e) all moneys due under any covenant relating to the Property under the Government Lease and the Deed of Mutual Covenant have been paid and any other covenants terms and conditions contained in the Government Lease and the Deed of Mutual Covenant so far as they relate to the Property have been observed and performed up to the date hereof; and
- (f) each of the above representations and warranties and any implied by law will be correct and complied with in all respects so long as the Obligations remain payable under the Security Documents.

## **6. COVENANTS**

6.1 The Mortgagor covenants with the Lender that the Mortgagor will :-

- (a) not make any Disposal or create or permit to subsist any Encumbrance over the whole or any part or parts of the Property except with the prior consent in writing of the Lender;
- (b) fully and completely observe and comply with:
  - (i) the covenants and conditions reserved and contained in the Government Lease and the Deed of Mutual Covenant; and
  - (ii) all Regulations;
- (c) not agree to any modification or waiver of the Government Lease or Deed of Mutual Covenant or of any lease, tenancy agreement, licence or any other Disposal of interest affecting the Property without the prior written approval of the Lender;
- (d) take all necessary action to preserve the Property against forfeiture, re-entry and re-possession by the Government;
- (e) take out, maintain and comply with the terms of insurance in respect of the Property which insurance shall :
  - (i) be in the joint names of the Mortgagor and the Lender or have the interest of the Lender denoted on the policy;

- (ii) be with such reputable insurance company carrying on business in the Hong Kong Special Administrative Region as the Lender may previously approve in writing;
- (iii) be against loss or damage by fire, lightning, explosion, storm, tempest, flood, typhoon, impact, landslip, subsidence, aircraft (other than hostile aircraft) and other aerial devices or articles dropped therefrom, earthquake, riot and strikes, malicious damage, third party risks and such other risks and contingencies as are normally covered by a comprehensive policy maintained by a prudent company owning similar property and carrying on similar business in the Hong Kong Special Administrative Region and as the Lender may from time to time reasonably require;
- (iv) be to a minimum of the full reinstatement value of the Property (including architect's and surveyor's fees and demolition costs and the costs of shoring up), provided that if the full reinstatement value referred to above cannot be agreed between the Mortgagor and the Lender, it shall be determined by a leading international firm of surveyors and valuers or other appropriate expert approved by the Lender at the expense of the Mortgagor; and
- (v) have clauses in a form satisfactory to the Lender to the effect that:
  - (01) payment will be made to the Lender in full, without any deductions, of all moneys and ex gratia payments in respect thereof;
  - (02) in the event that the Mortgagor becomes insolvent or goes into liquidation or ceases to carry on business, the insurer will, regardless of such insolvency or liquidation or cessation of business, assume liability on the same terms and conditions and for the remaining period that it would have assumed such liability in the absence of such insolvency or liquidation or ceasing to carry on business;
  - (03) the insurer undertakes to advise the Lender of :
    - (A) any alteration in, cancellation of, termination of, or expiry of the insurance at least 14 days before such alteration, cancellation, termination or expiry is due to take effect; and
    - (B) any default in the payment of any premium or failure to renew the insurance at least 14 days prior to the date of renewal thereof;

(04) with respect to the Lender, it shall be and remain enforceable in respect of any claim arising as a result of any act or thing occurring less than 14 days prior to notice to the Lender of any invalidity, avoidance or unenforceability in whole or in part of the insurance; and

(05) the Lender is not liable for the payment of premiums

PROVIDED ALWAYS that if the Mortgagor shall fail to insure the Property in accordance with the provisions contained in this Mortgage the Lender may insure the Property upon such terms and conditions as the Lender shall in its absolute discretion think fit and any money paid for such insurance shall be a charge on the Property in addition to the Obligations with the same priority and with Interest at the same rate;

- (f) pay or cause to be paid the premiums and all other moneys payable in connection with effecting or maintaining insurance taken out pursuant to Clause 6.1(e) and on demand to endorse over and deliver to the Lender the policy or policies of insurance together with the latest premium receipt and the Lender shall have a lien on the same and on all moneys thereby assured;
- (g) in the event of the Property being destroyed or damaged by fire or other peril the Mortgagor shall, unless otherwise agreed in writing by the Lender, lay out the insurance money received and at the Mortgagor's own expense make up any deficiency so as to fully and completely rebuild or reinstate the same to its original state and condition in accordance with the plans and specifications as shall be approved by the Lender and the relevant Government departments;
- (h) keep or cause to be kept the Property in a good and tenantable repair and condition to the satisfaction of the Lender and allow the Lender and any person nominated by the Lender to enter and to view the state of repair of the same at all reasonable times (without by so doing only be deemed to have taken possession of the Property or otherwise becoming liable as a mortgagee in possession);
- (i) promptly pay all premium, rates, taxes, Government rent, management and maintenance charges, expenses for all repairs, charges for power, lighting, water or other utilities, assessments and other outgoings whatsoever assessed, imposed or charged on or in respect of the Property, whether under the Government Lease, the Deed of Mutual Covenant or otherwise, and to indemnify the Lender against all actions, suits, claims, costs and expenses which may be incurred or sustained on account of the non-payment of such outgoings or the breach or non-performance of the covenants, obligations and agreements herein contained;

- (j) (if the Mortgagor is a body corporate) the Mortgagor will not create or agree to create or permit to arise any mortgage, charge, debenture or pledge creating any floating charge over or in respect of the Mortgagor's present or future undertaking, properties, assets, rights or revenues, or any part thereof, including its uncalled capital (if any) for the time being unless the Property and all rights and interests of the Mortgagor in respect of the Property are expressly excluded therefrom;
- (k) not without the prior written consent of the Lender carry out any operation on or institute or continue any use of the Property or any part or parts thereof for which the permission of any Governmental body or other competent authority is required or make any structural alterations or additions to the Property;
- (l) not commit any waste upon or injure or in any manner or by any means lessen the value of the Property;
- (m) forthwith deposit with the Lender all the deeds and documents of title relating to any of the Property; and
- (n) promptly inform the Lender of any event or of the receipt of any notice which may affect the title of the Mortgagor to the Property or its rights or interest therein or any Fixtures or fulfilment by the Mortgagor of any of the Mortgagor's covenants or obligations hereunder, or which may affect the security created by the Security Documents.

6.2 The Mortgagor further covenants with the Lender that :

- (a) if the Mortgagor shall default in the performance of the covenants and conditions contained in the Government Lease or in complying with its obligations under this Mortgage including but not limited to its obligations in keeping the Property in a good and substantial condition and state of repair, or in duly complying with all Regulations then and in any such case and so often as the same shall happen the Lender shall be at liberty to perform the covenants in respect of which such default shall be made and to comply with all such Regulations and the Mortgagor will forthwith repay on demand all moneys expended by the Lender therefor and until such repayment the same shall form part of the Obligations, shall have the benefit of the security contained in Clause 3 and shall bear Interest with effect from the date of demand for payment until repayment in full (both before and after judgment);
- (b) if at any time after an Event of Default has occurred or the power of sale herein contained shall become exercisable by the Lender, the Mortgagor will upon being given notice so to do by the Lender forthwith quit and deliver up vacant possession of the Property to the Lender or to whomsoever the Lender may nominate or direct and henceforth, the Property shall during the residue of the term of the Government Lease (and any renewal thereof) be held and enjoyed by the Lender without any lawful interruption or disturbance by the Mortgagor or any person charging by his direction or any person

rightfully claiming through under or in trust for the Mortgagor (other than in respect of an estate or interest subject to which this Mortgage is expressly made);

- (c) the Mortgagor shall execute and do all such assurances, acts, deeds and things as the Lender may require, and procure other interested parties so to do, for protecting or perfecting the security created by this Mortgage and to facilitate the exercise of all powers, authorities and discretions vested in the Lender or in any Receiver of the Property and shall in particular execute all transfers, conveyances, assignments, assurances and registrations, whether to the Lender or to its nominees or purchasers, or sub-purchasers and give all notices, orders and discretions which the Lender may think expedient and, for the purposes of this Clause, a certificate in writing by the Lender to the effect that any assurance or thing required by it is reasonably required shall be conclusive evidence of such fact;
- (d) in the event of the Mortgagor becoming entitled to apply for, or the Government offering, the taking up of a Government Lease or a renewal or extension of the term of the Government Lease the Mortgagor shall :
  - (i) forthwith make the application or accept the offer;
  - (ii) fully observe and perform the conditions of such taking up, renewal or extension and pay any premium or other consideration demanded and other costs and expenses in connection therewith;
  - (iii) immediately following completion of the taking up, renewal or extension of the Government Lease execute a new mortgage of the renewed or extended Government Lease or the shares owned by the Mortgagor therein and thereof to the Lender in the same form as this Mortgage or in a form substantially similar to this Mortgage with such consequential amendments as the circumstances require; and
  - (iv) pending execution of the mortgage pursuant to sub-clause 6.2(d)(iii) hold its interest in the Government Lease as renewed or extended in trust for the Lender.
- (e) all or any of the powers, authorities and discretions which are conferred upon the Lender and a Receiver of the whole or any part or parts of the Property shall continue to apply, mutatis mutandis, after the expiry of the term granted or agreed to be granted under the Government Lease, insofar as a Government Lease or an extension of the term under the Government Lease or a grant or regrant of the Property has been made to the Mortgagor by the Government or any competent authority and subject to such terms and conditions as may be imposed by the Government or such competent authority.

- 6.3 If on the expiry of the term granted or agreed to be granted under the Government Lease the Mortgagor does not become or is not entitled to an extension of the term granted by the Government Lease, and/or does not become or is not entitled to a regrant or new grant of an interest in the whole or any part of the Property, the Mortgagor shall forthwith furnish such alternative security to the Lender as the Lender shall require.
- 6.4 The Mortgagor hereby further covenants and undertakes with the Lender that if, based upon the valuation of the Property carried out at the expenses of the Mortgagor by a valuer acceptable to the Lender, the principal amount outstanding under the Facilities on the date of such valuation exceeds a certain percentage of the open market value of the Property as shown by such valuation (and, if applicable, the value of any additional security provided to the Lender hereunder), the Mortgagor shall, forthwith upon request of the Lender (1) effect a prepayment of the principal amount outstanding under the Facilities or a relevant part thereof together with all other sums due and payable in respect of the amount prepaid and/or (2) provide to the Lender such additional security as acceptable to the Lender as security for the Obligations so as to ensure that, immediately after the making of such prepayment and/or provision of security, the aggregate principal amount outstanding under the Facilities shall equal to a level satisfactory to the Lender by reference to the aggregate value of the Property and such additional security.
- 6.5 (i) If the Mortgagor shall fail or refuse to comply with his obligations under Clause 6.1, then and in any such event it shall be lawful for the Lender to act on behalf of the Mortgagor, and for such purposes the Mortgagor hereby irrevocably appoints the Lender's authorised officer by way of security to be the attorney of the Mortgagor to do such acts as may be necessary to ensure performance by the Mortgagor of such obligations, and to execute and sign, seal and, as the Mortgagor's act and deed, deliver such deeds and to sign such documents and instruments as the Lender shall consider necessary or desirable for such purpose and to pay such fees on behalf of the Mortgagor as shall be demanded by the Director of Lands or other competent authority (which fees, if paid by the Lender on the Mortgagor's behalf, shall be added to the Obligations and shall form part thereof) and to execute and to sign, seal and, as the Mortgagor's act and deed, deliver a new charge in such form and substance as the Lender shall require (or other security interest or alternative security as aforesaid) to the Lender as hereinbefore provided and to sign such documents and writing and to do all such other matters and things the Lender shall consider to be necessary or desirable for such purpose, and the Mortgagor shall ratify and confirm all that the said attorney shall lawfully do or cause to be done by virtue of the provisions herein contained;
- (ii) The Mortgagor shall provide the Lender with copies of all notices to or from all relevant Government departments or otherwise relating to the Property within seven (7) days of the service of such notices by or on the Mortgagor, or within such shorter period as is reasonable in the

circumstances, and shall comply with all governmental or other legal requirements and notices whether statutory or otherwise in respect of the Property.

6.6 The Mortgagor further covenants with the Lender that the Mortgagor shall :-

- (i) pay and take all such steps and make all such payments as may be necessary to comply with any notice or order in respect of any illegal or unauthorised structure or alterations (if any) in or at the Property which may be issued against the Property by the Buildings Authority or other Government authorities;
- (ii) solely be responsible for any claim that may be brought due to the existence of the said illegal or unauthorised structure or alterations of the Property or want of repair or maintenance of the same or any of them;
- (iii) forthwith upon the Lender's demand, pay and make good all losses damages costs and expenses suffered or incurred by the Lender, and shall indemnify and keep the Lender fully indemnified at all times on demand from and against any claims demands and liabilities as a result of and in connection with such illegal or unauthorised structure or alteration, or any failure of the Mortgagor to comply with the building order or notice issued against the Property aforesaid and/or terms and conditions in this Clause 6.6.

## **7. EVENTS OF DEFAULT**

7.1 The Lender shall be entitled to declare all or any part of this security hereby constituted immediately enforceable at any time if :-

- (a) the Mortgagor shall have failed to comply with a demand for repayment of the Obligations or any part thereof; or
- (b) the Mortgagor makes default in the payment on the due date and in accordance with the terms and conditions relating thereto of any principal or interest or other moneys outstanding and payable by the Mortgagor under any term loan account (whether demanded or not); or
- (c) any representation, warranty or statement by the Mortgagor is not complied with or proves to have been or to be incorrect; or
- (d) there shall be any breach of or omission by the Mortgagor to observe any of the agreements, covenants or obligations under the Security Documents or any of them; or
- (e) the Mortgagor becomes bound to repay prematurely any other loan or similar obligation for borrowed money by reason of a default in its obligations in respect of the same or fails to make any payment in respect thereof on the due date; or

- (f) (if applicable) a petition is presented or an order is made or an effective resolution is passed or analogous proceedings are taken for the winding up of the Mortgagor save for the purposes of an amalgamation, merger or reconstruction the terms whereof have previously been approved by the Lender; or
- (g) the Mortgagor convenes a meeting for the purpose of making, or proposes and/or enters into, any arrangement or composition for the benefit of its creditors; or
- (h) an encumbrancer takes possession or a receiver or other similar officer is appointed of the whole or any part of the assets, or the undertaking (if applicable) of the Mortgagor or a distress or execution is levied or enforced upon or sued out against any of the chattels or property of the Mortgagor and is not discharged within thirty days of being levied; or
- (i) the Mortgagor shall without the consent in writing of the Lender stop payment to creditors generally or (if applicable) the Mortgagor shall (otherwise than for the purpose of such an amalgamation, merger or reconstruction as is referred to in sub-clause 7.1(f)) cease or threaten to cease to carry on its business or any substantial part thereof or (if applicable) shall be deemed, for the purposes of Section 178 of the Companies Ordinance or any statutory modification or re-enactment thereof for the time being in force, to be unable to pay its debts or disposes or threatens to dispose of the whole or a substantial part of its undertaking or assets; or
- (j) a bankruptcy petition shall be presented against the Mortgagor or the Mortgagor shall become insolvent or make any composition or arrangement with the Mortgagor's creditors; or
- (k) the Mortgagor shall have any judgment or order of Court made or any execution levied against the Mortgagor's goods chattels or property; or
- (l) in the opinion of the Lender it has reasonable grounds to consider all or any part of the Property to be in danger of being seized or sold under any form of distress or execution levied or threatened or otherwise to be in jeopardy; or
- (m) there occurs a material adverse change in the Mortgagor's financial condition which would, in the opinion of the Lender, prevent it from performing in any material respect its obligations under the Security Documents; or
- (n) the Government or any competent authority shall re-enter or threaten to re-enter upon and take back possession of the Property provided that the provisions of this sub-clause (n) shall apply, mutatis mutandis, to any competent authority that extends or agrees to extend the terms of the Government Lease or grants, regrants or agrees to grant or regrant to the Mortgagor of the Property;

- 7.2 The Mortgagor covenants that it will notify the Lender forthwith in writing of the occurrence of any Event of Default.
- 7.3 Notwithstanding anything to the contrary contained in any facility letter, instrument, or other agreement or document to which the Mortgagor and the Lender are parties, the Lender shall be under no liability at any time after the occurrence of an Event of Default to honour any further obligations to provide or to continue to make available the Facilities or any other banking facilities under any arrangements relating to them and all term loans and other moneys, obligations and liabilities hereby secured not otherwise so repayable, shall become repayable immediately on demand, together with interest accrued thereon to the date of repayment in full, and cash cover shall be provided on demand for all contingent liabilities notwithstanding that the maturity thereof shall not have arrived or that the Mortgagor shall not have been called upon to pay thereunder.

## **8. LENDER'S POWERS**

- 8.1 If any Event of Default shall have occurred, then it shall be lawful for the Lender at any time thereafter without any consent of the Mortgagor or of any person :-
- (a) to enter into and take possession of the Property and for that purpose to take any legal proceedings and thenceforth to hold, possess and enjoy the Property and to take and receive the rents and profits thereof without any lawful interruption or disturbance by the Mortgagor or any other person;
  - (b) (subject to any lease or tenancy lawfully granted by the Mortgagor with the consent of the Lender) to Dispose of the Property or any part or parts thereof on such terms and conditions as he may think fit, to surrender and accept the surrender of tenancies or leases of the Property and so that (without prejudice to the generality of the foregoing) he may Dispose for a consideration consisting of cash, debentures or other obligations, shares, securities or other valuable consideration and any such consideration may be payable in a lump sum or by instalments spread over such period as he may think fit. Fixtures may be severed and sold separately from the Property containing them without the consent of the Mortgagor;
  - (c) to enter into a deed of mutual covenant relating to the Property and/or any other documents of a similar nature or grant or except any rights, easements or privileges over or in respect of the Property as the Lender shall in its absolute discretion think fit;
  - (d) without affecting the generality of sub-clause (b) hereof, whether or not the Lender shall have made such entry or taken possession aforesaid, sell, assign, call in, collect and convert into money the Property or any interest therein free from this Mortgage and any other estates, interests and rights to which this Mortgage has priority, with full power to sell the Property or any interest therein either together or

in parcels and either by public auction or tender or private contract and partly by one of such methods of sale and partly by any other one or more of such methods of sale with power upon any such sale to make any stipulations as to title or evidence of commencement of title or otherwise in such manner and subject to such lawful conditions as the Lender shall think expedient and either for a lump sum or for a sum to be paid by instalments or for a sum on account and subject to a charge or other security for the balance and with full power to give any option to purchase the same or to buy in or rescind or vary any contract of sale of the same and to re-sell the same without being responsible for any loss which may be occasioned thereby with full power to compromise and effect compositions, and for the purposes aforesaid or any of them to execute and do all such assurances and things as the Lender shall think fit

PROVIDED HOWEVER that where the Event of Default relates to the payment of any moneys payable hereunder no such sale, calling-in, collection or conversion into money shall be put into effect until the Lender shall have previously served on the Mortgagor (or any one of the Mortgagor where the Mortgagor comprises more than one person) a notice requiring payment of the Obligations and default has been made in payment thereof for a period of one calendar month after such service;

- (e) to make and effect all such repairs, alterations, improvements, maintenance and developments to and insurances of the Property as he may consider fit;
- (f) to commence, carry out and complete any building works, repairs, reconstruction, furnishing or equipment of the Property at the cost of the Mortgagor;
- (g) to enter into, perform or vary any contract or agreement for or relating to the Property and to discontinue, repudiate or rescind any such contract or agreement as aforesaid;
- (h) to appoint, hire and employ contractors, builders, workmen, managers, agents, officers, servants, solicitors, architects, surveyors, quantity surveyors, estate agents and others for any purpose on such terms and generally in such manner as the Lender may consider fit (including at such reasonable and proper remuneration as the Lender shall determine) and to discharge any such persons and any such persons appointed, hired or employed by the Lender;
- (i) to purchase or acquire all materials for use in connection with the exercise of his powers hereunder upon such terms and conditions as he may in any case think fit;
- (j) to settle, adjust, refer to arbitration, compromise and arrange any claims, accounts, disputes, questions and demands with or by any

person who is or claims to be a creditor of the Mortgagor or relating in any way to the Property;

- (k) to bring, prosecute, enforce, defend, compromise and abandon all claims, actions, suits and proceedings in relation to the Property as may seem to him to be expedient; and
- (l) to do all such other acts and things he may consider necessary or desirable in connection with the Property or for realising the Property or incidental or conducive to any of the matters, powers or authorities conferred on the Lender under or by virtue of this Mortgage and generally to exercise in relation to the Property all such powers, authorities and things as he would be capable of exercising and doing if he were the absolute beneficial owner of the same.

- 8.2 Upon any Disposal of the Property in pursuance of the aforesaid powers in that behalf and upon the exercise by the Lender of any of the aforesaid powers, a tenant or purchaser or any other person dealing with the Lender in connection therewith shall not be bound to see or enquire whether any default has been made in payment of the Obligations at the time hereinbefore appointed for payment thereof or whether any money remains owing on the security of this Mortgage or whether notice or demand has been given or made hereunder, or as to the propriety or regularity of the exercise of such powers.
- 8.3 Notwithstanding any impropriety or irregularity whatsoever in the exercise of such powers the same shall, as far as regards the safety and protection of any tenant or purchaser or any other person dealing with the Lender, be deemed to be within the aforesaid powers in that behalf and shall be valid and effectual accordingly.
- 8.4 The remedy of the Mortgagor in respect of any breach of the clauses or provisions hereinbefore contained or any obligations imposed by law upon the Lender from time to time with respect to the exercise of any such powers shall be in damages only.
- 8.5 The aforesaid powers may be exercised by any person who for the time being shall be entitled to receive and give a discharge for the moneys owing on the security of this Mortgage.
- 8.6 Subject as aforesaid the Lender shall not be answerable for any involuntary losses which may happen in the exercise of the aforesaid powers and trusts or any of them.
- 8.7 The provisions of this Clause 8 shall continue to apply, mutatis mutandis, after the expiry of the term granted or agreed to be granted under the Government Lease, in so far as an extension of the term under the Government Lease or a grant or regrant of the Property has been made to the Mortgagor by the Government or any competent authority and subject to such terms and conditions as may be imposed by the Government or such competent authority.

## **9. PROVISIONS AFFECTING RECEIVER**

9.1 If default in payment of the Obligations or any other Event of Default shall have occurred (and no delay or waiver of the right to exercise the powers conferred hereby shall prejudice the future exercise of such powers) the Lender may without further notice appoint in writing under the hand of the Lender such person or persons as the Lender thinks fit to be a Receiver of the Property, and the Lender may from time to time remove any Receiver so appointed and appoint another or others in his place, the following provisions shall apply with regard to any Receiver so appointed:-

- (a) any such appointment may be made before or after the Lender shall have entered into or taken possession of the Property;
- (b) any Receiver may (at the absolute discretion of the Lender) be appointed either Receiver of all of the Property or Receiver of such part or parts thereof as may be specified in the appointment and in such latter event the powers hereinbefore conferred on a Receiver shall have effect as though every reference therein to the Property were limited to the part or parts of the Property so specified;
- (c) any Receiver shall in the exercise of his powers, authorities and discretions conform to any regulations and directions from time to time made and given by the Lender Provided that no person dealing with the Lender or any Receiver shall be concerned to enquire whether the Receiver has so conformed to any such regulations and directions;
- (d) any Receiver shall be the agent of the Mortgagor for all purposes and the Mortgagor alone shall be responsible for his contracts, engagements, acts, omissions, defaults, losses and misconduct and for liabilities incurred by him and for his remuneration and the Lender shall not incur any liability therefor (either to the Mortgagor or to any other persons whatsoever) by reason of its appointing such Receiver or of its having made or given any requisition or direction pursuant to the foregoing sub-paragraph or for any other reason whatsoever;
- (e) if two or more persons are appointed Receiver the Lender may provide that their rights, powers and remedies vest in them jointly or jointly and severally;
- (f) the Lender may from time to time fix the remuneration of any Receiver and the Receiver shall be entitled to retain out of any money received by him that remuneration and all costs, charges and expenses properly incurred by him as Receiver, but the Mortgagor alone shall be liable for the payment of such remuneration;
- (g) the Lender may from time to time and at any time require any Receiver to give security for the due performance of his duties as Receiver and

may fix the nature and amount of the security to be so given but the Lender shall not be bound in any case to require any such security; and

- (h) every Receiver, attorney, manager, agent or other person appointed by the Lender hereunder shall be entitled to be indemnified out of the Property and the income thereof in respect of all liabilities and expenses incurred by him in the execution or purported execution of his powers and against all actions, proceedings, claims and demands in respect of any matter or thing done or omitted in anyway relating to the Property and the Lender may retain and pay out of any money in the Lender's hands arising from the Property or out of its own resources all sums necessary to effect such indemnity and all such sums shall be a charge on the Property.
- (i) such Receiver may be vested by the Lender with such powers and discretions, including powers of management, as the Lender may think expedient;
- (j) without prejudice to the generality of the foregoing, such Receiver shall have power to complete any building (if any) under construction on the Property and generally to complete the development thereof and to demand and recover all the income of the Property of which he is appointed receiver by action, distress or otherwise in the name either of the Mortgagor or the Lender to the full extent of the estate or interest of which the Mortgagor could dispose and to give effectual receipts accordingly for the same;
- (k) unless otherwise directed by the Lender, such Receiver may exercise all the powers and authorities vested in the Lender hereunder;
- (l) save so far as otherwise directed by the Lender, all moneys from time to time received by such Receiver shall be paid over to the Lender to be held by the Lender on the trusts herein declared of and concerning moneys which arise from any sale, calling in, collection or conversion;
- (m) the Lender may pay over to such Receiver any moneys constituting part of the Property or the income thereof to the intent that the same may be applied for the purposes hereof by such Receiver, and the Lender may from time to time determine what funds the Receiver shall be at liberty to keep in hand with a view to the performance of his duties as such Receiver;
- (n) subject as hereinafter provided, any such Receiver may, for the purpose of defraying any costs, charges, losses or expenses (including his remuneration) which shall be incurred by him in the exercise of the powers, authorities and discretions vested in him and for all other purposes hereof or any of them, raise and borrow money on the security of the Property or any interest therein either in priority to the moneys hereby secured and the security hereby constituted or otherwise and at such rate of interest and generally on such terms and conditions as he may think fit and no person lending any such money

shall be concerned to enquire as to the propriety or purpose of the exercise of this power or to see to the application of any moneys so raised or borrowed provided however that a Receiver shall not exercise this present power without first obtaining the prior written consent of the Lender;

- (o) any Receiver may act in his own name or in the name of the Mortgagor.

## **10. NON-LIABILITY OF LENDER OR RECEIVER**

- 10.1 Neither the Lender or any Receiver shall be liable, by reason of any entry into or taking possession of the Property or for any other reason whatsoever, and whether as mortgagee in possession or on any other basis whatsoever, be liable to account to the Mortgagor for anything except its own actual receipts or be liable to the Mortgagor for any loss or damage arising from any realisation of the Property or from any act, default or omission in relation to the Property or from any exercise or non-exercise by it of any power, authority or discretion conferred upon it in relation to the Property.

## **11. THIRD PARTIES**

- 11.1 No person dealing with the Lender or with any Receiver shall be concerned to enquire whether any Event of Default has happened upon which any of the powers, authorities and discretions conferred by or pursuant to the Security Documents in relation to the Property are or may be exercisable by the Lender or by any such Receiver or otherwise or whether any moneys remain due upon the security of this Mortgage or to the necessity or expediency of the stipulations and conditions subject to which any sale shall be made as to the propriety or regularity of acts purporting or intended to be in exercise of any such powers or to see to the application of any money paid to the Lender or any Receiver or its or his attorneys or agents and as regards any such person dealing with the Lender or any such Receiver, notwithstanding that the requisite power, authority or discretion has not become exercisable or any impropriety or irregularity whatsoever, such powers, authorities and discretions shall be deemed to be duly and validly exercised and that the remedy (if any) of the Mortgagor in respect of any irregularity or impropriety or any breach of the provisions hereinbefore contained shall be in damages only.
- 11.2 Upon any Disposal by the Lender and/or the Receiver the receipt of the Lender and/or the Receiver for the proceeds thereof and any other moneys paid to it or him shall effectually discharge the person paying the same therefrom and from being concerned to see to the application or being answerable for the loss or misapplication thereof.

## **12. POWER OF ATTORNEY**

- 12.1 The Mortgagor by way of security irrevocably appoints the Lender, each of the officers for the time being of the Lender and every Receiver of the Property, each with full power of substitution and each with full power to act alone, to be the Mortgagor's attorney and in the Mortgagor's name or in the name of the attorney and on the Mortgagor's behalf to execute and as the Mortgagor's act and deed or otherwise to do all such assurances, acts or things which the Lender (whose opinion shall be conclusive and binding upon the Mortgagor) considers as necessary or expedient that the Mortgagor should execute or do under the covenants and provisions contained in the Security Documents and generally in the Mortgagor's name and on the Mortgagor's behalf to exercise all or any of the powers, authorities and discretions conferred on the Lender or any such Receiver and (without prejudice to the generality of the foregoing) to execute, seal and deliver and otherwise perfect any deed, assignment, transfer, assurance, agreement, instrument or act which may in the opinion of such attorney be required or deemed proper, necessary or desirable in or for any of the purposes of the Security Documents.
- 12.2 The Mortgagor ratifies and confirms and agrees to ratify and confirm whatever any such attorney as is mentioned in sub-clause 12.1 shall do or purport to do in the exercise or purported exercise of all or any of the powers, authorities and discretions referred to therein.

## **13. PROCEEDS OF SECURITY REALIZATION**

- 13.1 The Lender or any Receiver so appointed shall hold and apply the moneys arising from any Disposal under the powers conferred upon the Lender or upon any Receiver after the security hereby created has become enforceable upon trust :-

- First : in discharge of all rent, taxes, rates and other outgoings due and affecting the Property;
- Secondly : unless the Property is sold subject to a prior encumbrance, in discharge of that prior encumbrance;
- Thirdly : in payment of the Receiver's lawful remuneration, the Receiver's and the Lender's costs, charges and expenses and all lawful costs and expenses properly incurred in the Disposal;
- Fourthly : in payment of the Obligations, and any residue shall be paid to the person who immediately before any Disposal was entitled to the Property or authorized to give a receipt for the proceeds of any Disposal of the Property

provided that all or any such moneys may in the absolute discretion of the Lender or Receiver be credited to any suspense account and may be held in such account for so long and in such manner as the Lender or the Receiver

may think fit and the Receiver may retain the same for such period as he may consider expedient.

- 13.2 If any moneys received by the Lender and/or any Receiver shall be in any currency other than the currency in which the Obligations or any part thereof is outstanding or payable, the Lender and/or any Receiver shall have the absolute discretion to convert such moneys or any part thereof into the currency in which the Obligations or any part thereof is outstanding or payable by reference to the prevailing spot selling rate of exchange quoted by the Lender for such other currency against the existing currency. The Mortgagor agrees and undertakes to reimburse the Lender and/or any Receiver all the expenses, charges and costs incurred by the Lender and/or any Receiver in connection with such conversion, which shall form part of the Obligations.
- 13.3 No payment to the Lender under this Mortgage pursuant to any judgment or order of any court or otherwise shall operate to discharge any obligation or liability of the Mortgagor in respect of which it was made unless and until payment in full shall have been received in the currency in which such obligation or liability was incurred and to the extent that the amount of any such payment shall, on actual conversion into such currency, fall short of the amount of such obligation or liability expressed in that currency the Lender shall have a further separate cause of action against the Mortgagor for the recovery of the amount of the shortfall.

**14. SECURITY ADDITIONAL**

- 14.1 The security conferred by this Mortgage is in addition to and shall not affect or be affected by any other remedy lien security or guarantee which the Lender may now or at any time hold or take from the Mortgagor or from any other person in respect of the Obligations.
- 14.2 The Lender may at any time during the continuance of this security at the expense of the Mortgagor obtain from a competent valuer in the Hong Kong Special Administrative Region one or more valuations of the Property and if in the opinion of the Lender the security constituted by the Property, together with any other security held by the Lender, is insufficient to secure the Obligations then the Mortgagor shall forthwith on demand by the Lender provide the Lender with such further security as the Lender shall require whether in cash or otherwise.

**15. SUSPENSE ACCOUNT**

The Lender may at any time place and keep for such time as it may think prudent any moneys received, recovered or realised under the Security Documents to and in a separate or suspense account to the credit of the Mortgagor or of such other person or persons or transaction, if any, as it shall think fit without any intermediate obligation on its part to apply the same or any part thereof in or towards the discharge of the Obligations.

## **16. SET-OFF**

16.1 The Mortgagor authorises the Lender to :-

- (a) apply (without prior notice) any credit balance (whether or not then due) to which the Mortgagor is at any time beneficially entitled on any account at any office of the Lender in the Hong Kong Special Administrative Region and elsewhere; and
- (b) set-off any liabilities of the Lender to the Mortgagor which are due or to become due;

in or towards satisfaction of all or any of the Obligations.

For that purpose, the Lender is hereby authorised by the Mortgagor to use all or any part of any such credit balance or liability to buy such other currencies as may be necessary to effect such application or set-off.

16.2 It shall also be lawful for the Lender at any time thereafter without notice and notwithstanding any settlement of account or other matter whatsoever combine or consolidate all or any of the Mortgagor's then existing accounts with the Lender or its holding or subsidiary or associated companies (whether current deposit loan or of any other nature whatsoever and whether subject to notice or not) and set-off or transfer any sum standing to the credit of any one or more of such accounts wheresoever situate in or towards satisfaction of all or any of the Obligations.

## **17. INDULGENCE**

17.1 This security given and the rights of the Lender under this Mortgage and the other Security Documents shall not be discharged or in any way affected by :-

- (a) any time, indulgence, waiver or consent at any time given to the Mortgagor (or any one or more of them if the Mortgagor comprises more than one person) or any other person;
- (b) any amendment to any of the Security Documents or to any other security, guarantee or indemnity or any release or variation of liabilities or obligations of the Mortgagor (or any one or more of them if the Mortgagor comprises more than one person) or any other person;
- (c) the making or the absence of any demand on the Mortgagor (or any one or more of them if the Mortgagor comprises more than one person) or any other person for payment;
- (d) the enforcement or absence of enforcement of or release of the Security Documents or of any other security, guarantee or indemnity;
- (e) the liquidation, bankruptcy, administration, dissolution, amalgamation, reconstruction or reorganisation, change in the constitution of the Mortgagor (or any one or more of them if the Mortgagor comprises more than one person) or change in the persons carrying on business in

the name of the Mortgagor or, as the case may be, death or other incapacity of the Mortgagor;

- (f) the illegality, invalidity or unenforceability of or any defect in any provision of the Security Documents or any of the Mortgagor's obligations under them; or
- (g) any party to any of the Security Documents not being bound by any of the same by reason of failure to execute the same or otherwise.

17.2 Where the Mortgagor comprises two or more persons (whether or not partners), any liability arising hereunder of the Mortgagor shall be the joint and several liability of each and every person comprising the Mortgagor, and none of such persons comprising the Mortgagor shall be entitled to any of the rights or remedies of a surety as regards the moneys and liabilities of any other such persons. The Lender shall be at liberty to release, compound with or otherwise vary or agree to vary the liability of or to grant time or indulgence to or make other arrangements with any one or more of the persons comprising the Mortgagor without prejudicing or affecting the Lender's rights and remedies against the other persons comprising the Mortgagor.

## **18. SETTLEMENT**

Any settlement, assignment, payment or discharge between the Lender and the Mortgagor shall be conditional upon no security or payment to the Lender in respect of the Obligations being avoided or reduced by virtue of any provisions or enactments relating to bankruptcy, insolvency or liquidation for the time being in force and in that event the Lender shall be entitled to recover the value or amount of any such security or payment from the Mortgagor as if no such settlement, assignment, payment or discharge has been made.

## **19. DISTRIBUTION OF PAYMENTS**

19.1 Payments by the Mortgagor shall be treated for the purposes of the Security Documents as if moneys received thereunder were applied to amounts owing thereunder or with respect thereto in such manner as the Lender may from time to time notify, notwithstanding that such moneys may in fact be applied or directed by the payer to be applied in some other manner.

19.2 If the security becomes enforceable all moneys received by the Lender in respect of the Obligations after the date conclusively determined by the Lender to be the earliest date on which the Lender was entitled to call for the immediate repayment of any principal not otherwise payable on demand or on which there was an Event of Default shall be credited to a suspense account or suspense accounts or treated as if so credited pending application thereof at the discretion of the Lender.

## **20. EXPENSES AND STAMP DUTY**

The Mortgagor shall be liable for and shall pay on demand :-

- (a) all costs, charges and expenses incurred and all payments made by the Lender or any Receiver in the lawful exercise of the powers hereby conferred upon it or him (together with all remuneration payable to the Lender or to any such Receiver); and
- (b) all reasonable costs and expenses (including legal fees on solicitors and own client basis) incurred by the Lender in connection with the preparation, negotiation, entry into of the Security Documents and/or any amendment of or waiver in respect of the Security Documents;
- (c) all reasonable costs and expenses (including legal fees on solicitors and own client basis) incurred by the Lender in the administration of, or in preserving, exercising, protecting or enforcing any rights under the Security Documents or in relation to the Property or recovering any sum due from the Mortgagor to the Lender hereunder; and
- (d) any stamp, documentary, registration or similar duty or fee payable in connection with the entry into, registration, performance, enforcement or admissibility in evidence of the Security Documents and shall indemnify the Lender against any liability with respect to or resulting from any delay in paying or omission to pay any such duty or fee;

to the intent that the Lender shall be afforded a full and unlimited indemnity in respect thereof and until so repaid such costs, charges, expenses and other sums and interest shall form part of the Obligations and shall have the benefit of the security contained in Clause 3 (but without prejudice to any other remedy, lien or security available to the Lender).

## **21. EVIDENCE**

- 21.1 The entries made in the accounts maintained by the Lender in accordance with its usual practice shall be conclusive evidence of the existence and amounts of the Obligations of the Mortgagor therein recorded save for manifest error.
- 21.2 A certificate by the Lender as to any sum payable to it under the Security Documents and any other certificate, determination, notification or opinion of the Lender provided for in the Security Documents, shall be conclusive and binding on the Mortgagor, save for manifest error.

## **22. ASSIGNMENT**

- 22.1 The Security Documents shall benefit and be binding on the parties, their respective successors and any permitted assignee or transferee of some or all of a party's rights or obligations thereunder. Any reference in the Security Documents to any party shall be construed accordingly.
- 22.2 The Mortgagor may not Dispose of all or part of the Mortgagor's rights or obligations under the Security Documents.
- 22.3 The Lender may at any time Dispose to any third party all or any part of its rights and benefits under the Security Documents and the Mortgagor hereby irrevocably appoints each of the successors and assigns of the Lender to be its

or his attorney in the same terms and for the same purposes as set out in the relevant provisions of this Mortgage.

- 22.4 The Lender may disclose to a potential disposee or any other person proposing to enter into contractual arrangements with the Lender in relation to the Security Documents or to all Government and regulatory authorities in accordance with applicable law such information about the Mortgagor as it may think fit.

**23. REMEDIES, WAIVERS, AMENDMENTS AND CONSENTS**

- 23.1 Time shall be of the essence of the Security Documents but no failure on the part of the Lender to exercise, and no delay on its part in exercising, any right or remedy under the Security Documents will operate as a waiver thereof, nor will any single or partial exercise of any right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy. The rights and remedies provided in the Security Documents are cumulative and not exclusive of any rights or remedies provided by law.
- 23.2 Any provision of the Security Documents may be amended only if the Mortgagor, and the Lender so agree in writing and any Event of Default may be waived before or after it occurs only if the Lender agrees in writing. Any waiver or consent shall be effective only in the instance and the purpose for which it is given.

**24. COMMUNICATIONS**

- 24.1 Each communication to be made under the Security Documents shall be made in writing but, unless otherwise stated, may be made by facsimile or letter but, if by facsimile by the Mortgagor, shall promptly be confirmed by sending the original (marked "confirmation copy") to the Lender.
- 24.2 Any communication or document to be made or delivered by one party to another pursuant to the Security Documents shall be made or delivered to that other party to the address specified herein or (if appropriate) its registered office or in the case of the Mortgagor to the Property.
- 24.3 Any communication from the Mortgagor shall be irrevocable, and shall not be effective until actually received by the Lender. Any demand for payment or notice by the Lender hereunder shall, without prejudice to any other effective mode of giving or making the same, be deemed to have been sufficiently given or made hereunder on the Mortgagor if left or sent by prepaid post addressed to the Mortgagor at the Property or the registered office or last known business or residential or correspondence address of the Mortgagor for the time being in Hong Kong, and shall be assumed to have reached the Mortgagor within 48 hours of posting, and in proving such service it shall be sufficient to prove that the notice or demand was properly addressed and posted or properly left as the case may be.
- 24.4 Any legal process including any writ or originating summons and any other summons or notice in connection with this Mortgage to be served on the

Mortgagor by the Lender in any legal proceedings or action commenced in any court or tribunal shall be deemed to have been duly and sufficiently served on the Mortgagor forty-eight (48) hours after the same having been left or sent by ordinary prepaid post to the Mortgagor at the Mortgagor's registered office or usual place of business or abode or correspondence address in the Hong Kong Special Administrative Region or at the address of the Property and in proving such service it shall be sufficient to prove that the legal process or summons or notice was properly addressed and posted or properly left as the case may be irrespective of whether the same is returned to the Lender through the post undelivered to the Mortgagor.

**25. PARTIAL INVALIDITY**

The illegality, invalidity or unenforceability of any provision of the Security Documents under the law of any jurisdiction shall not affect its legality, validity or enforceability under the law of any other jurisdiction nor the legality, validity or enforceability of any other provision.

**26. CONTINUING SECURITY**

The security created herein shall be a continuing security and shall be available to secure whatever may be the balance at any time or from time to time due by the Mortgagor to the Lender pursuant to this Mortgage.

**27. DATA POLICY**

The Mortgagor agrees that the applicable data policies, notices and other communications to customers concerning their data from time to time issued by the Lender (a member of the DBS Group) shall apply. A copy is available on request at any Lender's branch or from its website. The Mortgagor agrees that all information in any application, or that is obtained from any other sources or that arises from the Mortgagor's relationship with the Lender (or any other DBS Group Company) ("data") will be subject to such policies/or other communications (as may be varied from time to time). The Mortgagor agrees in particular that:

- (a) the Lender may verify, provide and collect information about the Mortgagor from other organisations, institutions or other persons;
- (b) the Lender may transfer data outside the Hong Kong SAR including to Singapore; and
- (c) the Lender may compare any data obtained with the Mortgagor's data, and use the results for taking of any actions including actions that may be adverse to the Mortgagor's interest (including declining any application).

**28. RIGHTS OF THIRD PARTIES**

Unless expressly provided to the contrary in this Mortgage, a person who is not a party to the Mortgage 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 this Mortgage, the consent of any third party is not required for any variation (including any release or compromise of any liability), rescission or termination of this Mortgage.

**29. GOVERNING LAW**

This Mortgage shall be governed by and construed in accordance with the laws of the Hong Kong Special Administrative Region and the parties hereby agree to submit to the non-exclusive jurisdiction of the Hong Kong Special Administrative Region Courts.

This Mortgage has been executed as a deed by or on behalf of the Mortgagor.

## **SCHEDULE**

1. The Property:
2. Government Lease:
3. Deed of Mutual Covenant:

**SCHEDULE 29**

Limit (referred to in clause 3.2, if applicable)

HK\$\_\_\_\_\_ (in words\_\_\_\_\_)

(Please complete. If this part of this Schedule is not completed, then this Mortgage shall secure all monies owed by the Mortgagor to the Lender).

SEALED with the Common Seal  
of the Mortgagor and SIGNED  
by  
in the presence of :

Executed and Delivered as a DEED )  
by the Mortgagor and SIGNED )  
by )

Name: \_\_\_\_\_

Name: \_\_\_\_\_

SIGNED SEALED and DELIVERED )  
by the Mortgagor (who having been )  
identified by the production of his/her )  
Hong Kong Identity Card No. )

INTERPRETED to the Mortgagor by:-

Dated \_\_\_\_\_

and

to

**DBS Bank (Hong Kong) Limited**

\_\_\_\_\_

**MORTGAGE**  
of

\_\_\_\_\_

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## **MORTGAGE**

### **DATED**

### **PARTIES**

(1)

(the "**Mortgagor**");

(2)

(the "**Borrower**"); and

(3) **DBS Bank (Hong Kong) Limited** whose registered office is situate at 11<sup>th</sup> Floor, The Center, 99 Queen's Road Central, Hong Kong (the "**Lender**" which shall include any branch in any location, and its successors and assigns).

### **W H E R E A S :-**

- (1) The Mortgagor is the registered owner of the Property (as hereinafter defined) which is held from The Government of the Hong Kong Special Administrative Region under and by virtue of the Government Grant referred to in Schedule I hereto subject to the payment of the premium (if any) and Government rent or (as the case may be) a due proportion thereof and to the performance and observance of the covenants terms and conditions by and in the said Government Grant reserved and contained.
- (2) The Mortgagor and the Borrower have applied to the Lender to grant or continue to grant to the Borrower Facilities (as defined below) to such extent as the Lender may from time to time determine at its absolute discretion and the Lender has agreed to grant the same subject to the Mortgagor and the Borrower entering into the covenants and obligations contained in these presents and to the Mortgagor charging to the Lender the Property as security for the due payment of all moneys payable or which may at any time hereafter or from time to time become payable by the Mortgagor and/or the Borrower to the Lender whether under or pursuant to any of the covenants terms and conditions hereinafter contained or otherwise howsoever.

### **PROVISIONS**

#### **1. INTERPRETATION**

- 1.1 In this Mortgage, including the Recitals, the following expressions shall have the following meaning except where the context otherwise requires:-

**"Deed of Mutual Covenant"**

the Deed of Mutual Covenant and Management Agreement (if any) referred to in the Schedule I and any variation or modification thereof;

**"Dispose" and "Disposal"**

any sale, assignment, exchange, transfer, concession, loan, lease, surrender of lease, tenancy, licence, direct or indirect reservation, waiver, compromise, release, dealing with or in or granting of any option, right of first refusal or other right or interest whatsoever or any agreement for any of the same;

**"Encumbrance"**

any mortgage, charge, pledge, lien (otherwise than arising by statute or operation of law), hypothecation or other encumbrance, priority or security interest, whatsoever over or in the Property;

**"Event of Default"**

any event set out in Clause 7.1;

**"Facilities"**

the general banking facilities made available or to be made available to the Borrower by the Lender or any other transactions entered or to be entered into between the Borrower and the Lender, in each case from time to time (including but not limited to all types of loans, advances, banking or credit facilities, treasury facilities, foreign exchange dealings and transactions, interest rate or other swap transactions, options or forwards trading facilities, any derivative transactions and all other facilities, accommodation, transactions or arrangements of whatever nature);

**"Fixtures"**

all fixed plant, fixed machinery and fixtures (including trade fixtures), fittings, goods and materials (other than those being personal chattels within the Bills of Sale Ordinance (Cap.20)) from time to time on or in the Property;

**"Government"**

the Government of the Hong Kong Special Administrative Region;

**"Government Lease"**

the Government Lease or Conditions referred to in Schedule I and any variation or modification thereof under which the Property is held from the Government at the date hereof by the Mortgagor;

**"Interest"**

interest at such rate(s) per annum as is/are applicable under the terms relating to the Facilities or as determined by the Lender (which determination shall be conclusive and binding on the Borrower);

**"Mortgage"**

this Mortgage as from time to time supplemented, amended or modified;

**"Obligations"**

all principal, interest and other amounts (whether present, future, actual and/or contingent) from time to time owing by the Borrower to the Lender on any current and/or other account and all other liabilities and obligations whatsoever (whether present, future, actual and/or contingent) of the Borrower to the Lender whether as principal or guarantor;

**"Property"**

the property registered or to be registered in the name of the Mortgagor and the Mortgagor's interest therein and more particularly described in Schedule I and, where the context so admits, it shall also mean any part of such property;

**"Receiver"**

a receiver or a receiver and manager for the time being appointed by the Lender hereunder and includes any permitted delegate or sub-delegate of the same;

**"Regulations"**

all planning, building, fire and other laws, regulations and directives affecting the Property;

**"Security Documents"**

this Mortgage, any facility letters, master agreements and other documentation in respect of the Facilities and all other documents supplemental to, collateral with or derived from them.

1.2 References in this Mortgage to :-

- (a) the Lender includes the Bank specifically named and its successors and assigns;
- (b) the Mortgagor or the Borrower includes, in the case of a natural person the person specifically named and his executors, administrators and assigns and in the case of a body corporate the body corporate specifically named and its successors and assigns; in the case of persons holding as tenants in common it includes the persons specifically named and their respective executors, administrators and assigns and in the case of persons holding as joint tenants it includes the persons specifically named and the survivors or survivor of them and the executors and administrators of such survivor, his or their assigns; and if the Mortgagor or the Borrower consists of two or more persons, any reference to the Mortgagor or the Borrower herein shall (except as otherwise specified in this Mortgage) be construed as reference to any one or more or all of such persons (as the case may be);
- (c) clauses and the Schedules are references to clauses hereof and the Schedule hereto;

- (d) sub-clauses and paragraphs are, unless otherwise stated, references to sub-clauses and paragraphs of the clause and sub-clause in which the reference appears;
  - (e) words denoting the singular shall include the plural and vice versa and words denoting one gender shall include all genders; and
  - (f) any laws, Ordinances, rules or regulations will, as required, be deemed also to include any amendment, re-enactment, consolidation, replacement and/or successor thereof.
- 1.3 Where the Mortgagor or the Borrower comprises two or more persons , each covenant and agreement herein on the part of the Mortgagor or the Borrower shall be deemed to have been given or made by such persons jointly and severally to the intent that each of the Mortgagor or the Borrower can be held fully responsible for complying with the obligations contained in this Mortgage even if this Mortgage cannot be enforced against the other of the Mortgagor or the Borrower (as the case may be).
- 1.4 Headings are inserted for convenience and for reference only and in no way define, limit or describe the scope of this Mortgage or the intent of any provision hereof, and shall be disregarded in construing this Mortgage.

## **2. COVENANT TO DISCHARGE OBLIGATIONS**

- 2.1 In consideration of the Lender agreeing to make available to or enter with the Borrower the Facilities upon such terms and subject to such conditions as the Lender and the Borrower may from time to time agree, the Mortgagor and the Borrower jointly and severally covenant to pay on demand all Obligations to the Lender.
- 2.2 The Lender shall not be bound to make advances or payments or to incur liabilities in respect of the Facilities beyond such sum as the Lender shall in its absolute discretion from time to time consider to be safe.

## **3. CHARGING CLAUSE**

- 3.1 In consideration of the premises and with the object and intention of affording to the Lender a continuing security for the discharge of the Obligations and the observance and performance by the Mortgagor and the Borrower of the agreements covenants and conditions contained in this Mortgage, the Mortgagor hereby :-
- (a) (i) as beneficial owner CHARGES the Property to the Lender by way of first fixed mortgage SUBJECT as is more particularly specified in Schedule I and to and with the benefit of all leases, tenancies, rights, licences, covenants, conditions and other incidents of tenure affecting the Property provided that insofar as the Property comprises a legal estate in land the charge herein contained shall be a legal charge over the Property;

- (ii) HEREBY ASSIGNS or agrees to assign unto the Lender the full benefit and all rights of all the terms and conditions more particularly specified in Schedule I and of any payment, covenant, agreement, undertaking or indemnity contained in any sale and purchase agreement, lease or other document, agreement or undertaking whatsoever in respect of or relating to the Property now subsisting or to be created hereafter TO HOLD the same unto the Lender absolutely

SUBJECT to the proviso for redemption hereinafter contained.

- (b)
  - (i) ASSIGNS to the Lender all the interest of the Mortgagor in and the benefit to the Mortgagor arising out of all insurances relating to the Property or any part thereof and the right to receive any sums payable to the Mortgagor in respect thereof;
  - (ii) AGREES TO ASSIGN legally to the Lender by a document in a form and substance required by the Lender all insurances relating to the Property of which the Mortgagor is entitled to the benefit forthwith upon notice by the Lender;
- (c) ASSIGNS to the Lender, (and agrees to assign to the Lender and will, if so required, execute a separate assignment or separate assignments in such form and substance as the Lender may require of), the sale proceeds, the rents and other sums of money and deposits now or to become payable by virtue of each sale agreement, lease, tenancy agreement or other Disposal now or hereafter concluded in respect of the Property or any part thereof together with power for the Lender to sue for recovery and give effectual discharges for the same in the name of the Mortgagor.

3.2 Notwithstanding the provision of Clause 3.1, the Property is charged only to the extent of providing security for the amount (if any) shown in the Schedule II, as well as in respect of all interest, costs, charges and expenses mentioned herein. For the avoidance of doubt, if the said Schedule II is not completed, this Mortgage shall secure all monies owed by the Borrower to the Lender.

#### **4. RELEASE**

If the Borrower and/or the Mortgagor shall repay to the Lender the Obligations hereby secured in accordance in all respects with the covenants in that behalf herein contained and observe and perform the covenants terms and conditions herein contained and on the part of the Mortgagor and the Borrower to be observed and performed then the Lender shall at the request and cost of the Mortgagor (including the expense of making a certified true copy of any Power of Attorney under which the Lender shall have executed or signed any deed or instrument) sign or execute a receipt for the Obligations hereby secured or otherwise discharge or release the security constituted by this Mortgage.

## **5. REPRESENTATIONS AND WARRANTIES**

5.1 The Mortgagor and the Borrower hereby jointly and severally represent and warrant to the Lender that :-

- (a) the Mortgagor is the beneficial owner of, has a good and marketable title to the Property and he/it has good right to charge the Property in manner aforesaid free from all Encumbrances save as may be specified herein;
- (b) the Government Lease and the Deed of Mutual Covenant are valid and subsisting and not voidable;
- (c) none of the Property has been Disposed of and, subject as disclosed to the Lender in writing prior to the date hereof, the Property is free from all Encumbrances;
- (d) in respect of existing tenancies of the Property as disclosed to the Lender in writing prior to the date hereof, no option to renew or purchase has been granted to the tenants or any of them other than as disclosed to the Lender in writing and no advance payment of rent has been or will be demanded, accepted or paid other than the monthly rent as and when it falls due each calendar month;
- (e) all moneys due under any covenant relating to the Property under the Government Lease and the Deed of Mutual Covenant have been paid and any other covenants terms and conditions contained in the Government Lease and the Deed of Mutual Covenant so far as they relate to the Property have been observed and performed up to the date hereof; and
- (f) each of the above representations and warranties and any implied by law will be correct and complied with in all respects so long as the Obligations remain payable under the Security Documents.

5.2 The Mortgagor warrants to the Lender that it has not taken and covenants to the Lender that it will not take from the Borrower, without the prior consent of the Lender, any form of security, either directly or indirectly and whether merely personal or involving a charge on any property of the Borrower, in respect of its liabilities under this Mortgage.

## **6. COVENANTS**

6.1 The Mortgagor covenants with the Lender that the Mortgagor will :-

- (a) not make any Disposal or create or permit to subsist any Encumbrance over the whole or any part or parts of the Property except with the prior consent in writing of the Lender;
- (b) fully and completely observe and comply with:

- (i) the covenants and conditions reserved and contained in the Government Lease and the Deed of Mutual Covenant; and
- (ii) all Regulations;
- (c) not agree to any modification or waiver of the Government Lease or Deed of Mutual Covenant or of any lease, tenancy agreement, licence or any other Disposal of interest affecting the Property without the prior written approval of the Lender;
- (d) take all necessary action to preserve the Property against forfeiture, re-entry and re-possession by the Government;
- (e) take out, maintain and comply with the terms of insurance in respect of the Property which insurance shall :
  - (i) be in the joint names of the Mortgagor and the Lender or have the interest of the Lender denoted on the policy;
  - (ii) be with such reputable insurance company carrying on business in the Hong Kong Special Administrative Region as the Lender may previously approve in writing;
  - (iii) be against loss or damage by fire, lightning, explosion, storm, tempest, flood, typhoon, impact, landslip, subsidence, aircraft (other than hostile aircraft) and other aerial devices or articles dropped therefrom, earthquake, riot and strikes, malicious damage, third party risks and such other risks and contingencies as are normally covered by a comprehensive policy maintained by a prudent company owning similar property and carrying on similar business in the Hong Kong Special Administrative Region and as the Lender may from time to time reasonably require;
  - (iv) be to a minimum of the full reinstatement value of the Property (including architect's and surveyor's fees and demolition costs and the costs of shoring up), provided that if the full reinstatement value referred to above cannot be agreed between the Mortgagor and the Lender, it shall be determined by a leading international firm of surveyors and valuers or other appropriate expert approved by the Lender at the expense of the Mortgagor and the Borrower; and
  - (v) have clauses in a form satisfactory to the Lender to the effect that:
    - (01) payment will be made to the Lender in full, without any deductions, of all moneys and ex gratia payments in respect thereof;
    - (02) in the event that the Mortgagor becomes insolvent or goes into liquidation or ceases to carry on business, the

insurer will, regardless of such insolvency or liquidation or cessation of business, assume liability on the same terms and conditions and for the remaining period that it would have assumed such liability in the absence of such insolvency or liquidation or ceasing to carry on business;

(03) the insurer undertakes to advise the Lender of :

(A) any alteration in, cancellation of, termination of, or expiry of the insurance at least 14 days before such alteration, cancellation, termination or expiry is due to take effect; and

(B) any default in the payment of any premium or failure to renew the insurance at least 14 days prior to the date of renewal thereof;

(04) with respect to the Lender, it shall be and remain enforceable in respect of any claim arising as a result of any act or thing occurring less than 14 days prior to notice to the Lender of any invalidity, avoidance or unenforceability in whole or in part of the insurance; and

(05) the Lender is not liable for the payment of premiums

PROVIDED ALWAYS that if the Mortgagor shall fail to insure the Property in accordance with the provisions contained in this Mortgage the Lender may insure the Property upon such terms and conditions as the Lender shall in its absolute discretion think fit and any money paid for such insurance shall be a charge on the Property in addition to the Obligations with the same priority and with Interest at the same rate;

(f) pay or cause to be paid the premiums and all other moneys payable in connection with effecting or maintaining insurance taken out pursuant to Clause 6.1(e) and on demand to endorse over and deliver to the Lender the policy or policies of insurance together with the latest premium receipt and the Lender shall have a lien on the same and on all moneys thereby assured;

(g) in the event of the Property being destroyed or damaged by fire or other peril the Mortgagor shall, unless otherwise agreed in writing by the Lender, lay out the insurance money received and at the Mortgagor's own expense make up any deficiency so as to fully and completely rebuild or reinstate the same to its original state and condition in accordance with the plans and specifications as shall be approved by the Lender and the relevant Government departments;

- (h) keep or cause to be kept the Property in a good and tenantable repair and condition to the satisfaction of the Lender and allow the Lender and any person nominated by the Lender to enter and to view the state of repair of the same at all reasonable times (without by so doing only be deemed to have taken possession of the Property or otherwise becoming liable as a mortgagee in possession);
- (i) promptly pay all premium, rates, taxes, Government rent, management and maintenance charges, expenses for all repairs, charges for power, lighting, water or other utilities, assessments and other outgoings whatsoever assessed, imposed or charged on or in respect of the Property, whether under the Government Lease, the Deed of Mutual Covenant or otherwise, and to indemnify the Lender against all actions, suits, claims, costs and expenses which may be incurred or sustained on account of the non-payment of such outgoings or the breach or non-performance of the covenants, obligations and agreements herein contained;
- (j) (if the Mortgagor is a body corporate) the Mortgagor will not create or agree to create or permit to arise any mortgage, charge, debenture or pledge creating any floating charge over or in respect of the Mortgagor's present or future undertaking, properties, assets, rights or revenues, or any part thereof, including its uncalled capital (if any) for the time being unless the Property and all rights and interests of the Mortgagor in respect of the Property are expressly excluded therefrom;
- (k) not without the prior written consent of the Lender carry out any operation on or institute or continue any use of the Property or any part or parts thereof for which the permission of any Governmental body or other competent authority is required or make any structural alterations or additions to the Property;
- (l) not commit any waste upon or injure or in any manner or by any means lessen the value of the Property;
- (m) forthwith deposit with the Lender all the deeds and documents of title relating to any of the Property; and
- (n) promptly inform the Lender of any event or of the receipt of any notice which may affect the title of the Mortgagor to the Property or its rights or interest therein or any Fixtures or fulfilment by the Mortgagor of any of the Mortgagor's covenants or obligations hereunder, or which may affect the security created by the Security Documents.

6.2 The Mortgagor further covenants with the Lender that :

- (a) if the Mortgagor shall default in the performance of the covenants and conditions contained in the Government Lease or in complying with its obligations under this Mortgage including but not limited to its obligations in keeping the Property in a good and substantial condition and state of repair, or in duly complying with all Regulations then and

in any such case and so often as the same shall happen the Lender shall be at liberty to perform the covenants in respect of which such default shall be made, and to comply with all such Regulations and the Mortgagor and the Borrower will forthwith repay on demand all moneys expended by the Lender therefor and until such repayment the same shall form part of the Obligations, shall have the benefit of the security contained in Clause 3 and shall bear Interest with effect from the date of demand for payment until repayment in full (both before and after judgment);

- (b) if at any time after an Event of Default has occurred or the power of sale herein contained shall become exercisable by the Lender, the Mortgagor will upon being given notice so to do by the Lender forthwith quit and deliver up vacant possession of the Property to the Lender or to whomsoever the Lender may nominate or direct and henceforth, the Property shall during the residue of the term of the Government Lease (and any renewal thereof) be held and enjoyed by the Lender without any lawful interruption or disturbance by the Mortgagor or any person charging by his direction or any person rightfully claiming through under or in trust for the Mortgagor (other than in respect of an estate or interest subject to which this Mortgage is expressly made);
- (c) the Mortgagor shall execute and do all such assurances, acts, deeds and things as the Lender may require, and procure other interested parties so to do, for protecting or perfecting the security created by this Mortgage and to facilitate the exercise of all powers, authorities and discretions vested in the Lender or in any Receiver of the Property and shall in particular execute all transfers, conveyances, assignments, assurances and registrations, whether to the Lender or to its nominees or purchasers, or sub-purchasers and give all notices, orders and discretions which the Lender may think expedient and, for the purposes of this Clause, a certificate in writing by the Lender to the effect that any assurance or thing required by it is reasonably required shall be conclusive evidence of such fact;
- (d) in the event of the Mortgagor becoming entitled to apply for, or the Government offering, the taking up of a Government Lease or a renewal or extension of the term of the Government Lease the Mortgagor shall :
  - (i) forthwith make the application or accept the offer;
  - (ii) fully observe and perform the conditions of such taking up, renewal or extension and pay any premium or other consideration demanded and other costs and expenses in connection therewith;
  - (iii) immediately following completion of the taking up, renewal or extension of the Government Lease execute a mortgage of the renewed or extended Government Lease or the shares owned

by the Mortgagor therein and thereof to the Lender in the same form as this Mortgage or in a form substantially similar to this Mortgage with such consequential amendments as the circumstances require; and

- (iv) pending execution of the mortgage pursuant to sub-clause 6.2(d)(iii) hold its interest in the Government Lease as renewed or extended in trust for the Lender.
  - (e) all or any of the powers, authorities and discretions which are conferred upon the Lender and a Receiver of the whole or any part or parts of the Property shall continue to apply, mutatis mutandis, after the expiry of the term granted or agreed to be granted under the Government Lease, insofar as a Government Lease or an extension of the term under the Government Lease or a grant or regrant of the Property has been made to the Mortgagor by the Government or any competent authority and subject to such terms and conditions as may be imposed by the Government or such competent authority.
- 6.3 If on the expiry of the term granted or agreed to be granted under the Government Lease the Mortgagor does not become or is not entitled to an extension of the term granted by the Government Lease, and/or does not become or is not entitled to a regrant or new grant of an interest in the whole or any part of the Property, the Borrower shall forthwith furnish such alternative security to the Lender as the Lender shall require.
- 6.4 The Mortgagor hereby further covenants and undertakes with the Lender that if, based upon the valuation of the Property carried out at the expenses of the Mortgagor by a valuer acceptable to the Lender, the principal amount outstanding under the Facilities on the date of such valuation exceeds a certain percentage of the open market value of the Property as shown by such valuation (and, if applicable, the value of any additional security provided to the Lender hereunder), the Mortgagor shall, forthwith upon request of the Lender (1) effect a prepayment of the principal amount outstanding under the Facilities or a relevant part thereof together with all other sums due and payable in respect of the amount prepaid and/or (2) provide to the Lender such additional security as acceptable to the Lender as security for the Obligations so as to ensure that, immediately after the making of such prepayment and/or provision of security, the aggregate principal amount outstanding under the Facilities shall equal to a level satisfactory to the Lender by reference to the aggregate value of the Property and such additional security.
- 6.5 (i) If the Mortgagor shall fail or refuse to comply with his obligations under Clause 6.1, then and in any such event it shall be lawful for the Lender to act on behalf of the Mortgagor, and for such purposes the Mortgagor hereby irrevocably appoints the Lender's authorised officer by way of security to be the attorney of the Mortgagor to do such acts as may be necessary to ensure performance by the Mortgagor of such obligations, and to execute and sign, seal and, as the Mortgagor's act and deed, deliver such deeds and to sign such documents and instruments as the Lender shall consider necessary or desirable for

such purpose and to pay such fees on behalf of the Mortgagor as shall be demanded by the Director of Lands or other competent authority (which fees, if paid by the Lender on the Mortgagor's behalf, shall be added to the Obligations and shall form part thereof) and to execute and to sign, seal and, as the Mortgagor's act and deed, deliver a new charge in such form and substance as the Lender shall require (or other security interest or alternative security as aforesaid) to the Lender as hereinbefore provided and to sign such documents and writing and to do all such other matters and things the Lender shall consider to be necessary or desirable for such purpose, and the Mortgagor shall ratify and confirm all that the said attorney shall lawfully do or cause to be done by virtue of the provisions herein contained;

- (ii) The Mortgagor shall provide the Lender with copies of all notices to or from all relevant Government departments or otherwise relating to the Property within seven (7) days of the service of such notices by or on the Mortgagor, or within such shorter period as is reasonable in the circumstances, and shall comply with all governmental or other legal requirements and notices whether statutory or otherwise in respect of the Property.

6.6 The Mortgagor and the Borrower jointly and severally covenant with the Lender that the Mortgagor and the Borrower shall :-

- (i) pay and take all such steps and make all such payments as may be necessary to comply with any notice or order in respect of any illegal or unauthorised structure or alterations (if any) in or at the Property which may be issued against the Property by the Buildings Authority or other Government authorities;
- (ii) solely be responsible for any claim that may be brought due to the existence of the said illegal or unauthorised structure or alterations of the Property or want of repair or maintenance of the same or any of them;
- (iii) forthwith upon the Lender's demand, pay and make good all losses damages costs and expenses suffered or incurred by the Lender, and shall indemnify and keep the Lender fully indemnified at all times on demand from and against any claims demands and liabilities as a result of and in connection with such illegal or unauthorised structure or alteration, or any failure of the Mortgagor and/or the Borrower to comply with the building order or notice issued against the Property aforesaid and/or terms and conditions in this Clause 6.6.

6.7 The Borrower shall, so far as it is able to do so, procure that the Mortgagor complies with the covenants and other obligations on its part contained in the Mortgage.

## **7. EVENTS OF DEFAULT**

7.1 The Lender shall be entitled to declare all or any part of this security hereby constituted immediately enforceable at any time if :-

- (a) the Mortgagor and/or the Borrower shall have failed to comply with a demand for repayment of the Obligations or any part thereof; or
- (b) the Mortgagor and/or the Borrower makes default in the payment on the due date and in accordance with the terms and conditions relating thereto of any principal or interest or other moneys outstanding and payable by the Borrower under any term loan account (whether demanded or not); or
- (c) any representation, warranty or statement by the Mortgagor or the Borrower is not complied with or proves to have been or to be incorrect; or
- (d) there shall be any breach of or omission by the Mortgagor or the Borrower to observe any of the agreements covenants or obligations under the Security Documents or any of them; or
- (e) the Mortgagor or the Borrower becomes bound to repay prematurely any other loan or similar obligation for borrowed money, by reason of a default by either of them in its obligations in respect of the same or fails to make any payment in respect thereof on the due date; or
- (f) (if applicable) a petition is presented or an order is made or an effective resolution is passed or analogous proceedings are taken for the winding up of the Mortgagor or the Borrower save for the purposes of an amalgamation, merger or reconstruction the terms whereof have previously been approved by the Lender; or
- (g) the Mortgagor or the Borrower convenes a meeting for the purpose of making, or proposes and/or enters into, any arrangement or composition for the benefit of its creditors; or
- (h) an encumbrancer takes possession or a receiver or other similar officer is appointed of the whole or any part of the assets, or the undertaking (if applicable) of the Mortgagor or the Borrower or a distress or execution is levied or enforced upon or sued out against any of the chattels or property of the Mortgagor or the Borrower and is not discharged within thirty days of being levied; or
- (i) the Mortgagor or the Borrower shall without the consent in writing of the Lender stop payment to creditors generally or (if applicable) the Mortgagor or the Borrower shall (otherwise than for the purpose of such an amalgamation, merger or reconstruction as is referred to in sub-clause 7.1(f)) cease or threaten to cease to carry on its business or any substantial part thereof or (if applicable) shall be deemed, for the purposes of Section 178 of the Companies Ordinance or any statutory

modification or re-enactment thereof for the time being in force, to be unable to pay its debts or disposes or threatens to dispose of the whole or a substantial part of its undertaking or assets; or

- (j) a bankruptcy petition shall be presented against the Mortgagor and/or the Borrower or the Mortgagor or the Borrower shall become insolvent or make any composition or arrangement with their respective creditors; or
  - (k) the Mortgagor or the Borrower shall have any judgment or order of Court made or any execution levied against their goods chattels or property; or
  - (l) in the opinion of the Lender it has reasonable grounds to consider all or any part of the Property to be in danger of being seized or sold under any form of distress or execution levied or threatened or otherwise to be in jeopardy; or
  - (m) there occurs a material adverse change in the Mortgagor's or the Borrower's financial condition which would, in the opinion of the Lender, prevent either of them from performing in any material respect their respective obligations under the Security Documents; or
  - (n) the Government or any competent authority shall re-enter or threaten to re-enter upon and take back possession of the Property provided that the provisions of this sub-clause (n) shall apply, mutatis mutandis, to any competent authority that extends or agrees to extend the terms of the Government Lease or grants, regrants or agrees to grant or regrant to the Mortgagor of the Property.
- 7.2 The Mortgagor and the Borrower covenant that they will notify the Lender forthwith in writing of the occurrence of any Event of Default.
- 7.3 Notwithstanding anything to the contrary contained in any facility letter, instrument, or other agreement or document to which the Mortgagor and/or the Borrower (if applicable) and the Lender are parties, the Lender shall be under no liability at any time after the occurrence of an Event of Default to honour any further obligations to provide or to continue to make available the Facilities or any other banking facilities under any arrangements relating to them and all term loans and other moneys, obligations and liabilities hereby secured not otherwise so repayable, shall become repayable immediately on demand, together with interest accrued thereon to the date of repayment in full, and cash cover shall be provided on demand for all contingent liabilities notwithstanding that the maturity thereof shall not have arrived or that the Borrower shall not have been called upon to pay thereunder.

## **8. LENDER'S POWERS**

- 8.1 If any Event of Default shall have occurred, then it shall be lawful for the Lender at any time thereafter without any consent of the Mortgagor or the Borrower or of any person :-

- (a) to enter into and take possession of the Property and for that purpose to take any legal proceedings and thenceforth to hold, possess and enjoy the Property and to take and receive the rents and profits thereof without any lawful interruption or disturbance by the Mortgagor or any other person;
- (b) (subject to any lease or tenancy lawfully granted by the Mortgagor with the consent of the Lender) to Dispose of the Property or any part or parts thereof on such terms and conditions as he may think fit, to surrender and accept the surrender of tenancies and leases of the Property and so that (without prejudice to the generality of the foregoing) he may Dispose for a consideration consisting of cash, debentures or other obligations, shares, securities or other valuable consideration and any such consideration may be payable in a lump sum or by instalments spread over such period as he may think fit. Fixtures may be severed and sold separately from the Property containing them without the consent of the Mortgagor;
- (c) to enter into a deed of mutual covenant relating to the Property and/or any other documents of a similar nature or grant or accept any rights, easements or privileges over or in respect of the Property as the Lender shall in its absolute discretion think fit;
- (d) without affecting the generality of sub-clause (b) hereof, whether or not the Lender shall have made such entry or taken possession aforesaid, sell, assign, call in, collect and convert into money the Property or any interest therein free from this Mortgage and any other estates, interests and rights to which this Mortgage has priority, with full power to sell the Property or any interest therein either together or in parcels and either by public auction or tender or private contract and partly by one of such methods of sale and partly by any other one or more of such methods of sale with power upon any such sale to make any stipulations as to title or evidence of commencement of title or otherwise in such manner and subject to such lawful conditions as the Lender shall think expedient and either for a lump sum or for a sum to be paid by instalments or for a sum on account and subject to a charge or other security for the balance and with full power to give any option to purchase the same or to buy in or rescind or vary any contract of sale of the same and to re-sell the same without being responsible for any loss which may be occasioned thereby with full power to compromise and effect compositions, and for the purposes aforesaid or any of them to execute and do all such assurances and things as the Lender shall think fit

PROVIDED HOWEVER that where the Event of Default relates to the payment of any moneys payable hereunder no such sale, calling-in, collection or conversion into money shall be put into effect until the Lender shall have previously served on the Mortgagor and/or the Borrower (or any one of the Mortgagor or the Borrower where the Mortgagor or the Borrower comprises more than one person) a notice

requiring payment of the Obligations and default has been made in payment thereof for a period of one calendar month after such service;

- (e) to make and effect all such repairs, alterations, improvements, maintenance and developments to and insurances of the Property as he may consider fit;
- (f) to commence, carry out and complete any building works, repairs, reconstruction, furnishing or equipment of the Property at the cost of the Mortgagor and the Borrower;
- (g) to enter into, perform or vary any contract or agreement for or relating to the Property and to discontinue, repudiate or rescind any such contract or agreement as aforesaid;
- (h) to appoint, hire and employ contractors, builders, workmen, managers, agents, officers, servants, solicitors, architects, surveyors, quantity surveyors, estate agents and others for any purpose on such terms and generally in such manner as the Lender may consider fit (including at such reasonable and proper remuneration as the Lender shall determine) and to discharge any such persons and any such persons appointed, hired or employed by the Lender;
- (i) to purchase or acquire all materials for use in connection with the exercise of his powers hereunder upon such terms and conditions as he may in any case think fit;
- (j) to settle, adjust, refer to arbitration, compromise and arrange any claims, accounts, disputes, questions and demands with or by any person who is or claims to be a creditor of the Mortgagor or relating in any way to the Property;
- (k) to bring, prosecute, enforce, defend, compromise and abandon all claims, actions, suits and proceedings in relation to the Property as may seem to him to be expedient; and
- (l) to do all such other acts and things he may consider necessary or desirable in connection with the Property or for realising the Property or incidental or conducive to any of the matters, powers or authorities conferred on the Lender under or by virtue of this Mortgage and generally to exercise in relation to the Property all such powers, authorities and things as he would be capable of exercising and doing if he were the absolute beneficial owner of the same.

8.2 Upon any Disposal of the Property in pursuance of the aforesaid powers in that behalf and upon the exercise by the Lender of any of the aforesaid powers, a tenant or purchaser or any other person dealing with the Lender in connection therewith shall not be bound to see or enquire whether any default has been made in payment of the Obligations at the time hereinbefore appointed for payment thereof or whether any money remains owing on the

security of this Mortgage or whether notice or demand has been given or made hereunder, or as to the propriety or regularity of the exercise of such powers.

- 8.3 Notwithstanding any impropriety or irregularity whatsoever in the exercise of such powers the same shall, as far as regards the safety and protection of any tenant or purchaser or any other person dealing with the Lender, be deemed to be within the aforesaid powers in that behalf and shall be valid and effectual accordingly.
- 8.4 The remedy of the Mortgagor in respect of any breach of the clauses or provisions hereinbefore contained or any obligations imposed by law upon the Lender from time to time with respect to the exercise of any such powers shall be in damages only.
- 8.5 The aforesaid powers may be exercised by any person who for the time being shall be entitled to receive and give a discharge for the moneys owing on the security of this Mortgage.
- 8.6 Subject as aforesaid the Lender shall not be answerable for any involuntary losses which may happen in the exercise of the aforesaid powers and trusts or any of them.
- 8.7 The provisions of this Clause 8 shall continue to apply, mutatis mutandis, after the expiry of the term granted or agreed to be granted under the Government Lease, in so far as an extension of the term under the Government Lease or a grant or regrant of the Property has been made to the Mortgagor by the Government or any competent authority and subject to such terms and conditions as may be imposed by the Government or such competent authority.

## **9. PROVISIONS AFFECTING RECEIVER**

- 9.1 If default in payment of the Obligations or any other Event of Default shall have occurred (and no delay or waiver of the right to exercise the powers conferred hereby shall prejudice the future exercise of such powers) the Lender may without further notice appoint in writing under the hand of the Lender such person or persons as the Lender thinks fit to be a Receiver of the Property, and the Lender may from time to time remove any Receiver so appointed and appoint another or others in his place, the following provisions shall apply with regard to any Receiver so appointed:-
  - (a) any such appointment may be made before or after the Lender shall have entered into or taken possession of the Property;
  - (b) any Receiver may (at the absolute discretion of the Lender) be appointed either Receiver of all of the Property or Receiver of such part or parts thereof as may be specified in the appointment and in such latter event the powers hereinbefore conferred on a Receiver shall have effect as though every reference therein to the Property were limited to the part or parts of the Property so specified;

- (c) any Receiver shall in the exercise of his powers, authorities and discretions conform to any regulations and directions from time to time made and given by the Lender Provided that no person dealing with the Lender or any Receiver shall be concerned to enquire whether the Receiver has so conformed to any such regulations and directions;
- (d) any Receiver shall be the agent of the Mortgagor for all purposes and the Mortgagor alone shall be responsible for his contracts, engagements, acts, omissions, defaults, losses and misconduct and for liabilities incurred by him and for his remuneration and the Lender shall not incur any liability therefor (either to the Mortgagor or to any other persons whatsoever) by reason of its appointing such Receiver or of its having made or given any requisition or direction pursuant to the foregoing sub-paragraph or for any other reason whatsoever;
- (e) if two or more persons are appointed Receiver the Lender may provide that their rights, powers and remedies vest in them jointly or jointly and severally;
- (f) the Lender may from time to time fix the remuneration of any Receiver and the Receiver shall be entitled to retain out of any money received by him that remuneration and all costs, charges and expenses properly incurred by him as Receiver, but the Mortgagor alone shall be liable for the payment of such remuneration;
- (g) the Lender may from time to time and at any time require any Receiver to give security for the due performance of his duties as Receiver and may fix the nature and amount of the security to be so given but the Lender shall not be bound in any case to require any such security;
- (h) every Receiver, attorney, manager, agent or other person appointed by the Lender hereunder shall be entitled to be indemnified out of the Property and the income thereof in respect of all liabilities and expenses incurred by him in the execution or purported execution of his powers and against all actions, proceedings, claims and demands in respect of any matter or thing done or omitted in anyway relating to the Property and the Lender may retain and pay out of any money in the Lender's hands arising from the Property or out of its own resources all sums necessary to effect such indemnity and all such sums shall be a charge on the Property;
- (i) such Receiver may be vested by the Lender with such powers and discretions, including powers of management, as the Lender may think expedient;
- (j) without prejudice to the generality of the foregoing, such Receiver shall have power to complete any building (if any) under construction on the Property and generally to complete the development thereof and to demand and recover all the income of the Property of which he is appointed receiver by action, distress or otherwise in the name either of the Mortgagor or the Lender to the full extent of the estate or interest

of which the Mortgagor could dispose and to give effectual receipts accordingly for the same;

- (k) unless otherwise directed by the Lender, such Receiver may exercise all the powers and authorities vested in the Lender hereunder;
- (l) save so far as otherwise directed by the Lender, all moneys from time to time received by such Receiver shall be paid over to the Lender to be held by the Lender on the trusts herein declared of and concerning moneys which arise from any sale, calling in, collection or conversion;
- (m) the Lender may pay over to such Receiver any moneys constituting part of the Property or the income thereof to the intent that the same may be applied for the purposes hereof by such Receiver, and the Lender may from time to time determine what funds the Receiver shall be at liberty to keep in hand with a view to the performance of his duties as such Receiver;
- (n) subject as hereinafter provided, any such Receiver may, for the purpose of defraying any costs, charges, losses or expenses (including his remuneration) which shall be incurred by him in the exercise of the powers, authorities and discretions vested in him and for all other purposes hereof or any of them, raise and borrow money on the security of the Property or any interest therein either in priority to the moneys hereby secured and the security hereby constituted or otherwise and at such rate of interest and generally on such terms and conditions as he may think fit and no person lending any such money shall be concerned to enquire as to the propriety or purpose of the exercise of this power or to see to the application of any moneys so raised or borrowed provided however that a Receiver shall not exercise this present power without first obtaining the prior written consent of the Lender;
- (o) any Receiver may act in his own name or in the name of the Mortgagor.

## **10. NON-LIABILITY OF LENDER OR RECEIVER**

- 10.1 Neither the Lender nor the Receiver shall be liable, by reason of any entry into or taking possession of the Property or for any other reason whatsoever, and whether as mortgagee in possession or on any other basis whatsoever, be liable to account to the Mortgagor for anything except its own actual receipts or be liable to the Mortgagor for any loss or damage arising from any realisation of the Property or from any act, default or omission in relation to the Property or from any exercise or non-exercise by it of any power, authority or discretion conferred upon it in relation to the Property.

## **11. THIRD PARTIES**

- 11.1 No person dealing with the Lender or with any Receiver shall be concerned to enquire whether any Event of Default has happened upon which any of the

powers, authorities and discretions conferred by or pursuant to the Security Documents in relation to the Property are or may be exercisable by the Lender, or by any such Receiver or otherwise, or whether any moneys remain due upon the security of this Mortgage or to the necessity or expediency of the stipulations and conditions subject to which any sale shall be made as to the propriety or regularity of acts purporting or intended to be in exercise of any such powers or to see to the application of any money paid to the Lender or any Receiver or its or his attorneys or agents and as regards any such person dealing with the Lender or any such Receiver, notwithstanding that the requisite power, authority or discretion has not become exercisable or any impropriety or irregularity whatsoever, such powers, authorities and discretions shall be deemed to be duly and validly exercised and that the remedy (if any) of the Mortgagor in respect of any irregularity or impropriety or any breach of the provisions hereinbefore contained shall be in damages only.

- 11.2 Upon any Disposal by the Lender and/or the Receiver the receipt of the Lender and/or the Receiver for the proceeds thereof and any other moneys paid to it or him shall effectually discharge the person paying the same therefrom and from being concerned to see to the application or being answerable for the loss or misapplication thereof.

## **12. POWER OF ATTORNEY**

- 12.1 The Mortgagor and the Borrower by way of security irrevocably appoints the Lender, each of the officers for the time being of the Lender and every Receiver of the Property, each with full power of substitution and each with full power to act alone, to be the Mortgagor's and/or the Borrower's attorney and in the Mortgagor's and/or the Borrower's name or in the name of the attorney and on the Mortgagor's and/or the Borrower's behalf to execute and as the Mortgagor's and/or the Borrower's act and deed or otherwise to do all such assurances, acts or things which the Lender (whose opinion shall be conclusive and binding upon the Mortgagor and/or the Borrower) considers as necessary or expedient that the Mortgagor and/or the Borrower should execute or do under the covenants and provisions contained in the Security Documents and generally in the Mortgagor's and/or the Borrower's name and on the Mortgagor's and/or the Borrower's behalf to exercise all or any of the powers, authorities and discretions conferred on the Lender or any such Receiver and (without prejudice to the generality of the foregoing) to execute, seal and deliver and otherwise perfect any deed, assignment, transfer, assurance, agreement, instrument or act which may in the opinion of such attorney be required or deemed proper, necessary or desirable in or for any of the purposes of the Security Documents.
- 12.2 The Mortgagor and the Borrower jointly and severally ratify and confirm and agree to ratify and confirm whatever any such attorney as is mentioned in sub-clause 12.1 shall do or purport to do in the exercise or purported exercise of all or any of the powers, authorities and discretions referred to therein.

### **13. PROCEEDS OF SECURITY REALIZATION**

- 13.1 The Lender or any Receiver so appointed shall hold and apply the moneys arising from any Disposal under the powers conferred upon the Lender or upon any Receiver after the security hereby created has become enforceable upon trust :-

First : in discharge of all rent, taxes, rates and other outgoings due and affecting the Property;

Secondly : unless the Property is sold subject to a prior encumbrance, in discharge of that prior encumbrance;

Thirdly : in payment of the Receiver's lawful remuneration, the Receiver's and the Lender's costs, charges and expenses and all lawful costs and expenses properly incurred in the Disposal;

Fourthly : in payment of the Obligations, and any residue shall be paid to the person who immediately before any Disposal was entitled to the Property or authorized to give a receipt for the proceeds of any Disposal of the Property

provided that all or any such moneys may in the absolute discretion of the Lender or Receiver be credited to any suspense account and may be held in such account for so long and in such manner as the Lender or the Receiver may think fit and the Receiver may retain the same for such period as he may consider expedient.

- 13.2 If any moneys received by the Lender and/or any Receiver shall be in any currency other than the currency in which the Obligations or any part thereof is outstanding or payable, the Lender and/or any Receiver shall have the absolute discretion to convert such moneys or any part thereof into the currency in which the Obligations or any part thereof is outstanding or payable by reference to the prevailing spot selling rate of exchange quoted by the Lender for such other currency against the existing currency. The Mortgagor and the Borrower jointly and severally agree(s) and undertake(s) to reimburse the Lender and/or any Receiver all the expenses, charges and costs incurred by the Lender and/or any Receiver in connection with such conversion, which shall form part of the Obligations.
- 13.3 No payment to the Lender under this Mortgage pursuant to any judgment or order of any court or otherwise shall operate to discharge any obligation or liability of the Mortgagor and/or the Borrower in respect of which it was made unless and until payment in full shall have been received in the currency in which such obligation or liability was incurred and to the extent that the amount of any such payment shall, on actual conversion into such currency, fall short of the amount of such obligation or liability expressed in that currency the Lender shall have a further separate cause of action against the Mortgagor and/or the Borrower for the recovery of the amount of the shortfall.

**14. NATURE OF SECURITY**

- 14.1 The security conferred by this Mortgage is in addition to and shall not affect or be affected by any other remedy lien security or guarantee which the Lender may now or at any time hold or take from the Mortgagor or the Borrower or from any other person in respect of the Obligations.
- 14.2 The security created herein shall be a continuing security and shall be available to secure whatever may be the balance at any time or from time to time due by the Mortgagor or the Borrower to the Lender pursuant to this Mortgage.
- 14.3 The Mortgagor shall not be entitled to require that the Lender to enforce any other rights, security, guarantee or indemnity whether against the Borrower, any other surety for the Borrower or any other person before enforcing this security.
- 14.4 This Mortgage shall not be discharged, released or otherwise affected by insolvency or winding up of the Mortgagor and shall remain valid and binding for all purposes notwithstanding any change by amalgamation, consolidation or otherwise which may be made in the constitution of the company or corporation by which the business of the Lender may from time to time be carried on and shall be available to the company carrying on that business for the time being.
- 14.5 The Lender may at any time during the continuance of this security at the expense of the Mortgagor and/or the Borrower obtain from a competent valuer in the Hong Kong Special Administrative Region one or more valuations of the Property and if in the opinion of the Lender the security constituted by the Property, together with any other security held by the Lender, is insufficient to secure the Obligations then the Mortgagor and/or the Borrower shall forthwith on demand by the Lender provide the Lender with such further security as the Lender shall require whether in cash or otherwise.

**15. SUSPENSE ACCOUNT**

The Lender may at any time place and keep for such time as it may think prudent any moneys received, recovered or realised under the Security Documents to and in a separate or suspense account to the credit of the Borrower or of such other person or persons or transaction, if any, as it shall think fit without any intermediate obligation on its part to apply the same or any part thereof in or towards the discharge of the Obligations.

**16. SET-OFF**

- 16.1 The Mortgagor and the Borrower authorise the Lender to :-
- (a) apply (without prior notice) any credit balance (whether or not then due) to which the Mortgagor or the Borrower is at any time beneficially entitled on any account at any office of the Lender in the Hong Kong Special Administrative Region and elsewhere; and

- (b) set-off any liabilities of the Lender to the Mortgagor or the Borrower which are due or to become due;

in or towards satisfaction of all or any of the Obligations.

For that purpose, the Lender is hereby authorised by the Mortgagor and the Borrower to use all or any part of any such credit balance or liability to buy such other currencies as may be necessary to effect such application or set-off.

- 16.2 It shall also be lawful for the Lender at any time thereafter without notice and notwithstanding any settlement of account or other matter whatsoever combine or consolidate all or any of the Mortgagor's and/or the Borrower's then existing accounts with the Lender or its holding or subsidiary or associated companies (whether current deposit loan or of any other nature whatsoever and whether subject to notice or not) and set-off or transfer any sum standing to the credit of any one or more of such accounts wheresoever situate in or towards satisfaction of all or any of the Obligations.

## **17. INDULGENCE**

- 17.1 This security given and the rights of the Lender under this Mortgage and the other Security Documents shall not be discharged or in any way affected by :-

- (a) any time, indulgence, waiver or consent at any time given to the Mortgagor or the Borrower (or any one or more of them if the Mortgagor and/or the Borrower comprises more than one person) or any other person;
- (b) any amendment to any of the Security Documents or to any other security, guarantee or indemnity or any release or variation of liabilities or obligations of the Mortgagor or the Borrower (or any one or more of them if the Mortgagor or the Borrower comprises more than one person) or any other person;
- (c) the making or the absence of any demand on the Mortgagor or the Borrower (or any one or more of them if the Mortgagor and/or the Borrower comprises more than one person) or any other person for payment;
- (d) the enforcement or absence of enforcement of or release of the Security Documents or of any other security, guarantee or indemnity;
- (e) the liquidation, bankruptcy, administration, dissolution, amalgamation, reconstruction or reorganisation, change in the constitution of the Mortgagor or the Borrower (or any one or more of them if the Mortgagor or the Borrower comprises more than one person) or change in the persons carrying on business in the name of the Mortgagor or the Borrower or, as the case may be, death or other incapacity of the Mortgagor or the Borrower;

- (f) the illegality, invalidity or unenforceability of or any defect in any provision of the Security Documents or any of the Mortgagor's or the Borrower's obligations under them; or
- (g) any party to any of the Security Documents not being bound by any of the same by reason of failure to execute the same or otherwise.

17.2 Where the Mortgagor or the Borrower comprises two or more persons (whether or not partners), any liability arising hereunder of the Mortgagor or the Borrower (as the case may be) shall be the joint and several liability of each and every person comprising the Mortgagor or the Borrower and none of such persons comprising the Mortgagor or the Borrower shall be entitled to any of the rights or remedies of a surety as regards the moneys and liabilities of any other such persons. The Lender shall be at liberty to release, compound with or otherwise vary or agree to vary the liability of or to grant time or indulgence to or make other arrangements with any one or more of the persons comprising the Mortgagor or the Borrower without prejudicing or affecting the Lender's rights and remedies against the other persons comprising the Mortgagor or the Borrower.

## **18. SETTLEMENT**

Any settlement, assignment, payment or discharge between the Lender and the Mortgagor or the Borrower shall be conditional upon no security or payment to the Lender in respect of the Obligations being avoided or reduced by virtue of any provisions or enactments relating to bankruptcy, insolvency or liquidation for the time being in force and in that event the Lender shall be entitled to recover the value or amount of any such security or payment from the Mortgagor or the Borrower as if no such settlement, assignment, payment or discharge has been made.

## **19. DISTRIBUTION OF PAYMENTS**

19.1 Payments by the Mortgagor or the Borrower shall be treated for the purposes of the Security Documents as if money received thereunder were applied to amounts owing thereunder or with respect thereto in such manner as the Lender may from time to time notify, notwithstanding that such moneys may in fact be applied or directed by the payer to be applied in some other manner.

19.2 If the security becomes enforceable all moneys received by the Lender in respect of the Obligations after the date conclusively determined by the Lender to be the earliest date on which the Lender was entitled to call for the immediate repayment of any principal not otherwise payable on demand or on which there was an Event of Default shall be credited to a suspense account or suspense accounts or treated as if so credited pending application thereof at the discretion of the Lender.

## **20. EXPENSES AND STAMP DUTY**

The Mortgagor and the Borrower shall jointly and severally be liable for and shall pay on demand :-

- (a) all costs, charges and expenses incurred and all payments made by the Lender or any Receiver in the lawful exercise of the powers hereby conferred upon it or him (together with all remuneration payable to the Lender or to any such Receiver); and
- (b) all reasonable costs and expenses (including legal fees on solicitors and own client basis) incurred by the Lender in connection with the preparation, negotiation, entry into of the Security Documents and/or any amendment of or waiver in respect of the Security Documents;
- (c) all reasonable costs and expenses (including legal fees on solicitors and own client basis) incurred by the Lender in the administration of, or in preserving, exercising, protecting or enforcing any rights under the Security Documents or in relation to the Property or recovering any sum due from the Mortgagor or the Borrower to the Lender hereunder; and
- (d) any stamp, documentary, registration or similar duty or fee payable in connection with the entry into, registration, performance, enforcement or admissibility in evidence of the Security Documents and shall indemnify the Lender against any liability with respect to or resulting from any delay in paying or omission to pay any such duty or fee;

to the intent that the Lender shall be afforded a full and unlimited indemnity in respect thereof and until so repaid such costs, charges, expenses and other sums and interest shall form part of the Obligations and shall have the benefit of the security contained in Clause 3 (but without prejudice to any other remedy, lien or security available to the Lender).

## **21. EVIDENCE**

- 21.1 The entries made in the accounts maintained by the Lender in accordance with its usual practice shall be conclusive evidence of the existence and amounts of the Obligations of the Borrower therein recorded save for manifest error.
- 21.2 A certificate by the Lender as to any sum payable to it under the Security Documents and any other certificate, determination, notification or opinion of the Lender provided for in the Security Documents, shall be conclusive and binding on the Mortgagor and the Borrower, save for manifest error.

## **22. ASSIGNMENT**

- 22.1 The Security Documents shall benefit and be binding on the parties, their respective successors and any permitted assignee or transferee of some or all of a party's rights or obligations thereunder. Any reference in the Security Documents to any party shall be construed accordingly.
- 22.2 The Mortgagor and the Borrower may not Dispose of all or part of their respective rights or obligations under the Security Documents.
- 22.3 The Lender may at any time Dispose to any third party all or any part of its rights and benefits under the Security Documents and each of the Mortgagor

and the Borrower hereby irrevocably appoints each of the successors and assigns of the Lender to be their attorney in the same terms and for the same purposes as set out in the relevant provisions of this Mortgage.

- 22.4 The Lender may disclose to a potential disposee or any other person proposing to enter into contractual arrangements with the Lender in relation to the Security Documents or to all Government and regulatory authorities in accordance with applicable law such information about the Mortgagor or the Borrower as it may think fit.

**23. REMEDIES, WAIVERS, AMENDMENTS AND CONSENTS**

- 23.1 Time shall be of the essence of the Security Documents but no failure on the part of the Lender to exercise, and no delay on its part in exercising, any right or remedy under the Security Documents will operate as a waiver thereof, nor will any single or partial exercise of any right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy. The rights and remedies provided in the Security Documents are cumulative and not exclusive of any rights or remedies provided by law.
- 23.2 Any provision of the Security Documents may be amended only if the Borrower and the Lender so agree in writing and any Event of Default may be waived before or after it occurs only if the Lender agrees in writing. Any waiver or consent shall be effective only in the instance and the purpose for which it is given.

**24. COMMUNICATIONS**

- 24.1 Each communication to be made under the Security Documents shall be made in writing but, unless otherwise stated, may be made by facsimile or letter but, if by facsimile by the Mortgagor or the Borrower, shall promptly be confirmed by sending the original (marked "confirmation copy") to the Lender.
- 24.2 Any communication or document to be made or delivered by one party to another pursuant to the Security Documents shall be made or delivered to that other party to the address specified herein or (if appropriate) its registered office or in the case of the Mortgagor to the Property.
- 24.3 Any communication from the Mortgagor or the Borrower shall be irrevocable, and shall not be effective until actually received by the Lender. Any demand for payment or notice by the Lender hereunder shall, without prejudice to any other effective mode of giving or making the same, be deemed to have been sufficiently given or made hereunder on the Mortgagor or the Borrower if left or sent by prepaid post addressed to the Mortgagor or the Borrower at the Property or the registered office or last known business or residential or correspondence address of the Mortgagor or the Borrower for the time being in Hong Kong, and shall be assumed to have reached the Mortgagor or the Borrower within 48 hours of posting, and in proving such service it shall be sufficient to prove that the notice or demand was properly addressed and posted or properly left as the case may be.

- 24.4 Any legal process including any writ or originating summons and any other summons or notice in connection with this Mortgage to be served on the Mortgagor and/or the Borrower by the Lender in any legal proceedings or action commenced in any court or tribunal shall be deemed to have been duly and sufficiently served on the Mortgagor and/or the Borrower forty-eight (48) hours after the same having been left or sent by ordinary prepaid post to the Mortgagor and/or the Borrower at their respective registered offices or usual places of business or abode or correspondence address in the Hong Kong Special Administrative Region or at the address of the Property (for the Mortgagor) and in proving such service it shall be sufficient to prove that the legal process or summons or notice was properly addressed and posted or properly left as the case may be irrespective of whether the same is returned to the Lender through the post undelivered to the Mortgagor and/or the Borrower.

25. **PARTIAL INVALIDITY**

The illegality, invalidity or unenforceability of any provision of the Security Documents under the law of any jurisdiction shall not affect its legality, validity or enforceability under the law of any other jurisdiction nor the legality, validity or enforceability of any other provision.

26. **SURETY PROVISIONS**

- 26.1 It has been agreed between the Mortgagor and the Borrower that, as between the Mortgagor and the Borrower, the Borrower shall be primarily liable for the repayment to the Lender of the Obligations.

- 26.2 Notwithstanding the foregoing agreement between the Mortgagor and the Borrower :-

- (a) as between the Mortgagor and the Lender, the Mortgagor shall be deemed a principal debtor in respect of the Obligations;
- (b) the liability of the Mortgagor shall not be affected by any extension of time for payment or other indulgence granted to the Borrower or any modification of the terms relating to the Facilities and the Interest thereon and/or the Obligations or any other matter or thing whereby the liability of the Mortgagor would but for this provision have been discharged; and
- (c) the Mortgagor shall not be entitled as against the Lender to any right of proof in the bankruptcy or liquidation of the Borrower until the whole of the Obligations shall have been completely discharged and satisfied.

27. **SUBROGATION**

Until the Obligations have been fully discharged (and notwithstanding that the Lender may have realised its security under this Mortgage) the Mortgagor shall not exercise or claim the benefit of any right of subrogation as against the Lender and shall not, without the Lender's prior consent, make any claim or enforce any rights against the Borrower or any other person in respect of this

Mortgage or any recoveries or realisations hereunder or prove in any winding-up of the Borrower or any other person in competition with the Lender; provided that, if so required by the Lender, the Mortgagor shall claim against, or prove in a winding up of the Borrower or any other person whether or not in competition with other creditors on condition that the benefit of such claims or proofs are held upon trust to pay any recoveries to the Lender until the Obligations have been discharged in full.

**28. CONTINUING SECURITY**

The security created herein shall be a continuing security and shall be available to secure whatever may be the balance at any time or from time to time due by the Mortgagor and/or the Borrower to the Lender pursuant to this Mortgagor.

**29. DATA POLICY**

The Mortgagor and the Borrower agree that the applicable data policies, notices and other communications to customers concerning their data from time to time issued by the Lender (a member of the DBS Group) shall apply. A copy is available on request at any Lender's branch or from its website. The Mortgagor and the Borrower agree that all information in any application, or that is obtained from any other sources or that arises from the Mortgagor's and the Borrower's relationship with the Lender (or any other DBS Group Company) ("data") will be subject to such policies/or other communications (as may be varied from time to time). The Mortgagor and the Borrower agree in particular that:

- (a) the Lender may verify, provide and collect information about the Mortgagor and the Borrower from other organisations, institutions or other persons;
- (b) the Lender may transfer data outside the Hong Kong SAR including to Singapore; and
- (c) the Lender may compare any data obtained with the Mortgagor's and the Borrower's data, and use the results for taking of any actions including actions that may be adverse to the Mortgagor's and the Borrower's interest (including declining any application).

**30. RIGHTS OF THIRD PARTIES**

Unless expressly provided to the contrary in this Mortgage, a person who is not a party to the Mortgage 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 this Mortgage, the consent of any third party is not required for any variation (including any release or compromise of any liability), rescission or termination of this Mortgage.

**31. GOVERNING LAW**

This Mortgage shall be governed by and construed in accordance with the laws of the Hong Kong Special Administrative Region and the parties hereby agree to submit to the non-exclusive jurisdiction of the Hong Kong Special Administrative Region Courts.

This Mortgage has been executed as a deed by or on behalf of the Mortgagor and the Borrower.

SAMPLE

**SCHEDULE**

1. The Property:
2. Government Lease:
3. Deed of Mutual Covenant:

SAMPLE

**SCHEDULE 31**

[Limit (referred to in clause 3.2, if applicable)]

HK\$ (in words\_\_\_\_\_)

(Please complete. If this part of this Schedule is not completed, then this Mortgage shall secure all monies owed by the Borrower to the Lender).]

SAMPLE

**This Mortgage is an important legal document. Before signing, you should read it carefully and if necessary seek independent legal advice to make sure you understand your commitment and the full consequences of signing. If you sign this document, you will be liable together with or in place of the Borrower for the Borrower's obligations to the Lender. You should only sign this document if you agree to be legally bound by its terms.**

SEALED with the Common Seal )  
of the Mortgagor and SIGNED )  
by )  
in the presence of : )  
)  
)

or

Executed and Delivered as a DEED )  
by the Mortgagor and SIGNED )  
by )

\_\_\_\_\_  
Director

Name: \_\_\_\_\_

\_\_\_\_\_  
Director/Company Secretary

Name: \_\_\_\_\_

or

SIGNED SEALED and DELIVERED )  
by the Mortgagor (who having been )  
identified by the production of his/her )  
Hong Kong Identity Card No. )  
in the presence of : )

INTERPRETED to the Mortgagor by:-

SEALED with the Common Seal )  
of the Borrower and SIGNED )  
by )  
in the presence of : )  
)  
)

or

Executed and Delivered as a DEED )  
by the Borrower and SIGNED )  
by )

\_\_\_\_\_  
Director

Name: \_\_\_\_\_

\_\_\_\_\_  
Director/Company Secretary

Name: \_\_\_\_\_

or

SIGNED SEALED and DELIVERED )  
by the Borrower (who having been )  
identified by the production of his/her )  
Hong Kong Identity Card No. )  
in the presence of : )

INTERPRETED to the Borrower by:-

**PLEASE READ THE TERMS AND CONDITIONS OF THIS GUARANTEE CAREFULLY AND MAKE SURE YOU UNDERSTAND THEM.**

TO: DBS BANK (HONG KONG) LIMITED

Dated \_\_\_\_\_

**1. Guarantee Provision**

In consideration of DBS BANK (HONG KONG) LIMITED ("**Bank**", which expression shall include all the branches of the Bank in all countries and its successors and assigns) granting, continuing or affording facilities or other accommodation or services at the request of the person named in Part 1 of the Schedule ("**Guarantor**" which expression shall include this person's successors and assigns) for as long as the Bank may think fit to, and/or agreeing to enter or entering into Derivative Transactions with, the person named in Part 2 of the Schedule (the "**Principal**"), the Guarantor HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREES and undertakes with the Bank to pay to the Bank on demand all sums of money and liabilities (collectively "**Liabilities**") whether certain or contingent, now or hereafter owing or incurred to the Bank by the Principal whether as principal or guarantor or surety and whether from the Principal solely or from the Principal jointly with any other person or persons or from any firm in which the Principal may be a partner and in whatever style, name or form including, without limitation:-

- (a) in the case of the death or liquidation of the Principal, all sums which would at any time have been owing to the Bank by the Principal prior to the Bank receiving actual notice of such death or liquidation;
- (b) all money obtained from, and/or liabilities incurred to, the Bank pursuant to facilities granted by the Bank, notwithstanding that the borrowing or incurring of such liabilities or the taking up of such facilities may be invalid or in excess of the powers of the Principal or of any director, attorney, agent, partner or other person purporting to borrow or request or act on behalf of the Principal and notwithstanding any other irregularity in such borrowing or incurring such liabilities or facilities;
- (c) if by any means or for any reason this Guarantee is discontinued, sums payable under all cheques, drafts, bills, notes and negotiable instruments drawn by or for the account of the Principal on or otherwise purchased or negotiated or honoured by the Bank or the Bank's agents and purporting to be dated on or before the date when such discontinuance becomes actually known to the Bank or the Bank's agents although presented to or paid by the Bank or the Bank's agents under any obligation or commitment after that date and all liabilities of the Principal owing to the Bank at such date, whether certain or contingent and whether payable forthwith or at some future time or times and also all facilities then established by the Bank for the Principal;
- (d) in all cases, money due to the Bank in respect of any facilities granted to the Principal or at its request in any country together with all interest on all such debts and facilities to the date of payment as well as commission, banking charges, discounts, legal and other costs, charges and expenses occasioned by or incidental to any other guarantee, indemnity or security held by or offered to the Bank for the same indebtedness, or occasioned by or incidental to the enforcement of any such guarantee, indemnity or security or by or to any attempt to recover or partially recover thereunder from the Principal;
- (e) (01) all sums of money or liability which are now or hereafter from time to time and at any time shall be due or owing, remain unpaid by the Principal to the Bank in respect of any derivative transactions, (02) all delivery of all property as and when the same shall become deliverable according to the master agreement (or any documents governing derivative transactions), and (03) all costs, charges and expenses (including reasonable legal costs) which the Bank may incur in enforcing or seeking to obtain payment or performance of all or any part of the monies, liabilities or obligations in respect of the derivative transactions (including any perfection or enforcement (or attempted perfection or enforcement) of any security or credit support documents, both after as well as before judgment;

PROVIDED that the total amount recoverable in respect of principal Liabilities from the Guarantor hereunder shall not exceed the sum specified in Part 3 of the Schedule to this Guarantee. For the avoidance of doubt, the Bank may in addition demand payment under this Guarantee of, and the Guarantor shall in addition pay, (i) all interest accrued on such principal Liabilities, (ii) default interest on all outstanding Liabilities at the rate that the Bank charges its customers from time to time, such interest to be calculated in accordance with the Bank's usual practice for the time being, from the date of the same becoming due until payment (whether before or after judgment) and (iii) all costs and expenses (on a full indemnity basis) arising out of or in connection with the recovery or attempted recovery by the Bank of any Liabilities, whether from the Principal, the Guarantor or any other person. For the avoidance of doubt, if Part 3 of the Schedule to this Guarantee is not completed, the Guarantor's liability under this Guarantee shall be unlimited.

**2. Primary Liability of the Guarantor**

Without prejudice to any other provision of this Guarantee, the Guarantor irrevocably and unconditionally agrees that it shall also be liable under this Guarantee in respect of the Liabilities as a primary debtor and not merely as a guarantor or surety and as if it had indemnified the Bank in full in respect of the Liabilities. The Guarantor shall pay to the Bank on demand any amount for which it is liable under this Clause 2.

**3. Continuing Guarantee**

This Guarantee shall be a continuing guarantee.

**4. Enduring Guarantee**

This Guarantee shall not be considered as satisfied by any intermediate payment or satisfaction of the whole or any part of any sum of money or liabilities owing as aforesaid but shall extend to cover any sum of money or liabilities which shall for the time being constitute the ultimate balance of the Liabilities.

**5. Guarantee is in Addition to Other Security**

This Guarantee shall be in addition to and shall not be in any way prejudiced or affected by any guarantee, indemnity or security provided by any person now or hereafter held by the Bank for all or any part of the Liabilities nor shall such guarantee, indemnity or security to which the Bank may be otherwise entitled or the liability of any person or persons not parties hereto for all or any part of the Liabilities be in anywise prejudiced or affected by this Guarantee. All money received by the Bank from the Guarantor or the Principal or any person or persons liable to pay the same may be applied by the Bank to any account or item of account or to any transaction to which the same may be applicable PROVIDED ALWAYS that the Bank shall have an absolute right to elect to enforce any such guarantee, indemnity, collateral or other security.

**6. Guarantee not Affected by Indulgence etc**

This Guarantee and the liability of the Guarantor under this Guarantee shall not be impaired, reduced, discharged or otherwise adversely affected in any way by reason of:

- (i) the Bank from time to time granting to the Principal, any surety for the Principal or any other person providing security for any Liabilities or otherwise any time, indulgence, concession, waiver or consent; or
- (ii) the renewing of any bills, promissory notes or other negotiable or non-negotiable instruments or securities; or
- (iii) the Bank varying, realising, releasing or abstaining from perfecting or enforcing any guarantees, indemnities, assurances, bills, notes, rights or security of any kind which the Bank may hold in respect of Liabilities, or any other rights, powers or remedies; or
- (iv) the Bank compounding with, or waiving, discharging, releasing or varying the liability of, the Principal or any other person, or concurring in accepting or varying any compromise, arrangement or settlement; or
- (v) the Bank opening any new account or closing or redesignating any other account of the Principal or renewing any existing facilities to the Principal or providing any new or additional facilities to the Principal or requiring the Principal to provide or procure any other guarantee, indemnity or security in respect of the Principal's obligations or the obligations of any other person; or
- (vi) the Bank, by its action or failure to act, prejudicing any rights which the Guarantor may have whether against the Principal, any surety for the Principal or any other person; or
- (vii) any failure by the Bank to take any guarantee, indemnity or security; or
- (viii) the invalidity of any guarantee, indemnity, security or other right, taken in respect of the Liabilities (or any provision thereof); or
- (ix) any existing or future agreement by the Bank as to the application of any facilities made or to be made to the Principal; or
- (x) the Principal or any other party thereto not being bound by the terms of any agreement by which facilities are made available by the Bank or any other security, guarantee, indemnity, power, right or remedy whether as a result of any failure to execute, or any deficiency in the execution of the same or as a result of any defect in or insufficiency or want of the necessary powers or any irregular or improper exercise thereof, whether or not known to the Bank or for any other reason; or
- (xi) any assignment by the Principal or any surety of any of its rights or obligations under any guarantee, indemnity, assurance, bill, note, right or security; or
- (xii) the death, incapacity, insolvency or liquidation of the Principal or any surety, or any arrangement or composition between the Principal or any surety and its creditors; or
- (xiii) any change in the status or composition of the Principal or any surety, whether by change of name or style or, in the case of a company, by amalgamation or reconstruction or any change in constitution (whether in the form of Articles of Association or otherwise) or, in the case of a firm, sole proprietorship or partnership, the introduction, retirement, removal, death or liquidation of partners (which may include the conversion of a sole proprietorship into a partnership or vice versa) so that this Guarantee shall provide assurance for the discharge of Liabilities both before or after any such change; or
- (xiv) the Bank and the Principal agreeing to any new, additional, restructuring or termination of, derivative transactions; or
- (xv) any amendment, variation, supplement of, or additions to, the master agreement or any other documents governing derivative transactions notwithstanding (a) such variations or additions may impose further liabilities or more onerous covenants, undertakings or burdens on the Principal and (b) the Guarantor shall not have received notice or been made aware of or consented to such amendments, variations of or additions to the master agreement; or
- (xvi) any moratorium or other period staying or suspending by contract, statute, order of any court or other authority all or any of the Bank's rights, remedies or recourse against the Principal; or
- (xvii) anything done or omitted or any other circumstances which, but for this provision, might operate to exonerate the Guarantor or any other person (whether as primary debtor or as surety).

**7. No Withholding, Deductions etc**

All payments under this Guarantee shall be made without any withholding on account of any tax, duty, levy, impost, charge or fee or other cause and without any set-off, counterclaim, restriction, condition or deduction. If the Guarantor is required by law to make any deduction or withholding from any payment under this Guarantee, the Guarantor shall pay to the Bank such additional amounts as may be necessary to ensure the receipt and retention by the Bank (free from any liability in respect of such deduction or withholding) of the full amount which it would otherwise have received.

**8. Approvals, Authorities etc**

The Guarantor hereby undertakes to the Bank to obtain and maintain in full force, validity and effect all governmental and other approvals, authorities, licences and consents required in connection with this Guarantee, and to do or cause to be done all other acts and things necessary or desirable for the performance of all the obligations of the Guarantor pursuant to this Guarantee. The Guarantor further agrees to bear the costs and expenses in relation to the release and/or discharge of this Guarantee.

**9. No Security from Principal**

The Guarantor warrants to the Bank that it has not taken and covenants to the Bank that it will not take from the Principal or any other person, without the prior written consent of the Bank, any form of security, guarantee or indemnity, either directly or indirectly and whether merely personal or involving a security interest on any property of the Principal or other person, in respect of the Guarantor's liabilities under this Guarantee. Any such security, guarantee or indemnity taken without the Bank's consent shall be held on trust for the Bank as security for the discharge of the Liabilities and shall be deposited with the Bank. If the Guarantor defaults in so depositing any such security, guarantee or indemnity with the Bank the maximum amount for which it shall be liable under this Guarantee, if any limit applies as provided in Part 3 of the Schedule, shall be increased by the amount by which any dividend in the bankruptcy or liquidation of the Principal or otherwise payable by the Principal to the Bank is thereby diminished.

**10. No Claims against Principal**

The Guarantor agrees not to (a) exercise any rights of set-off, contribution or indemnity or any right to demand or accept repayment of, or payment of interest on, any loans or advances now or in the future due to it from the Principal against the Principal, (b) claim any right of subrogation in respect of any guarantee, indemnity or security held by the Bank in respect of the Liabilities unless the Liabilities shall have been paid and discharged in full or (c) prove otherwise in competition with the Bank in respect of any payment by it under this Guarantee; except that the Guarantor may (and shall if so required by the Bank) prove in any liquidation or participate in any competition with creditors of the Principal or any other person for claims against the Principal or such person on condition that the benefit of such claims is held upon trust to pay amounts recovered thereunder to the Bank until the Liabilities shall have been discharged in full.

11. **Suspense Account**

Any money received under this Guarantee may be placed and kept to the credit of a suspense account for so long as the Bank thinks fit, without any obligation in the meantime to apply the same or any part thereof in or towards discharge of any Liabilities. Notwithstanding any such payment, in the event of any proceedings in or analogous to liquidation, composition or arrangement, the Bank may prove for and agree to accept any dividend or composition in respect of the whole or any part of the Liabilities in the same manner as if this Guarantee had not been given.

12. **Foreign Exchange**

With respect to any Liabilities payable in a foreign currency or in any foreign country, the Guarantor shall be obliged to pay to the Bank the relevant unpaid Liabilities in the same foreign currency and place in which the same are payable or, at the election and at the request of the Bank, the Guarantor shall be obliged to pay to the Bank at its Hong Kong Office, the equivalent thereof in Hong Kong currency computed at the current selling rate of the Bank, on the date the relevant Liabilities became due, for cable transfers of such foreign currency to the place where the same are payable. The Guarantor shall indemnify the Bank against, and pay to the Bank on demand the amount of, any loss incurred by it arising from any change in the value in Hong Kong currency of such foreign currency between the date the relevant Liabilities became due and the date of payment thereof. The term "foreign currency" shall be deemed in this Guarantee to refer to that type of such currency which under applicable laws and regulations may be used to pay and discharge any relevant Liabilities. If on the date the relevant Liabilities became due no selling rate is quoted by the Bank for cable transfers of such foreign currency to the place where the same are payable or if at any time the Bank is unable due to interruption of any communications between Hong Kong and any foreign office at which the records of the relevant Liabilities are maintained or to legal restrictions, acts of war, insurrection or civil uprising at the location of such foreign office, to establish the amount of the relevant Liabilities, the Bank may estimate the equivalent in Hong Kong currency of the amount of the relevant Liabilities on the basis of the last statement or statements received by the Bank from such foreign office and the last quoted selling rate for cable transfers of such foreign currency to the place where the same are payable and the Guarantor shall be obliged, on demand, to furnish such security or additional money (as the case may be) or to make such payments on account of its liabilities under this Guarantee as the Bank shall request. The Bank will hold such additional security or money as security for the Guarantor's obligations under this Guarantee and the Guarantor shall remain liable for all Liabilities when ultimately determined.

13. **Release Conditional on No Avoidance etc**

Any release, settlement or discharge between the Guarantor and the Bank shall be conditional upon no security, disposition or payment to the Bank in respect of the Liabilities being avoided or set aside or ordered to be surrendered, paid away, refunded or reduced by virtue of any law relating to liquidation, insolvency, composition or arrangement for the time being in force or for any other reason whatsoever. The Bank shall be entitled to retain any security and recover from the Guarantor or any other relevant person the value which the Bank placed upon such security or disposition or the amount of such payment as if such release, settlement or discharge had not occurred until the expiration of the period or periods under such provisions or enactments within which such payment or security could be avoided or reduced and if within such period the payment or security is avoided or reduced the Bank shall be entitled to retain the Guarantee or any part thereof for and during such further period as the Bank in its entire discretion shall determine.

14. **Ruling Off of Account**

If this Guarantee ceases from any cause whatsoever to be binding as a continuing guarantee on the Guarantor, the Bank shall be at liberty without thereby affecting its rights hereunder to open a fresh account or accounts and to continue any then existing account with the Principal and no money paid from time to time into any such account or accounts by or on behalf of the Principal and subsequently drawn out by the Principal shall on settlement of any claim in respect of this Guarantee be appropriated towards or have the effect of payment of any part of the money due from the Principal at the time of this Guarantee ceasing to be so binding as a continuing guarantee or of the interest thereon unless the person or persons principal in the money shall at the time in writing direct the Bank specially to appropriate it to that purpose.

15. **Lien**

- (a) In addition to any other right which it may have at law, the Bank shall be entitled to retain and not repay any amount whatsoever which is or may hereafter be owing from it to the Guarantor or any money whatsoever which it may hold, now or hereafter, for the account of the Guarantor, whether on current, savings or deposit account and regardless of the currency thereof, unless and until all Liabilities shall have been discharged in full.
- (b) **Without limiting any general or banker's lien, right of set-off or other right to which the Bank may be entitled, the Bank may at any time otherwise, without notice to the Guarantor, whether or not the Bank has made a demand under this Guarantee or the Liabilities have become due, combine, consolidate or merge all or any of the Guarantor's accounts with it and the Liabilities and may set-off or transfer any sums held for the Guarantor or standing to the credit of any such accounts (whether subject to notice or not and whether matured or not) in or towards satisfaction of the Liabilities, notwithstanding that the sums held for the Guarantor or the balances on such accounts and the Liabilities may be at different branches in different jurisdictions and may not be expressed in the same currency. The Bank is hereby authorised to effect any necessary conversions at its own rate of exchange then prevailing for the foregoing purposes.**

16. **No Waiver**

Any forbearance or delay by the Bank in exercising any right or remedy shall not be deemed to be a waiver of such right or remedy, and any single or partial exercise of any right or remedy shall not preclude the further exercise thereof. No course of dealing between the Guarantor and the Bank nor any waiver in any one or more instances shall be deemed a waiver in any other instance. Each of the Bank's rights and remedies shall continue in full force and effect until such rights or remedies are specifically amended or waived by an instrument in writing executed by the Bank.

17. **Invalidity**

Any provision in this Guarantee which is invalid for any reason in any jurisdiction shall be ineffective only to the extent of such invalidity and shall not affect the validity of the remaining provisions hereof or the validity of such provision in any other jurisdiction.

18. **Data Policy**

The Guarantor agrees that the applicable data policies, notices and other communications to customers concerning their data from time to time issued by the Bank (a member of the DBS Group) shall apply. A copy is available on request at any Bank branch or from its website. The Guarantor agrees that all information in any application, or that is obtained from any other sources or that arises from the Guarantor's relationship with the Bank (or any other DBS Group Company) ("data") will be subject to such policies or other communications (as may be varied from time to time). The Guarantor agrees in particular that:

- (i) the Bank may verify, provide and collect information about the Guarantor from other organisations, institutions or other persons;
- (ii) the Bank may transfer data outside Hong Kong including to Singapore; and
- (iii) the Bank may compare any data obtained with the Guarantor's data, and use the results for taking of any actions including actions that may be adverse to the Guarantor's interest (including declining any application).

19. **Continuing Validity**

Without prejudice to any other provision of this Guarantee, notwithstanding that the Principal is a committee or association or other unincorporated body (as the case may be) which has no legal existence or which is under no legal liability to discharge obligations undertaken or purported to be undertaken by it or on its behalf, this Guarantee shall be valid and binding on the Guarantor and have effect as though the Guarantor was the principal debtor and the Guarantor acknowledges that the Bank accepts the Principal as such at the Guarantor's request.

20. **Partnership Dissolution**

Without prejudice to any other provision of this Guarantee, if any firm whose account is hereby guaranteed is dissolved, this Guarantee shall apply to all money borrowed and liabilities and credits incurred in the firm's name until the Bank shall receive actual notice of such dissolution. If however the dissolution be by reason only of the introduction of a further partner or partners into the firm this Guarantee shall continue and, in addition to the debts and liabilities and credits due by the old firm, shall apply to all money and liabilities and credits due or incurred to the Bank from or by the new firm(s) thereby constituted as though there had been no change in the firm as previously constituted.

21. **Bank Amalgamation etc**

This Guarantee 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 and/or any of its rights and interests under this Guarantee.

22. **Notices**

Any notice or demand by the Bank shall be deemed to have been validly given if addressed to the Guarantor at such address as may be notified to the Bank in writing by the Guarantor or appear in the Bank's records as the Guarantor's last known address. Any notice delivered personally shall be deemed to have been given at time of delivery. Any notice despatched by letter postage prepaid shall be deemed to have been given immediately after posting. Any notice sent by telex with answer back or by facsimile shall be deemed to have been given at the time of transmission.

23. **Interpretation**

Where appropriate in this Guarantee:

- (i) the use of the masculine gender shall also include the feminine or neuter and the use of the neuter gender shall also include the masculine or feminine;
- (ii) headings are included for ease of reference only and shall have no legal effect;
- (iii) the use of the singular shall include the plural and vice versa;
- (iv) the expression "**person**" shall mean and include a company, society, corporation, firm, partnership, joint venture, trust, state, agency of a state, or an individual and in the case of an individual his or her executors, administrators, committee, receiver or other person lawfully acting on behalf of every such person;
- (v) the expression "**this Guarantee**" shall mean this Guarantee and Indemnity and shall be construed as including and extending to any separate or independent stipulation or agreement herein contained and any supplement or amendment hereto;
- (vi) "**derivative transactions**" means any transaction (including an agreement with respect to any such transaction) now existing or hereafter entered into between the Principal and the Bank contemplated by or under the master agreement, including without limitation, any foreign exchange transactions, swap or any derivative transaction on one or more rates, currencies, credit, commodities, equity securities or other equity instruments, debt securities or other debt instruments, economic indices;
- (vii) "**facility**" means all types of banking and credit facility and accommodation provided by the Bank including, without limitation, loans, advances, overdrafts, credits, guarantees, confirmations, hire purchase arrangements and financial, equipment, motor vehicle and other leases;
- (viii) "**Hong Kong**" means the Hong Kong Special Administrative Region of the People's Republic of China;
- (ix) "**liquidation**" means bankruptcy, winding up, liquidation, supervision, administration or any analogous proceedings in respect of any person (as the case may be);
- (x) "**master agreement**" means the ISDA Master Agreement (including any schedules and/or credit support annex) and/or any other master agreement governing derivative transactions entered into between the Bank and the Principal, in each case as supplemented and amended from time to time;
- (xi) references to the "**Schedule**" are to the Schedule annexed hereto;
- (xii) "**security**" includes any mortgage, charge, pledge, lien or other encumbrance or security interest;
- (xiii) where this Guarantee is given for more than one person the expression "**Principal**" shall be construed as referring to them collectively and individually;
- (xiv) if signed by a firm or partnership, the expression "**the Guarantor**" shall include the person or persons from time to time carrying on business in the name of such firm or partnership; and
- (xv) references to any laws, Ordinances, rules or regulations will, as required, be deemed also to include any amendment, re-enactment, consolidation, replacement and/or successor thereof.

24. **Bank Certificate**

A certificate by an officer of the Bank as to any Liabilities for the time being due, any interest or exchange rate or any other matter shall be conclusive evidence in any legal proceedings against the Guarantor unless (i) the Bank failed to exercise reasonable skill and care in respect of any such statement or certificate or (ii) any such statement or certificate was generated by the wilful default or forgery or negligence of the Bank or any of its employees, agents or servants.

25. **Third Parties**

Unless expressly provided to the contrary in this Guarantee, a person who is not a party to the Guarantee 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 this Guarantee, the consent of any third party is not required for any variation (including any release or compromise of any liability), rescission or termination of this Guarantee.

26. **Law**

- (a) This Guarantee shall be governed by and construed in accordance with the laws of Hong Kong and the Guarantor hereby irrevocably submits to the jurisdiction of the Hong Kong courts, provided that such jurisdiction, at the sole option of the Bank, shall not be exclusive. The Guarantor agrees that any writ, summons, order, judgment or other document shall be deemed duly and sufficient served if addressed to the Guarantor and left at or sent by post to the address in Hong Kong of the Guarantor last known to the Bank.
- (b) The Guarantor hereby irrevocably appoints the person named in Part 4 of the Schedule ("**Process Agent**") to be its agent to accept service of any legal process in Hong Kong in connection with this Guarantee. The Guarantor agrees that any writ, summons, order, judgment or other document issued in connection with the Liabilities shall be deemed duly and sufficiently served on it if addressed to the Process Agent and left at, or sent by post (postage prepaid) to, its address. The foregoing shall not limit the rights of the Bank to serve process on the Guarantor in any manner permitted by law in any jurisdiction.

27. **Joint Guarantors**

If this Guarantee is signed by more than one person or is signed by one person for himself and on behalf of others (whether a partnership or otherwise):

- (a) the expression "Guarantor" shall include each such person (a "**Joint Guarantor**") and the liability of Joint Guarantors under this Guarantee shall be joint and several;
- (b) any demand for payment on any one or more of the Joint Guarantors shall be treated as a valid demand on all Joint Guarantors;
- (c) the Bank may release or discharge any one or more of the Joint Guarantors from liability under this Guarantee or compound with, accept compositions from or make any other arrangement with any of such persons without, in consequence, releasing or discharging or otherwise prejudicing or affecting its rights and remedies against any other Joint Guarantor;
- (d) this Guarantee shall not be affected by the death, incapacity or liquidation of any Joint Guarantor;
- (e) the fact that any Joint Guarantor is not bound by the provisions of this Guarantee (for whatever reason) shall not discharge the other Joint Guarantors who shall be and continue to be bound by this Guarantee; and
- (f) until the Liabilities have been paid in full to the Bank, no Joint Guarantor will, without the prior written consent of the Bank, exercise or claim any rights available to it against any other Joint Guarantor.

28. **Ownership of Document**

This Guarantee is and will remain the property of the Bank notwithstanding the payment in full of any claim or claims of the Bank hereunder.

29. **Chinese Translation**

The Guarantor agrees that the Chinese translation of this Guarantee is provided for reference only and shall not apply for construing this Guarantee. The English version shall prevail for all purposes.

## **SCHEDULE**

### **Part 1**

#### **Guarantor**

Name:

Address:

Facsimile:

Telex (if any):

(Individuals): ID Card /  
Other Identification  
Document No.:

### **Part 2**

#### **Principal**

Name:

### **Part 3**

Limit (if applicable)

*(complete in words and figures; if this Part is not completed, the Guarantor's liability to the Bank under this Guarantee shall be unlimited)*

### **Part 4**

#### **Process Agent**

Name:

Address (in Hong Kong):

Facsimile:

Telex (if any):

This Guarantee has been executed by the Guarantor as a deed.

**This Guarantee is an important legal document. Before signing, you should read it carefully and if necessary seek independent legal advice to make sure you understand your commitment and the full consequences of signing. If you sign this document, you will be liable together with or in place of the Principal for the Principal's obligations to the Bank. You should only sign this document if you agree to be legally bound by its terms.**

**Individual Signatory**

Signed Sealed and Delivered by

L.S

\_\_\_\_\_  
(Name of Signatory in Block Letters)

\_\_\_\_\_  
(Signature)

I.D. Card / Other  
Identification Document No.  
of Signatory: \_\_\_\_\_

in the presence of:

Name of Witness: \_\_\_\_\_

Occupation of Witness: \_\_\_\_\_

\_\_\_\_\_  
(Signature of Witness)

Signed Sealed and Delivered by

L.S

\_\_\_\_\_  
(Name of Signatory in Block Letters)

\_\_\_\_\_  
(Signature)

I.D. Card / Other  
Identification Document No.  
of Signatory: \_\_\_\_\_

in the presence of:

Name of Witness: \_\_\_\_\_

Occupation of Witness: \_\_\_\_\_

\_\_\_\_\_  
(Signature of Witness)

Signed Sealed and Delivered by

L.S

\_\_\_\_\_  
(Name of Signatory in Block Letters)

\_\_\_\_\_  
(Signature)

I.D. Card / Other  
Identification Document No.  
of Signatory: \_\_\_\_\_

in the presence of:

Name of Witness: \_\_\_\_\_

Occupation of Witness: \_\_\_\_\_

\_\_\_\_\_  
(Signature of Witness)

**This Guarantee is an important legal document. Before signing, you should read it carefully and if necessary seek independent legal advice to make sure you understand your commitment and the full consequences of signing. If you sign this document, you will be liable together with or in place of the Principal for the Principal's obligations to the Bank. You should only sign this document if you agree to be legally bound by its terms.**

**Individual Signatory**

Signed Sealed and Delivered by

L.S

\_\_\_\_\_  
(Name of Signatory in Block Letters)

\_\_\_\_\_  
(Signature)

I.D. Card / Other  
Identification Document No.  
of Signatory: \_\_\_\_\_

in the presence of:

Name of Witness: \_\_\_\_\_

\_\_\_\_\_  
(Signature of Witness)

Occupation of Witness: \_\_\_\_\_

Signed Sealed and Delivered by

L.S

\_\_\_\_\_  
(Name of Signatory in Block Letters)

\_\_\_\_\_  
(Signature)

I.D. Card / Other  
Identification Document No.  
of Signatory: \_\_\_\_\_

in the presence of:

Name of Witness: \_\_\_\_\_

\_\_\_\_\_  
(Signature of Witness)

Occupation of Witness: \_\_\_\_\_

Signed Sealed and Delivered by

L.S

\_\_\_\_\_  
(Name of Signatory in Block Letters)

\_\_\_\_\_  
(Signature)

I.D. Card / Other  
Identification Document No.  
of Signatory: \_\_\_\_\_

in the presence of:

Name of Witness: \_\_\_\_\_

\_\_\_\_\_  
(Signature of Witness)

Occupation of Witness: \_\_\_\_\_

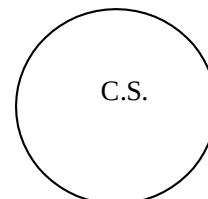
[ OR ]

**This Guarantee is an important legal document. Before signing, you should read it carefully and if necessary seek independent legal advice to make sure you understand your commitment and the full consequences of signing. If you sign this document, you will be liable together with or in place of the Principal for the Principal's obligations to the Bank. You should only sign this document if you agree to be legally bound by its terms.**

**Corporate Signatory**

The Common Seal of

)  
)  
)  
)  
)



was affixed hereto in the presence of:

\_\_\_\_\_  
Director/Authorised Signatory

Name :

\_\_\_\_\_  
Director/Secretary/Authorised Signatory

Name :

[OR]

Executed and Delivered as a **DEED** by

)  
)  
)  
)  
)

and **SIGNED** by

\_\_\_\_\_  
Director

Name: \_\_\_\_\_

\_\_\_\_\_  
Director/Company Secretary

Name: \_\_\_\_\_

CHARGE ON CASH DEPOSIT(S) to secure  
LIABILITIES OF THE DEPOSITOR(S)



PLEASE READ THE TERMS AND CONDITIONS OF THIS DOCUMENT CAREFULLY AND MAKE SURE YOU UNDERSTAND THEM.

TO: DBS BANK (HONG KONG) LIMITED

Dated \_\_\_\_\_

In consideration of DBS BANK (HONG KONG) LIMITED (the "**Bank**") granting or continuing to make available banking or credit facilities or other financial accommodation for so long as it may think fit to, and/or agreeing to enter or entering into Derivative Transactions (defined below) with \_\_\_\_\_

\_\_\_\_\_, Facsimile No.: \_\_\_\_\_

Attention: \_\_\_\_\_ (the "**Depositor**"), IT IS AGREED as follows:-

1. **DEFINITIONS**

1.1 In this Charge:

"**Deposit**" means all deposits, credit balances and monies now or in the future deposited in accounts maintained with or held by the Bank, whether such accounts are opened in the name of the Depositor individually or jointly with any other person or persons or whether such deposits, credit balances and monies are represented or evidenced by instruments having specifications or dates different from the original instruments representing or evidencing them or held in different accounts, as the same may from time to time be increased or decreased, and including, for the avoidance of doubt, all interest (compounded or otherwise) accrued thereon and other amounts of principal added thereto or otherwise, and the expression "**Deposit**" shall also include, for the avoidance of doubt, any currency into which such sums may from time to time be converted and all renewals and/or replacements of such sum(s);

"**Derivative Transactions**" means (a) any transaction (including an agreement with respect to any such transaction) now existing or hereafter entered into between the Depositor and the Bank that is (i) a rate swap transaction, swap option, basis swap, forward rate transaction, commodity swap or option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, credit protection transaction, credit swap, credit default swap, credit default option, total return swap, credit spread transaction, repurchase transaction, reverse repurchase transaction, buy/sell-back transaction, securities lending transaction, weather index transaction or forward purchase or sale or a security, commodity or other financial instrument or interest (including any option with respect to any of these transactions) or (ii) a type of transaction that is similar to any transaction referred to in sub-paragraph (i) above that is currently, or in the future becomes, recurrently entered into in the financial markets (including terms and conditions incorporated by reference in such agreement) and which is a forward, swap, future, option or other derivative on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, economic indices or measures of economic risk or value, or other benchmarks against which payments or deliveries are to be made, (b) any combination of these transactions referred to in sub-paragraphs (a), and (c) without limiting any of the foregoing, any transactions contemplated under any Master Agreement;

"**dissolution**" means, in relation to any person, the supervision, winding-up, liquidation or bankruptcy of that person, and any equivalent or analogous procedure under the law of any jurisdiction and "**dissolved**" shall be construed accordingly;

"**encumbrance**" means any mortgage, charge, pledge, lien or other encumbrance, priority or security interest whatsoever over or in any property, assets or rights or interests of whatsoever nature and includes any agreement for any of the same and "**encumber**" shall be construed accordingly;

"**Hong Kong**" means the Hong Kong Special Administrative Region of the People's Republic of China;

"**Liabilities**" means all sums of money and liabilities whether actual or contingent, now or in the future owing or incurred to the Bank by the Depositor whether as principal or surety and whether from the Depositor solely or from the Depositor jointly with any other person or persons or from any firm in which the Depositor may be a partner and in whatever style, name or form, and including (without limitation):

- (i) the amount of (01) any loans, acceptances or other credits or advances made to or for the accommodation or at the request of the Depositor, (02) any notes or bills, made, accepted, endorsed, discounted or paid by the Bank, (03) any liability under guarantees, indemnities, foreign exchange contracts (spot, forward or otherwise), documentary or other credits or any other instruments whatsoever assumed or given or entered into by the Bank for or at the request of the Depositor and (04) any liability under all hire purchase agreements and financial, equipment, motor vehicle and other leases entered into between the Bank and the Depositor; and
- (ii) (01) interest to the date of payment (notwithstanding any demand, judgment, death, dissolution, insolvency or other incapacity of the Depositor or any other person) at such rates and upon such terms as may from time to time be payable, (02) all commissions, discounts, fees and other charges payable to the Bank and (03) all sums, disbursements and other expenses paid or incurred by the Bank, in relation to the Bank's provision of banking or credit facilities or other financial accommodation (including, without limitation, pursuant to hire purchase agreements and financial, equipment, motor vehicle and other leases) to the Depositor, the implementation of the provisions of, or exercise of rights under, this Charge or the perfection or enforcement (or attempted perfection or enforcement) of this security or any other guarantees or encumbrances for any indebtedness of the Depositor to the Bank, including all reasonable legal costs and all other costs and expenses and any exchange control premiums, penalties or expenditure on a full indemnity basis; and
- (iii) (01) all sums of money or liability which are now or hereafter from time to time and at any time shall be due or owing, remain unpaid by the Depositor to the Bank in respect of any Derivative Transactions, (02) all delivery of all property as and when the same shall become deliverable according to the Master Agreement (or any documents governing Derivative Transactions), and (03) all costs, charges and expenses (including reasonable legal costs) which the Bank may incur in enforcing or seeking to obtain payment or performance of all or any part of the monies, liabilities or obligations in respect of the Derivative Transactions (including any perfection or enforcement (or attempted perfection or enforcement) of any security or credit support documents, both after as well as before judgment;

**"Master Agreement"** means the ISDA Master Agreement (including any schedules and/or credit support annex) and/or any other master agreement governing Derivative Transactions entered into between the Bank and the Depositor, in each case as supplemented and amended from time to time; and

**"this security"** means this Charge and the security constituted by it.

1.2 Where appropriate in this Charge:

- (i) the use of the masculine gender shall also include the feminine or neuter;
- (ii) the use of the neuter gender shall also include the masculine or feminine;
- (iii) the use of the singular shall include the plural and vice versa;
- (iv) and where the context so admits, the expression **"Depositor"** shall also include its successors and permitted assigns and persons deriving title under the Depositor or entitled to redeem this security and the expression **"Bank"** shall include its successors and assigns and any of its branches and persons deriving title under the Bank;
- (v) the expression **"person"** shall mean and include a company, society, corporation, firm, partnership, joint venture, trust, state, agency of a state, or an individual and in the case of an individual his or her executors, administrators, committee, receiver or other person lawfully acting on behalf of every such person;
- (vi) references to Clauses are to clauses in this Charge; and
- (vii) clause and other headings are for ease of reference only and shall not affect the interpretation of this Charge.

2. **PAYMENT UNDERTAKING**

2.1 **Payment:** The Depositor undertakes to pay to the Bank the Liabilities on demand or, if specifically provided for in any agreement evidencing or governing payment of the same, in accordance with the provisions of such agreement.

2.2 **Withholding:** All payments hereby undertaken to be made, whether principal, interest or otherwise shall be paid to the Bank in full without any deduction or withholding for or on account of any present or future taxes or other charges, fees, withholdings, restrictions or conditions and without set-off, counterclaim or other deduction whatsoever. If the Depositor is compelled by law to make any such deduction or withholding, the Depositor will ensure that the amount deducted or withheld does not exceed the minimum legal liability therefor and will promptly pay to the Bank such additional amount as will result in the net amount received by the Bank being equal to the full amount which would have been receivable had there been no deduction or withholding. Within 30 days after the due date of payment of any tax or other amount required to be paid pursuant to this Clause 2.2, the Depositor shall deliver to the Bank evidence, satisfactory to the Bank, of such deduction, withholding or payment and of its remittance to the relevant taxing or other authority.

2.3 **Bank's statements conclusive:** Any statement of account of the Depositor or certificate issued by the Bank shall, save for manifest error, be conclusive evidence as against the Depositor of any Liabilities.

3. **CHARGE**

The Depositor, as beneficial owner, hereby charges by way of first fixed charge, and agrees to charge, to the Bank as a continuing security for the payment and discharge of the Liabilities, the Deposit and all right, title and interest of the Depositor whatsoever, present and future, thereto and therein, together with any certificates of deposit or other instruments or securities evidencing title, or otherwise relating, thereto and any account to which the same is credited.

4. **REPRESENTATIONS AND UNDERTAKINGS**

4.1 **Representations:** The Depositor hereby represents and warrants to the Bank that during the continuance of this security:

- (a) the Depositor is the sole legal and beneficial owner of the Deposit and any other amounts and things subject to this security, free from all encumbrances and other rights of third parties;
- (b) the Depositor has full power, authority and legal right to execute this Charge in the Bank's favour; and
- (c) this security constitutes valid and legally binding obligations of the Depositor, enforceable in accordance with its terms.

4.2 **Undertakings:** The Depositor hereby undertakes and agrees that, during the continuance of this security, the Depositor shall:

- (a) not withdraw the Deposit or any part thereof or any other amounts for the time being subject to this security except with the Bank's prior consent provided that notwithstanding the foregoing the Depositor may give instructions for renewal or conversion of currencies until the Bank otherwise directs;
- (b) not encumber, assign, transfer or otherwise deal with or grant or suffer to arise any third party rights over or against the whole or any part of the Deposit or any other amounts as aforesaid, or purport so to do; and
- (c) obtain and maintain in full force and effect all governmental and other approvals and consents required in connection with this Charge, and do or cause to be done all other acts and things necessary or desirable for the performance of all its obligations under this Charge.

4.3 The Depositor shall indemnify the Bank on demand against all costs, reasonable legal costs, charges, losses, liabilities, expenses and other sums (including taxes thereon and legal, accountants' and other professional fees) reasonably expended, paid or debited on account by the Bank in relation to this Charge, and/or any other document referred to in this Charge, including, without prejudice to the generality of the foregoing:-

- (i) in connection with the negotiation, preparation, execution, stamping, filing, registration and perfecting of this Charge and the release and/or discharge of this security;
- (ii) in connection with the granting of any waiver or consent sought by the Depositor or in connection with any variation, amendment, extension or modification of this Charge;
- (iii) in enforcing, protecting, preserving or realising, or attempting to enforce, protect, preserve or realise, the Bank's Rights under this Charge; and
- (iv) in connection with or contemplation of any proceedings or the recovery or attempted recovery of any of the Liabilities.

## 5. RIGHTS OF BANK

- 5.1 **Bank as Attorney:** The Depositor irrevocably and by way of security appoints the Bank to be its attorney, with full power of substitution, and in the Depositor's own name or otherwise on the Depositor's behalf and as the Depositor's act and deed to sign, seal, execute, deliver, perfect and do all deeds, agreements, instruments, acts and things which may be required or which the Bank shall think fit for carrying out any of the Depositor's obligations under this Charge. The Depositor agrees to ratify and confirm any deed, agreement, instrument, act and thing which such attorney may lawfully execute or do.
- 5.2 **Further Assurance:** The Depositor shall at any time if and when the Bank requires, execute, do and perform such further encumbrances, authorities, powers of attorney, deeds, agreements and other assurances, instruments, acts or things as the Bank may from time to time require for the effective exercise of the Bank's rights and powers hereunder or otherwise for perfecting this security.
- 5.3 **Authority to deal:** The Depositor hereby authorises the Bank, whether or not any Liabilities shall have become due and payable, to renew, withdraw, vary the currency of or otherwise deal with the Deposit or any part thereof from time to time at the Bank's sole and absolute discretion without liability for any loss, cost or expense sustained by the Depositor as a result thereof.
- 5.4 **"Flawed asset":** In addition to any other right which it may have at law, the Bank shall be entitled to retain and not repay any amount whatsoever which is or may hereafter be owing from it to the Depositor or any money whatsoever which it may hold, now or hereafter, for the account of the Depositor, whether on current, savings or deposit account, whether such account is joint or individual, and regardless of the currency thereof (including, without limitation, the Deposit), unless and until all Liabilities shall have been discharged in full.
- 5.5 **Set-off:** Without limiting any general or banker's lien, right of set-off or other right to which the Bank may be entitled, the Bank may at any time and from time to time, whether or not any Liabilities shall have become due and payable, notwithstanding any settlement of account or other matter whatsoever, and without prior notice, combine, consolidate or merge all or any of the then existing accounts of the Depositor with the Bank (whether current, deposit, loan or of any other nature whatsoever and whether subject to notice or not and whether such sum or sums is/are unmatured deposits and including, without limitation, the account to which the Deposit is credited) and set-off or transfer any sum standing to the credit of any one or more of such accounts wheresoever situate in or towards satisfaction of any of the Liabilities. If such combination, consolidation, merger, set-off or transfer requires the conversion of one currency into another, such conversion shall be calculated at the spot rate of exchange at which the Bank in accordance with its normal practice is able on the date of the combination, consolidation, merger, set-off or transfer (as the case may be) to purchase the relevant currency. Any premium and costs of exchange payable in connection with such payment shall be borne by the Depositor.
- 5.6 **Recourse Rights:** The Bank shall be at liberty, but not bound, to resort for its benefit to any other means of obtaining payment or securing performance, observance and satisfaction at any time and in any manner or order it thinks fit without thereby affecting the security hereby evidenced. The Bank may exercise and enforce its rights hereunder before resorting to other means of obtaining payment or securing performance, observance or satisfaction or in respect of any balance due or outstanding liabilities or obligations after such other means have been resorted to and in the latter case without entitling the Depositor to any benefit from such other means so long as any or all of the Liabilities remains due or owing or payable or outstanding (whether actually or contingently) from or by the Depositor to the Bank.

## 6. SECURITY ENFORCEMENT

- 6.1 **Enforcement:** Without prejudice to any other rights of the Bank under this Charge or otherwise, if (a) the Bank makes demand for payment of any Liabilities or any Liabilities are otherwise not paid when due; (b) the Depositor or any other person fails to perform any of its obligations under or breaches any representations in this Charge or in any other documentation evidencing or securing Liabilities; or (c) the Depositor or any other person guaranteeing or providing an encumbrance as security for Liabilities is dissolved, then at any time and from time to time thereafter the Bank may, without further notice, apply all or any part of the Deposit in or towards settlement, discharge or reduction of the Liabilities or any part thereof.
- 6.2 **No liability on Bank:** Save in respect of its negligence or fraud, the Depositor shall not have any claim against the Bank and the Bank shall not have any liability of any nature whatsoever to the Depositor or any other person in respect of any loss arising out of exercise of any rights under this Charge or any part thereof, howsoever such loss may have been caused or arisen.

## 7. PRESERVATION OF RIGHTS

- 7.1 **Continuing obligations:** This Charge shall be a continuing security and shall cover and secure the ultimate balance from time to time of the Liabilities notwithstanding the insolvency, dissolution, amalgamation, reconstruction, reorganisation, change in the constitution, death or other incapacity of the Depositor or any other person, or any settlement of account or other matter whatsoever. This Charge is in addition to and shall not be in any way prejudiced or affected by any other encumbrance or rights or the release thereof now or hereafter held by or available to the Bank. This Charge may be enforced without the Bank first having recourse to any other encumbrance or rights. Nothing in this Charge shall restrict the operation of any general lien, statutory right of set-off or other rights which the Bank may have by law or otherwise, including the right to make further or other demands.
- 7.2 **Waiver:** Any waiver by the Bank of any breach of any of the undertakings or other terms contained in this Charge or other relaxation, forbearance or indulgence granted at any time by the Bank to the Depositor or any other person shall, without any express notice to that effect by the Bank, not affect the exercise at any time thereafter by the Bank of all or any of its rights, powers and remedies under this Charge as though no such waiver had been made or relaxation or indulgence granted.
- 7.3 **Insolvency claw-back:** Any release, settlement, assignment, payment or discharge between the Depositor and the Bank shall be conditional upon no encumbrance, disposition or payment to the Bank in respect of the Liabilities by the Depositor or any other person being avoided or set aside or ordered to be surrendered, paid away, refunded or reduced by virtue of any law relating to dissolution, insolvency, composition or arrangement for the time being in force or for any other reason whatsoever. The Bank shall be entitled to recover from the Depositor and/or any other relevant person the value which the Bank placed upon such encumbrance or disposition or the amount of such payment as if such release, settlement, assignment, payment or discharge had not occurred.
- 7.4 **Retention of security:** The Bank shall be entitled to retain this security until the expiry of one month plus the maximum period by virtue of any applicable law after the payment, discharge or satisfaction of all Liabilities or, in the event of the commencement of dissolution of the person making such payment, discharge or satisfaction can be avoided, reduced or invalidate, or for such further period as the Bank may determine and to enforce this security subsequently as if such release, discharge or settlement had not occurred.
- 7.5 **Ruling off accounts:** If the Bank receives actual or constructive notice of any encumbrance affecting the Deposit or any part thereof, the Bank may open a new account or accounts with the Depositor or any other person. If the Bank does not open a new account in such circumstances, it shall nevertheless be treated as if it had done so at the time when it received or was deemed to have received notice and, as from that time, all payments made by or for the account of the Depositor or such other person (as the case may be) or any of them to it shall be credited or be treated as having been credited to such new account and shall not operate to reduce the amount due from the Depositor or such other person or any of them to it at the date of receipt or deemed receipt of such notice.

- 7.6 **Consolidation of mortgages:** The Bank shall have the right to consolidate any encumbrances originally made by the Depositor and decline to allow them to be redeemed unless they are all redeemed at the same time provided that the legal dates for redemption on all such encumbrances have passed or the monies secured thereby have otherwise become due. Any statutory restriction on the right of consolidation of mortgage securities contained in any ordinance or law in force in Hong Kong shall not apply to this security.
- 7.7 **Remedies Cumulative.** Any rights, powers, remedies and privileges provided to the Bank under this Charge and any other documents may be exercised as often as necessary, are cumulative and not exclusive of any rights or remedies provided by law. Such rights, powers, remedies and privileges may be waived only in writing and specifically, and any delay in exercising or non-exercise is not a waiver of such right of any such right, powers, remedies or privileges.
- 7.8 **Binding Obligations for Derivative Transactions.** This Charge and the liability of the Depositor shall not be impaired, reduced, discharged or otherwise adversely affected in any way by reason of:
- (a) the Bank and the Depositor agreeing to any new, additional, restructuring or termination of, Derivative Transactions;
  - (b) any amendment, variation, supplement of, or additions to, the Master Agreement or any other documents governing Derivative Transactions;
  - (c) any moratorium or other period staying or suspending by contract, statute, order of any court or other authority all or any of the Bank's rights, remedies or recourse against the Depositor under the Master Agreement or other documents governing Derivative Transactions.
8. **DATA POLICY**
- The Depositor agrees that the applicable data policies, notices and other communications to customers concerning their data from time to time issued by the Bank (a member of the DBS Group) shall apply. A copy is available on request at any Bank branch or from its website. The Depositor agrees that all information in any application, or that is obtained from any other sources or that arises from the Depositor's relationship with the Bank (or any other DBS Group Company) ("data") will be subject to such policies or other communications (as may be varied from time to time). The Depositor agrees in particular that:
- (a) the Bank may verify, provide and collect information about the Depositor from other organisations, institutions or other persons;
  - (b) the Bank may transfer data outside Hong Kong including to Singapore; and
  - (c) the Bank may compare any data obtained with the Depositor's data, and use the results for taking of any actions including actions that may be adverse to the Depositor's interest (including declining any application).
9. **MISCELLANEOUS**
- 9.1 **Severability:** If any one or more provisions of this Charge shall be declared or adjudged to be illegal, invalid or unenforceable in any jurisdiction, such provision(s) shall be ineffective only to the extent of such illegality, invalidity and/or unenforceability and shall not affect the validity of the other provisions of this Charge or the validity of any provision of this Charge in any other jurisdiction.
- 9.2 **Amendments:** The Bank may amend this Charge at any time, subject to giving the Depositor 30 days prior written notice (unless any such amendment is not within the Bank's control).
- 9.3 **Amalgamation:** The provisions hereof shall remain binding on and enforceable against the Depositor notwithstanding any change in the status or composition of the Depositor or any surety, whether by change of name or style or, in the case of a company, by amalgamation, merger or reconstruction or any change in constitution (whether in the form of Articles of Association or otherwise) or, in the case of a firm, sole proprietorship or partnership, the introduction, retirement, removal, death or liquidation of partners (which may include the conversion of a sole proprietorship into a partnership or vice versa).
- 9.4 **One or more Depositors:** If this Charge is signed by more than one person or is signed by one person for himself and on behalf of others (whether a partnership or otherwise):
- (a) the expression "**Depositor**" shall include each such person (a "**Joint Depositor**") and the liability of Joint Depositors under this Charge shall be joint and several;
  - (b) any demand for payment on any one or more of the Joint Depositors shall be treated as a valid demand on all Joint Depositors;
  - (c) the Bank may release or discharge any one or more of the Joint Depositors from liability under this Charge or compound with, accept compositions from or make any other arrangement with any of such persons without, in consequence, releasing or discharging or otherwise prejudicing or affecting its rights and remedies against any other Joint Depositor;
  - (d) this Charge shall not be affected by the death, incapacity or dissolution of any Joint Depositor;
  - (e) the fact that any Joint Depositor is not bound by the provisions of this Charge (for whatever reason) shall not discharge the other Joint Depositor(s) who shall be and continue to be bound by this Charge; and
  - (f) until the Liabilities have been paid in full to the Bank, no Joint Depositor will, without the prior written consent of the Bank, exercise or claim any rights available to it against any other Joint Depositor.
- 9.5 **Firm:** If signed by a firm, the expression "**Depositor**" shall include, in addition, to the signatories, the person or persons from time to time carrying on business in the name of such firm or under the name in which the business of such firm may from time to time be continued. In any event if any person is admitted to partnership with the Depositor, the Depositor shall procure that such new partner shall undertake to adopt and be bound by the terms of this Charge as if he had originally been a party hereto and sign and execute any documents or agreement as the Bank may require for this purpose.
- 9.6 **Bank Amalgamation:** This Charge 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 and/or any of its rights and interests under this Charge.
10. **COMMUNICATIONS**
- (a) Every communication shall be in writing and may be made by facsimile unless otherwise stated.

- (b) Each communication to the Depositor shall be sent to the Depositor, marked for the attention of the person or office holder of the Depositor at the facsimile number or address as set out on page 1 of this Deed or marked for the attention of such other person or office holder or at such other facsimile number or address designated in writing by the Depositor from time to time. Unless otherwise notified by the Bank to the Depositor, each communication to the Bank shall be sent to the following facsimile number or address and marked for the attention of the person or office holder of the Bank below:

The Bank: DBS BANK (HONG KONG) LIMITED  
Address: 11/F The Center  
99 Queen's Road Central, Hong Kong  
Facsimile Number: 2167-8222

- (c) The Depositor shall promptly notify the Bank in writing of any change of facsimile number or address to which, or person or office holder to whom, communication must be sent under this Deed. For the avoidance of doubt, any change to the person, office holder, facsimile number or address of the Depositor set out on page 1 of this Deed shall only be effective when duly entered in the Bank's records.
- (d) Any communication from the Depositor shall be irrevocable and ineffective until actually received. Any other communication shall be deemed to have been received (i) in the case of a facsimile, when despatched; (ii) in the case of a communication delivered by hand, when left at the relevant party's designated address; and (iii) in the case of a communication sent postage prepaid, in a duly addressed envelope, 2 Business Days after posting for inland mail and 5 Business Days after posting for overseas mail (including mail from Hong Kong to China or vice versa), return of the communication through the post notwithstanding.

#### 11. THIRD PARTIES

Unless expressly provided to the contrary in this Charge, a person who is not a party to the Charge 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 this Charge, the consent of any third party is not required for any variation (including any release or compromise of any liability), rescission or termination of this Charge.

#### 12. GOVERNING LAW

- 12.1 **Governing law:** This Charge shall be governed by and construed in all respects in accordance with the laws of Hong Kong. References to any laws, Ordinances, rules or regulations will, as required, be deemed also to include any amendment, re-enactment, consolidation, replacement and/or successor thereof.
- 12.2 **Jurisdiction:** The Depositor hereby irrevocably submits to the non-exclusive jurisdiction of the Hong Kong Courts, but it shall be open to the Bank to enforce this security in the courts of any other competent jurisdiction.
- 12.3 **Process Agent:** If the Depositor is not a company incorporated in Hong Kong, the Depositor hereby appoints the person named below (if any) as its agent to accept service of any legal process in Hong Kong in connection with this Charge. The Depositor agrees that any writ, summons, order, judgment or other document issued in connection with this Charge shall be deemed duly and sufficiently served on the Depositor if addressed to the said agent and left at, or sent by post to the said agent's address last known to the Bank. The foregoing shall not limit the Bank's right to serve process in any manner permitted by law in any jurisdiction.

#### Process Agent

Name: \_\_\_\_\_

Address: \_\_\_\_\_, Hong Kong.

Contact Person: \_\_\_\_\_

Facsimile: \_\_\_\_\_

#### 13. CHINESE TRANSLATION

The Depositor agrees that the Chinese translation of this Charge is provided for reference only and shall not apply for construing this Charge. The English version shall prevail for all purposes.

In witness whereof the Depositor has executed this Charge as a deed on the day and year first above written.

**This Charge is an important legal document. Before signing, you should read it carefully and if necessary seek independent legal advice to make sure you understand your commitment and the full consequences of signing. You should only sign this document if you agree to be legally bound by its terms.**

**Individual Signatory**

Signed Sealed and Delivered by

L.S

\_\_\_\_\_  
(Name of Signatory in Block Letters)

\_\_\_\_\_  
(Signature)

I.D. Card / Other  
Identification Document No.  
of Signatory: \_\_\_\_\_

in the presence of:

Name of Witness: \_\_\_\_\_

\_\_\_\_\_  
(Signature of Witness)

Occupation of Witness: \_\_\_\_\_

Signed Sealed and Delivered by

L.S

\_\_\_\_\_  
(Name of Signatory in Block Letters)

\_\_\_\_\_  
(Signature)

I.D. Card / Other  
Identification Document No.  
of Signatory: \_\_\_\_\_

in the presence of:

Name of Witness: \_\_\_\_\_

\_\_\_\_\_  
(Signature of Witness)

Occupation of Witness: \_\_\_\_\_

Signed Sealed and Delivered by

L.S

\_\_\_\_\_  
(Name of Signatory in Block Letters)

\_\_\_\_\_  
(Signature)

I.D. Card / Other  
Identification Document No.  
of Signatory: \_\_\_\_\_

in the presence of:

Name of Witness: \_\_\_\_\_

\_\_\_\_\_  
(Signature of Witness)

Occupation of Witness: \_\_\_\_\_

**This Charge is an important legal document. Before signing, you should read it carefully and if necessary seek independent legal advice to make sure you understand your commitment and the full consequences of signing. You should only sign this document if you agree to be legally bound by its terms.**

**Individual Signatory**

Signed Sealed and Delivered by

L.S

\_\_\_\_\_  
(Name of Signatory in Block Letters)

\_\_\_\_\_  
(Signature)

I.D. Card / Other  
Identification Document No.  
of Signatory: \_\_\_\_\_

in the presence of:

Name of Witness: \_\_\_\_\_

\_\_\_\_\_  
(Signature of Witness)

Occupation of Witness: \_\_\_\_\_

Signed Sealed and Delivered by

L.S

\_\_\_\_\_  
(Name of Signatory in Block Letters)

\_\_\_\_\_  
(Signature)

I.D. Card / Other  
Identification Document No.  
of Signatory: \_\_\_\_\_

in the presence of:

Name of Witness: \_\_\_\_\_

\_\_\_\_\_  
(Signature of Witness)

Occupation of Witness: \_\_\_\_\_

Signed Sealed and Delivered by

L.S

\_\_\_\_\_  
(Name of Signatory in Block Letters)

\_\_\_\_\_  
(Signature)

I.D. Card / Other  
Identification Document No.  
of Signatory: \_\_\_\_\_

in the presence of:

Name of Witness: \_\_\_\_\_

\_\_\_\_\_  
(Signature of Witness)

Occupation of Witness: \_\_\_\_\_

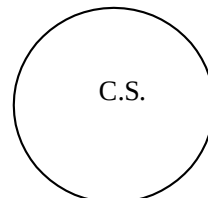
[OR]

**This Charge is an important legal document. Before signing, you should read it carefully and if necessary seek independent legal advice to make sure you understand your commitment and the full consequences of signing. You should only sign this document if you agree to be legally bound by its terms.**

**Corporate Signatory**

The Common Seal of

)  
)  
)  
)  
)  
)  
)



was affixed hereto in the presence of:

\_\_\_\_\_  
Director/Authorised Signatory

Name: \_\_\_\_\_

\_\_\_\_\_  
Director/Secretary/Authorised Signatory

Name: \_\_\_\_\_

[OR]

Executed and Delivered as a **DEED** by

)  
)  
)  
)  
)

and **SIGNED** by

\_\_\_\_\_  
Director

Name: \_\_\_\_\_

\_\_\_\_\_  
Director/Company Secretary

Name: \_\_\_\_\_

**PLEASE READ THE TERMS AND CONDITIONS OF THIS DOCUMENT CAREFULLY AND MAKE SURE YOU UNDERSTAND THEM.**

TO: **DBS BANK (HONG KONG) LIMITED**

Dated \_\_\_\_\_

In consideration of DBS BANK (HONG KONG) LIMITED (the "**Bank**"), at the request of \_\_\_\_\_

\_\_\_\_\_, Facsimile No.: \_\_\_\_\_

Attention: \_\_\_\_\_ (the "**Depositor**"), granting or continuing to make available banking or credit facilities or

other financial accommodation for so long as it may think fit to, and/or agreeing to enter or entering into Derivative Transactions (defined below) with \_\_\_\_\_

\_\_\_\_\_ (the "**Customer**"), the Depositor AGREES as follows: -

**1. DEFINITIONS**

**1.1 In this Charge:**

"**Deposit**" means all deposits, credit balances and monies now or in the future deposited in accounts maintained with or held by the Bank, whether such accounts are opened in the name of the Depositor individually or jointly with any other person or persons or whether such deposits, credit balances and monies are represented or evidenced by instruments having specifications or dates different from the original instruments representing or evidencing them or held in different accounts, as the same may from time to time be increased or decreased, and including, for the avoidance of doubt, all interest (compounded or otherwise) accrued thereon and other amounts of principal added thereto or otherwise, and the expression "**Deposit**" shall also include, for the avoidance of doubt, any currency into which such sums may from time to time be converted and all renewals and/or replacements of such sum(s);

"**Derivative Transactions**" means (a) any transaction (including an agreement with respect to any such transaction) now existing or hereafter entered into between the Customer and the Bank that is (i) a rate swap transaction, swap option, basis swap, forward rate transaction, commodity swap or option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, credit protection transaction, credit swap, credit default swap, credit default option, total return swap, credit spread transaction, repurchase transaction, reverse repurchase transaction, buy/sell-back transaction, securities lending transaction, weather index transaction or forward purchase or sale or a security, commodity or other financial instrument or interest (including any option with respect to any of these transactions) or (ii) a type of transaction that is similar to any transaction referred to in sub-paragraph (i) above that is currently, or in the future becomes, recurrently entered into in the financial markets (including terms and conditions incorporated by reference in such agreement) and which is a forward, swap, future, option or other derivative on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, economic indices or measures of economic risk or value, or other benchmarks against which payments or deliveries are to be made, (b) any combination of these transactions referred to in sub-paragraphs (a), and (c) without limiting any of the foregoing, any transactions contemplated under any Master Agreement;

"**dissolution**" means, in relation to any person, the supervision, winding-up, liquidation or bankruptcy of that person, and any equivalent or analogous procedure under the law of any jurisdiction and "**dissolved**" shall be construed accordingly;

"**encumbrance**" means any mortgage, charge, pledge, lien or other encumbrance, priority or security interest whatsoever over or in any property, assets or rights or interests of whatsoever nature and includes any agreement for any of the same and "**encumber**" shall be construed accordingly;

"**Hong Kong**" means the Hong Kong Special Administrative Region of the People's Republic of China;

"**Liabilities**" means:

all sums of money and liabilities whether actual or contingent, now or in the future owing or incurred to the Bank by the Customer whether as principal or surety and whether from the Customer solely or from the Customer jointly with any other person or persons or from any firm in which the Customer may be a partner and in whatever style, name or form, and including (without limitation):

- (i) the amount of (01) any loans, acceptances or other credits or advances made to or for the accommodation or at the request of the Customer, (02) any notes or bills, made, accepted, endorsed, discounted or paid by the Bank, (03) any liability under guarantees, indemnities, foreign exchange contracts (spot, forward or otherwise), documentary or other credits or any other instruments whatsoever assumed or given or entered into by the Bank for or at the request of the Customer and (04) any liability under all hire purchase agreements and financial, equipment, motor vehicle and other leases entered into between the Bank and the Customer; and
- (ii) (01) interest to the date of payment (notwithstanding any demand, judgment, death, dissolution, insolvency or other incapacity of the Customer or the Depositor or any other person) at such rates and upon such terms as may from time to time be payable, (02) all commissions, discounts, fees and other charges payable to the Bank and (03) all sums, disbursements and other expenses paid or incurred by the Bank, in relation to the Bank's provision of banking or credit facilities or other financial accommodation (including, without limitation, pursuant to hire purchase agreements and financial, equipment, motor vehicle and other leases) to the Customer, the implementation of the provisions of, or exercise of rights under, this Charge or the perfection or enforcement (or attempted perfection or enforcement) of this security or any other guarantees or encumbrances for any indebtedness of the Customer to the Bank, including all reasonable legal costs and all other costs and expenses and any exchange control premiums, penalties or expenditure; and

- (iii) (01) all sums of money or liability which are now or hereafter from time to time and at any time shall be due or owing, remain unpaid by the Customer to the Bank in respect of any Derivative Transactions, (02) all delivery of all property as and when the same shall become deliverable according to the Master Agreement (or any documents governing Derivative Transactions), and (03) all costs, charges and expenses (including reasonable legal costs) which the Bank may incur in enforcing or seeking to obtain payment or performance of all or any part of the monies, liabilities or obligations in respect of the Derivative Transactions (including any perfection or enforcement (or attempted perfection or enforcement) of any security or credit support documents, both after as well as before judgment;

**"Master Agreement"** means the ISDA Master Agreement (including any schedules and/or credit support annex) and/or any other master agreement governing Derivative Transactions entered into between the Bank and the Customer, in each case as supplemented and amended from time to time; and

**"this security"** means this Charge and the security constituted by it.

1.2 Where appropriate in this Charge:

- (i) the use of the masculine gender shall also include the feminine or neuter;
- (ii) the use of the neuter gender shall also include the masculine or feminine;
- (iii) the use of the singular shall include the plural and vice versa;
- (iv) and where the context so admits, the expression **"Depositor"** shall also include its successors and permitted assigns and persons deriving title under the Depositor or entitled to redeem this security and the expression **"Bank"** shall include its successors and assigns and any of its branches and persons deriving title under the Bank; and the **"Customer"** shall include its successors and permitted assigns and persons deriving title under the Customer;
- (v) the expression **"person"** shall mean and include a company, society, corporation, firm, partnership, joint venture, trust, state, agency of a state, or an individual and in the case of an individual his or her executors, administrators, committee, receiver or other person lawfully acting on behalf of every such person;
- (vi) references to Clauses and the Schedule are to clauses in, and the Schedule to, this Charge; and
- (vii) clause and other headings are for ease of reference only and shall not affect the interpretation of this Charge.

2. **Payment Undertaking**

All payments hereby undertaken to be made, whether principal, interest or otherwise shall be paid to the Bank in full without any deduction or withholding for or on account of any present or future taxes or other charges, fees, withholdings, restrictions or conditions and without set-off, counterclaim or other deduction whatsoever. If the Depositor is compelled by law to make any such deduction or withholding, the Depositor will ensure that the amount deducted or withheld does not exceed the minimum legal liability therefor and will promptly pay to the Bank such additional amount as will result in the net amount received by the Bank being equal to the full amount which would have been receivable had there been no deduction or withholding. Within 30 days after the due date of payment of any tax or other amount required to be paid pursuant to this Clause, the Depositor shall deliver to the Bank evidence, satisfactory to the Bank, of such deduction, withholding or payment and of its remittance to the relevant taxing or other authority.

3. **CHARGE**

The Depositor, as beneficial owner, hereby charges by way of first fixed charge, and agrees to charge, to the Bank as a continuing security for the payment and discharge of the Liabilities, the Deposit and all right, title and interest of the Depositor whatsoever, present and future, thereto and therein, together with any certificates of deposit or other instruments or securities evidencing title, or otherwise relating, thereto and any account to which the same is credited. Provided that the maximum amount of Liabilities (if any) specified in paragraph (i) of the definition of Liabilities in Clause 1.1 secured by this Charge shall be limited to the amount specified in the Schedule to this Charge.

4. **REPRESENTATIONS AND UNDERTAKINGS**

4.1 **Representations:** The Depositor hereby represents and warrants to the Bank that during the continuance of this security:

- (a) the Depositor is the sole legal and beneficial owner of the Deposit and any other amounts and things subject to this security, free from all encumbrances and other rights of third parties;
- (b) the Depositor has full power, authority and legal right to execute this Charge in the Bank's favour; and
- (c) this security constitutes valid and legally binding obligations of the Depositor, enforceable in accordance with its terms.

4.2 **Undertakings:** The Depositor hereby undertakes and agrees that, during the continuance of this security, the Depositor shall:

- (a) not withdraw the Deposit or any part thereof or any other amounts for the time being subject to this security except with the Bank's prior consent provided that notwithstanding the foregoing the Depositor may give instructions for renewal or conversion of currencies until the Bank otherwise directs;
- (b) not encumber, assign, transfer or otherwise deal with or grant or suffer to arise any third party rights over or against the whole or any part of the Deposit or any other amounts as aforesaid, or purport so to do; and
- (c) obtain and maintain in full force and effect all governmental and other approvals and consents required in connection with this Charge, and do or cause to be done all other acts and things necessary or desirable for the performance of all its obligations under this Charge.

4.3 The Depositor shall indemnify the Bank on demand against all costs, reasonable legal costs, charges, losses, liabilities, expenses and other sums (including taxes thereon and legal, accountants' and other professional fees) reasonably expended, paid or debited on account by the Bank in relation to this Charge, and/or any other document referred to in this Charge, including, without prejudice to the generality of the foregoing:-

- (i) in connection with the negotiation, preparation, execution, stamping, filing, registration and perfecting of this Charge and the release and/or discharge of this security;
- (ii) in connection with the granting of any waiver or consent sought by the Depositor or in connection with any variation, amendment, extension or modification of this Charge;

- (iii) in enforcing, protecting, preserving or realising, or attempting to enforce, protect, preserve or realise, the Bank's Rights under this Charge; and
- (iv) in connection with or contemplation of any proceedings or the recovery or attempted recovery of any of the Liabilities.

## 5. RIGHTS OF BANK

- 5.1 **Bank as Attorney:** The Depositor irrevocably and by way of security appoints the Bank to be its attorney, with full power of substitution, and in the Depositor's own name or otherwise on the Depositor's behalf and as the Depositor's act and deed to sign, seal, execute, deliver, perfect and do all deeds, agreements, instruments, acts and things which may be required or which the Bank shall think fit for carrying out any of the Depositor's obligations under this Charge. The Depositor agrees to ratify and confirm any deed, agreement, instrument, act and thing which such attorney may lawfully execute or do.
- 5.2 **Further Assurance:** The Depositor shall at any time if and when the Bank requires, execute, do and perform such further encumbrances, authorities, powers of attorney, deeds, agreements and other assurances, instruments, acts or things as the Bank may from time to time require for the effective exercise of the Bank's rights and powers hereunder or otherwise for perfecting this security.
- 5.3 **Authority to deal:** The Depositor hereby authorises the Bank, whether or not any Liabilities shall have become due and payable, to renew, withdraw, vary the currency of or otherwise deal with the Deposit or any part thereof from time to time at the Bank's sole and absolute discretion without liability for any loss, cost or expense sustained by the Depositor as a result thereof.
- 5.4 **"Flawed asset":** In addition to any other right which it may have at law, the Bank shall be entitled to retain and not repay any amount whatsoever which is or may hereafter be owing from it to the Depositor or any money whatsoever which it may hold, now or hereafter, for the account of the Depositor, whether on current, savings or deposit account, whether such account is joint or individual, and regardless of the currency thereof (including, without limitation, the Deposit), unless and until all Liabilities shall have been discharged in full.
- 5.5 **Set-off:** Without limiting any general or banker's lien, right of set-off or other right to which the Bank may be entitled, the Bank may at any time and from time to time, whether or not any Liabilities shall have become due and payable, notwithstanding any settlement of account or other matter whatsoever, and without prior notice, combine, consolidate or merge all or any of the then existing accounts of the Depositor with the Bank (whether current, deposit, loan or of any other nature whatsoever and whether subject to notice or not and whether such sum or sums is/are unmatured deposits and including, without limitation, the account to which the Deposit is credited) and set-off or transfer any sum standing to the credit of any one or more of such accounts wheresoever situate in or towards satisfaction of any of the Liabilities. If such combination, consolidation, merger, set-off or transfer requires the conversion of one currency into another, such conversion shall be calculated at the spot rate of exchange at which the Bank in accordance with its normal practice is able on the date of the combination, consolidation, merger, set-off or transfer (as the case may be) to purchase the relevant currency. Any premium and costs of exchange payable in connection with such payment shall be borne by the Depositor.
- 5.6 **Recourse Rights:** The Bank shall be at liberty, but not bound, to resort for its benefit to any other means of obtaining payment or securing performance, observance and satisfaction at any time and in any manner or order it thinks fit without thereby affecting the security hereby evidenced. The Bank may exercise and enforce its rights hereunder before resorting to other means of obtaining payment or securing performance, observance or satisfaction or in respect of any balance due or outstanding liabilities or obligations after such other means have been resorted to and in the latter case without entitling the Depositor to any benefit from such other means so long as any or all of the Liabilities remains due or owing or payable or outstanding (whether actually or contingently) from or by the Customer to the Bank.

## 6. SECURITY ENFORCEMENT

- 6.1 **Enforcement:** Without prejudice to any other rights of the Bank under this Charge or otherwise, if (a) the Bank makes demand for payment of any Liabilities or any Liabilities are otherwise not paid when due; (b) the Customer, the Depositor or any other person (as the case may be) fails to perform any of its obligations under or breaches any representations in this Charge or in any other documentation evidencing or securing Liabilities; or (c) the Customer, the Depositor or any other person (as the case may be) guaranteeing or providing an encumbrance as security for Liabilities is dissolved, then at any time and from time to time thereafter the Bank may, without further notice, apply all or any part of the Deposit in or towards settlement, discharge or reduction of the Liabilities or any part thereof.
- 6.2 **No liability on Bank:** Save in respect of its negligence or fraud, the Depositor shall not have any claim against the Bank and the Bank shall not have any liability of any nature whatsoever to the Depositor or any other person in respect of any loss arising out of exercise of any rights under this Charge or any part thereof, howsoever such loss may have been caused or arisen.
- 6.3 **Bank's determinations conclusive:** Any statement of account of the Customer or certificate issued by the Bank shall, save for manifest error, be conclusive evidence as against the Depositor of any Liabilities.

## 7. PRESERVATION OF RIGHTS

- 7.1 **Continuing obligations:** This Charge shall be a continuing security and shall cover and secure the ultimate balance from time to time of the Liabilities notwithstanding the insolvency, dissolution, amalgamation, reconstruction, reorganisation, change in the constitution, death or other incapacity of the Depositor or any other person, or any settlement of account or other matter whatsoever. This Charge is in addition to and shall not be in any way prejudiced or affected by any other encumbrance or rights or the release thereof now or hereafter held by or available to the Bank. This Charge may be enforced without the Bank first having recourse to any other encumbrance or rights. Nothing in this Charge shall restrict the operation of any general lien, statutory right of set-off or other rights which the Bank may have by law or otherwise, including the right to make further or other demands.
- 7.2 **Waiver:** Any waiver by the Bank of any breach of any of the undertakings or other terms contained in this Charge or other relaxation, forbearance or indulgence granted at any time by the Bank to the Depositor or any other person shall, without any express notice to that effect by the Bank, not affect the exercise at any time thereafter by the Bank of all or any of its rights, powers and remedies under this Charge as though no such waiver had been made or relaxation or indulgence granted.
- 7.3 **Insolvency claw-back:** Any release, settlement, assignment, payment or discharge between the Customer, the Depositor and the Bank shall be conditional upon no encumbrance, disposition or payment to the Bank in respect of the Liabilities by the Customer, the Depositor or any other person being avoided or set aside or ordered to be surrendered, paid away, refunded or reduced by virtue of any law relating to dissolution, insolvency, composition or arrangement for the time being in force or for any other reason whatsoever. The Bank shall be entitled to recover from the Customer, the Depositor and/or any other relevant person the value which the Bank placed upon such encumbrance or disposition or the amount of such payment as if such release, settlement, assignment, payment or discharge had not occurred.
- 7.4 **Retention of security:** The Bank shall be entitled to retain this security until the expiry of one month plus the maximum period by virtue of any applicable law after the payment, discharge or satisfaction of all Liabilities or, in the event of the commencement of dissolution of the person making such payment, discharge or satisfaction can be avoided, reduced or invalidate, or for such further period as the Bank may determine and to enforce this security subsequently as if such release, discharge or settlement had not occurred.

- 7.5 **Ruling off accounts:** If the Bank receives actual or constructive notice of any encumbrance affecting the Deposit or any part thereof, the Bank may open a new account or accounts with the Customer, the Depositor or any other person. If the Bank does not open a new account in such circumstances, it shall nevertheless be treated as if it had done so at the time when it received or was deemed to have received notice and, as from that time, all payments made by or for the account of the Customer, the Depositor or such other person (as the case may be) or any of them to it shall be credited or be treated as having been credited to such new account and shall not operate to reduce the amount due from the Customer, the Depositor or such other person or any of them to it at the date of receipt or deemed receipt of such notice.
- 7.6 **Consolidation of mortgages:** The Bank shall have the right to consolidate any encumbrances originally made by the Depositor and decline to allow them to be redeemed unless they are all redeemed at the same time provided that the legal dates for redemption on all such encumbrances have passed or the monies secured thereby have otherwise become due. Any statutory restriction on the right of consolidation of mortgage securities contained in any ordinance or law in force in HongKong shall not apply to this security.
- 7.7 **Remedies Cumulative.** Any rights, powers, remedies and privileges provided to the Bank under this Charge and any other documents may be exercised as often as necessary, are cumulative and not exclusive of any rights or remedies provided by law. Such rights, powers, remedies and privileges may be waived only in writing and specifically, and any delay in exercising or non-exercise is not a waiver of such right of any such right, powers, remedies or privileges.
8. **THIRD PARTY LIABILITY**
- 8.1 **Indulgence:** This Charge and the liability of the Depositor under this Charge shall not be impaired, reduced, discharged or otherwise adversely affected in any way by reason of:
- (i) the Bank from time to time granting to the Customer, any surety for the Customer or any other person providing security for any Liabilities or otherwise any time, indulgence, concession, waiver or consent; or
  - (ii) the renewing of any bills, promissory notes or other negotiable or non-negotiable instruments or securities; or
  - (iii) the Bank varying, realising, releasing or abstaining from perfecting or enforcing any guarantees, indemnities, assurances, bills, notes, rights or security of any kind which the Bank may hold in respect of Liabilities, or any other rights, powers or remedies; or
  - (iv) the Bank compounding with, or waiving, discharging, releasing or varying the liability of, the Customer or any other person, or concurring in accepting or varying any compromise, arrangement or settlement; or
  - (v) the Bank opening any new account or closing or redesignating any other account of the Customer or renewing any existing facilities to the Customer or providing any new or additional facilities to the Customer or requiring the Customer to provide or procure any other guarantee, indemnity or encumbrance in respect of the Customer's obligations or the obligations of any other person; or
  - (vi) the Bank, by its action or failure to act, prejudicing any rights which the Depositor may have whether against the Customer, any surety for the Customer or any other person; or
  - (vii) any failure by the Bank to take any guarantee, indemnity or encumbrance; or
  - (viii) the invalidity of any guarantee, indemnity, encumbrance or other right, taken in respect of the Liabilities (or any provision thereof); or
  - (ix) any existing or future agreement by the Bank as to the application of any facilities made or to be made to the Customer; or
  - (x) the Customer or any other party thereto not being bound by the terms of any agreement by which facilities are made available by the Bank or any other encumbrance, guarantee, indemnity, right or remedy whether as a result of any failure to execute, or any deficiency in the execution of the same or as a result of any defect in or insufficiency or want of the necessary powers or any irregular or improper exercise thereof, whether or not known to the Bank or for any other reason; or
  - (xi) any assignment by the Customer or any surety of any of its rights or obligations under any guarantee, indemnity, assurance, bill, note, right or encumbrance; or
  - (xii) the death, incapacity, insolvency or dissolution of the Customer or any surety, or any arrangement or composition between the Customer or any surety and its creditors; or
  - (xiii) any change in the status or composition of the Customer or any surety, whether by change of name or style or, in the case of a company, by amalgamation or reconstruction or any change in constitution (whether in the form of Articles of Association or otherwise) or, in the case of a firm, sole proprietorship or partnership, the introduction, retirement, removal, death or liquidation of partners (which may include the conversion of a sole proprietorship into a partnership or vice versa) so that this Charge shall provide security for the discharge of Liabilities both before or after any such change; or
  - (xiv) the Bank and the Customer agreeing to any new, additional, restructuring or termination of, Derivative Transactions; or
  - (xv) any amendment, variation, supplement of, or additions to, the Master Agreement or any other documents governing Derivative Transactions notwithstanding (a) such variations or additions may impose further liabilities or more onerous covenants, undertakings or burdens on the Customer and (b) the Depositor shall not have received notice or been made aware of or consented to such amendments, variations of or additions to the Master Agreement; or
  - (xvi) any moratorium or other period staying or suspending by contract, statute, order of any court or other authority all or any of the Bank's rights, remedies or recourse against the Customer; or
  - (xvii) anything done or omitted or any other circumstances which, but for this provision, might operate to exonerate the Depositor or any other person (whether as primary debtor or as surety).
- 8.2 **Counter-Security:** The Depositor warrants to the Bank that it has not taken and covenants to the Bank that it will not take from the Customer or any other person, without the prior written consent of the Bank, any form of encumbrance, guarantee or indemnity, either directly or indirectly and whether merely personal or involving an encumbrance on any property of the Customer or other person, in respect of the Depositor's liabilities under this Charge. Any such encumbrance, guarantee or indemnity taken without the Bank's consent shall be held on trust for the Bank as security for the discharge of the Liabilities and shall be deposited with the Bank.
- 8.3 **Subrogation:** The Depositor agrees not to (a) exercise any rights of set-off, contribution or indemnity or any right to demand or accept repayment of, or payment of interest on, any loans or advances now or in the future due to it from the Customer against the Customer, (b) claim any right of subrogation in respect of any guarantee, indemnity or encumbrance held by the Bank in respect of the Liabilities unless the Liabilities shall have been paid and discharged in full or (c) prove otherwise in competition with the Bank in respect of any payment by it under this Charge; except that the Depositor may (and shall if so required by the Bank) prove in any dissolution or participate in any competition with creditors of the Customer or

any other person for claims against the Customer or such person on condition that the benefit of such claims is held upon trust to pay amounts recovered thereunder to the Bank until the Liabilities shall have been discharged in full.

## 9. DATA POLICY

The Depositor agrees that the applicable data policies, notices and other communications to customers concerning their data from time to time issued by the Bank (a member of the DBS Group) shall apply. A copy is available on request at any Bank branch or from its website. The Depositor agrees that all information in any application, or that is obtained from any other sources or that arises from the Depositor's relationship with the Bank (or any other DBS Group Company) ("data") will be subject to such policies or other communications (as may be varied from time to time). The Depositor agrees in particular that:

- (a) the Bank may verify, provide and collect information about the Depositor from other organisations, institutions or other persons;
- (b) the Bank may transfer data outside Hong Kong including to Singapore; and
- (c) the Bank may compare any data obtained with the Depositor's data, and use the results for taking of any actions including actions that may be adverse to the Depositor's interest (including declining any application).

## 10. MISCELLANEOUS

- 10.1 **Severability:** If any one or more provisions of this Charge shall be declared or adjudged to be illegal, invalid or unenforceable in any jurisdiction, such provision(s) shall be ineffective only to the extent of such illegality, invalidity and/or unenforceability and shall not affect the validity of the other provisions of this Charge or the validity of any provision of this Charge in any other jurisdiction.
- 10.2 **Amendments:** The Bank may amend this Charge at any time, subject to giving the Depositor 30 days prior written notice (unless any such amendment is not within the Bank's control).
- 10.3 **Amalgamation:** The provisions hereof shall remain binding on and enforceable against the Depositor notwithstanding any change in the status or composition of the Depositor or any surety, whether by change of name or style or, in the case of a company, by amalgamation or reconstruction or any change in constitution (whether in the form of Articles of Association or otherwise) or, in the case of a firm, sole proprietorship or partnership, the introduction, retirement, removal, death or liquidation of partners (which may include the conversion of a sole proprietorship into a partnership or vice versa).
- 10.4 **One or more Depositors:** If this Charge is signed by more than one person or is signed by one person for himself and on behalf of others (whether a partnership or otherwise):
  - (a) the expression "Depositor" shall include each such person (a "Joint Depositor") and the liability of Joint Depositors under this Charge shall be joint and several;
  - (b) any demand for payment on any one or more of the Joint Depositors shall be treated as a valid demand on all Joint Depositors;
  - (c) the Bank may release or discharge any one or more of the Joint Depositors from liability under this Charge or compound with, accept compositions from or make any other arrangement with any of such persons without, in consequence, releasing or discharging or otherwise prejudicing or affecting its rights and remedies against any other Joint Depositor;
  - (d) this Charge shall not be affected by the death, incapacity or dissolution of any Joint Depositor;
  - (e) the fact that any Joint Depositor is not bound by the provisions of this Charge (for whatever reason) shall not discharge the other Joint Depositor(s) who shall be and continue to be bound by this Charge; and
  - (f) until the Liabilities have been paid in full to the Bank, no Joint Depositor will, without the prior written consent of the Bank, exercise or claim any rights available to it against any other Joint Depositor.
- 10.5 **Firm:** If signed by a firm, the expression "Depositor" shall include, in addition, to the signatories, the person or persons from time to time carrying on business in the name of such firm or under the name in which the business of such firm may from time to time be continued. In any event if any person is admitted to partnership with the Depositor, the Depositor shall procure that such new partner shall undertake to adopt and be bound by the terms of this Charge as if he had originally been a party hereto and sign and execute any documents or agreement as the Bank may require for this purpose.
- 10.6 **More than one person comprised in "Customer":** If the Customer comprises two or more persons, all references to the Customer shall be construed as references to all, or any one or more, of them (as the context requires).
- 10.7 **Bank Amalgamation:** This Charge 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 and/or any of its rights and interests under this Charge.

## 11. COMMUNICATIONS

- (a) Every communication shall be in writing and may be made by facsimile unless otherwise stated.
- (b) Each communication to the Depositor shall be sent to the Depositor, marked for the attention of the person or office holder of the Depositor at the facsimile number or address as set out on page 1 of this Deed or marked for the attention of such other person or office holder or at such other facsimile number or address designated in writing by the Depositor from time to time. Unless otherwise notified by the Bank to the Depositor, each communication to the Bank shall be sent to the following facsimile number or address and marked for the attention of the person or office holder of the Bank below:

The Bank: DBS BANK (HONG KONG) LIMITED  
Address: 11/F The Center  
99 Queen's Road Central, Hong Kong  
Facsimile Number: 2167-8222
- (c) The Depositor shall promptly notify the Bank in writing of any change of facsimile number or address to which, or person or office holder to whom, communication must be sent under this Deed. For the avoidance of doubt, any change to the person, office holder, facsimile number or address of the Depositor set out on page 1 of this Deed shall only be effective when duly entered in the Bank's records.
- (d) Any communication from the Depositor shall be irrevocable and ineffective until actually received. Any other communication shall be deemed to have been received (i) in the case of a facsimile, when despatched; (ii) in the case of a communication delivered by hand, when left at the relevant party's designated address; and (iii) in the case of a communication sent postage prepaid, in a duly addressed

envelope, 2 Business Days after posting for inland mail and 5 Business Days after posting for overseas mail (including mail from Hong Kong to China or vice versa), return of the communication through the post notwithstanding.

12. **THIRD PARTIES**

Unless expressly provided to the contrary in this Charge, a person who is not a party to the Charge 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 this Charge, the consent of any third party is not required for any variation (including any release or compromise of any liability), rescission or termination of this Charge.

13. **GOVERNING LAW**

13.1 **Governing law:** This Charge shall be governed by and construed in all respects in accordance with the laws of Hong Kong. References to any laws, Ordinances, rules or regulations will, as required, be deemed also to include any amendment, re-enactment, consolidation, replacement and/or successor thereof.

13.2 **Jurisdiction:** The Depositor hereby irrevocably submits to the non-exclusive jurisdiction of the Hong Kong Courts, but it shall be open to the Bank to enforce this security in the courts of any other competent jurisdiction.

13.3 **Process Agent:** If the Depositor is not a company incorporated in Hong Kong, the Depositor hereby appoints the person named below (if any) as its agent to accept service of any legal process in Hong Kong in connection with this Charge. The Depositor agrees that any writ, summons, order, judgment or other document issued in connection with the Liabilities shall be deemed duly and sufficiently served on the Depositor if addressed to the said agent and left at, or sent by post to the said agent's address last known to the Bank. The foregoing shall not limit the Bank's right to serve process in any manner permitted by law in any jurisdiction.

**Process Agent**

Name:

\_\_\_\_\_

Address:

\_\_\_\_\_, Hong Kong

Contact Person:

\_\_\_\_\_

Facsimile:

\_\_\_\_\_

14. **CHINESE TRANSLATION**

The Depositor agrees that the Chinese translation of this Charge is provided for reference only and shall not apply for construing this Charge. The English version shall prevail for all purposes.

**Schedule**

Limit (referred to in Clause 3 if applicable)

(Complete in words and figures; if this schedule is not completed, then this Charge shall secure all monies of the Customer).

In witness whereof the Depositor has executed this Charge as a deed on the day and year first above written.

**This Charge is an important legal document. Before signing, you should read it carefully and if necessary seek independent legal advice to make sure you understand your commitment and the full consequences of signing. If you sign this document, you will be liable together with or in place of the Customer for the Customer's obligations to the Bank. You should only sign this document if you agree to be legally bound by its terms.**

**Individual Signatory**

Signed Sealed and Delivered by

L.S

\_\_\_\_\_  
(Name of Signatory in Block Letters)

\_\_\_\_\_  
(Signature)

I.D. Card / Other  
Identification Document No.  
of Signatory: \_\_\_\_\_

in the presence of:

Name of Witness: \_\_\_\_\_

\_\_\_\_\_  
(Signature of Witness)

Occupation of Witness: \_\_\_\_\_

Signed Sealed and Delivered by

L.S

\_\_\_\_\_  
(Name of Signatory in Block Letters)

\_\_\_\_\_  
(Signature)

I.D. Card / Other  
Identification Document No.  
of Signatory: \_\_\_\_\_

in the presence of:

Name of Witness: \_\_\_\_\_

\_\_\_\_\_  
(Signature of Witness)

Occupation of Witness: \_\_\_\_\_

Signed Sealed and Delivered by

L.S

\_\_\_\_\_  
(Name of Signatory in Block Letters)

\_\_\_\_\_  
(Signature)

I.D. Card / Other  
Identification Document No.  
of Signatory: \_\_\_\_\_

in the presence of:

Name of Witness: \_\_\_\_\_

\_\_\_\_\_  
(Signature of Witness)

Occupation of Witness: \_\_\_\_\_

**This Charge is an important legal document. Before signing, you should read it carefully and if necessary seek independent legal advice to make sure you understand your commitment and the full consequences of signing. If you sign this document, you will be liable together with or in place of the Customer for the Customer's obligations to the Bank. You should only sign this document if you agree to be legally bound by its terms.**

**Individual Signatory**

Signed Sealed and Delivered by

L.S

\_\_\_\_\_  
(Name of Signatory in Block Letters)

\_\_\_\_\_  
(Signature)

I.D. Card / Other  
Identification Document No.  
of Signatory: \_\_\_\_\_

in the presence of:

Name of Witness: \_\_\_\_\_

\_\_\_\_\_  
(Signature of Witness)

Occupation of Witness: \_\_\_\_\_

Signed Sealed and Delivered by

L.S

\_\_\_\_\_  
(Name of Signatory in Block Letters)

\_\_\_\_\_  
(Signature)

I.D. Card / Other  
Identification Document No.  
of Signatory: \_\_\_\_\_

in the presence of:

Name of Witness: \_\_\_\_\_

\_\_\_\_\_  
(Signature of Witness)

Occupation of Witness: \_\_\_\_\_

Signed Sealed and Delivered by

L.S

\_\_\_\_\_  
(Name of Signatory in Block Letters)

\_\_\_\_\_  
(Signature)

I.D. Card / Other  
Identification Document No.  
of Signatory: \_\_\_\_\_

in the presence of:

Name of Witness: \_\_\_\_\_

\_\_\_\_\_  
(Signature of Witness)

Occupation of Witness: \_\_\_\_\_

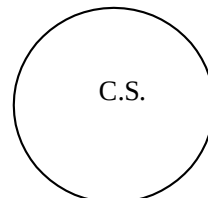
[OR]

**This Charge is an important legal document. Before signing, you should read it carefully and if necessary seek independent legal advice to make sure you understand your commitment and the full consequences of signing. If you sign this document, you will be liable together with or in place of the Customer for the Customer's obligations to the Bank. You should only sign this document if you agree to be legally bound by its terms.**

**Corporate Signatory**

The Common Seal of

)  
)  
)  
)  
)  
)  
)



was affixed hereto in the presence of:

\_\_\_\_\_  
Director/Authorised Signatory

Name: \_\_\_\_\_

\_\_\_\_\_  
Director/Secretary/Authorised Signatory

Name: \_\_\_\_\_

[OR]

Executed and Delivered as a **DEED** by

)  
)  
)  
)  
)

and **SIGNED** by

\_\_\_\_\_  
Director

Name: \_\_\_\_\_

\_\_\_\_\_  
Director/Company Secretary

Name: \_\_\_\_\_

**Dated** \_\_\_\_\_

**(1)**

**(2)**

**in favour of**

**(3) DBS BANK (HONG KONG) LIMITED**

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**ASSIGNMENT OF INSURANCE POLICY**

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**NOTICE TO INDIVIDUAL BENEFICIARY(IES)  
REGARDING  
ASSIGNMENT OF INSURANCE POLICY**

1. The Assignment is an important legal document. Before executing the Assignment, you should read it carefully and seek independent legal advice to ensure that you understand the full consequences of executing the Assignment.
2. The Assignment will secure (i) all monies, obligations and liabilities in any currency owing by the Borrower to the Assignee from time to time and at any time actually or contingently, in any capacity, alone or jointly with any other person under the Transaction Documents, (ii) interest on any amount owing by the Borrower (both before and after any demand or judgment), to the date on which the Assignee receives payment, at the rates payable by the Borrower or which would have been payable but for any circumstance which restricts payment and (iii) all fees, commissions, charges, expenses and disbursements (including, without limitation, legal fees) which are of reasonable amount and reasonably incurred by the Assignee in enforcing or attempting to enforce the Assignment (the “Secured Obligations”).
3. By executing the Assignment, you may become liable instead of the Borrower or together with the Borrower. Your liability under the Assignment in respect of the Secured Obligations will be limited to the amount (if any) specified in Schedule 1 to the Assignment or the amount of the Proceeds, whichever is less.
4. Any money payable to you by the Insurer in respect of the Policy may be used to settle the Secured Obligations if the Borrower fails to pay the Secured Obligations. Any payment in respect of the Policy received by you must be held by you in trust for the Assignee and be paid to the Assignee upon demand.
5. The Assignment will be binding as a continuing security on you until the Secured Obligations shall have been paid or satisfied in full and all obligations and liabilities incurred by the Borrower have been duly performed and discharged.
6. This Notice is a summary of the salient terms and conditions of the Assignment. Nothing contained in this Notice shall affect or vary the terms and conditions set out in the Assignment. In case of conflict, the terms and conditions of the Assignment shall prevail.

You acknowledge that before executing the Assignment you have been advised to seek independent legal advice on the terms and conditions of the Assignment. You also acknowledge that you have been provided with a copy of the Assignment.

Expressions used in this Notice shall have the same meanings as defined in the Assignment.

THIS ASSIGNMENT is dated \_\_\_\_\_ and made by:

- (1) The Policyholder (as defined in Clause 1.1); and
- (2) Each of the Beneficiaries (as defined in Clause 1.1);

IN FAVOUR OF:

- (3) DBS BANK (HONG KONG) LIMITED, whose registered office is at 11th Floor, The Center, 99 Queen's Road Central, Hong Kong (the "Assignee").

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Assignment, except where the context otherwise requires, the following expressions shall have the following meanings:

**"Assignor"** means the Policyholder and the Beneficiaries (if any), and any of them;

**"Beneficiary"** means each person (if any) specified as such and with its particulars set out in Schedule 1, designated by the Policyholder as a beneficiary under the Policy and recorded as such by the Insurer;

**"Borrower"** means (i) the Policyholder or (ii) each person (if any) specified as such and with its particulars set out in Schedule 1, as the case may be;

**"Encumbrance"** means any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, assignment, security interest or other encumbrance of any kind securing, or any right conferring a priority of payment in respect of, any obligation of any person and any other preferential arrangement resulting in a secured transaction or having the same economic or legal effect as any of the foregoing or the interest of a vendor or lessor under any conditional sale agreement, lease, hire purchase agreement or other title retention arrangement or any agreement to give any of the foregoing;

**"Lending Documents"** means all loan agreements, credit agreements, facility letters, agreements regulating interest rate or other swap or hedging facilities and all other credit facility documents made or to be made between the Assignee and the Borrower or executed by the Borrower in favour of the Assignee whether or not any other person is a party thereto and whether made before, on or after the date of this Assignment, and shall, for the avoidance of doubt, include all standard terms and conditions of the Assignee attached thereto;

**"Hong Kong"** means the Hong Kong Special Administrative Region of the People's Republic of China;

**"Insurer"** means the insurer whose particulars are set out in Schedule 2;

**"person"** includes an individual, a firm, a company, a corporation and an unincorporated body of persons;

**“Policy”** means the insurance policy taken out by the Policyholder with the Insurer, details of which are set out in Schedule 2, and any part of the Policy including all benefits and claims under or in connection with the Policy;

**“Policyholder”** means the policyholder of the Policy specified as such and with its particulars set out in Schedule 1;

**“Proceeds”** means any or all amounts from time to time payable to or for the account of the Assignor, or to which the Assignor is entitled, in respect of the Policy, whether on account of any claim, award or judgment made or given under or in connection with the Policy or otherwise;

**“Secured Obligations”** means (i) all monies, obligations and liabilities in any currency owing by the Borrower to the Assignee from time to time and at any time actually or contingently, in any capacity, alone or jointly with any other person under the Transaction Documents, (ii) interest on any amount owing by the Borrower (both before and after any demand or judgment), to the date on which the Assignee receives payment, at the rates payable by the Borrower or which would have been payable but for any circumstance which restricts payment and (iii) all fees, commissions, charges, expenses and disbursements (including, without limitation, legal fees) which are of reasonable amount and reasonably incurred by the Assignee in enforcing or attempting to enforce this Assignment;

**“Security Documents”** means this Assignment and all other documents (including, without limitation, any guarantee or indemnity) executed or to be executed as security or guarantee, whether by the Assignor and/or any other person, for the obligations of the Borrower under the Lending Documents (or any part thereof); and

**“Transaction Documents”** means, collectively, the Lending Documents and the Security Documents.

1.2 In this Assignment, unless the context otherwise requires :-

- (a) words importing the plural include the singular and vice versa;
- (b) words importing a gender include every gender;
- (c) references to (or any specified provisions of) this Assignment or any other document shall be construed as references to this Assignment, that provision or that document as in force for the time being and as from time to time varied, amended or supplemented, novated or substituted;
- (d) **“regulation”** includes a rule, code, directive, requirement, request or guideline, whether or not having the force of law, of any governmental or other regulatory agency or authority; and
- (e) references to provisions of any law or regulation or any enactment shall be construed as references to such provisions or enactment as re-enacted, amended, extended, modified or replaced from time to time.

- 1.3 References to Clauses and Schedules shall be construed as references to the clauses of and the schedules to this Assignment. The headings in this Assignment are inserted for reference only and do not affect its interpretation.
- 1.4 The Schedules to this Assignment form part of this Assignment.
- 1.5 References to the Assignor or the Assignee include references to their respective successors and permitted assigns.

## 2. COVENANT FOR PAYMENT

The Assignor covenants with the Assignee that:

- (a) without prejudice to its obligations to the Assignee under the Transaction Documents, the Assignor will pay to the Assignee in full the Secured Obligations whenever the same is due in accordance with, and in the manner required by, the terms of the Transaction Documents and will duly and punctually observe and perform all its obligations contained in each of the Transaction Documents;
- (b) the Assignor will from time to time forthwith on demand pay to or reimburse the Assignee (on a full indemnity basis) for:
  - (i) all costs, charges and expenses (including, without limitation, legal and other fees and all out-of-pocket expenses and any applicable goods and services tax or similar duties and tax) of reasonable amount and reasonably incurred by the Assignee or by any receiver or by any delegate or sub-delegate appointed by the Assignee pursuant to the Transaction Documents including (but without prejudice to the generality of the foregoing) remuneration payable to any such receiver, delegate or sub-delegate as aforesaid and all costs, charges and expenses incurred in the protection, preservation, realisation or enforcement of the security constituted by this Assignment or any part thereof or in defending any claims brought against the Assignee, any receiver or any delegate or sub-delegate appointed by the Assignee in respect of this Assignment or in releasing or re-assigning this Assignment upon payment of all monies hereby secured; and
  - (ii) interest on each of the items of costs, charges and expenses referred to in paragraph (i) above accruing day by day from demand of such costs, charges or expenses until full discharge of such costs, charges or expenses (both before and after any demand or judgment) at the rate per annum specified in the relevant Lending Documents or if no rate is specified, at such other rate per annum as may from time to time be determined by the Assignee. Any interest payable under this paragraph (ii) which is not paid in accordance with this paragraph (ii) shall for as long as it remains unpaid be added to the overdue sum on the last business day of the calendar month in which it accrued and itself bear interest accordingly,

and, until payment of the same in full, all such costs, charges, expenses and amounts shall be secured by this Assignment.

3. ASSIGNMENT

- 3.1 In consideration of the Assignee making and continuing to make available credit facilities or accommodation to the Borrower pursuant to the Transaction Documents and as a continuing security for the due and punctual payment and discharge of the Secured Obligations and for the due and punctual observance and performance by the Borrower of each of its obligations under each of the Transaction Documents, the Assignor as beneficial owner HEREBY ASSIGNS AND AGREES TO ASSIGN ABSOLUTELY to the Assignee by way of first legal assignment free from all Encumbrances all the Assignor's rights, title and interests in and to, and all benefits accrued and to accrue to the Assignor under, the Policy (including, without limitation, all claims of any nature under the Policy and return of premiums) and the Proceeds, whether in existence now or after the date of this Assignment, to the fullest extent permitted by law.
- 3.2 If at any time the Assignee is satisfied that the whole of the Secured Obligations has been unconditionally and irrevocably paid, discharged or performed in full and/or extinguished, the Assignee shall, at the request and expense of the Assignor and in such form as the Assignee may approve, discharge the security hereby created and reassign to the Assignor all the property, rights and interests assigned under this Assignment.
- 3.3 The Assignee shall be entitled to retain this Assignment for such period as the Assignee may consider appropriate in order to protect the interests of the Assignee in respect of the Secured Obligations.
- 3.4 Notwithstanding any other provisions in this Assignment and subject only to Clause 9, the liability of the Beneficiary under this Assignment in respect of the Secured Obligations will be limited to the amount (if any) specified in Schedule 1 or the amount of the Proceeds, whichever is less.

4. NOTICE OF ASSIGNMENT

Upon execution of this Assignment, the Assignor shall give notice of this Assignment to the Insurer in the form set out in Part A of Schedule 3 (or substantially in the form set out in Part A of Schedule 3 and as may be approved by the Assignee), together with a copy of this Assignment, and shall procure that the Insurer signs and delivers to the Assignee an acknowledgment of such notice in the form set out in Part B of Schedule 3 (or substantially in the form set out in Part B of Schedule 3 and as may be approved by the Assignee).

5. CONTINUING AND ADDITIONAL SECURITY

- 5.1 The security created by this Assignment shall constitute and be a continuing security and shall remain in full force and effect until the Secured Obligations has been paid, discharged and performed in full despite any intermediate payment of the Secured Obligations, or the death, bankruptcy, insolvency or liquidation or change in the constitution or status of the Assignor, the Borrower or any other person, or any disability or incapacity of or affecting the Assignor, the Borrower or any other person, or any other matter whatsoever and shall secure the ultimate balance of the Secured Obligations. The Assignee does not have any further commitment, obligation or liability (whether actual or contingent) to provide any credit facilities or accommodation to the Borrower under the Lending Documents notwithstanding any intermediate settlement of account or reduction or repayment of the Secured Obligations from time to time.
- 5.2 The security created by this Assignment is in addition to and independent of and not in substitution for, and shall not be prejudiced or affected by nor merged with, and may be enforced despite, the existence, invalidity or unenforceability of any other security, collateral, guarantee, indemnity, right, remedy or Encumbrance now or subsequently held by or provided to the Assignee nor shall any such security, collateral, guarantee, indemnity, right, remedy or Encumbrance be in any way prejudiced or affected by this Assignment. This Assignment may be enforced without prior recourse to any such security, collateral, guarantee, indemnity, right, remedy or Encumbrance and without any demand being made upon or proceedings being taken against the Borrower or any other person. Any restriction imposed by any applicable law on any immediate or other power of sale, application of proceeds or on any other right or on the consolidation of mortgages or other Encumbrances shall not apply to this Assignment, the Assignee or to any Encumbrance given to the Assignee under or pursuant to this Assignment.

## 6. OBLIGATIONS OF THE ASSIGNOR

- 6.1 Upon execution of this Assignment, the Policyholder shall deliver to the Assignee all original contracts and endorsements in relation to the Policy.
- 6.2 Notwithstanding the assignment effected by this Assignment or anything implied to the contrary:
- (a) the Assignee shall not be obliged to make any enquiry as to the nature or sufficiency of any payment made under the Policy or otherwise received by it, or to make any claim or take any other action to collect any monies, or to enforce any right or benefit hereby assigned to the Assignee or to which the Assignee may at any time be entitled under this Assignment, or to perform or fulfil any obligation of the Policyholder in respect of the Policy or to make any payment thereunder; and
  - (b) the Policyholder shall be and shall remain liable under the Policy to observe and perform all the conditions and obligations specified in the Policy to be observed and performed by the Policyholder or otherwise assumed by it under the Policy, and the Assignee shall not by reason of this Assignment assume any obligation or liability under the Policy or any obligation to observe or

perform any obligation of the Policyholder or of any representation, warranty, condition, covenant, agreement or other term of the Policy.

- 6.3 The Assignor will deliver a written request (together with such documents as may be necessary) for payment pursuant to the Policy as and when required to do so by the Assignee.
- 6.4 If the Assignor is in default of or fails to satisfy the Assignee that the Assignor has observed or performed any of its obligations under this Assignment, the Assignee shall be entitled (but not obliged), without prejudice to any other rights or remedies it may have, to take such action and to make such payments as it shall in its absolute discretion consider appropriate on behalf of or in the name of the Assignor or otherwise with a view to remedying or mitigating the consequences of any such default or failure and securing the observance or performance of this Assignment and all expenses of reasonable amount and reasonably incurred by the Assignee in this regard shall be repayable in full by the Assignor to the Assignee immediately on demand.

## 7. UNDERTAKINGS

- 7.1 The Policyholder undertakes with the Assignee that, throughout the continuance of this Assignment and so long as the Secured Obligations or any part thereof remains outstanding:
- (a) Payment of premiums: the Policyholder will punctually pay all premiums and other sums payable in respect of the Policy, comply with all warranties, conditions or other requirements relating to the Policy, produce to the Assignee the certified true copy or the original of the Policy (including, without limitation, any alteration, addition, amendment or endorsement thereto), cover notes and other relevant documents relating to the Policy and receipts for the premiums and other amounts payable under the Policy as the Assignee may from time to time reasonably request;
  - (b) Validity of Policy: the Policy is and will be valid and subsisting and fully enforceable and in no way void or voidable and the whole benefit of the Policy will be vested in the Assignor free from any Encumbrance, except created pursuant to this Assignment;
  - (c) Information relating to Policy: the Policyholder shall promptly notify the Assignee in writing of such information relating to the Policy as the Assignee may from time to time reasonably require and of any change to such information; and
  - (d) Change of Beneficiaries: unless with the prior written approval of the Assignee, the Policyholder shall not change any of the Beneficiaries or add any other persons as beneficiaries under the Policy.

7.2 Each Assignor undertakes with the Assignee that, throughout the continuance of this Assignment and so long as the Secured Obligations or any part thereof remains outstanding:

- (a) Invalidity of Policy: unless with the prior written approval of the Assignee, the Assignor will not make or agree to any claim that the Policy is frustrated or invalid;
- (b) Exercise of rights on Policy: unless with the prior written approval of the Assignee, the Assignor will at no time exercise any right or power conferred on the Assignor by the Policy in any manner which is or is likely to be adverse to the interests of the Assignee under this Assignment;
- (c) Acts and omissions: unless with the prior written approval of the Assignee, the Assignor will not take or permit any act, omission or thing which may result in any alteration or impairment of this Assignment or of any of the rights created hereby and will not do or cause or permit to be done anything which may in any way depreciate, jeopardise or otherwise prejudice the value of the Assignee's security or the effectiveness of this Assignment;
- (d) Acts for enforcement: the Assignor will do or procure each and every act or thing which the Assignee may from time to time require to be done for the purpose of enforcing the rights of the Assignee under this Assignment, and will allow the Assignor's name to be used as and when required by the Assignee for that purpose;
- (e) Notices: the Assignor will forthwith upon any notice being received or given (as the case may be) send to the Assignee a copy of that notice received or given by the Assignor in respect of the Policy;
- (f) Amendments: unless with the prior written approval of the Assignee, the Assignor will not make or agree to any amendment, modification or variation of any terms of the Policy or release the Insurer from any of its obligations under the Policy or exercise any rights or powers of termination under the Policy or waive any breach of the Policy by the Insurer;
- (g) No equities: unless with the prior written approval of the Assignee, the Assignor will not create or permit to exist any equities between the Insurer and the Assignor which may be to the detriment of the Assignee or its rights under this Assignment;
- (h) No Encumbrances: unless with the prior written approval of the Assignee, the Assignor shall not create or attempt or agree to create or permit to exist any Encumbrances over the Policy and/or the Proceeds or any part thereof or any interest therein or otherwise assign, deal with or dispose of all or any of the same in favour of any person other than the Assignee;
- (i) No prohibition against assignment: the Assignor will ensure that the Policy does not contain any provision which would prohibit or restrict in any manner

any assignment, transfer or other disposition of the Assignor's rights in respect of the Policy;

- (j) Void Policy: if the Policy shall become voidable or void at any time, the Assignor will immediately at the Assignor's expense do all such things as may be necessary (i) if the Policy shall become voidable, for restoring the same to full validity or (ii) if the Policy shall become void, for effecting or for enabling the Assignee to effect a new policy or new policies on the life or lives assured under the void Policy in such manner and in such name as the Assignee may require for the sum or sums which would have been payable under the void Policy (whether the sum assured or the surrender value) by an insurer approved by the Assignee and will enter into an assignment in favour of the Assignee in respect of such new policy or policies on terms and conditions similar to the terms and conditions of this Assignment or otherwise satisfactory to the Assignee;
- (k) Surrender of Policy: unless with the prior written approval of the Assignee, the Assignor will not surrender, exchange, cancel, terminate, transfer, sell, dispose of or otherwise deal with the Policy and/or the Proceeds;
- (l) No settlement: unless with the prior written approval of the Assignee, the Assignor shall not waive, release, settle, compromise or abandon any claim under or in respect of the Policy and/or the Proceeds or do or omit to do any other act or thing whereby the recovery in full of the Proceeds as and when they become payable may be impeded;
- (m) Endorsement of security: if so requested by the Assignee, the Assignor shall promptly procure that notice of the Assignee's security interest under this Assignment, in form and substance satisfactory to the Assignee, is endorsed on and included in the Policy and any other instruments issued or to be issued in respect of the Policy;
- (n) Mortgagee protection: if so requested by the Assignee, the Assignor shall use its best endeavours to procure that a clause providing that the insurance under the Policy and any other instrument issued or to be issued in respect of the Policy shall not be vitiated or avoided as against the Assignee in the event or as a result of any misrepresentation, act or neglect or failure to make disclosure on the part of the Assignor or any other person or any circumstances beyond the control of an insured party and that the rights of the Assignee thereunder shall not be prejudiced by any act or neglect of the Assignor or any other person, such clause to be in form and substance satisfactory to the Assignee, is endorsed on and included in the Policy and any other instruments issued or to be issued in respect of the Policy;
- (o) Payment in trust: in the event the Assignor receives payment of any amounts hereby assigned, such amounts shall be held by it in trust for the Assignee and shall forthwith be paid over by it to the Assignee or as the Assignee shall direct;

- (p) Notice of breach: the Assignor shall promptly notify the Assignee in writing of any breach by the Insurer or by the Assignor of its obligations under the Policy;
- (q) Instructions to Insurer: the Assignor shall give such instructions and directions to the Insurer as the Assignee may reasonably require from time to time for preserving and/or perfecting its title to the Policy and the Proceeds;
- (r) Change of information: the Assignor shall promptly notify the Assignee in writing of any change in the information about the Assignor as provided in this Assignment; and
- (s) No borrowing from Insurer: without prejudice to the generality of paragraph (h) above and unless with the prior written approval of the Assignee, the Assignor shall not enter into any borrowing, credit or similar arrangement with the Insurer, or allow any amount to become due or owing to the Insurer.

## 8. REPRESENTATIONS AND WARRANTIES

### 8.1 The Policyholder represents and warrants to the Assignee as follows:

- (a) Formation: the Policyholder is duly incorporated, established or formed and validly existing under the laws of its place of incorporation, establishment or formation with full power, authority and right to carry on its business as it is now being conducted and to own its property and assets;
- (b) Binding obligations: the Transaction Documents to which the Policyholder is a party when executed, and any the obligations expressed to be assumed by the Policyholder thereunder, constitute legal, valid and binding obligations of the Policyholder and are enforceable in accordance with their terms;
- (c) Authorisations and consents: the Policyholder has full capacity, power, authority and legal right to execute and deliver, and to perform its obligations under, the Transaction Documents and otherwise engage in the transactions contemplated by the Transaction Documents, and all action, conditions and things required or desirable from time to time to be taken, fulfilled and done (including, without limitation, the obtaining of any necessary consents and authorisation by the Policyholder from any government, state or agency or authority of a government or state, any of its creditors or any other person) to (i) authorise the execution and performance of the Transaction Documents and to enable the Policyholder lawfully to enter into, exercise its rights and perform and comply with its obligations under the Transaction Documents, (ii) ensure that those obligations are valid, legally binding and enforceable and (iii) make the Transaction Documents to which it is a party admissible in evidence in the courts of Hong Kong, have been taken, fulfilled and done and all necessary authorisations and consents have been obtained or effected and are in full force and effect and all conditions of each such authorisation and consent have been complied with;

- (d) Non-violation of laws, etc.: the Policyholder's entry into, exercise of its rights and/or performance of or compliance with its obligations under the Transaction Documents do not and will not violate or conflict with (i) any applicable law to which it is subject or (ii) any agreement to which it is a party or which is binding on it or its assets, and do not and will not result in the existence of, or oblige the Policyholder to create, any security over those assets (except the security created or purported to be created under this Assignment);
- (e) Breach of other contracts: there is no provision of any existing mortgage, trust deed, contract, licence, franchise, concession or agreement binding on the Policyholder which is being contravened or breached by the execution by the Policyholder of the Transaction Documents to which the Policyholder is a party or by the Policyholder's performance or observance of any of its obligations under the Transaction Documents;
- (f) Litigation: no litigation, arbitration or administrative proceeding is current or pending or threatened against the Policyholder or its assets or the Policy or the Proceeds or any part thereof or (i) which is brought to restrain the entry into, exercise of the Policyholder's rights under or performance and/or enforcement of or compliance with the Policyholder's obligations under the Transaction Documents or (ii) which could materially affect the Policyholder's ability to perform any of its obligations under the Transaction Documents;
- (g) Event of default: no event of default in connection with any of the Lending Documents has occurred;
- (h) Analogous events: no other event comparable or analogous to any event specified in (f) or (g) above shall happen in relation to the Policyholder in any jurisdiction in which it is domiciled, resident or carries on business or has assets and liabilities;
- (i) Compliance with Transaction Documents: there is no breach of any of the terms and conditions of any of the Transaction Documents to which the Policyholder is a party;
- (j) Disclosure: the Policyholder has fully disclosed in writing to the Assignee all facts and information relating to the Policyholder which it is aware of and which might, if disclosed, reasonably be expected to affect materially and adversely the decision of the Assignee in deciding whether or not to provide finance for any of the purposes specified in the Transaction documents on the terms of the Transaction Documents;
- (k) Policy: the particulars of the Policy set out in Schedule 2 are accurate, and the Policy effected or when effected (as the case may be) constitutes legal, valid, binding and enforceable obligations of the parties thereto in accordance with its terms in favour of the Assignor, is in full force and effect and is not void or voidable and has not been varied or modified in any way from the form in which copies of the Policy have been or will be delivered by the Policyholder to the Assignee, or cancelled, and no party is in default thereunder or has

asserted or has the right to assert, any right of termination or rescission whatsoever; and

- (l) Free from Encumbrances: the Assignor is the beneficial owner of the Policy and/or the Proceeds and that the Policy is valid and in force free from any Encumbrances (except as created or purported to be created under this Assignment), and that all premiums and other payments due thereunder have been duly paid and all covenants, terms and conditions contained in the Policy have been duly observed and performed and that nothing has been or shall be done, permitted or suffered whereby the Assignee may be prevented from receiving all or any of the Proceeds pursuant to and in accordance with the terms of this Assignment.

8.2 Each Assignor represents and warrants to the Assignee as follows:

- (a) Power and capacity: the Assignor has full power and capacity to enter into and perform its obligations under this Assignment;
- (b) Binding obligations: this Assignment constitutes legal, valid and binding obligations of the Assignor and are enforceable in accordance with its terms;
- (c) Authorisations and consents: the Assignor has full capacity, power, authority and legal right to execute and deliver, and to perform its obligations under, this Assignment and otherwise engage in the transactions contemplated by this Assignment, and all action, conditions and things required or desirable from time to time to be taken, fulfilled and done (including, without limitation, the obtaining of any necessary consents and authorisation by the Assignor from any government, state or agency or authority of a government or state, any of its creditors or any other person) to (i) authorise the execution and performance of this Assignment and to enable the Assignor lawfully to enter into, exercise its rights and perform and comply with its obligations under this Assignment, (ii) ensure that those obligations are valid, legally binding and enforceable and (iii) make this Assignment admissible in evidence in the courts of Hong Kong, have been taken, fulfilled and done and all necessary authorisations and consents have been obtained or effected and are in full force and effect and all conditions of each such authorisation and consent have been complied with;
- (d) Non-violation of laws, etc.: the entry into, exercise of its rights and/or performance of or compliance with its obligations under this Assignment by the Assignor do not and will not violate or conflict with (i) any applicable law to which it is subject or (ii) any agreement to which it is a party or which is binding on it or its assets, and do not and will not result in the existence of, or oblige the Assignor to create, any security over those assets (except the security created or purported to be created under this Assignment);
- (e) Breach of other contracts: there is no provision of any existing mortgage, trust deed, contract, licence, franchise, concession or agreement binding on the Assignor which is being contravened or breached by the execution by the

Assignor of this Assignment or by the Assignor's performance or observance of any of its obligations under this Assignment;

- (f) Information: all the information provided by the Assignor in this Assignment is true, correct and up-to-date;
- (g) Free from Encumbrances: the Assignor has not assigned, charged, pledged, created any Encumbrances or otherwise transferred any of its rights, title or interests in or to, or any of the benefits of, the Policy or the Proceeds except the security created or purported to be created under this Assignment;
- (h) Bankruptcy: the Assignor is not and is not deemed to be insolvent or unable to pay its debts as they fall due and no steps have been taken or are being taken to appoint a receiver over the assets of the Assignor or for the bankruptcy of the Assignor or for an interim order to be made against the Assignor or its assets or revenues; and
- (i) Analogous events: no other event comparable or analogous to any event specified in (h) above shall happen in relation to the Assignor in any jurisdiction in which it is domiciled, resident or carries on business or has assets and liabilities.

8.3 The representations and warranties in Clauses 8.1 and 8.2 are made on the date of this Assignment and shall be deemed to be repeated by the Assignor on each day during the continuance of this Assignment until all the Secured Obligations have been paid or discharged in full as if made by reference to the facts and circumstances then subsisting from time to time.

## 9. PROTECTION OF THE ASSIGNEE

9.1 Without prejudice to the other provisions of this Assignment, neither the security created by this Assignment nor the liability of the Assignor for the Secured Obligations shall be prejudiced, discharged, diminished or in any way affected by, including without limitation, the following (whether or not known to the Assignor):

- (a) the entering into of any agreement or arrangement by the Assignee with the Borrower or any other person to renew, vary, modify, consolidate, increase or terminate any credit, facilities or accommodation to the Borrower or any other person;
- (b) any amendment, variation or modification (however fundamental) to this Assignment or any of the other Transaction Documents, or any other security, collateral, guarantee, indemnity, right, remedy or lien or any other document referred to therein;
- (c) the release of any of the Transaction Documents (other than this Assignment) or any other security, collateral, guarantee, indemnity, right, remedy or lien being or becoming held by or available to the Assignee or which the Assignee may now or after the date of this Assignment have from or against the

Assignor, the Borrower or any other person, or by the Assignee at any time refraining from enforcing, varying or in any other way dealing with any of the same;

- (d) any settlement, compromise, concession, waiver, consent, discharge, release, variation, indulgence of time or otherwise being granted by the Assignee to the Assignor, the Borrower or any other person in respect of or in connection with, the Secured Obligations or any other Encumbrance, guarantee or indemnity or document;
- (e) the enforcement or absence of enforcement of this Assignment, any of the other Transaction Documents or any other security, collateral, guarantee, indemnity, right, remedy or lien being or becoming held by or available to the Assignee, or by any of the same being or becoming wholly or partly void, voidable, unenforceable or impaired;
- (f) the insolvency, bankruptcy, dissolution, winding-up, administration, receivership, amalgamation, reorganisation, reconstruction, change in constitution, incapacity, disability, insanity or death (as the case may be) of the Assignor, the Borrower, the Assignee or any other person, or (in relation to any of them) the acquisition of all or a part of its undertakings by any other person (or the commencement of any of the foregoing);
- (g) any lack of capacity or deficiency in the powers of the Assignor, the Borrower or any other person to enter into or perform any of its obligations under any of the Transaction Documents;
- (h) any invalidity or irregularity in the execution of any of the Transaction Documents;
- (i) the making or absence of any demand for payment of the Secured Obligations on the Assignor, the Borrower or any other person, whether by the Assignee or any other person;
- (j) the illegality, invalidity or unenforceability of or any defect in the provisions of any of the Transaction Documents or any other security, collateral, guarantee, indemnity, right, remedy or lien or any of the obligations of any of the parties thereunder;
- (k) any variation of, or extension to, the terms of the Policy;
- (l) any other act, thing or event done or omitted or neglected to be done by the Assignee or any other person or any other dealing, fact, event, circumstance, matter or thing which, but for this provision, would or may operate to prejudice, discharge, exonerate or affect the security created by this Assignment, this Assignment or the liability of the Assignor under this Assignment; or

- (m) in the case of a Beneficiary, any act or omission which would not have discharged or affected its liability had it been the principal debtor in respect of the Secured Obligations.
- 9.2 The Assignor shall be liable to the Assignee as principal debtor and not merely a surety. Any of the Secured Obligations which may not be valid or enforceable against the Borrower for any reason will, nevertheless, be recoverable from the Assignor as principal debtor, by way of indemnity, immediately on demand on the Secured Obligations.
- 9.3 Until all the Secured Obligations have been paid, discharged or performed in full (and notwithstanding payment of a dividend in any liquidation, or under any compromise or arrangement, or discharge of its liability under this Assignment), each Assignor agrees that, without the prior written consent of the Assignee, it will not:
- (a) exercise its rights of subrogation and indemnity against the Borrower or any other person liable and will waive all rights and remedies as a surety to the extent that they might prejudice the right, interest or benefit of the Assignee under this Assignment;
  - (b) accept any security or collateral in respect of any indebtedness now or after the date of this Assignment due to it from the Borrower;
  - (c) take any step to enforce any right against the Borrower or any other person liable in respect of any such obligations and liabilities; or
  - (d) claim set-off or counterclaim against the Borrower or any other person liable or claim or prove in competition with the Assignee in the liquidation of the Borrower or any other person liable or have the benefit of, or share in, any payment from or composition with, the Borrower or any other person liable or any other security or collateral now or after the date of this Assignment held by the Assignee for any Secured Obligations or for the obligations or liabilities of any other person liable but so that, if so directed by the Assignee, it will prove for the whole or any part of its claim in the liquidation of the Borrower or other person liable on terms that the benefit of such proof and of all money received by it in respect thereof shall be held in trust for the Assignee and delivered to the Assignee on demand.
- 9.4 If the Assignee at its sole discretion considers that an amount paid by the Assignor, the Borrower or any other person is capable of being avoided or otherwise set aside (on the liquidation of the Assignor or the Borrower or otherwise), then that amount shall not be deemed or considered to have been paid for the purposes of this Assignment. Furthermore, the Assignee may in its absolute discretion concede or compromise any claim that any payment, security or other disposition is liable to be avoided, set aside, reduced or repaid.
- 9.5 No assurance, security or payment which may be avoided under any law relating to preferences, bankruptcy or insolvency or for any reason whatsoever, and no release, discharge or settlement given or made by the Assignee on the faith of any such assurance, security or payment, shall prejudice or affect the right of the Assignee to

enforce the security created by this Assignment in respect of the full extent of the monies hereby secured. Any such release, discharge or settlement shall be deemed to be made subject to the condition that it will be void if any assurance, payment or security which the Assignee may previously have received or may thereafter receive from any person in respect of the Secured Obligations in consideration of such release, discharge or settlement is set aside, avoided or ordered to be surrendered, paid away, refunded or reduced under any applicable law or proves to have been for any reason invalid or voidable for any other reason, and the Assignee shall be entitled thereafter to enforce this Assignment as if no such release, discharge or settlement had occurred. This Clause shall survive the discharge of this Assignment unless the Assignee expressly agrees otherwise in writing.

- 9.6 If any obligation or liability of the Assignor to the Assignee is invalid or unenforceable or ceases to be valid or enforceable for any reason whether or not known to the Assignee including, without limitation, (i) any defect in or want of powers of the Assignor, (ii) any irregular exercise of any such powers or act or authority by any person purporting to act for or on behalf of the Assignor or any legal or other limitation, or (iii) the death, disability, incapacity of the Assignor (if applicable), the Assignor shall nevertheless be liable to the Assignee in respect of that obligation or liability as if such obligation and liability were fully valid and enforceable to the extent permitted under applicable law.
- 9.7 The rights and remedies provided in this Assignment are cumulative and do not exclude or restrict any other rights or remedies provided by law.

#### 10. PAYMENTS TO THE ASSIGNEE

- 10.1 All sums payable by the Assignor under this Assignment shall be paid in full without any set-off, counterclaim, restriction or condition of any kind and, except to the extent required by any applicable law or regulation, free and clear of any deduction or withholding on account of tax or otherwise. If the Assignor or any other person is required by any law or regulation to make any such deduction or withholding, the Assignor shall, together with the relevant payment, pay such additional amount as will ensure that the Assignee actually receives and is entitled to retain, free and clear of any such deduction or withholding, the full amount which it would have received if no such deduction or withholding had been required. The Assignor shall, within the required time period, pay or cause to be paid over to the relevant taxation or other authority the full amount of any such deduction or withholding and shall promptly forward to the Assignee copies of any official receipt or other evidence satisfactory to the Assignee showing that such payment has been made.
- 10.2 All payments received by the Assignee pursuant to this Assignment shall be applied by the Assignee, in the first place, to pay all costs and expenses of whatever nature incurred by the Assignee in or about or incidental to the enforcement of the rights, title, interest and benefits hereby assigned, and the balance shall be applied in such order as the Assignee may consider appropriate whether or not the Secured Obligations shall have become due and whether or not the security created by this Assignment shall have become enforceable and any surplus for the time being may be

retained by the Assignee and held in a suspense account pending application by the Assignee.

- 10.3 A certificate of balance signed by any authorised officer of the Assignee shall be conclusive and binding, in the absence of manifest error, against the Assignor of the amount of the Secured Obligations or any other indebtedness or liability owing at any time to the Assignee.

## 11. INDEMNITY AND SET-OFF

- 11.1 The Assignor shall indemnify the Assignee, on demand, against all losses, actions, claims, proceedings, demands and liabilities which may be suffered by, and all costs and expenses which are of reasonable amount and reasonably incurred by, the Assignee:
- (a) for anything done or omitted in the exercise or purported exercise or non-exercise of any of the rights, powers, remedies, authorities or discretions conferred on or vested in the Assignee under or pursuant to this Assignment;
  - (b) as a result of any failure of the Assignor to observe or perform any of its covenants or obligations under the Policy or this Assignment;
  - (c) as a result of any payment in respect of the Secured Obligations (whether made by the Assignor, the Borrower or any other person) being impeached or declared void for any reason whatsoever; and/or
  - (d) as a result of any taxes, duties, rates or outgoings assessed upon or payable in respect of the Policy and/or the Proceeds or in connection with the entry into, perfection, preservation, enforcement or exercise of any rights under this Assignment.
- 11.2 The obligations of the Assignor shall be to pay the Secured Obligations in the same currency in which they are incurred or due ("Currency of Account") to the Assignee. Any amount received or recovered by the Assignee in a currency ("Relevant Currency") other than the Currency of Account, whether as a result of or of the enforcement of a judgment or order of court or tribunal of any jurisdiction, in the bankruptcy, dissolution or winding-up (as the case may be) of the Assignor or otherwise, in respect of any sum due to the Assignee from the Assignor under this Assignment shall only constitute a discharge to the Assignor to the extent of the amount in the Currency of Account which the Assignee is able, in accordance with its usual banking procedure and practice, to purchase with the amount of the Relevant Currency so received or recovered 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) after deducting any costs of exchange and any other related costs and expenses. If that amount in the Currency of Account purchased is less than the amount of the Currency of Account due to the Assignee under this Assignment, the Assignor shall indemnify the Assignee against the shortfall.

- 11.3 Each of the above indemnities constitutes a separate and independent obligation from the other obligations of the Assignor under this Assignment, shall give rise to a separate, additional and independent cause of action, shall apply irrespective of any indulgence granted by the Assignee and shall continue in full force and effect despite any judgment, order, claim or proof for a liquidated amount in respect of any sum due under the Transaction Documents or any judgment or other order and shall survive the termination of this Assignment.
- 11.4 The Assignee may retain and pay out of any money in the Assignee's hands all sums necessary to effect the indemnities contained in this Assignment and all sums payable by the Assignor under this Assignment shall form part of the monies hereby secured.
- 11.5 The Assignee shall be entitled at any time without prior notice set-off against any amount payable by the Assignee to the Assignor all or any amount owing by the Assignor to the Assignee under this Assignment.

## 12. ENFORCEMENT

- 12.1 This Assignment shall be enforceable by the Assignee at any time after the Borrower and/or the Assignor defaults in any payment or other obligations owing by it to the Assignee. At any time after the security created by this Assignment becomes enforceable, the Assignee may, without notice to the Assignor or prior authorisation from any court, in its absolute discretion enforce all or any part of this Assignment and the security created by or pursuant to this Assignment (at the times, in the manner and on the terms it thinks fit), exercise all or any of the powers, rights, remedies, authorities and discretions which are conferred upon it by this Assignment (whether expressly or by reference) in relation to all or any part of the rights, interest and benefits assigned hereunder, hold, sell, dispose of or deal with all or any part of the rights, interest and benefits assigned hereunder, and exercise all or any of the powers, authorities and discretions conferred by statute (as varied or extended by this Assignment) on mortgagees or receivers or otherwise conferred by law on mortgagees or receivers. The Assignee shall also have the power to do all acts and things and exercise all rights, powers and remedies that the Assignee could do or exercise in relation to the rights, benefits and interests assigned hereunder in the name or on behalf and at the cost of the Assignor as if the Assignee were the absolute beneficial owner of the same. Without prejudice to the generality of the foregoing, the Assignee shall also have the power to surrender or exchange the Policy.
- 12.2 This Assignment may be enforced without the Assignee first having recourse to any other security or rights or taking any other steps or proceedings against the Assignor, the Borrower or any other person or may be enforced for any balance due after resorting to any one or more other means of obtaining payment or discharge of the monies, obligations and liabilities hereby secured.
- 12.3 The Assignee may, without prejudice to any other right, power or remedy of the Assignee, at any time and from time to time, without further authority or notice to the Assignor, debit and charge any account of the Assignor with the Assignee with any of the monies payable to the Assignee under or pursuant to any of the Transaction Documents to which the Assignor is a party.

- 12.4 The Assignee may release any of the rights, benefits or interests assigned hereunder from the security hereby created at any time and any such release shall not in any way affect, prejudice or invalidate the security hereby created over any other rights, benefits or interests assigned hereunder or the obligations of the Assignor under this Assignment or any other Transaction Documents to which it is a party.
- 12.5 If the Assignee receives or is deemed to be affected by notice, whether actual or constructive, of any subsequent Encumbrance or other instrument affecting any part of the Policy, the Proceeds and/or the rights, benefits and interests assigned hereunder, the Assignee may open a new account for the Assignor. If the Assignee does not open a new account, it shall nevertheless be treated as if it had done so at the time when the Assignee received or was deemed to have received notice, and as from that time all payments made to the Assignee shall be credited or be treated as having been credited to the new account without any immediate obligation on the part of the Assignee to apply the same or any part thereof in or towards the discharge of the Secured Obligations and such payments shall not operate to reduce the amount for which this Assignment is security.

13. FURTHER ASSURANCE

The Assignor shall at any time and from time to time (whether before or after the security created under this Assignment shall have become enforceable) upon request of the Assignee promptly and duly execute or procure the execution of all such further legal or other mortgages, charges or assignments and do all such transfers, assurances, acts and things as the Assignee may require over or in respect of the Policy and/or the Proceeds to secure all monies, obligations and liabilities hereby covenanted to be paid or hereby secured or for the purposes of preserving, perfecting and completing any assignment or vesting of the Assignee's rights, benefits or obligations hereunder or otherwise enabling the Assignee to obtain the full benefit of the security created or intended by this Assignment and of the rights, powers and discretions granted by this Assignment, and the Assignor shall also give all notices, orders and directions which the Assignee may require.

14. SUSPENSE ACCOUNTS

In order to enable the Assignee to sue or prove for the whole of the Secured Obligations, all monies received, recovered or realised by the Assignee under this Assignment (whether before or after the insolvency or bankruptcy of the Assignor) may, in the discretion of the Assignee, be credited to any suspense or impersonal account (which may not be interest-bearing) and may be held in such account for so long as the Assignee may think fit pending the application from time to time (as the Assignee shall be entitled to do in its discretion) of such monies and accrued interest thereon, if any, in or towards the discharge of the Secured Obligations.

15. ATTORNEY

- 15.1 The Assignor irrevocably appoints by way of security the Assignee and any of its delegates or sub-delegates to be its true and lawful attorney jointly and also severally (with full power to appoint substitutes and to sub-delegate including power to authorise the person so appointed to make further appointments with regard to the Policy and/or the Proceeds) in its name and on its behalf, and as its act and deed or otherwise, to do all acts, things and deeds which may be required or which the Assignee shall think proper or expedient to preserve, perfect or enforce this Assignment including, without limitation, any acts, things and deeds which:
- (a) the Assignor could itself do in relation to the Policy and/or the Proceeds;
  - (b) the Assignor is or may become obliged to do under this Assignment; and/or
  - (c) may be required for or deemed proper or expedient for the purpose of exercising fully and effectively all or any of the powers, remedies and discretion conferred on the Assignee under this Assignment or to give full force and effect to the terms and conditions contained in this Assignment.
- 15.2 The Assignor warrants and declares that any and all such deeds, instruments and documents executed on its behalf by or on behalf of the Assignee by virtue of the provisions of this Clause shall be as good, valid and effectual, to all intents and purposes whatsoever, as if the same had been duly and properly executed by the Assignor itself and the Assignor undertakes to ratify and confirm all such deeds, instruments and documents whatever any attorney shall do or purport to do in the exercise or purported exercise of all or any of the powers, authorities and discretions conferred by this Clause.
- 15.3 The Assignor further declares that the powers, authorities and discretions conferred by this Clause are given for valuable consideration and shall be and remain irrevocable until the discharge of the security created by this Assignment.

16. EXPENSES

- 16.1 The Assignor shall pay to the Assignee on demand, all costs, charges and expenses (including legal fees) which are of reasonable amount and reasonably incurred by the Assignee in connection with the negotiation, preparation, execution and registration of, and any amendment to or consent or waiver under, this Assignment and the other Transaction Documents to which the Assignor is a party, and the enforcement of, and preservation of the Assignee's rights under, this Assignment and the other Transaction Documents to which the Assignor is a party.
- 16.2 The Assignor shall also pay, on demand, all stamp, registration or other taxes, duties or fees (including any such duties payable by the Assignee) imposed by any relevant jurisdiction or any authority in respect of this Assignment and any documentation required in connection with this Assignment and shall indemnify the Assignee against all liabilities, costs and expenses which may result from any delay or default in paying such taxes, duties or fees.

17. NOTICES

- 17.1 Every notice, request, demand or other communication under this Assignment must be in writing delivered personally or sent by prepaid post or transmitted by fax.
- 17.2 (a) In the case of posting, the envelope containing the notice or communication must be addressed to the intended recipient at the address of that party set out in this Assignment or such other address as a party may notify the other party in writing and must have the proper postage prepaid (airmail if applicable and available).
- (b) In the case of a fax, the transmission must be sent to the intended recipient at the fax number of the relevant party as that party may notify the other party in writing.
- 17.3 No change in any of the addresses and the fax numbers of the Assignor shall be effective until it has been notified to and acknowledged by the Assignee in writing.
- 17.4 Any notice or communication from the Assignor shall be irrevocable and shall not be effective until the Assignee has actually received it. In other cases, any notice or communication shall be deemed to have been received:
- (a) on personal delivery to the addressee;
- (b) forty-eight (48) hours after the date of posting, where the addressee's address is in Hong Kong;
- (c) seven days after the date of posting, where the addressee's address is not in Hong Kong; or
- (d) in the case of a fax, on transmission to the addressee.
- 17.5 Any notice or communication which is received after official business hours on a working day, or on a day which is not a full working day, in the place of receipt shall be deemed to be received on the next full working day in that place.
- 17.6 In the case of death of the Assignor or the Assignor's personal representatives (if applicable) and until the Assignee has actually received written notice of the grant of probate or letters of administration, any notice, request, demand or other communication addressed to the Assignor or the Assignor's personal representatives at the address of the Assignor stated in this Assignment shall be deemed a sufficient notice or communication to the Assignor and the Assignor's personal representatives and shall be effective as if the Assignor or the Assignor's personal representatives were still living.

18. NO WAIVER

No failure or delay by the Assignee to exercise any right or remedy under this Assignment or otherwise will operate as a waiver of that right, nor will any single or

partial exercise of any right or remedy preclude any other or further exercise of that right or of any other right or remedy. Any waiver or consent given by the Assignee under this Assignment shall be in writing and may be given subject to such conditions as the Assignee may impose. Any waiver or consent shall be effective only in the instance and for the purpose for which it is given.

19. SUCCESSORS AND ASSIGNS

- 19.1 This Assignment shall be binding upon and inure to the benefit of each party to this Assignment and its successors and permitted assigns and, in the case of the Assignor, the Assignor's personal representatives and any committee, receiver or other person lawfully acting on the Assignor's behalf (if applicable).
- 19.2 No Assignor may assign or transfer all or any part of its rights, benefits or obligations under this Assignment without the prior written consent of the Assignee.
- 19.3 The Assignee may assign or transfer all or any part of its rights, benefits or obligations under this Assignment to any person without the consent of the Assignor.
- 19.4 For the avoidance of doubt and without prejudice to the provisions of Clause 19.1, this Assignment shall remain binding on the Assignor notwithstanding any change in the constitution of the Assignee or its absorption in, or amalgamation with, or the acquisition of all or part of its undertakings or assets by, any other person, or any reconstruction or reorganisation of any kind, to the intent that this Assignment shall remain valid and effective in all respects in favour of any assignee, substitute or other successor in title of the Assignee in the same manner as if such assignee, substitute or successor in title had been named in this Assignment as a party instead of, or in addition to the Assignee.

20. SEVERABILITY

If any provision of this Assignment is not or ceases to be legal, valid, binding or enforceable under the law of any jurisdiction, neither the legality, validity, binding effect or enforceability of the remaining provisions under that law nor the legality, validity, binding effect or enforceability of that provision under the law of any other jurisdiction shall be affected.

21. JOINT AND SEVERAL LIABILITY

If the Assignor consists of two or more persons:

- (a) the agreements, liabilities and obligations on the part of the Assignor under this Assignment shall take effect as joint and several agreements, liabilities and obligations on the part of each of the persons comprising the Assignor, and all references to "Assignor" in this Assignment shall mean all such persons or any of them;

- (b) each of the persons comprising the Assignor agrees and consents to be bound by this Assignment notwithstanding that any other persons comprising the Assignor that are intended to execute this Assignment or to be bound by it may not do so or be effectually bound for any reason and, without prejudice to the other provisions of this Assignment, notwithstanding that this Assignment may not be enforceable against any of the other persons comprising the Assignor for any reason;
- (c) the Assignee is entitled to deal separately with any person comprising the Assignor on any matter, including the discharge of its liability or obligations to any extent or the granting of time or other indulgence, without affecting the liability and obligations of any other persons comprising the Assignor or prejudicing the Assignee's rights and remedies against any of them and without notice to or consent from them;
- (d) no person comprising the Assignor is entitled to the rights or remedies of a guarantor or surety as regards the liability or obligations of any other persons comprising the Assignor;
- (e) any demand for payment made by the Assignee to any one or more of the persons comprising the Assignor shall be deemed to be a demand made to all of them; and
- (f) for the avoidance of doubt, as against any one person comprising the Assignor, references in this Assignment to any other person and to any other Transaction Documents shall be deemed to include references to the other persons comprising the Assignor insofar as it affects such other persons.

## 22. THIRD PARTIES

Unless expressly provided to the contrary in this Assignment, a person who is not a party to the Assignment 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 this Assignment, the consent of any third party is not required for any variation (including any release or compromise of any liability), rescission or termination of this Assignment.

## 23. GOVERNING LAW

- 23.1 This Assignment shall be governed by, and construed in all respects in accordance with, the laws of Hong Kong.
- 23.2 The Assignor hereby irrevocably submits to the non-exclusive jurisdiction of the Hong Kong courts but this Assignment may be enforced in the courts of any competent jurisdiction. The Assignor irrevocably waives any objection which the Assignor may at any time have to the laying of the venue of any proceedings in any court referred to in this Clause and any claim that any such proceedings have been brought in an inconvenient forum.

24. COUNTERPARTS

This Assignment may be executed in any number of counterparts and by the different parties to this Assignment on separate counterparts, each of which when executed and delivered shall be an original but all the counterparts shall together constitute one and the same instrument.

25. DATA POLICY OF DBS GROUP

Each Assignor agrees that the applicable data policies, notices and other communications to customers concerning their data from time to time issued by the Assignee (a member of the DBS Group) shall apply. A copy is available on request at any branch of the Assignee in Hong Kong or from its website ([www.dbs.com/hk](http://www.dbs.com/hk)). Each Assignor agrees that all information provided, or that is obtained from any other sources or that arises from the Assignor's relationship with the Assignee or any other DBS Group company ("data") will be subject to such policies, notices or other communications (as may be varied from time to time). Each Assignor agrees in particular that:

- (a) the Assignee may verify, provide and collect information about the Assignor from other organisations, institutions or other persons;
- (b) the Assignee may transfer the data outside Hong Kong including to Singapore; and
- (c) the Assignee may compare any data obtained with the data of the Assignor, and use the results for taking any actions including actions that may be adverse to interests of the Assignor (including declining any application).

IN WITNESS WHEREOF the parties have caused this Assignment to be executed the day and year first above written.

## THE POLICYHOLDER

SEALED with the COMMON SEAL of )  
 )  
 the Policyholder and SIGNED by )

Director/Authorized Person

Director/Authorized Person

[OR]

Executed and Delivered as a DEED by \_\_\_\_\_ )  
the Policyholder and SIGNED by \_\_\_\_\_ )

Director

Director/Company Secretary

SIGNED SEALED and DELIVERED by )  
 )  
the Policyholder )

[Sole Proprietor][Partner]

Director/Authorized Person

Director/Authorized Person

[OR]

Executed and Delivered as a DEED by )  
the Beneficiary and SIGNED by )

Director

Director/Company Secretary

SIGNED SEALED and DELIVERED by )  
the Beneficiary )

SIGNED SEALED and DELIVERED by    )  
                                                          )  
the Beneficiary                                )

\_\_\_\_\_  
Beneficiary

SIGNED SEALED and DELIVERED by    )  
                                                          )  
the Beneficiary                                )

\_\_\_\_\_  
Beneficiary

**Schedule 1**

**The Policyholder, the Beneficiary(ies) and the Borrower**

**Policyholder**

Name :

Address :

Fax No. :

**Beneficiary(ies)**

**The Borrower**

Amount referred to in Clause 3.4 :

**Schedule 2**

**Particulars of the Insurer and the Policy**

**The Insurer**

Name :

Address :

Fax No. :

**The Policy**

Name of the life insured :

Policy No. :

**Schedule 3**

**Notice of Assignment and Acknowledgment of Notice**

**Part A - Notice of Assignment**

To :

1. We hereby give you notice that by an Assignment of Insurance Policy dated [ ] made by us in favour of DBS Bank (Hong Kong) Limited (the “Assignee”), we have assigned absolutely by way of security to the Assignee all our rights, title, interests and benefits in and to the Insurance Policy with Policy Number [ ] (the “Policy”) and all amounts from time to time payable to us in respect of the Policy. We hereby attach a copy of the Assignment of Insurance Policy for your records.
2. The Assignment of Insurance Policy provides, among other things, that we shall not without the prior written consent of the Assignee enter into any borrowing or credit arrangement or other accommodation with you or initiate, or create or allow to exist any security interest or other encumbrance over the Policy or the Proceeds or any part of them, or agree to any amendment or variation in relation to the Policy (including, without limitation, any change of the beneficiaries or any change which affects the value or face amount of the Policy or the amount of the Proceeds).
3. You are hereby authorised and instructed that all payments which you may be required to make to us under the Policy shall be paid to the account of the Assignee as follows or to such other account or in such other manner as the Assignee may from time to time prescribe, without any set-off, counterclaim, deduction or withholding:  
  
Account Bank :  
Account Number :
4. The authority and instructions contained in this Notice cannot be revoked or varied by us without the prior written consent of the Assignee. In all other respects, you should continue to deal with us in respect of the Policy until you receive written notice to the contrary from the Assignee.
5. This Notice is governed by, and shall be construed in accordance with, the laws of the Hong Kong Special Administrative Region of the People's Republic of China.

Please sign and return to the Assignee the Acknowledgment attached to this Notice.

Dated :

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Signature of the Policyholder  
Name of the Policyholder:

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Signature of the Beneficiary  
Name of the Beneficiary:

---

Signature of the Beneficiary  
Name of the Beneficiary:

SAMPLE

Part B - Acknowledgment

To : DBS Bank (Hong Kong) Limited  
The Center, 99 Queen's Road Central  
Hong Kong

We hereby confirm and acknowledge receipt of the Notice of Assignment, a copy of which is attached to this Acknowledgment for identification purpose (the "Notice").

We further confirm to you that : -

1. we have not received any other notice of assignment relating to the Policy (as defined in the Notice);
2. the rights of the policyholder and each beneficiary under the Policy are subject to the Assignment of Insurance Policy;
3. we do not hold and will not obtain any security interest or other encumbrance over the Policy or the Proceeds or any part of them without your prior written consent, and any security which may arise in breach of this clause shall be held by us in trust for you;
4. we acknowledge the contents of the Notice and will comply with all the instructions contained in or to be given from time to time pursuant to the Notice; and
5. we will pay to you all the amounts which we are required to pay in respect of the Policy according to the instructions contained in the Notice without any set-off, counterclaim, deduction or withholding.

Dated :

For and on behalf of

By \_\_\_\_\_  
Name :  
Title :

**Standard Terms And Conditions**  
**Governing Facilities and Services Granted by**  
**DBS Bank (Hong Kong) Limited 星展銀行 (香港) 有限公司**  
**(the "Bank")**  
**("Standard Conditions")**

**A. GENERAL TERMS AND CONDITIONS**

1. **Undertakings** So long as any monies are owing or are to be advanced under the Facility Documents:
    - 1.1. **Obligations to rank *pari passu***: The Borrower must ensure that its obligations under the Facility Letter are unconditional and unsubordinated and will at all times rank at least *pari passu* with all its other unsecured and unsubordinated obligations (except for such obligations mandatorily preferred by law).
    - 1.2. **Furnishing of Information**: The Borrower will deliver to the Bank (i) where applicable, certified true copies of each Obligor's audited and (if applicable) consolidated financial statements for each of such Obligor's financial year as soon as the same are available but not later than 180 days after the end of such Obligor's financial year or such other dates as may otherwise be mutually agreed by the Borrower and the Bank and at any other time requested by the Bank; (ii) where applicable, certified true copies of each Obligor's semi-annual financial statements as soon as the same are available, but not later than 4 months after the first half of such Obligor's financial year or such other dates as may otherwise be mutually agreed by the Borrower and the Bank and at any time requested by the Bank; and (iii) promptly, any other information and/or documents as the Bank may require. For any properties charged to the Bank, the Bank may from time to time require a valuation report in form and substance acceptable to it. All the valuation fees are for the account of the Borrower.
    - 1.3. **Nature of business/ Changes in Articles of Association or equivalent constitutional documents**: The Borrower must not substantially alter the nature of its business or amend any provision in its constitutional documents (if applicable) relating to its principal business activities or its power to borrow, secure or guarantee and supply the Bank certified true copies of any updated constitutional documents.
    - 1.4. **Change of Management**: The Borrower must, and must procure that each other Obligor must, ensure that there will be no change in its management without the prior written consent of the Bank.
    - 1.5. **Notice of default**: The Borrower will notify the Bank promptly upon occurrence of any potential or actual breach of the terms by any Obligor under any Facility Document or any other event which might affect any of Obligor's ability to perform its obligations under or in connection with the Facility Documents.
    - 1.6. **Re-organisation**: The Borrower must not undertake or agree to undertake any re-organisation, amalgamation, reconstruction, merger, take-over or any other schemes of compromise or arrangement affecting its present constitution without the prior written consent of the Bank.
  - 1.7. **Indemnity/costs and expenses/break funding**:
    - 1.7.1. **The Borrower shall on demand indemnify the Bank against all costs, expenses, Taxes, claims, demands, actions, damages, losses and liabilities whatsoever (including legal fees on a full indemnity basis) which may reasonably be incurred by the Bank in connection with:**
      - (a) the execution, delivery, performance, perfection, enforcement, preservation of rights or attempted enforcement or preservation of rights under the Facility Documents. For the avoidance of doubt, the fees, costs and expenses are payable by the Borrower notwithstanding that the Facilities are cancelled, modified or withdrawn at any time before completion of the relevant transaction;
      - (b) breakfunding and other costs for any advances prepaid, any advances requested for but not made, unwinding costs for foreign exchange, or any derivative transactions terminated before the contracted maturity date; and
      - (c) any breach by any Obligor under any Facility Document or any enquiry, investigation, subpoena (or similar order), litigation, arbitration or administrative proceedings with respect to an Obligor and/or any Affiliates of the Borrower or with respect to the transactions contemplated under the Facility Documents.
    - 1.7.2. **If the Bank receives any sum in a currency (the "Relevant Currency") other than the currency in which such sum is due (the "Currency of Account") and that amount, when converted into the Currency of Account at the Bank's rate of exchange on the date of receipt or recovery, is less than the amount in the Currency of Account due to the Bank, the Borrower shall indemnify the Bank on demand against any cost and loss sustained by it as a result of such conversion.**
  - 1.8. **Anti-money laundering/sanctions**: The Borrower will, and will procure that each of its Affiliates will, at all times comply with all applicable anti-money laundering, anti-bribery, anti-corruption, counter-terrorism financing, and economic or trade sanctions laws and regulations.
  - 1.9. **Compliance with laws**: The Borrower will, and will procure that each of its Affiliates will, at all times: (i) comply in all respects with all applicable laws and regulations, including all applicable anti-money laundering, anti-bribery, anti-corruption, counter-terrorism financing, and economic or trade sanctions laws and regulations and Environmental Law; and (ii) obtain and maintain any Environmental Permit applicable to it.
  - 1.10. **No misleading information**: The Borrower warrants to the Bank that all information provided by it or its Affiliates for the purposes of the Facility Documents is true and accurate in all material respects as at the date it was provided and is not misleading in any respect.
2. **Application of Advance** Notwithstanding any other provision of the Facility Documents, if on any date an amount ("**First Amount**") is to be advanced by the Bank and an amount ("**Second Amount**") is due from the Borrower to the Bank, the Bank shall apply the First Amount in payment of the Second Amount. The Bank shall advance any excess (or, as the case may be, the Borrower shall pay any shortfall) in accordance with the Facility Documents.

3. **Interest** All interest (including default interest) under the Facility Documents shall accrue on a daily basis and shall be calculated based on the actual number of days elapsed, with monthly rests or such other periodic rests as the Bank may prescribe and based on a 365-day year (if the interest is in Singapore Dollars, British Pounds Sterling, Hong Kong Dollars, Malaysian Ringgit or any other currency as the Bank may notify the Borrower (collectively, the "Specified Currencies")), and based on a 360-day year (if the interest is in any other foreign currency which is not a Specified Currency).
4. **Market Disruption and Alternative Interest Rates**
- If, on any rate fixing day or for any interest period, the Bank is unable to determine the applicable interest rate or the Bank determines that the relevant benchmark rate is not available or is zero or negative or is no longer representative; or the methodology, formula or other means of determining the relevant benchmark rate has materially changed; or the administrator of the applicable benchmark rate or its supervisor announces that it may no longer be used; or the cost to the Bank of funding the Facilities would be in excess of the applicable Market Disruption Rate or, if a Market Disruption Rate is not specified in the Facility Letter, in excess of the applicable benchmark rate, then the rate of interest shall be the sum of (i) the margin specified in the Facility Letter; and (ii) the Cost of Funds. The Bank shall promptly notify you of such substitute rate of interest. The Bank shall not be required to reveal how its Cost of Funds is determined. For the purposes of this paragraph, references to "benchmark rate" shall include any compounded rate, central bank rate, daily rate, reference rate, risk free rate, or screen rate and any other fallback rate (however defined), in each case, that is used in the calculation of the rate of interest in the Facility Letter.
5. **Default Interest** If any amount under the Facility Letter is unpaid on due date or exceeds the permitted facility limit, such overdue or excess sum will be subject to the Bank's then prevailing overdue or over limit interest rate, and may be compounded monthly or at such other intervals as may be determined by the Bank. Unless otherwise stated, interest on such overdue or excess amounts shall be payable immediately on demand by the Bank but if not demanded, shall be paid at the end of each month. In addition, the Bank reserves the right to charge any excess overdraft utilisation at a rate to be determined by the Bank.
6. **Fees/ Payment**
- 6.1. The Bank is entitled to receive a handling fee in an amount to be determined by the Bank in respect of the periodical review to be carried out by the Bank so long as the Facilities are continuing. The Borrower shall pay to the Bank on demand the commissions, fees and charges in connection with the Facilities and/or services (including insurance cover) at the rates and in the amount and manner stipulated by the Bank from time to time. Schedules of fees and charges are published by the Bank and will be made available to the Borrower upon request.
- 6.2. All payments to the Bank shall be made in immediately available funds before noon on the due date. If a payment due date is not a Business Day, the payment shall be made on the next following Business Day or the immediate preceding Business Day depending on the nature/type of Facilities, as may be absolutely determined by the Bank. Payment by the Borrower to the Bank shall be in the currency of the relevant liability.
- 6.3. Any monies paid to the Bank in respect of the Borrower's obligations may be applied in or towards satisfaction of the same or placed to the credit of a suspense account with a view to preserving the Bank's rights to prove for the whole of the Borrower's outstanding obligations.
- 6.4. If any payments paid to the Bank in respect of the Borrower's obligations are required to be repaid by virtue of any law relating to insolvency, bankruptcy or liquidation or for any other reason, the Bank shall be entitled to recover such sums from the Borrower as if such monies had not been paid.
- 6.5. The Bank may apply the moneys received from the Borrower towards discharge of the Borrower's obligations to the Bank in whatever priority that the Bank may determine.
7. **Insurance**
- The Borrower shall maintain insurance coverage against loss and damages on such terms and with insurance companies acceptable to the Bank with respect to assets in which the Bank has an interest, failing which the Bank may arrange the insurance at the expense of the Borrower. The Bank's interest shall be duly noted on the relevant insurance documents. The Borrower shall lodge with the Bank all evidence related to such insurance as may be requested by the Bank.
8. **Authority to Debit and Set-off Accounts**
- 8.1. The Bank is entitled, at any time and without notice to the Borrower, to set-off any obligations of the Bank to the Borrower towards satisfaction of the Total Indebtedness and any other obligations of the Borrower to the Bank. The Bank shall be entitled to debit the Borrower's accounts (whether in Hong Kong or elsewhere and whether alone or jointly with any other person) for any amount owing or payable by the Borrower at any time and without any notice to the Borrower.
- 8.2. The Bank is also entitled to effect any necessary currency conversions at the Bank's own rate of exchange then prevailing. If an amount is unascertained, the Bank may estimate that amount and set-off or debit in respect of the estimate, subject to final settlement between the Borrower and the Bank when that amount is ascertained.
- 8.3. The circumstances in which the Bank will exercise its rights of set-off include, without limitation, the following:
- 8.3.1. the Borrower fails to observe any terms of the Facility Documents;
- 8.3.2. the Borrower fails to pay any debt due or the Bank has reason to believe that the Borrower is unable to pay any debt due;
- 8.3.3. any attachment, execution or similar process is levied against the Borrower; or
- 8.3.4. any petition for the Borrower's bankruptcy or winding up is presented to the court.
- 8.4. The Bank will, as soon as practicable, give notice to the Borrower of any exercise of its rights under this clause.
9. **Lien and Power of Sale** The Bank shall have a lien on all property of the Borrower coming into the possession or control of the Bank, for custody or for any other reason and whether or not in the ordinary course of banking business, as security, with power for the Bank to sell such property to satisfy any obligations owed by the Borrower to the Bank.
10. **Rights Cumulative and No Waivers** No failure or delay by the Bank in exercising any right or remedy hereunder shall operate as a waiver hereof nor shall any defective or partial exercise of any right or remedy prevent any other or further exercise of that or any other right or remedy. No course of conduct or negotiation on the Bank's part shall preclude the Bank from exercising any such right or constitute a waiver of any such right. Any waiver of the Bank's rights must be in writing.

11. **Rights Binding on Borrower** The Bank's rights in the Facility Documents shall be binding on the Borrower and its successors and shall not be affected by (i) any liquidation affecting any Obligor or any change in any Obligor's constitution, or (ii) any change in the Bank's constitution, or (iii) any death, bankruptcy, insanity or other disability affecting any Obligor.
12. **Termination Events** Without prejudice to any other terms in the Facility Documents (including without limitation, the Bank's right of review and the Bank's right to demand immediate repayment of any Facility which is repayable on demand), if any Termination Event occurs, the Bank may by notice to the Borrower terminate the Facility whereupon such Facility (or any part thereof) shall be immediately cancelled and/or declare the Total Indebtedness to be immediately due and payable to the Bank, whereupon it shall become so due and payable. Thereafter:
- 12.1. the Bank shall be entitled to immediately exercise all or any rights, powers or remedies under any Security Documents without any restriction;
- 12.2. any sum repaid to the Bank by or for the account of the Borrower shall be applied at the Bank's sole discretion towards the settlement and discharge of the Borrower's liabilities and obligations on any account; and
- 12.3. where applicable, the Borrower shall without demand immediately procure the complete and unconditional release of the Bank from all its liabilities and obligations (contingent or otherwise), failing which the Borrower shall immediately pay to the Bank such sums as may be necessary to be paid to the beneficiaries or any other persons whatsoever under or in relation to the said liabilities and obligations together with all costs and expenses reasonably incurred or which may be reasonably incurred by the Bank in respect thereof.
13. **Assignment and Transfer** The Borrower may not assign or transfer any rights or obligations under any Facility Document without the Bank's prior written consent. The Bank may make the Facilities available and receive any payment due to it through any of its offices. The Bank may at any time without consent of and without notice to the Borrower assign, or transfer by novation, all or any part of its rights and/or obligations under any Facility Document to any person as the Bank thinks fit. Any such assignee or transferee shall be entitled to the full benefit of such rights and/or obligations as if it were the Bank. Notwithstanding the foregoing, any transfer by novation shall be effected by way of notification from the Bank and the transferee to the Borrower, specifying the effective date of such transfer. Upon any transfer taking effect pursuant to this clause, (1) the Bank and the Borrower shall be released from their obligations to each other and their respective rights against each other shall be cancelled (the "**Discharged Rights and Obligations**"); (2) the Borrower and the transferee lender shall assume obligations towards each other and/or acquire rights against each other which differ from the Discharged Rights and Obligations only insofar as the Borrower and the transferee lender have assumed and/or acquired the same in place of the Borrower and the Bank; (3) references in the Facility Documents to the Bank shall be construed accordingly as references to the transferee lender or the Bank, as relevant; and (4) all agreements, representations and warranties made in the Facility Documents shall survive any assignments or transfers made pursuant to this clause and shall inure to the benefit of the transferee lender as well as the Bank. The Bank may at any time grant one or more participations in its rights and/or obligations under the Facility Documents but the Borrower shall not be concerned in any way with any participation so granted.
14. **Security over Lenders' right** In addition to the other rights provided to the Bank under the Facility Documents, the Bank may without consulting with or obtaining consent from any Obligor, at any time charge, assign or otherwise create security in or over (whether by way of collateral or otherwise) all or any of its rights under any Facility Document to secure obligations of the Bank including:
- 14.1. any charge, assignment or other security to secure obligations to a federal reserve or central bank; and
- 14.2. any charge, assignment or other security granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by the Bank as security for those obligations or securities,
- except that no such charge, assignment or security shall:
- (a) release the Bank from any of its obligations under the Facility Documents or substitute the beneficiary of the relevant charge, assignment or security for the Bank as a party to any of the Facility Documents; or
- (b) require any payments to be made by an Obligor other than or in excess of, or grant to any person any more extensive rights than, those required to be made or granted to the Bank under the Facility Documents.
15. **Change affecting Foreign Currency** If the Bank determines that currency requested by the Borrower under the Facilities is unavailable, the Borrower's request shall be deemed to be withdrawn.
16. **Severability** The illegality, invalidity or unenforceability of any provision or part of the Facility Documents under the law of any jurisdiction shall not affect or impair the validity, legality and enforceability of any other provision or part of the provision and the remaining provisions of the Facility Documents shall be construed as if such invalid, unlawful or unenforceable provision or part had never been contained in the Facility Documents.
17. **Consent to Disclosure**
- 17.1. **Consent to Disclosure**
- 17.1.1. The Bank may disclose any information in connection with the Borrower, the Borrower's account, the Borrower's transactions and/or the Facilities to:
- (a) any person to whom such disclosure is permitted or required under any law or regulation or required or requested by any court, government authority or regulator;
- (b) any Obligor and any Affiliate of any Obligor;
- (c) any person to whom the Bank assigns, transfers or sub-participates (or intends to assign, transfer or sub-participate) any rights or obligations of the Bank;
- (d) any person for the purposes of enforcing or protecting the Bank's rights and interests;
- (e) any person in connection with any insolvency or other analogous proceedings in relation to any Obligor or any Affiliate of any Obligor;
- (f) any entity of the DBS Group; and
- (g) any person in connection with the provision of insurance or services to meet DBS Group's operational, administrative or risk management requirements.
- 17.1.2. The Borrower consents and acknowledges that the Bank may provide the Borrower's information to any proposed or actual guarantor or other security provider (or their solicitors) in respect of any credit facilities extended or to be extended to the Borrower, including (without limitation):

- (a) any financial information concerning the Borrower;
- (b) a copy of the contract evidencing the obligations to be guaranteed or secured or a summary of such contract;
- (c) a copy of any formal demand for overdue payment which may be sent to the Borrower after it has failed to settle an overdue amount; and
- (d) from time to time on request by the proposed or actual guarantor or security provider, a copy of the Borrower's latest statement of account or other information showing the financial status of the Borrower and/or credit facilities extended to the Borrower.

#### 17.2. Data Policy

The Borrower agrees that the applicable data policies and other communications to customers concerning their data ("**Data Policy Notice**") from time to time issued by the Bank (a member of the DBS Group) shall apply. The Borrower acknowledges that the Bank has given a copy of the Bank's current Data Policy Notice to it. The Borrower further acknowledges that it can obtain a copy of the Data Policy Notice which applies from time to time at any branches of the Bank or from the Bank's website. The Borrower agrees that all information provided or that the Bank obtains from any other sources or that arises from the Borrower's relationship with the Bank (or any other DBS Group company) will be subject to the Data Policy Notice (as may be varied from time to time).

The Borrower confirms that each individual whose personal data the Borrower gives the Bank has provided the Borrower with the ir consent to the Bank's receiving, holding and processing those personal data in accordance with the Data Policy Notice.

#### 18. Further Act or Assurance/Authorization

- 18.1. The Borrower shall at its own expense, immediately execute such documents or take such steps, as the Bank may reasonably require.
- 18.2. The Borrower hereby authorizes the Bank to appoint any other person (including correspondent, agent or third party contractor) in relation to the Facilities and services and the Bank may delegate any of its powers in the Facility Documents to such person.

#### 19. Taxes

- 19.1. The Borrower will pay all Taxes now or hereafter imposed by law on the Bank in respect of the Facility Documents or on any payment under the Facility Documents. The Bank shall have the right to debit the same from any account of the Borrower.
- 19.2. The Borrower will pay all amounts free and clear of any deduction, counterclaim, set-off or withholding. If the Borrower is required by law to make any such deduction, counterclaim, set-off or withholding, the Borrower will pay to the Bank additional amounts so that the Bank receives an amount equal to what the Bank would have received if no such deduction, counterclaim, set-off or withholding had been made.

#### 20. Statement/Certificate A statement or certificate issued by the Bank on a rate or amount under or in connection with the Facilities or the Facility Documents shall (in the absence of manifest or computational error) be final and conclusive against the Borrower.

#### 21. Relationship with Directors/Employees etc As a licensed bank, the Bank is subject to certain limitations on advances to persons related to the directors, employees, controllers or minority shareholder controllers of the Bank, its subsidiaries or Affiliates ("**Connected Persons**"). The Borrower hereby confirms to the Bank that it is not a Connected Person. The Borrower undertakes to immediately advise the Bank in writing upon becoming a Connected Person at any time while the loan or other indebtedness to the Bank is outstanding.

For the purpose of this clause, "**controllers**" and "**minority shareholder controllers**" shall have the meanings used within the relevant rules relating to exposures to connected parties under the Banking (Exposure Limits) Rules of the Banking Ordinance (Cap 155 of the Laws of Hong Kong); and "subsidiary" shall have the meaning ascribed to it in the Companies Ordinance (Cap 622 of the Laws of Hong Kong).

#### 22. Limitation on Liability The Bank, its agent and correspondent shall not be liable to the Borrower for any action taken or not taken by them unless directly caused by their negligence or wilful misconduct.

#### 23. Partnership

- 23.1. Where the Borrower is a partnership or otherwise consists of two or more persons, references to the Borrower, where the context admits, are references to the persons who constitute the Borrower for the time being, and each of these persons shall be jointly and severally liable for the Borrower's obligations and liabilities to the Bank.
- 23.2. Any document executed and signed by the Borrower to the Bank shall continue to bind the partnership notwithstanding any change in the constitution, name or membership of the partnership by reason of death, bankruptcy, retirement, disability, or admission of new partners or the occurrence of any other event which may dissolve the partnership or otherwise affect its obligations to the Bank. In the case of the death or retirement of a partner, the liability of the partner or his estate to the Bank shall cease only with regard to transactions made with the Bank subsequent to the receipt by the Bank of written notice of the retirement or death of the deceased partner.

#### 24. Third Parties A person who is not a party to the Facility Letter may not enforce any of its terms under the Contracts (Rights of Third Parties) Ordinance (Cap 623 of the Laws of Hong Kong).

#### 25. Governing Law and Jurisdiction

- 25.1. The Facility Letter is governed by and shall be construed in accordance with the laws of Hong Kong. The Borrower submits to the non-exclusive jurisdiction of the courts of Hong Kong in respect of any dispute arising out of or in connection with the Facility Letter. The Borrower agrees that the courts of Hong Kong are the most appropriate and convenient forum and will not argue to the contrary. Nothing in this paragraph shall limit the right of the Bank to take proceedings against the Borrower in any other court nor shall the taking of proceedings in one or more jurisdictions preclude the Bank from taking proceedings in any other jurisdiction, whether concurrently or not.
- 25.2. The Borrower irrevocably waives, to the extent permitted by applicable law, with respect to itself and its revenues and assets, all immunity on the grounds of sovereignty or other similar grounds from suit, jurisdiction of any court, injunction or order for specific performance or recovery of property, attachment of its assets, and execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any proceedings.

#### 26. Notices

- 26.1. The Bank may provide certain electronic advices or notices through electronic means, including making them available at

the Bank's electronic banking services platform and any notices made available on our electronic platform shall be deemed effective at the time it was made available according to our system. The Bank may provide certain notices by e-mail to an e-mail address of the Borrower as notified to the Bank from time to time and any notices provided by e-mail shall be deemed effective at the time shown in our e-mail system as being successfully sent to the Borrower's e-mail address.

26.2. Subject to the above or unless otherwise agreed, all communications to the Borrower shall be sent by post or left at the Borrower's registered office or principal place of business in the records of the Bank, or if sent by fax, to the numbers in the records of the Bank, and shall be deemed to have been received by the Borrower on the second or seventh Business Day following such posting to an address in Hong Kong or overseas respectively, or on the day when it was so left, or upon dispatch of such fax. Any notice by the Borrower to the Bank shall be in writing and shall be deemed to have been given only on actual receipt.

27. **Service of Process** If the Borrower is not ordinarily resident in Hong Kong or is not a company incorporated under the laws of Hong Kong or is a non-Hong Kong company which is not registered under the Companies Ordinance (Cap 622 of the Laws of Hong Kong), the Borrower hereby appoints, agrees to appoint and retain as long as any Facilities are outstanding, a process agent (as notified to the Bank) to accept service of any legal process in Hong Kong on behalf of the Borrower in connection with the Facility Letter. The Borrower agrees that any writ, summons, order, judgment or other document shall be deemed duly and sufficiently served on the Borrower when left at or sent by post to the address of the process agent last known to the Bank. The foregoing shall not limit the Bank's right to serve process on the Borrower by any other mode of service.

## **B. DEFINITIONS AND INTERPRETATION**

1. Unless the context requires otherwise, the following expressions appearing in the Facility Letter and these Standard Conditions shall have the following meanings:-

**"Affiliates"** in respect of a party, means any other legal entity, directly or indirectly controlling or controlled by or under the direct or indirect common control with that party,

for the purpose of this definition, "control" means (i) the direct or indirect ownership of 50% or more of the voting share capital of a party; or (ii) the entitlement to exercise, or control the exercise of 50% or more of the voting power of a party; or (iii) the ability of a party (whether directly or indirectly and whether by ownership of share capital, possession of voting power, contract or otherwise) to direct the management and policies of another party or to control the composition of the other party's board of directors or equivalent body.

**"Bank"** means DBS Bank (Hong Kong) Limited which includes all its branches and offices wherever situated and its successors, assigns and any other person with which the Bank merges or consolidates;

**"Borrower"** means a party who is, or is deemed as, a borrower under any Facility Letter, and where there is more than one Borrower, all references to the "Borrower" shall mean all such persons or any one or more of them;

**"Business Day"** shall mean a day (excluding Saturdays, Sundays and public holidays) (a) on which banks are open in Hong Kong; and if applicable, (b) if the transaction requires or involves a currency (other than Euro and Hong Kong Dollars), on which banks in the principal financial centre where such currency is issued are open; and/or (c) if the transaction requires or involves Euro, on which the bank in which the Bank maintains an account in Euro and the system in which such bank uses, are open;

**"Cost of Funds"** means the rate determined by the Bank solely to be its cost of funding of the relevant Facility;

**"DBS Group"** means DBS Group Holdings Ltd and its Affiliates;

**"Environmental Law"** means any law or regulation concerning:

- (a) the protection of health and safety;
- (b) the environment; or
- (c) any emission or substance which is capable of causing harm to any living organism or the environment;

**"Environmental Permit"** means any authorization required by an Environmental Law;

**"Facilities"** means the banking facilities, loans and advances or other accommodation (or any part of it) more particularly described in the Facility Letter and such other banking facilities as may from time to time be granted by the Bank to the Borrower;

**"Facility Documents"** means the Facility Letter, the Security Documents, all agreements, credit agreements, facility letters, application and other forms and all other documents made or to be made between an Obligor and the Bank and/or one or more Affiliates of the Borrower and the Bank or executed by an Obligor and/or one or more Affiliates of the Borrower in favour of the Bank and/or for the attention of the Bank in connection with the Facilities;

**"Facility Letter"** means the letter of offer relating to the Facilities granted or to be granted by the Bank to the Borrower and shall include these Standard Conditions and any and all other terms and conditions of the Bank attached thereto or any one or more or all of them as the context may require, all of which are incorporated therein and form part thereof;

**"HIBOR"** means the Hong Kong Interbank Offered Rate quoted by the Bank for the relevant period;

**"LIBOR"** means the London Interbank Offered Rate quoted by the Bank for the relevant period;

**"Market Disruption Rate"** to the extent applicable, has the meaning given to that term in the Facility Letter;

**"Obligor"** means each of the Borrower, guarantor and any other party to any of the Security Documents (other than the Bank and the Borrower);

**"Security Documents"** means (i) any guarantee and any other document from time to time executed to guarantee, secure or otherwise assure the performance of the obligations of the Borrower under or in connection with the Facilities and (ii) any deed of subordination from time to time executed in favour of the Bank under or in connection with the Facility Documents and/or the Facilities;

**"Taxes"** includes all present and future taxes, levies, imposts, duties, fees, charges or withholding of a similar nature together with any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same;

**"Termination Event"** means any of the following:

- (a) a failure by any Obligor to pay any amount due from it under any of the Facility Documents at the place and in the currency in which it is expressed to be payable on the due date or on demand if so payable;
- (b) any representation, warranty or undertaking provided by any Obligor in any Facility Document or in any document delivered thereunder is not complied with, or is or proves to have been incorrect in any respect when made or any Obligor does not perform or comply with any

of the provisions under any Facility Document to which it is a party;

- (c) any Obligor or any of its Affiliates is (or is deemed by law to be) insolvent or unable to pay its debts, suspends or threatens to suspend payment of any of its debts or takes any other step with a view to rescheduling all or a material part of (or a particular type of) its indebtedness, proposes a general assignment, arrangement or composition with any creditor, or a moratorium is agreed or declared in respect of all or a material part of (or a particular type of) its indebtedness or assets; or any corporate action, legal proceeding or step is taken in relation to the bankruptcy, winding up, dissolution, termination, administration, judicial management, provisional supervision or reorganization (by way of a voluntary arrangement, scheme of arrangement or otherwise) of any Obligor or any of its Affiliates or for the appointment of a liquidator (including a provisional liquidator), receiver and/or manager, judicial manager, trustee, administrator, agent or similar officer in respect of any Obligor, any of its Affiliates or over any of its respective assets or any analogous step is taken in any jurisdiction; and
- (d) any indebtedness (whether actual or contingent), or any commitment for any indebtedness, of any Obligor or any of its Affiliates, is not paid when due, or is capable of being declared due and payable before its normal maturity or in the case of any such commitment, is capable of being cancelled or terminated as a result of any default (howsoever described) or if any Obligor or any of its Affiliates defaults under any foreign exchange transactions (or other similar transactions) or any derivative transactions; and

**"Total Indebtedness"** means at any time, all amounts (whether of principal, interest, fees, costs, charges, expenses or otherwise) owing (whether or not matured, actual, future, contingent, unliquidated or unascertained and whether as surety or as principal) from the Borrower either solely or jointly with any other person(s) to the Bank arising out of or in connection with any of the Facilities from time to time extended or granted by the Bank to the Borrower either solely or jointly with any other person(s) and including, without limitation, any amounts for which the Borrower is liable to indemnify the Bank in any matter whatsoever.

- 2. The headings in the Facility Letter and these Standard Conditions shall be ignored in construing the Facility Letter and these Standard Conditions.
- 3. A reference to:
  - (a) any document or agreement refers to such document or agreement as amended, replaced or supplemented at any time and any document or agreement which amends, replaces or supplements such document or agreement;
  - (b) an **"Obligor"**, **"Borrower"**, **"Bank"** and any person includes its successors in title, personal representatives, permitted assigns and transferees (where applicable);
  - (c) a **"person"** includes any person, firm, company, corporation, government, state or agency of a state, governmental or quasi-governmental bodies or authorities or any society, association or partnership, limited partnership, limited liability partnership or any other entity (whether or not having separate legal personality);
  - (d) a **"guarantee"** includes an indemnity, bond or counter-indemnity, howsoever described, issued by any person in respect of any obligation of any other person; and
  - (e) any statute or any provision thereof includes that statute or that provision as amended or re-enacted or re-numbered from time to time.
- 4. Where two or more persons are included in the term **"Borrower"** and **"Obligor"**:
  - (a) all covenants, agreements, terms, conditions, provisions, restrictions or obligations shall be deemed to be made by and binding on and applicable to them jointly and each of them severally and shall also be binding on and applicable to their respective successors and permitted assigns jointly and severally; and
  - (b) any notice given by the Bank to any of the Borrower shall be binding on the others and any notice or demand given by the Bank to any one of the Borrower(s) shall be deemed to be served on all of them.

## SME FINANCING GUARANTEE SCHEME

## APPLICATION FORM

To : The SME Financing Guarantee Scheme Unit,  
HKMC Insurance Limited (the "HKMCI")

Fax No.: (852) 2258 5228

## Part A : TO BE COMPLETED BY THE BORROWER

## I. Information of the Borrower

I/We \_\_\_\_\_ (the "Borrower") hereby provide the following information in support of this application by \_\_\_\_\_ (the "Lender") for a guarantee from the HKMCI under the SME Financing Guarantee Scheme (the "Scheme") in respect of a facility proposed to be granted by the Lender to the Borrower (the "Facility"), the particulars of which are set out in Part C of this Form.

1. Name of Borrower in Chinese: \_\_\_\_\_
2. (a) Business Registration No. (Note 1): \_\_\_\_\_ (b) Expiry Date (dd/mm/yyyy): \_\_\_\_\_
3. (a) Date of Establishment (dd/mm/yyyy) (Note 2): \_\_\_\_\_ (b) Number of completed years in operation in Hong Kong: \_\_\_\_\_
- (c) Place of Incorporation (Note 3): ☐ Hong Kong ☐ BVI ☐ Others, please specify: \_\_\_\_\_
4. Email Address: \_\_\_\_\_
5. Form of Business (Notes 3, 4): ☐ Sole Proprietorship ☐ Partnership ☐ Limited Company ☐ Listed Company in HK  
☐ Others, please specify: \_\_\_\_\_
6. (a) Please provide annual business turnover of the Borrower (Note 5): ☐ ≤ HK\$50 million  
☐ > HK\$50 million and ≤ HK\$100 million  
☐ > HK\$100 million

(b) Please provide the following information on the past 3 years (if available):

| Financial Year End (mm/yyyy)<br>(Latest on the left) |                                                                                                                            | ( ) | ( ) | ( ) |
|------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------|-----|-----|-----|
| (i)                                                  | Business turnover (HK\$):                                                                                                  |     |     |     |
| (ii)                                                 | Adjusted EBITDA (HK\$):                                                                                                    |     |     |     |
| (iii)                                                | Total assets (HK\$):                                                                                                       |     |     |     |
| (iv)                                                 | Adjusted Net-worth (HK\$):                                                                                                 |     |     |     |
| (v)                                                  | Account Receivables (HK\$):                                                                                                |     |     |     |
| (vi)                                                 | Total borrowings from lending institutions<br>(including obligations under hire purchase<br>and leasing agreement) (HK\$): |     |     |     |

## 7. Type of Business (Note 3):

- ☐ Manufacturing -
- |                                                        |                                                     |                                               |                                                  |
|--------------------------------------------------------|-----------------------------------------------------|-----------------------------------------------|--------------------------------------------------|
| <input type="checkbox"/> Bags and garment accessories  | <input type="checkbox"/> Chemical and biotechnology | <input type="checkbox"/> Electronics          | <input type="checkbox"/> Food and beverage       |
| <input type="checkbox"/> Footwear                      | <input type="checkbox"/> Furniture                  | <input type="checkbox"/> Industrial machinery | <input type="checkbox"/> Jewellery               |
| <input type="checkbox"/> Medical and optical devices   | <input type="checkbox"/> Metal products             | <input type="checkbox"/> Plastics             | <input type="checkbox"/> Printing and publishing |
| <input type="checkbox"/> Stationery and paper products | <input type="checkbox"/> Textiles and clothing      | <input type="checkbox"/> Toy                  | <input type="checkbox"/> Watches and clocks      |
- ☐ Others, please specify: \_\_\_\_\_
- ☐ Non-manufacturing -
- |                                                                          |                                                      |                                                       |
|--------------------------------------------------------------------------|------------------------------------------------------|-------------------------------------------------------|
| <input type="checkbox"/> Banking, insurance and other financial services | <input type="checkbox"/> Car trading                 | <input type="checkbox"/> Catering services            |
| <input type="checkbox"/> Construction                                    | <input type="checkbox"/> Engineering                 | <input type="checkbox"/> Hotel / hospitality services |
| <input type="checkbox"/> Information technology                          | <input type="checkbox"/> Interior design/ decoration | <input type="checkbox"/> Professional services        |
| <input type="checkbox"/> Real estate                                     | <input type="checkbox"/> Telecommunication           | <input type="checkbox"/> Transportation and logistics |
- ☐ Trading (including import and export trade), please specify product type(s): \_\_\_\_\_
- ☐ Wholesale, please specify product type(s): \_\_\_\_\_
- ☐ Retail, please specify type(s) of products or services: \_\_\_\_\_
- ☐ Others, please specify: \_\_\_\_\_

8. Number of Employees in Hong Kong (at the time of lodging the application for Facility to the Lender) <sup>(Note 6)</sup> :

Full-time staff: \_\_\_\_\_ Part-time staff: \_\_\_\_\_

9. (a) Use of Proceeds under the Facility <sup>(Note 3)</sup> :

☐ To acquire the following to facilitate and for use in the business operations of the Borrower:

☐ Installation(s), machinery(ies) and/or equipment

☐ Vehicle(s)

☐ Industrial or commercial property(ies)

☐ Others, please specify : \_\_\_\_\_

☐ To provide general working capital for business operation of the Borrower

☐ To refinance facilities guaranteed under the Scheme <sup>(Note 20)</sup> and (where applicable) to provide general working capital for business operation of the Borrower

(b) Number of Borrowers under the Facility <sup>(Note 3)</sup> :

☐ One.

☐ More than one. (Please complete a separate Application Form for each Borrower.)

## II. Declaration

In this Declaration, unless otherwise specified, (a) all references to any person shall include its respective successors and permitted assigns and transferees and any persons deriving title under them, and (b) all references to a document shall include any subsequent amendment or supplement thereto from time to time.

In consideration of the agreement of the HKMCI to consider this application, the Borrower confirms and undertakes to the HKMCI, the Lender, TransUnion Limited and/or any other credit reference agencies (each a "CRA" ) (as appropriate) that:-

- (i) the information given at any time in or for the purpose of this application is to the best of the Borrower's knowledge and belief true, accurate, up-to-date and complete as at the date of its submission. The Borrower hereby authorises the Lender, the HKMCI and (if any) reinsurers (including their respective related bodies) to verify or confirm such information, directly or indirectly or through Commercial Credit Reference Agency, TransUnion Limited and/or any other CRA or from any source or in any manner as they may choose or deem appropriate, and to obtain on behalf of the Borrower within 90 days from the day of signing of this Form by the Borrower, a copy of the Borrower's credit report from any CRA for the purposes of the guarantee to be granted by the HKMCI relating to the Facility and other related purposes, and any other purposes in connection with the business of the HKMCI or any of its related bodies (including its holding company, The Hong Kong Mortgage Corporation Limited); in this connection, the Borrower consents to and authorises any CRA to provide a copy of the Borrower's credit report directly to the HKMCI without having first sent the Borrower a copy of the credit report for review;
- (ii) the Borrower hereby agrees and acknowledges to all CRAs that the provision of any credit report by any CRA to the HKMCI or the use of any such credit report by the HKMCI shall not be made the basis of any complaint, claim, suit, demand, cause of action or other proceeding against the CRA, the HKMCI or the Lender by the Borrower or any third party;
- (iii) the Borrower hereby agrees that a copy or an electronic record of this Form bearing its signature(s) shall for the purpose of this application (including this Declaration), have the same effect as if it were the original thereof;
- (iv) the Borrower hereby authorises (a) the Lender, the HKMCI and their related bodies to access, inspect and make copies of all books, records, accounts and any other information relating to the Borrower or the Borrower's business, whether in paper, electronic or any other form or medium and whether in the possession, custody or control of the Lender,

the Borrower or otherwise, and (b) the HKMCI to disclose any information relating to the Borrower under the Scheme to the Lender, for any purpose relating to this application, monitoring the performance of the Facility, conducting due diligence review, processing a request for payment under the Scheme and other related purposes;

- (v) the use of the Facility which may be granted by the Lender under this application is subject to the terms and conditions of the Scheme; notwithstanding that the Borrower is required to pay the Lender an amount equal to the guarantee fee payable by the Lender for the cover provided to the Lender by the HKMCI pursuant to the Scheme, the Scheme is for the sole and exclusive benefit of the Lender, and that the Borrower shall not be deemed to be a party to it, or a beneficiary of it, and that no payments made under the Scheme to the Lender shall affect or lessen the Lender's rights of remedy against the Borrower in the event of default under the Facility;
- (vi) the Borrower is not an affiliate <sup>(Note 7)</sup> of the Lender and is not carrying on the business of a lender or otherwise providing funds available for borrowing in any way;
- (vii) the Borrower has business operation in Hong Kong and has been registered and remains duly registered for carrying on a business in Hong Kong under the Business Registration Ordinance (Chapter 310 of the Laws of Hong Kong);
- (viii) the Borrower does not have any of its shares listed on any stock exchanges outside Hong Kong;
- (ix) the Borrower hereby undertakes to inform the Lender as soon as practicable if there is any material change of shareholding/equity interest in the Borrower;
- (x) the Borrower shall use the Facility solely for the purpose specified in Part A I.9 of this Form;
- (xi) the Borrower shall not use any Facility, whether in whole or in part, for:
  - (a) paying, repaying, restructuring or repackaging all or any part of any loan, credit facility or payment obligation (including any loan referred to as a "classified loan" by the Hong Kong Monetary Authority from time to time) of the Borrower, its subsidiaries or its Related Entities ; and/or
  - (b) financing and/or re-financing the acquisition of any business installation, machinery, equipment or other assets that was in the ownership, control or possession of the Borrower, its subsidiaries and/or its Related Entities (whether as owner or otherwise) on or at any time before the date on which an application for the Facility is received by the Lender;

except that, subject to the satisfaction of certain conditions under the Scheme, the Borrower may use a Facility, in whole or in part, for refinancing facilities that are guaranteed under the Scheme;

- (xii) there is no Outstanding Default <sup>(Note 18)</sup> on the part of the Borrower;
- (xiii) the information provided to the HKMCI and the Lender to determine whether the applicable maximum amount of facilities under the Scheme has been exceeded is true, accurate, up-to-date and complete, and such information will remain true and accurate on the Starting Date <sup>(Note 11)</sup> of the Facility;
- (xiv) the Borrower hereby undertakes to inform the HKMCI and the Lender as soon as practicable if any information provided by the Borrower in connection with this application is no longer valid or accurate. The Borrower undertakes to repay in full all the outstanding amounts with respect to the Facility with interest within such time specified upon notification by the HKMCI or the Lender, if any information provided by the Borrower in connection with this application, is false, inaccurate or no longer valid. The Borrower acknowledges that the HKMCI and the Lender reserve the right to take any actions, including legal actions, deemed appropriate against the Borrower for furnishing false information;
- (xv) without prejudice to any rights and remedies that the Lender or the HKMCI may have, the Borrower acknowledges that the HKMCI may forthwith request the Lender to suspend the

Facility, and the Lender shall act accordingly, in the event that the HKMCI is in the opinion that the Borrower is:

- (a) in breach of any of the undertakings given in this application;
  - (b) in breach of any of the terms and conditions mentioned in the Acceptance of Conditions; or
  - (c) no longer in compliance with, or has not complied with any declaration in this application;
- (xvi) each signatory to this Form for and on behalf of the Borrower hereby declares and confirms that such signatory has the requisite authority and is duly authorised (in the case of a Borrower which is a company) in accordance with the articles of association and/or other corporate approvals of the Borrower or (in the case of a Borrower which is a partnership) by all partners to execute this Form (which shall be binding on the Borrower) for and on behalf of the Borrower; and
- (xvii) each signatory to Part A of this Form (whether in his/her personal capacity, for and on behalf of the Borrower and/or for and on behalf of any other person whose personal data may be provided to the HKMCI in relation to this application and the operation of the Scheme) hereby confirms, acknowledges and consents to the "Personal Information Collection Statement of the HKMC Group" (which accompanies this Form or which has been provided by the Lender to each signatory and to each individual whose personal data may be provided through the signatory(ies)).

Signed for and on behalf of the Borrower by its authorised officer(s):

|                           |                    |
|---------------------------|--------------------|
| Authorised Signature(s) : | Company Chop :     |
| Full Name :               | Date: (dd/mm/yyyy) |
| Position :                | Fax Number :       |
| Telephone Number :        | Email Address :    |

Please note that if the processing of this application is not completed **within 60 days** from the date of Part C of this Form or if the Form is submitted by IIDS, the date of submission of this Form, the HKMCI reserves the right to require the submission of a new Application Form or the provision of updated information or further documents or confirmation in order for the HKMCI to further process the application.

**Part B : TO BE COMPLETED BY THE PERSONAL GUARANTOR(S) <sup>(Note 8)</sup>/SOLEPROPRIETOR****Declaration**

In this Declaration, unless otherwise specified, (a) all references to any person shall include its respective successors and permitted assigns and transferees and any persons deriving title under them, and (b) all references to a document shall include any subsequent amendment or supplement thereto from time to time.

In consideration of the agreement of the HKMCI to consider this application, I/we jointly and severally confirm and undertake to the HKMCI, the Lender, TransUnion Limited and/or any other credit reference agencies (each a “CRA” ) (as appropriate) that:-

- (i) the information given at any time in or for the purpose of this application, including the declarations given by the Borrower in Part A II of this Form, is to the best of my/our knowledge and belief true, accurate, up-to-date and complete as at the date of its submission; I/we hereby authorise the Lender, the HKMCI and (if any) reinsurers (including their respective related bodies) to verify or confirm such information, directly or indirectly or through TransUnion Limited and/or any other CRA or from any source or in any manner as they may choose or deem appropriate, and to obtain on my/our behalf within 90 days from the day of signing of this Form by me/us, a copy of my/our credit report from any CRA for the purposes of the guarantee to be granted by the HKMCI relating to the Facility and other related purposes, and any other purposes in connection with the business of the HKMCI or any of its related bodies (including its holding company, The Hong Kong Mortgage Corporation Limited); in this connection, I/we consent to and authorise any CRA to provide a copy of my/our credit report directly to the HKMCI without having first sent me/us a copy of the credit report for review;
- (ii) I/we hereby agree and acknowledge to all CRAs that the provision of any credit report by any CRA to the HKMCI or the use of any such credit report by the HKMCI shall not be made the basis of any complaint, claim, suit, demand, cause of action or other proceeding against the CRA, the HKMCI or the Lender by me/us or any third party;
- (iii) I/we hereby agree that a copy or an electronic record of this Form bearing my/our signature(s) shall for the purpose of this application (including this Declaration), have the same effect as if it were the original thereof;
- (iv) I/we hereby authorise the Lender, the HKMCI and their related bodies to access, inspect and make copies of all books, records, accounts and any other information relating to me/us or my/our business, whether in paper, electronic or any other form or medium and whether in the possession, custody or control of the Lender, me/us or otherwise, for any purpose relating to this application, monitoring the performance of the Facility, conducting due diligence review, processing a request for payment under the Scheme and other related purposes;
- (v) the use of the Facility which may be granted by the Lender under this application is subject to the terms and conditions of the Scheme; notwithstanding that the Borrower is required to pay the Lender an amount equal to the guarantee fee payable by the Lender for the cover provided to the Lender by the HKMCI pursuant to the Scheme, the Scheme is for the sole and exclusive benefit of the Lender, and that I/we shall not be deemed to be a party to it, or a beneficiary of it, and that no payments made under the Scheme to the Lender shall affect or lessen the Lender's rights of remedy against me/any of us in the event of default under the Facility;
- (vi) I/we hereby undertake to inform the Lender as soon as practicable if I/we become aware of any material change of shareholding/equity interest in the Borrower;
- (vii) I/we hereby undertake to inform the HKMCI and the Lender as soon as practicable if any

information provided by me/us in connection with this application is no longer valid or accurate. I/We acknowledge that the HKMCI and the Lender reserve the right to take any actions, including legal actions, deemed appropriate against me/us for furnishing false information;

- (viii) I/we confirm that I/we have either obtained independent legal advice or voluntarily waived my/our right to seek such independent legal advice. I/We fully understand the nature and extent of my/our obligations and liabilities as the sole proprietor or the Personal Guarantor(s) of the Borrower in relation to the Facility and have acted independently and free from any undue influence of any person;
- (ix) the HKMCI's rights, including but not limited to its right of subrogation, shall at all times rank in priority to my/our rights and remedies, if any. I/We shall not exercise in any manner or to any extent my/our rights or remedies against the Borrower, the sole proprietor and/or any other person giving a guarantee and/or in relation to any security, including but not limited to any right of subrogation, indemnity or contribution which exists under law or equity or under the security or guarantee mentioned in Part C below, unless and until the HKMCI has fully and unconditionally recovered all amounts paid to the Lender under the Scheme or unless and until the HKMCI otherwise consents in writing and shall not assert against the HKMCI any rights or remedies; and
- (x) I/we hereby confirm, acknowledge and consent to the "Personal Information Collection Statement of the HKMC Group" (which accompanies this Form or which has been provided by the Lender to me/us). I/We acknowledge that any person signing this Declaration without ticking the box in the "Opting-out direct marketing contact and information - the HKMCI" section below will be regarded as consenting to the use and provision of his/her personal data for use in direct marketing.

## Opting-out direct marketing contact and information - the HKMCI

- ☐ I, \_\_\_\_\_ (name of Personal Guarantor/Sole Proprietor) object to the HKMCI (i) using my personal data in direct marketing; and (ii) providing my personal data to the other persons for their use in direct marketing.
- ☐ I, \_\_\_\_\_ (name of Personal Guarantor/Sole Proprietor) object to the HKMCI (i) using my personal data in direct marketing; and (ii) providing my personal data to the other persons for their use in direct marketing.
- ☐ I, \_\_\_\_\_ (name of Personal Guarantor/Sole Proprietor) object to the HKMCI (i) using my personal data in direct marketing; and (ii) providing my personal data to the other persons for their use in direct marketing.
- ☐ I, \_\_\_\_\_ (name of Personal Guarantor/ Sole Proprietor) object to the HKMCI (i) using my personal data in direct marketing; and (ii) providing my personal data to the other persons for their use in direct marketing.

*Please note that your choice above applies to the direct marketing of the classes of products, services and/or subjects as set out in the "Use and Provision of Personal Data in Direct Marketing" section of the "Personal Information Collection Statement of the HKMC Group". Please also refer to the same section on the kinds of personal data which may be used in direct marketing and the classes of persons to which your personal data may be provided for their use in direct marketing.*

### To be completed by Personal Guarantor(s)

| Name of Personal Guarantor |           | Identity Card No. /<br>Passport No. | Equity Interest<br>(%) in the<br>Borrower<br>(if any) | Signature |
|----------------------------|-----------|-------------------------------------|-------------------------------------------------------|-----------|
| (English)                  | (Chinese) |                                     |                                                       |           |
| 1.                         |           |                                     |                                                       |           |
| 2.                         |           |                                     |                                                       |           |
| 3.                         |           |                                     |                                                       |           |
| 4.                         |           |                                     |                                                       |           |

### To be completed by Sole Proprietor

| Name of Sole Proprietor |           | Identity Card No. / Passport No. | Signature |
|-------------------------|-----------|----------------------------------|-----------|
| (English)               | (Chinese) |                                  |           |
|                         |           |                                  |           |

Please note that if the processing of this application is not completed **within 60 days** from the date of Part C of this Form or if the Form is submitted by IIDS, the date of submission of this Form, the HKMCI reserves the right to require the submission of a new Application Form or the provision of updated information or further documents or confirmation in order for the HKMCI to further process the application.

**Part C : TO BE COMPLETED BY THE LENDER**

Pursuant to the Deed for the HKMC SME Financing Guarantee Scheme or the Deed for the SME Financing Guarantee Scheme (as applicable) (the “**Master Deed of Guarantee**”), we confirm our endorsement of the Borrower’s application for the Facility, and apply for a guarantee in respect of the Facility and provide the following information in relation to this application:

**Guarantee Product Number :** \_\_\_\_\_

Lender’s internal risk rating for the Borrower: \_\_\_\_\_ (if any)

**I. The Facility**

1. Designated Bank Account or Sub-account No. for the Facility: \_\_\_\_\_

2. Facility Type <sup>(Note 3)</sup> :

(a) Facility of a non-revolving nature :

- ☐ Term loan through one single Drawdown ☐ Term loan by multiple Drawdown  
☐ Hire Purchase / Leasing / Equipment or Assets Financing (please fill out 2(c))  
☐ Others, please specify : \_\_\_\_\_

(b) Facility of a revolving nature : (not applicable to Guarantee Products SME90A and SME90B)

☐ Revolving credit line, in the form of (If sub-facilities are involved, please indicate all the facility type(s)) :

Facility Types

- ☐ overdraft facility  
☐ import trade facility  
☐ export trade facility  
☐ revolving loan facility  
☐ receivable financing facility  
☐ factoring with recourse to the Borrower, remarks (if any) : \_\_\_\_\_  
☐ others, please specify : \_\_\_\_\_

(c) Supporting document(s) checked (applicable to Hire Purchase / Leasing / Equipment or Assets Financing) <sup>(Note 3)</sup> :

Type of Installation(s)/Machinery(ies) / Equipment / other Assets: \_\_\_\_\_

☐ Quotation/Invoice : Date (dd/mm/yyyy) : \_\_\_\_\_ No. / Ref. : \_\_\_\_\_

Name of Supplier : \_\_\_\_\_

☐ Sales Contract : Date (dd/mm/yyyy) : \_\_\_\_\_

Name of Supplier : \_\_\_\_\_

If the quotation/invoice/sales contract was addressed to/signed by business entity other than the Borrower, please specify the relationship between the business entity and the Borrower :

Location where the business installation(s), machinery(ies) and equipment will be placed :

☐ Hong Kong ☐ Mainland China ☐ Others, please specify : \_\_\_\_\_

3. Principal Amount/Facility Limit of the Facility (HK\$) <sup>(Note 10)</sup> : \_\_\_\_\_

4. (a) (Highest Interest Rate among all sub-facilities, if any) Interest Rate for HKD denominated Facility<sup>(Notes 3, 9)</sup>:

☐ Fixed Rate : \_\_\_\_\_ (% per annum)      ☐ Flat Rate : \_\_\_\_\_ (☐ % per month    ☐ % per annum)

☐ Floating Rate, please specify the following information:

| Base Rate                                                                                                                                                                                                                                                                           |                      | Reference Rate (if applicable)                                                                                                                                                                                                                              |                      |                                                                                                                                                             |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Rate Index                                                                                                                                                                                                                                                                          | Rate Spread (+/- x%) | Rate Index                                                                                                                                                                                                                                                  | Rate Spread (+/- x%) | Determination Method                                                                                                                                        |
| <input type="checkbox"/> HKD Prime Lending Rate<br><input type="checkbox"/> _____-month HKD HIBOR<br><input type="checkbox"/> Standard Bills or Standard Bills Finance Rate<br><input type="checkbox"/> (equivalent to Prime +/- _____%)<br><input type="checkbox"/> Others : _____ |                      | <input type="checkbox"/> Fixed Rate : _____ (% per annum)<br><input type="checkbox"/> HKD Prime Lending Rate<br><input type="checkbox"/> _____-month HKD HIBOR<br><input type="checkbox"/> Lender's cost of fund<br><input type="checkbox"/> Others : _____ |                      | <input type="checkbox"/> Whichever is lower<br><input type="checkbox"/> Whichever is higher<br><input type="checkbox"/> Other method, please specify: _____ |

(b) If the Facility is denominated in foreign currency or allows drawing(s) in foreign currency in addition to HKD, please (i) specify the foreign currency(ies) and the rate details; and (ii) convert such Interest Rate to an equivalent interest rate expressed as the funding cost of that currency +/- a rate spread<sup>(Notes 3, 10)</sup>.

| Currency (e.g. USD) | Rate Index (e.g. Standard Bills Rate) | Rate Spread (e.g. -1.50%) | Equivalent to the Funding Cost of the Currency +/- a rate spread (e.g. USD LIBOR +2.00%) |
|---------------------|---------------------------------------|---------------------------|------------------------------------------------------------------------------------------|
|                     |                                       |                           |                                                                                          |

## 5. Relevant Fees and Charges directly related to the Facility:

Annual Recursive (HK\$): \_\_\_\_\_ Single Upfront (HK\$): \_\_\_\_\_

6. (a) Proposed Starting Date (dd/mm/yyyy)<sup>(Note 11)</sup>: \_\_\_\_\_

(b) Proposed Maturity/Expiry Date (dd/mm/yyyy): \_\_\_\_\_

(c) Date of Facility Letter (dd/mm/yyyy): \_\_\_\_\_

(d) If the date of Facility Letter is older than 90 days as at the date of receipt by the HKMCI of this application, please confirm if the Facility Letter and the credit approval of the Facility are still valid:

☐ Yes, still valid.

☐ Others, please specify: \_\_\_\_\_

## 7. Terms of Repayment (applicable only to facility of a non-revolving nature):

(a) First repayment due on (dd/mm/yyyy): \_\_\_\_\_ (b) Interval of subsequent repayments: \_\_\_\_\_

(c) Period for Payment of Interest only (dd/mm/yyyy - dd/mm/yyyy) (if any): \_\_\_\_\_

(d) Method of Repayment<sup>(Note 3)</sup>:

☐ Equal Instalment Payment, adjusting Instalment Amount for any change in Interest Rate

☐ Equal Instalment Payment, adjusting Maturity Date for any change in Interest Rate

☐ Equal Principal Payment

☐ Others, please specify: \_\_\_\_\_

8. (a) When did the Lender start commercial banking relationship with the Borrower? \_\_\_\_\_ (mm/yyyy)
- (b) Does the total amount of Facility(ies) granted or to be granted by the Lender to the Borrower under the SFGS and specified in the credit proposal covering the Facility under this application exceed HK\$8 million? ☐ Yes ☐ No
- (c) Are there any **credit facilities** (excl. Facility under this application) offered by the Lender to the Borrower (Note 3)? ☐ No ☐ Yes, please input consolidated information below, and the details of the facilities and security (if any) on a supplementary information sheet (for submission via IIDS in PDF format) (Notes 12, 21):

| Facility type | Total principal amount / facility limit of facilities (HK\$) | Highest Pricing among the facilities (e.g. HKD Prime +x% p.a.) | Security Type(s)                                                                                                                                   | Latest Security Value (Note 13) (HK\$)             |
|---------------|--------------------------------------------------------------|----------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------|
| <b>Total</b>  |                                                              |                                                                | Guarantee under SFGS<br>Properties<br>Deposits<br>Listed Securities, Funds or Unit Trust, etc.<br>Equipment or Vehicles<br>Others, please specify: | _____<br>_____<br>_____<br>_____<br>_____<br>_____ |

Account conduct on existing facilities granted by and accounts with the Lender :

(i) Number of overdue payments in the last 12 months : \_\_\_\_\_ time(s) Longest Duration: \_\_\_\_\_ day(s)

(ii) Details of the last overdue record:

Overdue Start Date: \_\_\_\_\_ Settlement Date: \_\_\_\_\_

Overdue Amount: \_\_\_\_\_ Facility Nature: \_\_\_\_\_

(iii) Has the Lender classified the existing facility(ies) offered to the Borrower as Special Mention/Substandard/Doubtful/Loss Loan type (in accordance with the Hong Kong Monetary Authority's loan classification guidelines) at any time during the last 12 months?

☐ No ☐ Yes, please provide the details : \_\_\_\_\_

(d) Are there any **credit facilities** made available to the Borrower by other lenders which the Lender is aware of (e.g. based on credit information report(s) issued by credit reference agencies) (Note 3)?

☐ No ☐ Yes, please input consolidated information below, and the details of the facilities on a supplementary information sheet (for submission via IIDS in PDF format) (Notes 12, 21):

| Lender | Facility type | Total principal amount / facility limit of facilities (HK\$) | Highest Pricing among the facilities (e.g. HKD Prime +x% p.a.) |
|--------|---------------|--------------------------------------------------------------|----------------------------------------------------------------|
|        |               |                                                              |                                                                |

Account conduct on existing facilities granted by and accounts with other lenders which the Lender is aware of:

(i) Number of overdue payments in the last 12 months: \_\_\_\_\_ time(s) Longest Duration: \_\_\_\_\_ day(s)

(ii) Details of the last overdue record:

Overdue Start Date: \_\_\_\_\_ Settlement Date: \_\_\_\_\_

Overdue Amount: \_\_\_\_\_ Facility Nature: \_\_\_\_\_

## 9. Security or guarantee regarding the Facility (Notes 3, 15) :

- (a) Whether the Borrower has procured any security or guarantee in favour of, or held by, the Lender regarding the Facility (Note 3)?

☐ No ☐ Yes, please specify the following information (Note 12) :

| Security Details | Security Code(s)<br>(Note 14) | Security Value (Note 13)<br>(HK\$) |
|------------------|-------------------------------|------------------------------------|
|                  |                               |                                    |

- (b) (Applicable only to acquisition of asset(s)) The installation(s), machinery(ies), equipment and/or other assets (including keyman insurance policy taken out by the Borrower, with the Borrower or the Lender as beneficiary) to be acquired under the Facility will constitute a security regarding the Facility (Note 16). Please provide details of security (Note 12):

| Security Details | Security Code(s)<br>(Note 14) | Security Value (Note 13)<br>(HK\$) |
|------------------|-------------------------------|------------------------------------|
|                  |                               |                                    |

10. Whether the Borrower has been in operation for at least one year in Hong Kong on the date of this application (Note 3)?
- ☐
- Yes
- ☐
- Not applicable.

11. Whether the Borrower's financial information is assessed by the Lender (Note 3)?

- (a)
- ☐
- Yes, by the following (Note 3) :

☐ audited account(s) from \_\_\_\_\_ (mm/yyyy) to \_\_\_\_\_ (mm/yyyy)☐ management account(s) from \_\_\_\_\_ (mm/yyyy) to \_\_\_\_\_ (mm/yyyy)☐ others, please specify : \_\_\_\_\_☐ No, assessment is not required under Lender's credit policies and procedures.

- (b) Is the year-end date of the latest audited financial statements older than 18 months or (as the case may be) the management account(s) older than 12 months, as at the date of this Form?

☐ Yes, please provide the date of approval of the subject Facility: \_\_\_\_\_☐ Not applicable.

12. Has the Lender ascertained that there is no Outstanding Default (Note 18) and that no petition for winding up, bankruptcy or dissolution has been filed against the Borrower (or where applicable, its partners, major shareholders and directors) (Note 3)?
- ☐
- Yes
- ☐
- No

13. (a) Does the Borrower have any pending legal proceedings of the High Court (other than those specified in Question 12) (Note 3)?
- ☐
- Yes
- ☐
- No

- (b) If yes, has the Lender taken into account the impact of the pending legal proceedings of the High Court on the Borrower's credit worthiness and repayment ability in granting the Facility and properly documented the relevant analysis/recommendation in the loan file (Note 3)?
- ☐
- Yes
- ☐
- No

Please provide supporting document(s) and briefly describe the relevant pending legal proceedings of the High Court (Note 12):

14. Has the Lender conducted company visit on the Borrower<sup>(Note 3)</sup>? ☐ Yes ☐ No  
If yes, when was the last visit? \_\_\_\_\_ (mm/yyyy)

15. (a) Has the Lender reviewed and considered the latest credit information report(s) issued by Commercial Credit Reference Agency (CCRA), TransUnion Limited (TU) and / or any other credit reference agencies regarding the Borrower (or, where applicable, its partners, major shareholders and directors)<sup>(Note 3)</sup>? ☐ Yes ☐ No

- (b) Is there any negative credit information (such as overdue records with other lenders and litigation records of the High Court other than those specified in Question 13) noted from the credit reference report<sup>(Note 3)</sup>? ☐ Yes ☐ No

If yes, please specify the details (For CCRA report, please state the date of first past due reported and the particulars of the litigation record(s) of the High Court (Note 12):

16. Has the Lender taken into account the Borrower's track record, business prospects and information obtained by and/or made available to the Lender in accordance with its credit policies and procedures in assessing the Borrower's credit worthiness and repayment ability<sup>(Note 3)</sup>? ☐ Yes ☐ No

Please give reasons if any of the answer(s) to Questions 12 to 16 (except 13 (a) and 15 (b)) is/are "No" (Note 12):

17. Please select the payment method (a) or (b)<sup>(Note 3)</sup>:

- (a) ☐ Single Upfront Guarantee Fee :  
☐ Out-of-pocket; or ☐ To be financed as part of the Indebtedness of this Facility.  
 (b) ☐ Annual Guarantee Fee.

18. Any additional information concerning the Borrower and/or this application which may be useful to the HKMCI in considering the application <sup>(Notes 12, 17)</sup> :

## II. Declaration by the Lender

In this Declaration, unless otherwise specified, (a) all references to any person shall include its respective successors and permitted assigns and transferees and any persons deriving title under them, and (b) all references to a document shall include any subsequent amendment or supplement thereto from time to time.

In consideration of the agreement of the HKMCI to consider this application, we confirm and undertake that:-

- (i) the information given in or for the purpose of this application is to the best of our knowledge and belief true, accurate, up-to-date and complete;
- (ii) the Borrower is not our affiliate and is not and shall not be carrying on the business of a lender or otherwise providing funds available for borrowing in any way;
- (iii) the Borrower is not a company or corporation which has any of its shares listed on any stock exchanges outside Hong Kong;
- (iv) where required under the relevant credit policies and procedures for approving the Facility under this application, we have assessed the Borrower's credit and financial information;
- (v) we have assessed the credit-worthiness of the Borrower in relation to the Facility and the value of any security (and of any asset as the subject of any security) under the relevant facility letter;
- (vi) we have conducted "know your customer" or other similar procedures under applicable laws and regulations to safeguard against any money laundering or similar issues;
- (vii) we, in relation to our participation in the Scheme, have acted as a prudent commercial lender (consistent with our prevailing practice in respect of facilities granted by us outside the Scheme) in using our best endeavours to require the Borrower to ensure the satisfaction of and compliance by the Borrower and the Facility with the Guarantee Product Eligibility Criteria and the applicable maximum amount of facilities under the Scheme has not and will not be exceeded, pursuant to the Master Deed of Guarantee;
- (viii) we are satisfied that the Facility will be used by the Borrower for the purpose specified in Part A I.9 of this Form;
- (ix) the HKMCI may use, disclose and/or transfer the personal data or other information in relation to this application, the relevant Facility and/or guarantee, the Borrower, its subsidiaries and/or Related Entities, the entities disclosed in the relevant Form SFGS103 (Note 7), and/or their respective directors, shareholders, proprietors or partners and/or guarantors of the Borrower in respect of the Facility pursuant to the "Personal Information Collection Statement of the HKMC Group";
- (x) without prejudice to any rights and remedies that the HKMCI may have, we acknowledge that the HKMCI may forthwith request us to suspend the Facility, and we shall act accordingly, in the event that the HKMCI is in the opinion that the Borrower is:
  - (a) in breach of any of the undertakings given in this application;
  - (b) in breach of any of the terms and conditions mentioned in the Acceptance of Conditions; or
  - (c) no longer compliant, or has not complied, with any declaration in this application;
- (xi) a copy or an electronic record of this Form bearing the signature(s) (or electronic signature(s)) of the authorised signatory(ies) shall, for the purpose of this application (including this Declaration), have the same effect as if it were the original thereof;
- (xii) none of the following shall be regarded as in any way lessening or releasing any of the obligations on our part as the Lender under the Master Deed of Guarantee to act in accordance with the standards of a prudent commercial lender, nor shall the reliance of the HKMCI on the information submitted by us be construed as an acceptance by the HKMCI that the Lender has acted or is acting in accordance with the standards of a

prudent commercial lender:

- (a) before the relevant guarantee is issued, any request by the HKMCI for information or any examination by the HKMCI of such information relating to this application, the relevant Facility and/or the guarantee, the Borrower, its subsidiaries and/or Related Entities, the entities disclosed in the Form SFGS103 (Note 7) and/or their respective directors, shareholders, proprietors or partners and/or guarantors of the Borrower and/or providers of security in respect of the Facility;
  - (b) before the relevant guarantee is issued, any enquiry by the HKMCI or the HKMCI's failure to raise any enquiry in relation to the matters mentioned in (a) above;
  - (c) the issue of the relevant guarantee or any proposal by the HKMCI; or
  - (d) any action or inaction by the HKMCI from time to time; and
- (xiii) for export trade facility of a revolving nature, we shall act in accordance with our internal policies and procedures in collecting payments on the assigned account receivables. Any charge (whether fixed or floating) or assignment created in our favour of over the account receivables, or proceeds received from the account receivables shall be used to secure and settle the Facility on first priority basis.

Contact details of the Lender

Branch (if applicable) : \_\_\_\_\_  
 Address : \_\_\_\_\_  
 Contact Person : \_\_\_\_\_  
 Telephone No. : \_\_\_\_\_ Fax No. : \_\_\_\_\_  
 Email Address : \_\_\_\_\_

Signed for and on behalf of the Lender by its authorised officer(s) (Note 19):

|                           |                     |
|---------------------------|---------------------|
| Authorised Signature(s) : | Company Chop :      |
|                           | Date : (dd/mm/yyyy) |
| Full Name :               | Position :          |

Please return this Form to the HKMCI by:

IIDS - Website: <https://iids.hkmcinet.com.hk/>

FAX (only if the IIDS shall (for whatever reason) not be in normal operating mode): (852) 2258 5228

ENQUIRY HOTLINE: (852) 2536 0392

Please note that if the processing of this application is not completed **within 60 days** from the date of Part C of this Form or if the Form is submitted by IIDS, the date of submission of this Form, the HKMCI reserves the right to require the submission of a new Application Form or the provision of updated information or further documents or confirmation in order for the HKMCI to further process the application.

Notes

Note 1 : Please provide a copy of the valid Business Registration Certificate of the Borrower. The Borrower will be required to provide the renewed Business Registration Certificate if the original one expires on or before the Starting Date of the Facility.

Note 2 : Please provide documentary evidence showing the date on which the business was first registered with the Business Registration Office of the Inland Revenue Department or the date on which the business was registered with the Companies Registry.

Note 3 : Please select as appropriate.

Note 4 : Please provide documentary evidence (e.g. Form 1(a) of the Business Registration Office, Annual Return of the Companies Registry (Form NAR1)).

Note 5 : The Borrower is required to estimate its annual business turnover by making reference to the latest available information (e.g. the latest management accounts, internal ledger accounts, bank transaction records) and indicate the range of annual business turnover in the Application Form.

Note 6 : The number of employees/staff shall include individual proprietors, partners and shareholders actively engaged in the operation of the business; and salaried employees of the business, including full-time or part-time salaried personnel directly paid by the business, both permanent and temporary.

Note 7 : “**affiliate**”, in relation to a Lender, means: -

- (a) any company which controls the Lender or one over which the Lender has control or any company which is under the control of the same person as the Lender;
- (b) any person who controls the Lender and any partner of such person, and, where either such person is an individual, any relative of such individual;
- (c) any director of the Lender or of any company referred to in paragraph (a) above and any relative of any such director; or
- (d) any partner of the Lender and, where such partner is an individual, any relative of such individual.

“**control**”, in relation to a company, means the power of a person to secure: -

- (a) by means of the holding of shares or the possession of voting power in or in relation to such or any other company; or
- (b) by virtue of any powers conferred by the articles of association or other document regulating such or any other company.

that the affairs of such company are conducted in accordance with the wishes of such person.

“**Related Entity**”, unless the context otherwise requires, shall be construed so that a person (A), being a sole proprietor, partnership or company, and another person (B), being a sole proprietor, partnership or company, are Related Entities of each other if any one or more persons, individually or jointly, directly or indirectly, hold(s), beneficially own(s) or control(s): (a) for the purpose of the Guarantee Product Eligibility Criterion on “Use of Proceeds”, any business interest in each of A and B; and (b) for any other purpose, 30% or more of the business interest in each of A and B. For the purpose of the foregoing, “business interest” in relation to a company means the shares or equity interest of such company, and in relation to a partnership means the aggregate or overall rights or entitlements to participate in a distribution of profits of such partnership.

“**relative**”, in relation to an individual, means the spouse, parent, child, brother, sister, brother-in-law, father-in-law, mother-in-law, sister-in-law, daughter-in-law, son-in-law, aunt, cousin, uncle, niece, nephew, grandfather or grandmother of the individual, and for the purposes of this definition, an adopted child shall be regarded as a child both of the natural parents and the adoptive parents and a step-child as the child both of the natural parents and any step-parents.

Note 8 : Any person (who is an individual) who, directly or indirectly, holds or is beneficially entitled to more than 50% of the issued share capital or equity interest of the Borrower shall enter into an irrevocable, unconditional and legally binding guarantee in favour of the Lender in relation to the Facility and become a Personal Guarantor. In the event that there is no such single person, all those persons (who are individuals) who, directly or indirectly, hold in aggregate more than 50% of the issued share capital or equity interest of the Borrower shall become Personal Guarantors in relation to the Facility on a joint and several basis. Partner(s) who provide personal guarantee(s) in favour of the Lender in relation to the Facility or sole proprietor shall sign in this Part B.

Note 9 : If the Facility has two or more credit facilities sharing the same Facility Limit but charged by different interest rates, the Lender shall report the **highest** interest rate (in respect of HK Dollar credit facility) among such credit facilities. If the Facility has a pricing indexed to HKD HIBOR as the base rate but without any interest rate ceiling or without any reference rate and rate determination arrangement specified in Part C I.4(a) of this Form, the Lender shall provide the pricing details for all credit facilities under such Facility to the HKMCI for its determination of the Overall Interest Rate. If the relevant facility

letter is available, the Lender can submit it to the HKMCI together with the Application Form for sole purpose of calculating the Overall Interest Rate and the Guarantee Fee.

Note 10 : The Facility can be denominated in Hong Kong Dollars or foreign currency, and the Lender shall provide the Principal Amount / Facility Limit of the Facility in Hong Kong Dollars or the amount of Hong Kong Dollars equivalent to the foreign currency in Part C I.3 of this Form. For Facility involving foreign currency, please specify the interest rate chargeable to the Facility in Part C I.4(b) of this Form.

Note 11 : The Starting Date means:

- (a) in respect of a Facility of a non-revolving nature which is a loan facility, the date of the first Drawdown under that Facility; and
- (b) in respect of (i) a Facility of a non-revolving nature which is not a loan facility or (ii) a Facility of a revolving nature (whether or not a loan facility), the commencement date of the availability period relating to that Facility, being the date on which all or any part of that Facility shall first be made available by the Lender to the relevant Borrower for drawing or other utilisation.

Note 12 : Please attach separate sheet if necessary.

Note 13 : Security Value is defined as the security value as per Lender's latest assessment, or the purchase price on the date of purchase (if latest assessment on the security value is not available).

Note 14 : Please choose one or more from the following Security Codes and specify the details in the space provided-

- |                                                                                                                 |                                                    |
|-----------------------------------------------------------------------------------------------------------------|----------------------------------------------------|
| 11 - Residential Property                                                                                       | 12 - Industrial / Commercial Property              |
| 13 - Business Installation / Machinery / Equipment                                                              | 14 - Public Light Bus / Taxi                       |
| 15 - Other Vehicle                                                                                              | 16 - Cash / Deposits (please specify the currency) |
| 17 - Listed Securities, Funds or Unit Trust, etc.                                                               |                                                    |
| 51 - Corporate Guarantee                                                                                        |                                                    |
| 52 - Guarantee under the SME Loan Guarantee Scheme of the Trade and Industry Department of the HKSAR Government |                                                    |
| 99 - Others, please specify in Part C I.18.                                                                     |                                                    |

Note 15 : In the event of default by the Borrower, the proceeds realised from the security for the Facility as well as any other sums recovered by the Lender or the HKMCI for the repayment of the Facility shall be shared between the Lender and the HKMCI in accordance with the Master Deed of Guarantee.

Note 16 : The Borrower shall not during the Guarantee Period (as defined in the Master Deed of Guarantee) sell, sub-lease, charge, part with possession of or otherwise deal with (whether in whole or in part) any business installations, machinery(ies) and equipment and/or other assets referred to be acquired with any of the proceeds of the relevant Facility without the prior written consent of the Lender, and, if the foregoing has not been complied with, the Borrower shall ensure that all the proceeds or sums realised or generated as a result shall be paid direct to the Lender for application in or towards payment and discharge of the Indebtedness (which shall be reduced by the relevant amount accordingly).

Note 17 : In respect of any treasury facility reported in Part C I.8(b) or I.8(c) of this Form, please provide details of the nature of the contract, purpose of the facility, current line utilization, profit / loss position and contract expiry date in Part C I.18 of this Form.

Note 18 : "**Outstanding Default**" means failure to repay a loan, interest or other payments, or any part thereof, in accordance with the relevant facility and the indebtedness remains outstanding for (a) sixty-one (61) days or more after the relevant repayment date as evidenced by the latest report issued by any credit information provider(s) made available to the Lender and which is issued not earlier than thirty (30) days prior to the date of the Application Form; or (b) thirty-one (31) days or more after the relevant repayment date in respect of (i) any facility granted by the Lender and (ii) any facility granted by other financial institutions which the Lender is aware of (by whatever means).

Note 19 : Authorised signature(s) and company chop are required if the submission of this Form is by fax.

Note 20 : Refinancing facilities guaranteed under the Scheme is only permitted subject to conditions set out in the Guarantee Product Eligibility Criteria.

Note 21 : The Lender may provide information of all credit facilities under the Lender and/or other lender(s) on a consolidated basis instead of inputting respective information of credit facilities one by one via IIDS. The Lender shall provide details of each credit facility (which shall include name of lender (where applicable), facility type, loan amount/facility limit, relevant loan interest rate, etc.) by extracting from the respective credit assessment reports on a supplementary information sheet (for submission via IIDS in PDF format) together with this Form.

For HKMCI's use only

|              |                 |               |                |                   |
|--------------|-----------------|---------------|----------------|-------------------|
| Received On: | HKMCI Ref. No.: | S.V. On / By: | Input On / By: | Approved On / By: |
|--------------|-----------------|---------------|----------------|-------------------|

## Personal Information Collection Statement of the HKMC Group

1. Nothing in this Statement shall limit the rights of data subjects under the Personal Data (Privacy) Ordinance.
2. The supply of personal data is voluntary except for the personal data specified in the relevant data collection form as obligatory. Failure to supply such obligatory data will prevent us from fulfilling the purposes described below.

### PURPOSES

3. The purposes for which personal data of a data subject may be used will vary depending on the circumstances and context of its collection, but the purposes perceived by us will include the following:
  - (a) administering, maintaining and operating our products/services/events relating to our financing, loans and loans acquisition, retirement planning, insurance and credit support businesses (**Services**);
  - (b) processing and evaluating any applications, requests, enquiries or complaints involving the data subject relating to our Services;
  - (c) providing subsequent or ongoing services in relation to our Services involving the data subject, including but not limited to providing information, administering the policies or guarantees issued or the loans or credit supports granted;
  - (d) any purposes in connection with any claim or requests made by or against or otherwise involving the data subject in respect of our Services, including the related verification and investigation work;
  - (e) detecting, investigating and preventing fraud, crime, wrongdoing or irregularity;
  - (f) facilitating design of products/services/events of any members of the HKMC Group;
  - (g) conducting research and maintaining databases for marketing, statistical, actuarial, product development or other purposes;
  - (h) matching any personal data held which relates to the data subject from time to time for any of the purposes listed herein and verifying data or information provided by any third party;
  - (i) creating and maintaining data subject profile and segregation and business model and performing risk management;
  - (j) evaluating any future application by or involving the data subject in relation to our Services;
  - (k) registering data subjects and administering the provision of Services through telecommunications or online channels, or mobile applications;
  - (l) conducting underwriting, identity and credit checks and debt collection;
  - (m) offering, providing and marketing to the data subject the Services of the Company, other members of the HKMC Group or our business partners (see “Use and Provision of Personal Data in Direct Marketing” section below)
  - (n) carrying out business co-operation with the data subject (including referral or other modes of co-operation);
  - (o) sending to the data subject newsletters and printed materials about educational, recreational or other events of any member of the HKMC Group;
  - (p) providing benefit to the data subject for relationship management purposes;
  - (q) making disclosures as required by any applicable law, rules, regulations, codes of practice or guidelines or for assisting law enforcement purposes, investigations by police or other government or regulatory authorities in Hong Kong or elsewhere;
  - (r) complying with the laws, regulatory requirements and any other rules, guidelines or orders of any applicable jurisdiction which we are expected to or would normally comply with;
  - (s) complying with any obligations, requirements, policies, procedures, measures or arrangements for sharing personal data and information within the HKMC Group

and/or any other use of personal data and information for compliance with sanctions or prevention or detection of money laundering, terrorist financing or other unlawful or prohibited activities or conduct;

- (t) enabling an actual or potential assignee of us, or participant or sub-participant of our rights in respect of a data subject to evaluate the transaction intended to be the subject of the assignment, participation or sub-participation; and
- (u) purposes directly relating to any of the above.

## **TRANSFEREES**

4. Personal data will be kept confidential but, subject to the provisions of any applicable law, may be provided to the following parties (within or outside Hong Kong) for the purposes outlined in paragraph 3 above:

- (a) any member of the HKMC Group;
- (b) any broker, referrer or introducer of the data subject in Hong Kong or elsewhere;
- (c) any co-applicant or co-borrower, and any person proposing to provide or providing any financial or credit support in relation to a data subject's obligations in connection with our Services.
- (d) any business partner which has participated in programmes operated by any member of the HKMC Group in relation to our Services;
- (e) any person in connection with any claims made by or against or otherwise involving the data subject in respect of any Services provided by the Company or any member of the HKMC Group;
- (f) any agent, contractor or third party, which provides administrative, audit, data-processing, document management, technology, telecommunication, storage, payment or other services (including direct marketing services) to any member of the HKMC Group in Hong Kong or elsewhere under a duty of confidentiality to the same;
- (g) where applicable, any insurer or reinsurer (including any re-reinsurers of such reinsurer) of, or any entity providing financial support in relation to our Services;
- (h) any valuer, medical service provider or an provider of products or services which is, or will be paid by funds drawn from the Services;
- (i) credit reference agencies or, in the event of default, debt collection agencies;
- (j) any agent, auditor, accountant, tax adviser, lawyer, consultant or other professional adviser;
- (k) any court, tribunal or administrative, governmental or regulatory body or enforcement agency in Hong Kong or elsewhere (including local or foreign tax authorities); and
- (l) any actual or potential assignee, transferee, participant or sub-participant of our rights or business.

## **USE AND PROVISION OF PERSONAL DATA IN DIRECT MARKETING**

5. We intend to:

- (a) use the names, contact details, Services portfolio information, transaction pattern and behaviour, financial, employment or other background and demographic data of a data subject held by us from time to time for direct marketing and we cannot use such data unless we have received the data subject's consent or indication of no objection; and
- (b) conduct direct marketing in relation to the following classes of products/services/events:
  - (i) insurance, financial services, retirement planning and related products/services/events; and
  - (ii) reward, loyalty, co-branding or privilege programmes, and related products/services/events.

6. The above products/services/events may be provided or solicited by us and/or:
- (a) any member of the HKMC Group;
  - (b) third-party financial institutions and insurers; and
  - (c) third-party reward, loyalty, co-branding or privilege programme providers or operators.
7. In addition to marketing the above products/services/events, we may provide a data subject's information described in paragraph 5(a) to all or any of the persons described in paragraph 6 above for use by them in marketing those products/services/events, and we require the data subject's written consent (which includes an indication of no objection) for that purpose.

***If a data subject does not wish us to use or provide to other persons his/her personal data for use in direct marketing as described above, the data subject may exercise his/her opt-out right by notifying us.***

## **RIGHTS OF ACCESS AND CORRECTION**

8. A data subject may request access to or correction of his/her personal data by making a request in writing to our Data Protection Officer at 19/F, Two Harbour Square, No. 180 Wai Yip Street, Kwun Tong, Kowloon, Hong Kong.
9. We may charge a fee which is not excessive for processing any data access request.

In this Statement, unless the context does not permit or otherwise requires,

**Company, we, our and us** mean the company named in the document collecting the relevant data (which is a member of the HKMC Group) and its successors and assigns;

**data subject**, in relation to personal data, means the individual who is the subject of the personal data; and

**HKMC Group** means The Hong Kong Mortgage Corporation Limited, its subsidiaries and subsidiary undertakings.

## **Notes**

- (a) This Statement may from time to time be revised or updated by us.
- (b) By using or continuing to use or participate any of our products/services/events, providing information about the data subject himself/herself, or providing services to or entering into commercial or other contractual arrangements with us, a data subject is deemed to have accepted and agreed to the arrangements set out in and to be bound by the provisions herein.

*Issued by the Company*

**SME FINANCING GUARANTEE SCHEME****ACCEPTANCE OF CONDITIONS**

To : The SME Financing Guarantee Scheme Unit,  
HKMC Insurance Limited (the "HKMCI")

Fax No.: (852) 2516 9600

Name of Borrower : \_\_\_\_\_  
Business Registration No. of Borrower : \_\_\_\_\_  
HKMCI Reference No. : \_\_\_\_\_

**AGREEMENT**

In consideration of the HKMCI agreeing to issue a guarantee in favour of \_\_\_\_\_  
(the "Lender") (the "Guarantee") in respect of a facility granted or to be granted by the Lender to the  
Borrower (the "Facility"), the Borrower agrees that:

1. All confirmations, undertakings and declarations (as applicable) provided by the Borrower and contained in the Application Form under the above HKMCI Reference No. \_\_\_\_\_ duly signed by the Borrower (the "Application Form") are hereby repeated as if they have been given again on the date hereof.
2. The Borrower shall use the proceeds from the Facility for the sole purpose as declared in the Application Form under the above HKMCI Reference No.
3. The Borrower shall allow the Lender, the HKMCI and their related bodies to access, inspect and make copies of all books, records, accounts and any other information relating to the Borrower or the Borrower's business, whether in paper, electronic or any other form or medium, and whether in the possession, custody or control of the Lender, the Borrower or otherwise, for any purpose relating to the application, monitoring the performance of the Facility, conducting due diligence review, processing a request for payment under the Scheme and other related purposes.
4. Unless otherwise permitted in the Deed for the HKMC SME Financing Guarantee Scheme or the Deed for the SME Financing Guarantee Scheme (as applicable), the Borrower shall not use any relevant Facility, whether in whole or in part, for: (a) paying, repaying, restructuring or repackaging all or any part of any loan, credit facility or payment obligation (including any loan referred to as a "classified loan" by the Hong Kong Monetary Authority from time to time) of the Borrower, its Subsidiaries or its Related Entities; and/or (b) financing and/or re-financing the acquisition of any business installation, machinery, equipment or other asset that was in the ownership, control or possession of the relevant Borrower, its Subsidiaries and/or its Related Entities (whether as owner or otherwise) on or at any time before the date on which an application for the Facility is received by the Lender.
5. Any request or demand made upon the HKMCI by or on behalf of the Lender for payment of any sum under the Guarantee shall be conclusive evidence as between the Borrower and the HKMCI that the HKMCI's liability under the Guarantee has accrued and shall constitute conclusive authority for the HKMCI to make such payment to the Lender and the Borrower shall be liable to the HKMCI for such payment. The HKMCI shall be entitled to make such payment to the Lender or

any person as the Lender may direct without inquiring into the validity or justification of the request or demand irrespective of notice or knowledge of any dispute between the Borrower and the Lender and the Borrower shall not challenge the HKMCI's propriety or authority in making such payment to the Lender.

6. A demand accompanied by a certificate of balance signed by any of the HKMCI's authorised officers shall be conclusive evidence against the Borrower of the Borrower's obligations to pay under this Agreement and/or the Guarantee and of the amount payable.
7. Payments by the Borrower shall be made to the HKMCI without any set-off, counterclaim or condition and shall be free and clear of all present and future taxes, withholdings or deductions of any nature except that, if the Borrower is compelled by law to make such withholding, the sum payable by the Borrower shall be increased so that the amount actually received by the HKMCI is the amount the HKMCI would have received if there had been no withholding.
8. No payment to the HKMCI under this Agreement and/or the Guarantee pursuant to any judgment, court order or otherwise shall discharge the Borrower's obligation in respect of which it was made unless and until payment in full has been received by the HKMCI in the currency in which it is payable and, to the extent that the amount of any such payment shall, on actual conversion into such currency, fall short of the amount of the Borrower's obligation expressed in that currency, the Borrower shall be liable for the shortfall.
9. The Borrower shall irrevocably and unconditionally indemnify and hold the HKMCI harmless, on demand, from and against all actual or alleged liabilities, claims, demands, losses, damages, taxes, costs, charges and expenses of any kind (including, without limitation, legal fees on a full indemnity basis) which may be incurred or suffered by the HKMCI and all actions and proceedings which may be brought by or against the HKMCI in connection with or arising out of this Agreement or the Guarantee.
10. If any moneys paid to the HKMCI pursuant to this Agreement or the Guarantee are required to be repaid by virtue of any law relating to insolvency, bankruptcy or liquidation or for any other reason, the HKMCI shall be entitled to enforce the indemnity as if such moneys had not been paid.
11. The indemnity given herein is a continuing indemnity and will remain in full force and effect until the HKMCI shall have confirmed in writing that the Borrower has been absolutely released and discharged from the Borrower's liabilities in connection with such indemnity.
12. The Borrower's liability to indemnify hereunder shall not be discharged or otherwise affected by any of the following reasons:
  - (a) that the HKMCI waives a condition under or in connection with the Guarantee or any other documents relating to it (including this Agreement);
  - (b) that the HKMCI waives any compliance by the Lender of any of its obligations under or in connection with the Guarantee;
  - (c) that the HKMCI varies the Guarantee or enters into any agreement or arrangement with the Lender or any other person or by reason of any legal limitation, disability or incapacity or any other act, omission or circumstance which, but for this provision, would discharge the Borrower to any extent; or
  - (d) that time or indulgence shall have been granted to the Borrower by the Lender or the HKMCI in connection with any of the Borrower's obligations to the Lender or the HKMCI.

13. The indemnity hereunder shall be in addition to and not in substitution for and shall not be prejudiced or affected by any other indemnities or security given by the Borrower or any other person which the HKMCI may now or hereafter hold in respect of the Guarantee. Any release, variation, exchange or abstain from perfecting of any other indemnities or security now held or hereafter may be held by the HKMCI in respect of the Guarantee shall not affect such indemnity. Any restriction on the right of consolidating securities shall not apply to such indemnity.
14. The indemnity hereunder shall be binding on the Borrower's heirs, legal representatives, successors and assigns.
15. Each of the provisions in this Agreement is severable and distinct from the other and, if one or more of such provisions is or becomes illegal, invalid or unenforceable, the remaining provisions shall not be affected in any way. The Borrower hereby agrees that a copy or an electronic record of this Agreement bearing the signature(s) of the Borrower shall have the same effect as if it were the original thereof.
16. The Borrower shall pay to the HKMCI, upon demand, interest on all amounts payable by the Borrower to the HKMCI under this Agreement and/or the Guarantee. For the purpose of this provision, interest shall accrue on a day to day basis and be calculated on each amount due to the HKMCI at the interest rate certified by the HKMCI to be the HKMCI's cost of funds in relation to that amount and shall be payable from the day on which such amount becomes due until (and including) the day it is received by the HKMCI.
17. At the HKMCI's request, the Borrower shall execute such documents and take such action which the HKMCI may consider necessary or convenient to give effect to the HKMCI's rights and in connection with the exercise of the HKMCI's powers under this Agreement and/or the Guarantee.
18. No act or omission by the HKMCI pursuant to this Agreement, the Guarantee or any other document relating to them shall affect the HKMCI's rights, powers and remedies in connection with them or any further or other exercise of such rights, powers and remedies.
19. The Borrower shall not assign any of the Borrower's rights and obligations, in whole or in part, under this Agreement, the Guarantee, the Facility or any documents relating to any of them without the HKMCI's prior written consent (such consent shall not be unreasonably withheld). The HKMCI may assign any of the HKMCI's rights under these documents to any person without the Borrower's prior written consent.
20. The Borrower shall not do or permit to be done anything which would prejudice or jeopardise the rights of the Lender or the HKMCI, in respect of the Facility and any business installation and equipment and/or other assets as specified in the Application Form.
21. The Borrower shall not create, or permit to be created, any subsequent charges or encumbrances ranking in priority to or pari passu with any security that may be given to or held by the Lender for the Facility.
22. The Borrower shall not during the Guarantee Period sell, sub-lease, charge, part with possession of or otherwise deal with (whether in whole or in part) any business installations and equipment and/or other assets to be acquired with any of the proceeds of the relevant Facility without the prior written consent of the Lender, and, if the foregoing has not been complied with, the Borrower shall ensure that all the proceeds or sums realised or generated as a result shall be paid direct to the Lender for application in or towards payment and discharge of the Indebtedness (which shall be reduced by the relevant amount accordingly).

23. In the event of breach of paragraphs 20, 21 or 22 above, the Borrower shall pay all the proceeds and sums realised or generated as a result direct to the Lender for payment towards the Indebtedness under the Facility.
24. The Borrower acknowledges that if the Starting Date (as defined in the Application Form) of the Facility cannot be effected on or before the date specified as such in the relevant Notification of Result and/or Guarantee (or such other time as the HKMCI may agree in writing) for any reason, the HKMCI's Approval-in-Principle or Guarantee shall be deemed to have lapsed for all purposes after such date and that the Borrower has no recourse of whatever kind against the HKMCI therefor.
25. The Borrower shall at all relevant times comply with all terms and conditions as set out in the relevant facility letter(s) which set(s) out the respective rights and obligations of the Lender and the Borrower and other terms and conditions of the relevant Facility.
26. The Borrower shall inform the HKMCI and the Lender as soon as practicable if any of the information provided by the Borrower supplied in connection with the Application Form is no longer valid. The Borrower shall repay in full all the outstanding amounts under the Facility, with interest, within such time specified upon notification by the HKMCI or the Lender, if any information the Borrower supplied in connection with the Application Form is false, inaccurate or no longer valid. The Borrower acknowledges that the HKMCI and the Lender reserve the right to take any legal action against the Borrower for any breach of the terms and conditions of the Facility or this Agreement. The Borrower acknowledges that the HKMCI may set off any of the outstanding amounts owed by the Borrower under the Facility, the Guarantee and/or this Agreement from any sums that may be due from the HKMCI to the Borrower, its subsidiaries and/or its Related Entities (as defined in the Application Form).
27. This Agreement and the rights and obligations of the parties hereunder are governed by and shall be construed in accordance with the laws of Hong Kong Special Administrative Region. The Borrower shall submit to the non-exclusive jurisdiction of the Courts of the Hong Kong Special Administrative Region but this Agreement may be enforced in the Courts of any competent jurisdiction.
28. Without prejudice to any rights and remedies that the Lender or the HKMCI may have, the Borrower acknowledges that the HKMCI may forthwith request the Lender to suspend the Facility, and the Lender shall act accordingly, in the event that the HKMCI is in the opinion that the Borrower is:
- (a) in breach of any of the undertakings given in the Application Form;
  - (b) in breach of any of the terms and conditions mentioned herein; or
  - (c) no longer compliant, or has not complied with any declaration by the Borrower given in the Application Form.
29. The Contracts (Rights of Third Parties) Ordinance (Cap. 623 of the Laws of Hong Kong) shall not apply to this Agreement and unless specifically herein provided no person other than the parties to this Agreement shall have any rights under it nor shall it be enforceable by any person other than the parties to it.

Signed for and on behalf of the Borrower (Note 1):

|                           |                     |
|---------------------------|---------------------|
| Authorised Signature(s) : | Company Chop:       |
| Full Name :               | Date : (dd/mm/yyyy) |
| Position :                | Fax Number :        |
| Telephone Number :        | Email Address :     |

Please return this Form to the HKMCI by (Note 2):

IIDS - Website: <https://iids.hkmcinet.com.hk/>

FAX(only if the IIDS shall (for whatever reason) not be in normal operating mode) : (852) 2516 9600

ENQUIRY HOTLINE: (852) 2536 0392

Notes

Note 1 : The person(s) signing this Form and the signature(s) should be the same as those in the Application Form.

Note 2 : The Lender shall retain in the relevant loan file (or equivalent) the **original** of this Form and the copy of which is to be retained by the Borrower.

For HKMCI's use only

|              |                             |                |                   |
|--------------|-----------------------------|----------------|-------------------|
| Received On: | Signature Verified On / By: | Input On / By: | Approved On / By: |
|--------------|-----------------------------|----------------|-------------------|