

# **Terms and Conditions for Private Banking Services**

**Nanyang Commercial Bank, Limited**

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These terms and conditions are applicable to all Service (as defined in Section 1) offered by Nanyang Commercial Bank Limited's ("us", "we", "Bank") private banking ("Private Banking") division (the "Terms and Conditions" as may be amended or supplemented from time to time) to you ("you", "Client", "Account Holder"). Capitalised terms and expressions have, unless the context provides otherwise, the meanings given to them in Section 1 of these Terms and Conditions

We are a licensed bank under the Banking Ordinance (Cap.155 of the Laws of Hong Kong) and a registered institution under the SFO carrying the Central Entity registration number AAI 250 at the Hong Kong Securities and Futures Commission. We are registered under section 119(1) of the SFO to conduct Type 1 (dealing in securities) and type 4 (advising on securities) regulated activities. Our business address in Hong Kong is 151 Des Voeux Road Central, Hong Kong.

These Terms and Conditions are incorporated into and form an integral part of your Account Opening Form and other transaction documents such as the Confirmation for the relevant Transaction and any Facility Letter and they (collectively the "Agreement") constitute a single agreement governing your relationship with us for any Services. If there is any inconsistency between these Terms and Conditions and any Confirmation or Facility Letter, the Confirmation or Facility Letter (as relevant) shall prevail. The relevant Account, Service and Transaction shall also be governed by the Bank's prevailing "Conditions and Rules for Services and other Information" (as amended from time to time and which are available on the Bank's website, in any of the Bank's branches or such other channels as specified by us from time to time). If there is any inconsistency between the Conditions for Services and this Agreement, this Agreement shall prevail over the Conditions for Services. If there is any inconsistency between Section 2 (the General Terms and Conditions) and the other Sections of these Terms and Conditions, such other sections of these Terms and Conditions shall prevail over the General Terms and Conditions in respect of the relevant Services or Transactions.

You agree to be bound by the Agreement and acknowledge that you have received a copy, read and fully understood these Terms and Conditions. You understand and agree that we may at our absolute discretion amend or supplement these Terms and Conditions from time to time. If we do so, we will give you a prior notice in writing and (i) such changes will be effective and binding on you from the date specified in our notice to you or (ii) if the changes affect fees, charges or your liabilities or obligations, we will give you 30 days' notice before such changes take effect.

The English version of these Terms and Conditions shall prevail wherever there is a discrepancy between the English version and a Chinese version.

Please read our Data Policy Notice (which will govern our use and disclosure of information of any individual provided to us for the Services) carefully and make sure that you understand them. Please also consider taking independent advice before engaging in any Private Banking relationship with us.

## Section 1: Definitions and interpretation

### 1. Definitions

- 1.1 In these Terms and Conditions, the following terms shall have the meaning set out below unless otherwise defined or the context requires otherwise:
- 1.2 "Account" means the Private Banking account you open with us which contains various sub-accounts for different Services and accordingly a "Joint Account" means an Account opened in name of more than one person.
- 1.3 "Account Opening Form" means the account opening form signed by you for your application for opening an Account or for Services.
- 1.4 "Affiliate" means, in relation to us:
- a. any entity controlled, directly or indirectly, by us;
  - b. any entity that controls, directly or indirectly, us; or
  - c. any entity, directly or indirectly, under common control with us; and
- 1.5 "Aggregate Value" means the amount determined by us to be equivalent to the market value of the Collateral (as conclusively determined by us) multiplied by the applicable lending ratio (as conclusively determined by us from time to time).
- 1.6 "Alternative Reference Rate" means any of SOFR, SONIA, TONAR, ESTR or SARON as the context requires.
- 1.7 "Authority" means any judicial, administrative or regulatory body, any government, or public or government agency, instrumentality or authority, any tax authority, securities or futures exchange, self-regulatory organisation, trade repositories, central counterparties, court, central bank or law enforcement body or any agents thereof, having jurisdiction over any part of our Group.
- 1.8 "Authorized Signatory" means the person or persons authorized by you from time to time in writing (in such form as may be acceptable to us, which has been validly executed by you and received by us and in respect of which person we have not received from you any written notice of revocation or termination of such person's appointment, powers or authority) to act for and on behalf of you in connection with the operation of the Account, utilization of any of the Services and/or entering into any Transaction (including persons appointed as attorney by you under powers of attorney).
- 1.9 "B Prime" means the prime rate for any currency other than HKD, CNY or USD as may be quoted by the Bank from time to time and subject to fluctuation.
- 1.10 "Base Rate" means HKD Prime, USD Prime, CNY Prime, B Prime, HIBOR, Alternative Reference Rates, EURIBOR, CNY HIBOR, such other rates as may be determined by the Bank from time to time (as the case may be) or the Bank's cost of funds as may be quoted by the Bank from time to time (as the case may be).
- 1.11 "Business Day" means:
- a. in relation to a payment of Hong Kong dollars, a day (excluding Saturday, Sunday and public holiday) on which we are open for business in Hong Kong and excludes a black rainstorm warning day or gale warning day, each as defined by section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1 of the Laws of Hong Kong) or any other day on which we are open for a period of less than four hours; and
  - b. in relation to a payment of a currency other than Hong Kong dollars, means a day on which commercial banks and foreign exchange markets are open for general business in the principal financial center for that currency.
- 1.12 "CNY Prime" means the prime rate for CNY as may be quoted by the Bank from time to time and subject to fluctuation.
- 1.13 "Collateral" means any and all cash or cash deposits, Securities, commodities, bank guarantee, properties, insurance policies and/or other assets acceptable to us, now or from time to time pledged, charged or otherwise provided to us to secure your performance of the Agreement and the Total Liabilities and Obligations.
- 1.14 "Confirmation" means one or more documents or written advice issued by us (which may be issued electronically and/or by facsimile) confirming the terms and conditions of a Transaction entered by you with us, whether or not it refers to these Terms and Conditions, which shall supplement and form part of the Agreement and be read and construed as a single agreement. Any agreement relating to such Transaction which are referred to in a Confirmation are part of that Confirmation.
- 1.15 "Customer Information" means Personal Data, confidential information and all Information.
- 1.16 "Control" of an entity or person, means having ownership of a majority of the voting power of the entity or person.
- 1.17 "Data" means all information and documents given to us for the purpose of the Agreement, any Services or Transaction.
- 1.18 "Default Rate" means a rate of interest, as determined by the Bank from time to time, charged on any unpaid liabilities when due or on demand, or any amount in excess of any facility limits.
- 1.19 "Derivative Facility" means a Facility to be utilized for the purpose of derivatives Transactions, as set out in the Facility Letter.
- 1.20 "Email Instruction" means any communication given by you or an Authorized Signatory by electronic mail and conveyed to us.
- 1.21 "Event of Default" means in relation to you and any Security Provider any one of the following:

- a. Fail to pay or deliver: Failure to make, when due, any payment or delivery required under the Agreement;
- b. Breach: Failure to comply with any obligations in accordance with the Agreement;
- c. Support default: The occurrence or existence of:
  - i. a failure to perform any agreement to provide any Collateral or additional Collateral to us as when required by us or a failure to maintain Collateral up to the level/amount as requested by us;
  - ii. such Collateral expires or ceases to be in full force and effect without our written consent or becomes unenforceable, invalid or illegal; or
  - iii. any Obligor or other relevant person (or any person appointed to manage it or act on its behalf) disclaims or repudiates, in whole or part, or challenges the validity of, such Collateral;
- d. Misrepresentation: Any representation or statement made or deemed to be made by an Obligor, or other relevant person, in any document delivered by or on behalf of any Obligor proves to be false, incorrect, incomplete or misleading in any material respect;
- e. Cross default: The occurrence or existence of:
  - i. a default (however described) under one or more financial, investment, derivative or borrowing transactions which has resulted in such transactions becoming, or becoming capable of being declared, due and payable or deliverable, or otherwise terminated prematurely;
  - ii. a default in making one or more payments or deliveries on the due date under any financial, investment, derivative or borrowing transaction (after giving effect to applicable notice requirement or grace period, if any); or
  - iii. a disclaimer, repudiation or rejection, in whole or in part, of any financial, investment, derivative or borrowing transaction (or such action is taken by any relevant person appointed or empowered to manage it or act on its behalf),

in respect of any arrangement between you and any Security Provider and us, our Affiliates or any of our Group;
- f. Insolvency: Any relevant person:
  - i. becomes insolvent or fails or admits in writing its inability to pay its debts as they become due;
  - ii. makes a general assignment, arrangement or composition with or for the benefit of its creditors;
  - iii. is the subject of any judicial, administrative or other proceeding, or any action, (1) seeking a judgment of or arrangement for insolvency, bankruptcy, liquidation, reorganization or rehabilitation with respect to the relevant person or its debts or assets, (2) seeking the appointment of a trustee, receiver, liquidator, supervisor or custodian for the relevant party or any part of its assets, or (3) which has a similar effect;
  - iv. has any resolution passed for its liquidation, reorganization or rehabilitation;
  - v. has any secured party take possession of all or any part of its assets or has a distress, execution, attachment or other legal process enforced against all or any part of its assets; or
  - vi. causes or is subject to any event which, under any applicable Laws, has a similar effect to any of the above;
- g. Merger: Any Obligor or other relevant person amalgamates or merges with or transfers all or any substantial part of its assets to another entity;
- h. Death or incapacitation: If an Obligor or other relevant person is an individual, such person dies or becomes mentally incapacitated or is otherwise subject to any form of legal incapacity;
- i. Force majeure: The occurrence or existence of:
  - i. Any relevant person, by reason of any event or circumstance, is or would be prevented from complying with, or it is or would be impossible or impracticable to comply with, any material provision of the Agreement where such event or circumstance is beyond the control of the affected party; or
  - ii. It is or would be unlawful under any applicable Laws for any relevant person to comply with any material provision of the Agreement;

For this purpose, material provisions include the obligation to make or receive a payment or delivery on a timely basis under a transaction ("Force Majeure Events");
- j. Unlawfulness: The occurrence of:
  - i. it is or becomes unlawful for an Obligor or other relevant person to perform any of its obligations under any Agreement or any Facility Letter or Security Document or any transaction or security created or expressed to be created or evidenced by the Agreement or Facility Agreement or Security Document ceases to be effective;
  - ii. any obligation or obligations of any Obligor or other relevant person under any Agreement or any Facility Letter or Security Document are not or cease to be legal, valid, binding or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Bank under the Agreement or any Facility Letter or Security Document;
  - iii. any Agreement or any Facility Letter or Security Document ceases to be in full force and effect or any Security ceases to be legal, valid, binding, enforceable or effective or is alleged by a party to it to be ineffective.
- k. Repudiation and rescission of Agreement: An Obligor (or any other relevant party) rescinds or purports to rescind or repudiates or purports to repudiate an Agreement or any Facility Letter or Security Document or evidences an intention to rescind or repudiate an Agreement or any Facility Letter or Security Document.
- l. Adequate assurances: Failure to provide adequate assurances of its ability to perform the outstanding obligations under the Agreement or any other agreement after our written request when we have reasonable grounds for insecurity; or
- m. Litigation: Legal proceedings, suit or action of any kind (whether criminal or civil) shall be instituted against any relevant person.

- 1.22 "ESTR" means, with respect to any business day, a rate per annum equal to the Euro Short-Term Rate (ESTR) for such business day published by the European Central Bank (or a successor administrator of the ESTR) on its website (or any successor source for the ESTR identified by the European Central Bank or its successor from time to time) on the immediate succeeding business day, as determined by the Bank.
- 1.23 "Facilities" means such overdraft, credit or other facilities and accommodation in its widest sense which we may in our absolute discretion agree to make available to you temporarily or otherwise from time to time (whether solely or jointly with other person(s)) pursuant to a Facility Letter or otherwise) and any reference to "Facility" shall mean any one of them.
- 1.24 "Facility Letter" means any and each letter, agreement or document specifying terms and conditions subject or pursuant to which any Facility is made available to you by us, as it may be amended, modified or supplemented from time to time.
- 1.25 "Fax Instruction" means any communication given by facsimile.
- 1.26 "Financial Crime Compliance" means any action to meet the compliance obligations relating to detection or prevention of financial crime that we may take.
- 1.27 "Inter-jurisdictional Tax Compliance Rules" includes but without limitation to:
- a. "FATCA", which means:
    - i. sections 1471 through 1474 of the United States Internal Revenue Code of 1986 (as amended) or any amended or successor version thereof;
    - ii. any intergovernmental agreement, memorandum of understanding, undertaking and other arrangement between governments and regulators in connection with Condition 20.2(a)(i), including as entered into by the government of Hong Kong;
    - iii. agreements between us and the Internal Revenue Service of the United States or other regulator or government agency pursuant to or in connection with Condition 20.2(a)(i); and
    - iv. any laws, rules, regulations, interpretations or practices adopted in the United States, Hong Kong or elsewhere pursuant to any of the foregoing; and
  - b. "Tax Information Sharing Arrangements", which means:
    - i. any local or foreign laws, regulations and rules including, without limitation to, the obligations under FATCA and associated rules and regulations and other international exchange arrangements affecting us.
- 1.28 "Group" means the Bank and its holding companies, branches, subsidiaries, representative offices and Affiliates, wherever situated, together with China Cinda (HK) Holdings Company Limited and China Cinda Asset Management Co., Ltd.. Affiliates include the Bank's holding companies and China Cinda (HK) Holdings Company Limited and their respective branches, subsidiaries, representative offices and Affiliates that are located in Hong Kong.
- 1.29 "HIBOR" means in respect of a particular interest period and in relation to any advance and/or drawing under the facilities in HKD, the rate per annum quoted by the Bank in the Hong Kong Interbank Hong Kong Dollar Market and known as "Hong Kong Interbank Offered Rate".
- 1.30 "HKD Prime" means the prime rate for HKD as may be quoted by the Bank from time to time and subject to fluctuation.
- 1.31 "Hong Kong" means the Hong Kong Special Administrative Region of the People's Republic of China.
- 1.32 "Individual Customer" means a private individual who maintains an account with us (including a joint account with another private individual or an account held as an executor or trustee or private investment company or the accounts of partnerships, and companies) or receives other services from us.
- 1.33 "Information" means all Data and your banking affairs.
- 1.34 "Investment Services" means the services set out in Section 3 of these Terms and Conditions and includes any and all investment Services made available by us to you from time to time, including in relation to Transactions. These also include, the following regulated activities under the SFO:
- a. Securities brokerage services, in which case we act as your agent;
  - b. other offers of Securities, in which case we act as principal; and
  - c. if separately agreed with us, advisory services.
- 1.35 "Nominee" means any nominee appointed by us from time to time.
- 1.36 "Laws" means any applicable local or foreign statute, law, regulation, ordinance, rule, judgment, decree, voluntary code, directive, guidelines, administrative requirements, sanctions regime, court order, agreement between us or any Affiliate and any Authority, or agreement or treaty between Authorities and applicable to the Bank or an Affiliate.
- 1.37 "Loss" means any claim charge, cost (including, but not limited to, any legal or other professional cost), damages, debt, expense, fees, tax, levy, liability, obligation, allegation, suit, action, demand, cause of action, proceeding or judgment, however calculated or caused, and whether direct or indirect, consequential or incidental (including, without limitation, loss of profit, loss of interest or loss of opportunity).
- 1.38 "Obligation" has the meaning given to it in Clause [8.2].
- 1.39 "Obligor" means you and a Security Provider, collectively, the "Obligors" and each an "Obligor".
- 1.40 "Oral Instruction" means any communication given orally by telephone, video conference, in person or by any other mode of transmission.



- 1.41 "Personal Data" means any data relating (directly or indirectly) to an individual, whether true or not, from which the identity of the individual can be directly or indirectly ascertained, whether with other data or other information the Bank is likely to have access to or otherwise, including, without limitation, sensitive personal data, name(s), residential address(es), contact information, age, date of birth, place of birth, nationality, citizenship, personal and marital status.
- 1.42 "Potential Event of Default" means any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.
- 1.43 "SARON" means, with respect to any business day, a rate per annum equal to the Swiss Average Rate Overnight (SARON) for such business day published by the SIX Swiss Exchange AG (or a successor administrator of the SARON) on its website (or any successor source for the SARON identified by the SIX Swiss Exchange AG or its successor from time to time) on the immediate succeeding business day, as determined by the Bank.
- 1.44 "Securities" means any assets of whatever nature of a type commonly referred to as securities, including without limitation, including but not limited to any shares, stocks and other equity instruments, debenture, notes (including, but not limited to, equity linked notes, currency linked notes, interest rate linked notes, index linked notes and commodity linked notes), bonds and other debt instruments, options and warrants, units in any unit trust and interests in mutual funds or any other collective investment scheme, rights and obligations over any of the same and any other analogous instruments or rights or derivative products related thereto, together with all interest, dividends, bonuses and other rights and benefits arising from or attaching to any of the same.
- 1.45 "Security Document" means any document executed or to be executed from time to time by a Security Provider creating or evidencing any security interest, guarantee, indemnity or other assurance granted in favor of us.
- 1.46 "Security Provider" means any person or entity who may, from time to time, provide any security and/or assume the obligations of a surety, guarantor or indemnifier in favour of us.
- 1.47 "Services" means the banking services which the Bank may from time to time provide to you pursuant to these terms and conditions, including, without limitation:
- a. the opening, maintaining and closing of any Accounts;
  - b. the Investment Services;
  - c. credit facilities;
  - d. renminbi accounts and services;
  - e. global stock trading services;
  - f. other banking products and services (including, for example, securities dealing, investment advisory, broker agency, custodian, clearing or technology procuring services); and
  - g. the maintenance of the Bank's overall relationship with you in connection with any of the above, including processing applications, conducting ancillary credit assessments and product eligibility assessments, marketing services or products to you, market research, insurance, and audit and administrative purposes.
- 1.48 "SFO" means the Securities and Futures Ordinance (Cap. 571 of the Laws of Hong Kong).
- 1.49 "SOFR" means, with respect to any business day, a rate per annum equal to the Secured Overnight Financing Rate (SOFR) for such business day published by the Federal Reserve Bank of New York (or a successor administrator of the SOFR) on its website (or any successor source for the SOFR identified by the Federal Reserve Bank of New York or its successor from time to time) on the immediate succeeding business day, as determined by the Bank.
- 1.50 "SONIA" means, with respect to any business day, a rate per annum equal to the Sterling Overnight Index Average (SONIA) for such business day published by the Bank of England (or a successor administrator of the SONIA) on its website (or any successor source for the SONIA identified by the Bank of England or its successor from time to time) on the immediate succeeding business day, as determined by the Bank.
- 1.51 "Tax Authorities" means any government, government body, government agency or regulator, in or outside of Hong Kong, including the Inland Revenue Department of Hong Kong and Internal Revenue Service of the United States.
- 1.52 "TONAR" means, with respect to any business day, a rate per annum equal to the Tokyo Overnight Average Rate (TONAR) for such business day published by the Bank of Japan (or a successor administrator of the TONAR) on its website (or any successor source for the TONAR identified by the Bank of Japan or its successor from time to time) on the immediate succeeding business day, as determined by the Bank.
- 1.53 "Total Liabilities and Obligations" means all monies, obligations and liabilities (including all interest, charges, commissions etc) now or at any time hereafter due, owing or incurred by you to us, anywhere, whether on your account, in respect of the Services, any Transactions or otherwise in whatsoever manner and actual or contingent, present or future and in whatever currency and whether solely or jointly and in whatsoever name, style or form and whether as principal debtor or as surety.
- 1.54 "Transaction" means any foreign exchange transaction; over-the-counter derivative transaction (including a swap, option, cap, collar or floor) a transaction relating to an Underlying; forward or futures transaction; commodities transaction; traded option transaction; a combination of one or more of any of the above transactions; and any other transaction as we may from time to time permit; and
- 1.55 "Underlying" means any, or any group or combination of one or more, currency; interest rate; financial product (including any Security); commodity; index or other benchmark, instrument or any other underlying as we may from time to time permit.
- 1.56 "United States" means the United States of America.
- 1.57 "USD Prime" means the prime rate for USD as may be quoted by the Bank from time to time and subject to fluctuation.

## **2. Interpretation**

In these Terms and Conditions:

- 2.1 Words which are expressed in the singular shall, where the context allows, include the plural and vice versa.
- 2.2 A word which suggests one gender includes the other genders.
- 2.3 The word "person" includes any individual, company, corporation, firm, partnership, limited liability partnership, joint venture, association, organization, trustee, state or agency of a state (in each case, whether or not having separate legal personality); "us" "we" / "Bank" and all references to us include our successors and assigns; "you" include your estates, heirs, successors and personal representatives; and a "Section" or "Clause" shall be construed as a reference to a section or clause hereto; a "regulation" includes any regulation, rule, treaty, official directive, requirement, request, guideline or policy (whether or not having the force of law) of any governmental agency (and, if not having the force of law, with which responsible entities in the position of the relevant party would normally comply); the words "including", or "for example" or "such as" when introducing an example do not limit the meaning of the words to which the example relates to that examples or examples of a similar kinds; anything (including an amount) is reference to the whole and each part of it.
- 2.4 Where the expression "you" or "the Borrower" consist of more than one person, all agreements, obligations, powers, authorities and liabilities on your or the Borrower's part in connection with these Terms and Conditions shall be joint and several.
- 2.5 Headings or clauses have been inserted for guidance only and shall not be treated as forming any part of the context or to be taken into consideration in the interpretation of those clauses or of these Terms and Conditions.
- 2.6 For the avoidance of doubt, any reference to a document includes a reference to that document as amended or supplemental from time to time; and reference to any ordinance are ordinances of Hong Kong and includes reference to those ordinances as amended, re-enacted, replaced from time to time.
- 2.7 Unless specified otherwise, all times are with reference to Hong Kong time. Time shall in all respects be of the essence in the performance of your obligations.
- 2.8 Unless otherwise agreed, for the purposes of any calculation(s) in respect of any Transaction, (i) all percentages will be rounded, if necessary, to the nearest one hundred-thousandth of a percentage point; and (ii) all currency amounts will be rounded in accordance with the relevant market practice.
- 2.9 In the event of any inconsistency between the terms under Section 2 (General Terms and Conditions) of these terms and any other section of these terms, the provisions of that other section shall prevail to the extent of the inconsistency when they apply to the Services.

## Section 2: General Terms and Conditions

This Section 2 applies to all Services we provide to you.

### 1. Your instructions

- 1.1 General authority to accept instructions: We are authorized to accept and act on any instructions that we believe to be genuine and purporting to be signed, given or issued by you or by an Authorized Signatory. You agree to ratify and confirm all the acts and deeds of the Authorized Signatory in the exercise or purported exercise of the Authorized Signatory's powers and authority as generally or specifically delegated. Until receipt by us from you written notification of the revocation of powers and authority or termination of the appointment of any Authorized Signatory (whether by you or by virtue of the bankruptcy, liquidation, death or mental incapacity of the Authorized Signatory or any other reason whatsoever), we shall be entitled to act on the instructions of such Authorized Signatory.
- 1.2 Undated instruction: If any instruction given or document delivered by you to us is undated, the time and date imprinted by us on the instruction or document at the time of its receipt shall be conclusive evidence of the time and date of such instruction or document.
- 1.3 Signature, chop: All instructions must be in accordance with the authorizations in, and terms of, the Agreement and must bear signature and/or, as applicable, company or individual chop which, in our sole opinion, corresponds to your specimen signature or chop impression as provided to us. You assume full responsibility in providing instructions in such manner.
- 1.4 Oral Instructions, Fax Instructions, Email Instructions: without prejudice to anything in these Terms and Conditions:
  - a. we are entitled (but not bound) to accept as genuine and act upon any Oral Instruction or Email Instruction we believe in good faith to have been given by you or an Authorized Signatory and upon any signature which appears to us to be your signature or an Authorized Signatory's signature on a Fax Instruction or Email Instruction;
  - b. we are not under any obligation to enquire into the genuineness of any Oral Instruction, Email Instruction or Fax Instruction nor into the good faith of the person giving any Oral Instruction, Email Instruction or Fax Instruction and such Oral Instruction, Email Instruction or Fax Instruction shall be binding on you;
  - c. we will not be obliged to act upon an Oral Instruction from you or an Authorized Signatory and shall be entitled to require receipt of written instructions or confirmation from you or an Authorized Signatory before executing any instructions contained in any Oral Instruction;
  - d. we will not be obliged to act upon any Email Instruction or Fax Instruction from you or an Authorized Signatory and shall be entitled to (but not obliged to) call you or an Authorized Signatory and/or require you or an Authorized Signatory to provide a signed instruction in a form acceptable to us to verify any Email Instruction and/or Fax Instruction we receive and may refuse to execute such instruction if we are not able to obtain oral confirmation or verification as we may require as regards such instruction;
  - e. any Email Instruction or Fax Instruction shall not be effective or take or deemed to be received by us until an acknowledgement (whether by return email, facsimile transmission, telephone or otherwise) is sent by us to you in response to that Email Instruction and/or Fax Instruction;
  - f. we will not accept Email Instructions sent to an email address which is not an email address we have stipulated to you as the email address to be used for Email Instructions from time to time, in writing;
  - g. we do not make any warranty that electronic communications (secured or otherwise) sent by or to us will be received without having been falsified or on time or that such electronic communications will reach the correctly entered addressee or that any electronic mail showing that we are the sender actually comes from us;
  - h. we are under no duty to inquire into the authenticity of any email instruction or the identity of the person giving or purporting to give such instruction;
  - i. in relation to Fax Instructions, you acknowledge that you have considered fully the risks inherent in the giving of a Fax Instruction and in particular that signatures on a facsimile may be forged or that Fax Instructions may be transmitted to a wrong number; may never reach us; and/or may thereby become known to third parties thereby losing their confidential nature;
  - j. in relation to Email Instructions, you acknowledge that electronic communications can involve substantial risks including but not limited to potential loss of confidentiality and the sending of communication to a person not authorised to receive the same, interception and/or hacking of a communication, the manipulation of contents and/or sender's address, the non-original signatures in an electronic communication may be forged and the loss of data or damage to hardware may be caused by computer viruses, bugs and/or other harmful or malicious script or software; and
  - k. you are fully responsible for all loss or damage sustained or incurred by means of Oral Instruction, Email Instruction or Fax Instruction in lieu of the receipt by us of original signed documents.
- 1.5 Unsecured email communications: Notwithstanding anything in the foregoing, we specifically draw to your attention that, as a general practice, we do not accept instructions from you that cause, change or terminate rights or obligations via unsecured email, including instructions to make payments to third parties.
- 1.6 Recording: We may at our absolute discretion record oral, telephone instructions and conversations by writing, tape recording and/or, with prior warning, any other method, and we may deem the recording of such instructions as conclusive and binding evidence in any dispute that may arise. You and each Authorized Signatory consent to such recording and agree that such records are our property. Such recordings or transcripts thereof may be used by us as evidence in any dispute that may arise.
- 1.7 Encrypted instruction: We may require instructions to be encrypted and/or to contain such identifying code, password, test or digital signature as we may from time to time specify, and you shall be responsible for any improper use or misappropriation of such identifying codes, passwords, tests or digital signatures or failure to encrypt.

- 1.8 Refuse to act, cut-off time: We may in our absolute discretion without having to state the grounds for such refusal and without any liability whatsoever refuse to act upon any instructions or such part thereof as we think appropriate, including deferring or delaying to act on any instructions or part thereof. Without prejudice to the generality of the foregoing, we may refuse to act if any instructions are unclear, or if we receive conflicting instructions, or there is a related dispute or if we believe, in good faith, that instructions are fraudulent, forged or unauthorized or that acting on any instructions may be in breach of any Laws applicable to us, you and/or the Authorized Signatory. Unless otherwise agreed by us, each instruction must be received by us or our agent during banking hours on a Business Day but before the relevant cut-off time for such type of instruction as determined by us in our absolute discretion. Any instruction received after the relevant cut-off time will be treated as received on the next Business Day.
- 1.9 No duty on us to inquire: We shall be under no duty to inquire into the authenticity of any instructions or the identity, authority or good faith of the person giving or purporting to give any instructions. We may treat all instructions given as fully authorized and binding on you regardless of the circumstances prevailing at the time of the instructions being given or the nature or amount of the Transaction and notwithstanding any error, misunderstanding, lack of clarity, errors in transmission, fraud, forgery or lack of authority in relation to the instructions except in the case of willful misconduct or gross negligence on the our part while acting on such instructions.
- 1.10 Your duty to prevent fraudulent, forged or unauthorized instructions: You agree that you are under an express duty to us to prevent any fraudulent, forged or unauthorized instructions being given. We shall not be responsible or liable for any direct or indirect Loss suffered or incurred as a consequence of any failure or delay in executing an instruction caused by circumstances beyond our reasonable control including delay or failure to read an instruction or delay to read an instruction given by facsimile or electronic mail.

## **2. Statement of account and confirmation of transaction**

- 2.1 Statement and Confirmation: We will send you periodic statement of account reflecting Transactions and balances in your Account (unless otherwise agreed with you or there has been no Transactions on the Account since last statement of account). At individual Transaction level, as soon as practical thereafter a Transaction, we will send you a Confirmation evidencing each Transaction carried out by you or the Authorized Signatory (but we do not need to do so unless required by Law), although the terms of such Transaction shall be legally binding from the moment they are agreed between us and you or the Authorized Signatory (whether orally or otherwise). Failure by you to sign and return (if required) a Confirmation in respect of a Transaction shall not prejudice or invalidate the terms of that Transaction already entered into.
- 2.2 Your duty to verify and deemed acceptance: You undertake to carefully check, examine and verify the correctness of each such statements and Confirmations. You agree that reliance can only be placed upon the original statement and/or Confirmation (unless being sent to you electronically). You further undertake to inform us promptly and in any event, within ninety (90) days from the date of such statement (or such other period as specified in the statement of account) and within fourteen (14) days from the date of such Confirmation (or such other period as specified in the Confirmation) of any discrepancies, omissions, credit or debit wrongly made to, inaccuracies or incorrect entries in the relevant Account or the execution or non-execution of any order; failing which, upon the expiry of the respective ninety (90) days or fourteen (14) days (or such other period as specified in the statement of account or Confirmation), we may deem you have approved the original statement or Confirmation as sent by us to you. In which case, you shall be deemed conclusively to have accepted all the matters contained in such statements and Confirmations without any further proof that the relevant accounts and all entries therein and the execution of all Transactions are correct and we shall be free from all claims in respect of the relevant Account, and all such Transactions.
- 2.3 Right to reverse or correct entry: Without prejudice to the above, we may at any time and in our absolute discretion, without prior notice to you, acting in good faith, reverse entries in or make any corrections to any statement or Confirmation:
- a. which relate to instruments or items which are returned to us unpaid;
  - b. in connection with or in relation to the non-delivery of any Securities by any issuer or agent or the failure by party or person to deliver any asset; or
  - c. which are required by reason of operational error or erroneous payment on our part or other person and may correct an obvious error made in any statement or Confirmation.
- 2.4 Electronic statements and Confirmations: We may provide you with any document contemplated under Clause 2.1 by posting it at a secure location on our website accessible by your password. You will read them without delay. Records will only be retained in our system or website for the period determined by us. You are regarded as having received a communication three (3) Business Days after it is dispatched by our system or posted on our website.

## **3. Payments**

- 3.1 Payment on due date or on demand: Any payment or delivery from you to us shall be made promptly to, or to our order, on the due date as specified in the Agreement, (subject to our right to require payment on demand), in the currency in which it is due (unless otherwise required by us). All such payments shall be made in full in immediately available and freely transferable funds.
- 3.2 Tax gross-up: All payments must be made to us without set-off, counterclaim or any restriction or condition, free and clear of and without deduction of any taxes, charges or fees of any nature now or hereafter imposed or however arising unless such withholding or deduction is required by Laws, as modified by the practice of any relevant governmental revenue authority, then in effect. If any amount is so required to be deducted or withheld from any payment due from you to us, you shall pay us such amount as may be necessary to ensure that we receive a net amount equal to the amount which we would have received had no such deduction or withholding been required or made. You agree to pay the relevant deducted or withheld amount to the relevant authority in accordance with applicable Laws and give us the original receipts.
- 3.3 Payment in stipulated currency: Your payment obligation shall not be discharged by an amount paid in a currency other than that in which payment is due ("Stipulated Currency") (whether pursuant to a judgment or order of a court of any jurisdiction or otherwise) to the extent that the amount so paid, on prompt conversion to the Stipulated Currency at the Bank's prevailing rate of exchange, does not yield the amount due in the Stipulated Currency. You shall indemnify us against any Stipulated Currency deficiency and in respect of all other Loss (including but not limited to the cost of making any currency purchase or exchange) which we may incur or suffer, provided always that we shall not be obliged to make such purchase or exchange and it shall be sufficient for us to show that it would have suffered the Stipulated Currency deficiency had an actual purchase or exchange been made. This indemnity shall constitute a separate and independent obligation from the other obligations under these Terms and Conditions and the Agreement and shall give rise to a separate and independent cause of action, shall apply irrespective of any indulgence granted by the Bank and shall continue in full force and effect despite any judgment, order, claim or proof for a liquidated amount in respect of any other sum due or any judgment or order.

- 3.4 Void payment: Any discharge of you or any Security Provider by us shall be deemed to be made subject to the condition that it will be void to the extent that any security, disposition or payment to us by you or such Security Provider or any other person is set aside, avoided or reduced pursuant to any provision or enactment relating to the dissolution, deregistration, bankruptcy, liquidation, winding-up, reorganization or otherwise of you, such Security Provider or such other persons (whether as fraudulent preference or otherwise) or proves otherwise to have been invalid, in which event, the Bank shall be entitled to retain such security for such period as the Bank may determine or you and such Security Provider shall make good us upon demand such amount as shall have been set aside, avoided or invalidated (as applicable) as aforesaid and we shall be entitled to enforce these indemnities against you or such Security Provider subsequently as if such discharge to the extent the aforesaid has not occurred.
- 3.5 Currency conversion: In order to pay the proceeds or any Transactions, instruments or other transfer to an account denominated in a different currency and for the settlement and facilitation of your investment and other Transactions, we may convert the proceeds into a currency and in a manner we consider appropriate at our prevailing rate of exchange (whether by one or multiple conversion(s), after combination, set-off or transfer or otherwise). We shall have no responsibility for or liability to you for any diminution in the value of the monies due to such conversion or unavailability of such monies due to restrictions on convertibility or of any other Force Majeure Events. In addition, if a currency's country of origin restricts availability, credit or transfers of such currency, we will have no obligation to pay you the funds in your Account in such currency, whether by way of draft or cash in the relevant currency or any other currency, and we shall be deemed to have satisfied any payment obligation to you by making payment in such other currency as we deem fit, at the prevailing exchange rate, or if no such exchange rate is available, at such exchange rate as we may in our absolute discretion deem reasonable.
- 3.6 Payment screening: We are required to act in accordance with Laws and any requests of statutory and regulatory authorities operating in various competent jurisdictions. These relate, amongst other things, to the prevention of money laundering, terrorist financing, the provision of financial or other services to any persons which may be subject to sanctions and other types of restricted activities. We may in our absolute discretion take any action as we consider appropriate to comply with all such Laws and requests. Such action may include but is not limited to the interception and investigating of any payment messages and other information or communications sent to or by you; to or from your Account and making further enquires as to whether a name which might refer to a sanctioned person actually refers to that person. We may delay, block, suspend or refuse to process any payment or instruction as we determine in our absolute discretion. We shall not be liable for any Loss suffered by you or any person arising out of (a) any delay or failure by us in processing any such payment messages or other information or communications, or in performing any our duties or other obligations in connection with the provisions of any Services to you, caused in whole or in part by any steps which we, in our absolute discretion, consider appropriate to take in accordance with all such Laws and requests; or (b) the exercise of any of our right under this Clause.
- 3.7 Payment to your Account: A sum or item received for your Account may not be drawn against or used and does not earn interest (if the same is credited into your interest bearing account) until we have unconditionally received cleared funds. Inward remittances to any account held with us may not be credited to such account on the same day if the relevant payment advice is not received by us before the relevant cut-off time set by us from time to time. No interest will accrue on inward remittances before the funds are credited into your interest bearing account with us. Information on our current cut-off time shall be made available upon request. We may at any time reverse any entry if the sum or item or part thereof is not actually received. For certain accounts, we will pay interest on your credit balance. Notwithstanding the foregoing, we may apply negative interest rate over credit balance. Interest (including negative interest) will be calculated at the rate, and be credited to or debited from (as the case may be) your account at the time, determined by us from time to time. Different currencies may have different rates. Interest will be calculated for each day over a 360 or 365 day year according to market convention for the relevant currency, as follows:
- a. for Hong Kong dollars, Pound Sterling and Singapore Dollar: 365-day year; and
  - b. for other currencies: 360-day year.
- [If an Account is closed before a date for crediting or debiting interest, we may pay or debit (as the case may be) interest up to the preceding month.]
- 3.8 Payment netting: If on any date amounts would otherwise be payable, (a) in the same currency and (b) in respect of one of more Transactions, by one party to the other, then on such date (if we so select at our absolute discretion), each party's obligation to make payment of any such amount will be automatically satisfied and discharged and (if the aggregate amount that would otherwise have been payable by one party exceeds the aggregate amount that would otherwise have been payable by the other party) replaced by an obligation upon the party by whom the larger aggregate amount would have been payable to pay to the other party the excess of the larger aggregate amount over the smaller aggregate amount.
- 3.9 Payments will be made to you subject to Laws and Obligations and any required deduction or withholding. You confirm that you have (or will at the relevant time have) provided notice to and secured consent or waiver from any person owning a beneficial interest in such payments in respect of the aforesaid deduction or withholding. We are authorized to pay the amount deducted or withheld to the relevant authority in accordance with the relevant requirement.
- 4. Internet banking / electronic banking**
- 4.1 Before accessing the Services through our internet banking, you confirm that you have appropriate equipment and facilities and agree to receive our electronic communications, which may be sent in lieu of paper or other communications. You acknowledge that (a) your instructions may be processed automatically by computers without oversight and (b) an accepted instruction may be rejected by reason of computer operations and you will check whether your instructions have been executed (as we will not notify you on any non-execution). Our system will not reprocess your instruction automatically. If your instruction has not been accepted by our system for any reason (for example, after the relevant cut-off time), please try again. Our system may process one piece of information in your instruction without checking if it conflicts with other information.
- 4.2 You agree not to access our internet banking except with an equipment (and software), appropriate electronic aids (such as passwords, test, codes or digital signatures) and in a communication format permitted by us, or for any purpose other than to access an available Service in a reasonable manner. You will ensure that the contents of a message sent by or on your behalf are not inconsistent with Laws. You shall be fully responsible for and legally bound by all messages or instructions transmitted under your password and for entering into any Transactions and other consequences thereof whether or not such messages or instructions were authorized by you.
- 4.3 You agree to take all reasonable steps to keep any device (for example, personal computers, security devices that generate one-time passwords and smart cards that store digital certificates) or secret code (for example, password) used for accessing internet banking services secure and secret. This includes the following: (a) you should destroy any original printed copy of a secret code; (b) you should not allow anyone else to use your secret code; (c) you must never write down a secret code on any device for accessing internet banking Services or

on anything usually kept with or near it; and (d) you must not write down or record any secret code without disguising it.

- 4.4 Electronic messages are treated as writing signed by the sender. Neither you nor we will contest the validity of a contract concluded by electronic messages on the grounds that it was so concluded. As between you and we, a contract concluded by electronic messages is concluded in Hong Kong and at the time when our final confirmation of your instruction is dispatched. If you do not receive a confirmation, you must check with us. If a re-confirmation has been requested from you, your instructions are not effective unless re-confirmed within time. Transactions and messages shown on or printed out from your computer or other equipment are for your reference only. If our liability in relation to any matter relating to or arising in connection with this Agreement or the provision or receipt of electronic messages or electronic banking is capable of limitation (but not indemnification or exclusion), it is hereby limited to the maximum extent that is permitted by law and our regulatory obligations.
- 4.5 Hyperlinks to other sites are provided for your convenience only. They are not our recommendation or endorsement of the other sites. We are not responsible for the contents of the other sites, and have not verified them and use of hyperlinks to other internet sites or resources are at your own risks. We expressly disclaim any responsibility for the accuracy or availability of the information provided by those sites, or for the safety of information which the browser may provide to any third party, or any Loss you incur in connection with any such hyperlinks. Making available any advertisements, marketing or promotional materials, market information or product information to you shall not, by itself, constitute solicitation of the sale or recommendation of any product.
- 4.6 Our website is hosted by us and is connected to the internet via an independent service provider, who is not our agent and for whom we are not responsible. We will use reasonable care in selecting the service provider. Our website and the information on it may be changed by us at any time without notice. We will only record your visit by recording your domain name server address and the pages you visited. No personal information is collected unless otherwise specified.
- 4.7 Fees and charges applicable to internet banking Services are set out in the relevant fee schedule.
- 4.8 If you believe that your access to internet banking has been compromised, including unauthorized transactions being undertaken on your behalf, or you have any complaint or query in relation to internet or electronic banking, you should notify us immediately. You will be fully liable for any transaction which has been undertaken on your behalf where such access arises due to your failure to meet the requirements set out in this Clause 4.
- 4.9 To the extent applicable, this Clause 4 governs the use of other electronic banking Services made available to you (on telephone or other electronic network or devices as informed by us).

## **5. Joint Account**

- 5.1 Right of survivorship: You acknowledge and agree that where the Account is opened in the name of more than one person, it shall be treated as a Joint Account with right of survivorship. Accordingly, in the event of the death of any one Joint Account Holder, subject to our or any third party's rights, we may transfer the cash and assets held in a Joint Account into the name(s) of the surviving Joint Account Holder(s) who shall become the owner(s) of the cash and assets. Each Joint Account Holder shall be entitled individually and independently from the other(s) and without limitation to operate the relevant Joint Account. Unless otherwise agreed, we shall be entitled to deal separately with any one of the Joint Account Holders on any matter (including the variation or discharge of any liability to any extent, or the granting of time or other indulgence to, or making other arrangement with any Joint Account Holder) without prejudicing or affecting our rights, powers or remedies against other Joint Account Holders. Any obligation of us to notify the Joint Account Holders shall be discharged if we notify any one of them. However, any signing authority of the Joint Account can be varied only if authorized in writing by all the Joint Account Holders.
- 5.2 Disputes between Joint Account Holders: In the event of a dispute between any Joint Account Holder in respect of a Joint Account, we may (but are not obliged to) decline to effect transactions on the Joint Account(s) and/or suspend operation of the Joint Account(s) unless we have the authority of all the Joint Account Holders.
- 5.3 Joint and several liability: Each Joint Account Holder shall be the agent of the other Joint Account Holder, but the Joint Account Holders agree that each or all of them is/are responsible and liable separately and together (jointly and severally) for all liabilities and obligations under the Agreement. Such liabilities and obligations may also be discharged by set-off against any credit balance standing to the account of any of the Joint Account Holder held with us. This Clause 5 shall govern the legal relationship between the Joint Account Holders and us exclusively, irrespective of the internal relationship between the Joint Account Holders themselves and their successors, and regardless, in particular, of their respective rights of ownership of the assets in the Joint Account.
- 5.4 One set of statements: The Joint Account Holder agree to dispense with the giving to each of them of a separate statement in relation to the Joint Account and agree that all statements, advices and other correspondence from us regarding the Joint Account shall only be sent to the specified address of the specified Joint Account Holder as notified to us from time to time.
- 5.5 Each of the Joint Account Holders shall be bound by these Terms and Conditions, even though these Terms and Conditions may be invalid or unenforceable against any one or more of such persons by reason of fraud, forgery or otherwise (whether or not known to us).
- 5.6 These Terms and Conditions shall not be terminated by the death or incapacity of any of the Joint Account Holders or any other cause but shall remain in full force for the surviving Joint Account Holders. If any one of the Joint Account Holders shall die the Joint Account shall be treated as belonging to the surviving Joint Account Holders(s), without prejudice to any right that we may have under Clause 5.7 below. We may charge against the Joint Account all expenses (including reasonable legal fees) paid or incurred by us with respect to the transfer of the balance on the Joint Account to the Joint Account Holder(s).
- 5.7 You agree that (a) in the event of the death of any one or more of the Joint Account Holders, the credit balances in the Joint Account will be held to the order of the survivor(s) to the fullest extent permissible under any Laws; (b) in the event of death, bankruptcy, liquidation or other legal incapacity of one or more of the Joint Account Holders, we shall have the right to set off any claims we have or may have against such person or persons howsoever incurred against any credit balance in the Joint Account and other relevant accounts and further, we shall have the right, in our absolute discretion, to freeze the Joint Account and refuse any dealings therewith or refuse to accept any instructions, whether in respect of the Joint Account, the Services or otherwise; and (c) any representations, warranties or other agreements made by you under the Agreement shall be made jointly and severally.

## **6. Collateral**

- 6.1 Request for Collateral: Collateral may be required by us for certain Services. As security for the Total Liabilities and Obligations, you and/or the Security Provider shall maintain at all times sufficient Collateral as determined by us in our absolute discretion. We may require, from time to time, additional Collateral for the relevant Services.
- 6.2 Request for additional Collateral: In the event that the Collateral provided, in our absolute discretion, is no longer sufficient to meet the level/amount required by us from time to time, we may from time to time, at any time, require you or the Security Provider to provide Collateral in such form and at such time as we may in our discretion require in respect of the Total Liabilities and Obligations. We also have the unrestricted right (but not the obligation) to conclude or close out such Transactions as we consider appropriate and off set all proceeds net of expenses against any outstanding amount and Loss resulting from such close out. You would be responsible solely and shall bear all Loss, whatsoever and howsoever, in respect of such close out and/or actions referred to above. You undertake to remit immediately to us an amount to cover any shortfall. Without prejudice to the foregoing, if we in our absolute discretion deem appropriate, we may require you or any Security Provider to provide additional Collateral acceptable to us to restore to the level/amount required by us from time to time.
- 6.3 Your duty: You shall, and procure that the Security Provider shall, immediately upon demand by us and at your expense (including with limitation, payment of any legal fees incurred by us), make, execute, do and perform all such further assurances, instruments, acts or things as we shall from time to time require to perfect, protect or enforce the Collateral or any part thereof and our title to the security thereby constituted or intended to be constituted by the Collateral or for the purposes of clause 6.2; and to give effect to any of the rights conferred on us, including but not limited to any assignments and rights of subrogation. You shall not, and shall procure the Security Provider not to, sell, transfer, assign, encumber, pledge, create any further mortgage or charge over, dispose of or otherwise deal with the Collateral or any part thereof or any interest therein.
- 6.4 Our right: Notwithstanding that we may be appointed as a custodian, agent or otherwise act for all or part of the Collateral, we may upon the enforcement of our rights, sell, dispose of, realize or otherwise deal with the Collateral as your agent, mortgagee or pledgee thereof, as the case may be, as we may at our absolute discretion deem fit without incurring any liability whatsoever or howsoever in respect of any act done by us.

## **7. Lien, set-off and consolidation of accounts**

- 7.1 Continuing lien: Without prejudice to any of our other rights to recover sums due from you, all your monies, securities, assets and other property now hereafter held by us or to our order, whether with us, the Affiliates or our agent and whether in the same or different jurisdictions for your account (solely or jointly) and whether for safe custody or otherwise, and regardless of the currency, shall be subject to a continuing lien for the settlement of the Total Liabilities and Obligations.
- 7.2 Right to retain: We shall be entitled to retain and not repay any amount which is or may hereafter be owing from us to you or any money which we may hold, now or hereafter, for your account, whether on deposit or other account and regardless of the currency and until you have discharged in full the Total Liabilities and Obligations, and we may also apply any such amount against the Total Liabilities and Obligations.
- 7.3 Set off and combination: Without prejudice and in addition to any general lien, right of set off, combination of accounts, right of retention or withholding or other right to which we are otherwise entitled, we may (but are not obliged), at any time at our absolute discretion, without prior notice to you or any other person (whether upon the occurrence of an Event of Default or otherwise), set off, sell or realize any or all of your monies, securities, assets and other property held by us or held to our order (whether or not we have a charge or lien over the same and including those provided by the Security Provider) in such manner as we think fit and combine, consolidate, merge, set off, transfer or apply any balance to which you are entitled (whether matured or not or contingent and in whatsoever currency) on your Account or other accounts and any other indebtedness owing by us, whether with us, the Affiliates or our agent and whether in the same jurisdiction, to you (whether solely or jointly) in or towards satisfaction of the Total Liabilities and Obligations and we are hereby authorized to effect any necessary currency conversions at our prevailing exchange rate. Notwithstanding the foregoing, in the case of an Event of Default associated with insolvency, any credits to you shall be deemed to have been automatically set off against the Total Liabilities and Obligations. For the purpose of cross-currency set-off, we may convert any amount or obligation at the applicable market exchange rate determined by us at the relevant date. If an obligation is unascertained, we may estimate that obligation and set off in respect of the estimate, subject to the relevant party accounting to the other when the obligation is ascertained.
- 7.4 Prompt notice: We shall, as soon as reasonably practicable, give notice to you upon the exercise of our right of set off.
- 7.5 No security interest: Other than to the extent permitted by Laws, this clause 7 shall not constitute or create a charge or other security interest.

## **8. Collection, use and sharing of your information**

- 8.1 Customer Information will not be disclosed to other parties unless such disclosure is made in accordance with our Data Policy Notice, other than where we are legally required or permitted to disclose, we have a public duty to disclose, our legitimate business purposes require disclosure, the disclosure is made with your consent whether in writing or otherwise or it is disclosed as permitted or authorised in this clause 8.
- 8.2 Unless it is prohibited by Laws, you and each Authorized Signatory expressly authorize us to transfer and disclose any or all Customer Information to and between us and the Affiliates, our agents (current and former, and their domestic or foreign group companies) and any third parties (including but not limited to auditor and legal or other professional advisors, insurers, networks, exchanges and clearing houses, debt collection agencies, data processors and credit reference agencies) selected by any of us or them (each a "Transferee"), wherever situated, for confidential use (including for use as evidence in court proceedings or regulatory investigations, relationship management, marketing, data processing, statistical, credit and risk analysis purposes or to affect your instructions) or any other use or purposes set out in this Clause. You and each Authorized Signatory further expressly authorize us and any of the Transferees to use, transfer or disclose any such Customer Information (either based on a special information request or by way of mandatory notification for transactions and positions) to any person, as required by any Laws, court, supervisory authority, regulator, legal process or code in Hong Kong or any relevant overseas jurisdictions or according to our Group's policy, any present or future contractual or other requirement by or commitment with local or foreign legal, regulatory, governmental, tax, law enforcement or other authorities, clearing houses, securities or futures exchange, central bank, custodian banks, central securities depositories or an issuer, or self-regulatory or industry bodies or associations of financial services providers ("Authorities") or agreement or treaty between Authorities or a broker acting as an intermediary involved in the execution of a Transaction, or other circumstances which may encompass the duty to disclose client identity information, and applicable to us, our Affiliates or a member of our Group (collectively "Obligations"). In the case of such Obligations, you hereby expressly consent to the disclosure of your Personal Data. .

If you are an individual, this provision will apply to you subject to the following Clause 8.6 and our Data Policy Notice as amended from time to time.

- 8.3 You and each Authorized Signatory consent to Customer Information being used, processed and stored in or outside Hong Kong by third parties on our behalf. We will contract with third parties to take reasonable care to keep the Customer Information confidential and to observe Laws, including the requirements of the Personal Data (Privacy) Ordinance (Cap. 486 of the laws of Hong Kong). You and each Authorized Signatory further acknowledge that, subject to applicable Laws, Information may be disclosed and used by Local and overseas government, quasi-government, regulatory and judicial authorities may in certain circumstances.
- 8.4 You and each Authorized Signatory consent to the Customer Information being transferred to another jurisdiction outside Hong Kong and to any matching procedures being carried out. Your attention is drawn to the fact that laws relating to banking secrecy or data protection may not have extra-territorial effect. Our service providers may be required by applicable Laws to disclose Customer Information to third parties.
- 8.5 All copyright and other intellectual property rights of any nature in or relating to the Services, website, materials or documentation will vest in us.
- 8.6 If you are an individual, you acknowledge receipt of our Data Policy Notice and agree that the contents of the Data Policy Notice (as the same may be amended from time to time) shall be binding on you. If you are a body corporate, the foregoing shall be binding on individuals whose Personal Data is held by us in relation to your accounts.
- 8.7 You confirm that every entity or individual whose information has been (or will be) provided to us or the Transferees (as referred to in Clause 8.2 above) in connection with your Account and/or provision of products and Services to you has (or will at the relevant time have) been notified of and consented to the using, processing and disclosure of its/his/her information (including Personal Data) in accordance with this Clause 8 and for the purposes as shown in the Data Policy Notice (in case of individual).
- 8.8 You and the Authorized Signatory acknowledge, agree and consent that some Services, operational and processing procedures relating to the Transactions or Services provided by us from time to time may be outsourced to our regional or global processing centers, Affiliates, our representative offices, agents and third parties selected by any of us or them, wherever situated, and these service providers may from time to time be given access to the Customer Information for the purpose of or in relation to the services and procedures they perform.
- 8.9 You expressly authorize us to transfer and disclose any or all Customer Information to and between (a) the stock exchange or any listed company or other type of entity (or its agent or nominee) in which you have an interest in such securities (which shall, for the avoidance of doubt, include but not limited to any interest in a real estate investment trust or any other type of collective investment scheme) which are held by us as Nominee for you (whether or not in our name) where we are obliged to disclose the Customer Information by applicable Laws or by an otherwise legally binding requirement as the shareholder or legal owner of record; and (b) any Security Provider from whom Collateral is provided to us for your obligation, including but not limited to providing to, if so requested by, such Security Provider a copy of any of the Facility Letter addressed to you, your latest statement of account in our possession and our formal demand for overdue payment, if any.
- 8.10 You agree to inform us promptly, and in any event, within 30 days, in writing if there are any changes to Customer Information given to us from time to time and promptly give to us such further information as may be necessary or desirable in connection with the Services.
- 8.11 Without prejudice to any other provisions in the Agreement, where there is another person who: (i) beneficially owns or has control over the Account(s) or the assets under the Account(s), whether by virtue of ownership or other means, (ii) is a beneficial owner under the applicable Laws, (iii) is ultimately responsible for originating the Instructions, or (iv) stands to gain the commercial and economic benefit of the Account or any Transaction or bear the commercial or economic risks, and this has been notified to us, you confirm that you have obtained all consents or waivers from your client(s) or such other person(s) to release the information set out in this Clause 8 to the requesting party (including Transferees, Authorities and brokers acting as an intermediary involved in the execution of a Transaction). In particular, if you effect a Transaction for the account of another person and it is in a jurisdiction with client secrecy laws, you confirm that:
- a. your client(s) or such other person(s) have waived the benefit of the secrecy law in relation to any enquiry by the requesting party (including Transferees, Authorities and brokers acting as an intermediary involved in the execution of a Transaction); and
  - b. such waiver is valid and binding under the laws of the relevant jurisdiction.
- 8.12 The provisions of this Clause 8 shall continue in effect notwithstanding the termination of the Agreement, the closure of the Account or the termination of the Services.

## **9. Limit of our liability**

- 9.1 Unless caused by our willful misconduct or gross negligence, we are not liable for:
- a. any delay or interruption in your having access to any Services, or any inability to use a Service;
  - b. any Loss, error, delay, misdirection, corruption or unauthorized alteration or interception of a message sent through the internet, telephone or any other means, or any unauthorized access to a Service, Account or Information;
  - c. any act or omission including any failure to execute or error in executing your instructions;
  - d. any error, malfunctioning, interruption, suspension or failure of any software, equipment or system;
  - e. anything including any computer virus, trojan horses, worms etc. which may impair the functions of a computer system;
  - f. any Loss arising from the suspension, non-availability or termination of any Service provided to you;
  - g. any diminution in the value of or Loss to or in connection with any assets (including loss of opportunity to increase the value of such assets in held in or booked to your Account or in respect of a Service);
  - h. any acts, omissions, default, bankruptcy or insolvency of any agent appointed by us in good faith, or any other person through whom your instructions are effected; or



- i. the correctness, reliability and completeness of such information as we or third parties engaged by us receive from financial centers, counterparties, issuers, data providers or other third parties.
- 9.2 We are not liable for any Loss caused by a third party, government, market disruption or any event beyond our control. We are not liable to recover a payment which you have made to a third party, or to resolve a dispute between you and any third party. We are not obliged to account to you if our relevant office is prevented from acting.
- 9.3 We are in any event not liable for any indirect, special, incidental or consequential loss or damages.
- 9.4 All information, advertisements, marketing or promotional materials, market information or other information relating to any transactions, products, services or accounts provided by us are for your reference only. Unless otherwise expressly stated, it is not an offer. Subject to Clause 1.2A (a) and 1.2B of Section 3, we do not otherwise provide advice and our employees, representatives and agents do not have authority to advise you. No information provided should be regarded as an advice. You acknowledge that we do not give any representation, guarantee or assurance to the outcome of any investment. Any price, rate or other quotation provided by us is only indicative, unless otherwise expressly stated, and may be changed without notice until we have confirmed acceptance of your offer. Unless otherwise expressly stated, the prices payable by you do not include, and you will in addition pay, applicable taxes, duties, levies, fees and reasonable expenses.
- 9.5 We have no duty to verify the validity or genuineness of any documents or the title to your property to be received or held by us.
- 9.6 We have no duty to enquire whether any person involved in the issue or management of any investment is performing its duties.
- 9.7 These limits of our liability operate to the extent permitted by applicable Laws. We, the Affiliates and our agents and every director, officer, employee or agent of any of the foregoing shall be entitled to every exemption from liability, every defense and every indemnity to which we are entitled under applicable Laws and, for the purposes hereof. We are and shall be deemed to be acting as agent on behalf of and for the benefit of such persons.
- 9.8 All our obligations and the performance thereof by us shall be excused by the occurrence of any Force Majeure Events.

## **10. Your responsibility**

- 10.1 You shall at all times exercise due care to prevent payment or other instruments, instructions or electronic aids (such as passwords, test, codes or digital signatures) from coming into possession of unauthorized persons and to prevent alternation in a manner which may facilitate fraud or forgery. You shall notify us immediately on discovering or becoming aware of or suspecting that such items have been stolen, lost, misappropriated or mislaid but such notification shall not relieve you from your liability to assume and bear the consequences of the same. It is your duty to ensure instructions are clear, correct and intelligible and that they have been received and/or read, as applicable, by our relationship manager designated to deal with you.
- 10.2 You undertake to consult with your own independent legal, regulatory, tax, financial and accounting advisors to the extent you consider necessary in respect of any Transactions you enter or propose to enter into with us.
- 10.3 You shall be responsible for all taxes, duties and charges (including but not limited to tax reporting and withholding obligations) of any kind arising pursuant to all Transactions conducted with or through us. For the avoidance of doubt, in no event shall we or any of the Affiliates and our agents or any director, officer, employees or agent of any of the foregoing be liable for any adverse tax implication of any Transaction whatsoever. Without prejudice to the foregoing, you authorize us and our agent(s) on your behalf to debit, withhold and/or make payment of any taxes payable in connection with your account or any Transactions, where required. You acknowledge that we may debit any amount available in the account or from any payment to you, in satisfaction of taxes.
- 10.4 You acknowledge that any failure by you to provide us with valid, true, complete, accurate and up-to-date information concerning your personal circumstances, risk tolerance, financial situation, investment experience, investment objectives and investment horizon (including but not limited to response to the Questionnaire on Investment Preference) may impact upon our ability to assess suitability and to provide certain Services to you.
- 10.5 This Clause 10 is in addition to your other responsibilities under the Agreement.

## **11. Professional investor status**

- 11.1 The SFO (Section 1, Part 1, Schedule 1) defines "Professional Investor" to include any person prescribed by the Securities and Futures (Professional Investor) Rules (Cap. 571D) (the "Professional Investor Rules") as a Professional Investor. Under the Professional Investor Rules, a Professional Investor is defined to include: (a) an individual, either alone or with his/her spouse or children, having a portfolio of investments of at least HK\$8 million; (b) a corporation or partnership with total assets of at least HK\$40 million or a portfolio of investments of at least HK\$8 million; and (c) a trust corporation having been entrusted under the trust or trusts of which it acts as a trustee with total assets of at least HK\$40 million.
- 11.2 As a Professional Investor, we will be able to offer to you certain investment products that we are unable to offer to members of the Hong Kong public who are not Professional Investors.
- 11.3 Under the Securities and Futures (Contract Notes, Statements of Accounts and Receipts) Rules (Cap. 571Q) (the "Contract Notes Rules"), we are generally required to provide contract notes to you in the prescribed format no later than the end of the second Business Day after entering into the relevant contract. Whenever a contract related to products involving financial accommodation or margined transactions such as exchange traded derivatives and over-the-counter stock/bond options (referred to as "margined transactions" under the Contract Notes Rules) is opened or closed, a daily statement is generally required to be provided to you. In addition, daily and monthly statements of account shall include certain prescribed information such as the margin ratio and margin value of each security, margin excess or shortfall and minimum margin required for open positions.
- 11.4 However, if you qualify as a Professional Investor under the Professional Investor Rules, exemptions are available from all of these requirements.
- 11.5 By subscribing into the Services set out under Section 3 and Section 7 of these terms, you represent to us that you have duly considered the Professional Investor Rules and notice(s) issued by us in relation thereto and that you qualify as a Professional Investor under the Professional

Investor Rules and agree that we do not need to provide contract notes, statements of account or receipts (as the case may be) in accordance with the Contract Notes Rules. You have the right to withdraw your consent to be treated as a Professional Investor by giving us 30 days' prior notice in writing.

11.6 Without prejudice to Clause 17 of Section 2:

- a. we may terminate the Services set out under Section 3 and Section 7 of these terms immediately upon notice to you where in our sole determination you are no longer a Professional Investor or, where permitted under applicable Law, you withdraw your consent to be classified as a Professional Investor; and
- b. we may suspend the operation of your Account (or any part of it) immediately by giving you notice in writing if (i) your Account falls below the minimum value which we prescribe from time to time for the use of the Services (ii) to meet our compliance obligations;. Such suspension shall continue until such time as we either give you notice that we have lifted the suspension or upon termination of the Services.

**12. Tax compliance**

- 12.1 You and any person acting on your behalf acknowledge that it is your sole responsibility to understand and comply with your tax obligations in all jurisdictions. Such tax obligations include but not limited to tax payment or filing of returns or other required documents to relevant Tax Authorities. Certain countries have tax legislation with extraterritorial effect regardless of your place of domicile, residence, citizenship or incorporation. Please consider seeking independent legal and tax advice and neither we nor our agents provide tax advice.
- 12.2 You undertake to provide us with information, documents and certificates as may be required by us in order to meet our obligations imposed by applicable Inter-jurisdictional Tax Compliance Rules. You acknowledge and agree that this may include information, documents or certifications in connection with you, your Authorized Signatories, other representatives or your beneficial owners and agree to promptly notify us of any changes to these details.
- 12.3 You acknowledge and agree that we may report and disclose any information (including but not limited to your identification details), document, certification or account details (including but not limited to the relevant account balances, gross amounts of relevant interest incomes, dividend incomes and withdrawals) given by or relating to you, any beneficial owners, any Authorized Signatory or other representative, any Account with us or any transaction to the Tax Authorities, as required under the applicable local or foreign laws, regulations and rules and as determined by us. You also acknowledge and understand that our obligations imposed by applicable local or foreign laws are continuous.
- 12.4 You will, from time to time, supply us with identity information and Personal Data in connection with the establishment or continuation of any Account with us or provision of Services. Failure to supply the information may result in us being unable to effect a transaction, provide the Services or operate or maintain any Account with us. It may also result in us having to withhold or deduct amounts as required under the local or foreign laws, regulations and rules.
- 12.5 Without limiting any other indemnity provided by you, you will indemnify us, our Affiliates or agents on demand against any liability, reasonable Loss arising from or in connection with your instructions, Account or provision of Services to you, including as a result of any of your failure to comply with these Terms and Conditions or any other undertakings given by you or your agent providing misleading or false information in respect of yourself or any other person or matter in connection with these Terms and Conditions, unless such Loss is solely caused by our gross negligence or willful misconduct.
- 12.6 For the purposes of complying with applicable tax laws, you waive any bank secrecy, privacy or data protection rights applicable to you and/or related to your Account.

**13. Financial Crime Compliance**

- 13.1 We are required to act in accordance with applicable Laws, policies (including our policies) and request of statutory and regulatory authorities operating in various jurisdictions. These relate, amongst other things, to the prevention of money laundering, terrorist financing, bribery, corruption, actual or attempted tax evasion, fraud and the provision of financial or other services to any persons which may be subject to sanctions. We may in our absolute discretion take any action as we consider appropriate to comply with all such Laws, regulations, policies and requests. Such action may include but is not limited to:
  - a. screening, intercepting and investigating any instruction, drawdown request, application for Services, payment or communication sent to or by you (or on your behalf) and to or from your Account;
  - b. investigating and making further enquiries as to the source of intended recipient of funds, the status and identity of a person or entity, whether they are subject to a sanction regime, and whether a name which might refer to a sanctioned person actually refers to that persons;
  - c. combining and using information about you, your personal data, beneficial owners, Authorized Signatories and other representatives, Accounts, transactions, use of our Services with other related information possessed by us or our Affiliates;
  - d. delaying, blocking, suspending or refusing to process any payment or instruction to you or by you in our absolute discretion;
  - e. refusing to enter or conclude transactions involving certain persons or entities;
  - f. terminating our relationship with you;
  - g. reporting suspicious transactions to any authority; and
  - h. taking any other actions necessary for us or our Affiliates to meet any legal, regulatory or compliance obligations.

To the extent permissible by applicable Laws, neither us nor any of our agents shall be liable for any Loss suffered by you or any third party, caused in whole or in part in connection with Financial Crime Compliance.

#### **14. Your indemnity**

- 14.1 You agree to compensate and fully indemnify us and our officers and employees, and any third parties engaged by us, on demand against any Loss (including sums payable in respect of your investments, amounts we paid on your behalf with interest thereon, fees and levies of exchanges, clearing houses, registrars and regulatory authorities, legal fees, taxes and stamp duties incurred or pending) and defend us and our officers and employees, and any third parties engaged by us, against any relevant claims, including but not limited to those asserted by way of court, regulatory or arbitral proceedings, in connection with or arising from:
- a. your instructions, your Account or the provision of Services to you;
  - b. any act or omission by you and the Authorized Signatory (your employees or agents to the extent applicable) including any breach of the Agreement and/or any Security Document or the terms, conditions or rules applicable to a particular Service, Transaction or Facility, and/or your failure to provide valid, true, complete, accurate and up-to-date information requested by us in discharging our regulatory or legal duties (including but not limited to our duty as to suitability assessment under Clause 1.2B of Section 3 of these Terms and Conditions);
  - c. any Event of Default;
  - d. any demand notice being given;
  - e. any advance not being made/drawn for any reason (excluding default by us) after your request has been accepted by us including but not limited to, any Loss incurred in maintaining or funding any advance or any part thereof or in liquidating or reemploying deposits from third parties acquired to effect or maintain any advance or any part thereof.
- 14.2 You agree to pay us all expenses (including legal fees) incurred in the exercise or enforcement of our rights including in recovering any sum from you or in obtaining any advice we consider necessary in relation to your Account, Services and Facility provided to you.
- 14.3 You will pay us the amounts and within the times we notify you.
- 14.4 We may employ third party agencies to collect overdue sums from you.

#### **15. Your representations, warranties and undertakings**

- 15.1 You (and if you are a company, on behalf of your shareholders and controllers) represent and warrant to us as of the date of the execution of the Agreement as follows (which representations and warranties shall be deemed repeated on a continuous basis for as long as you utilize the Services and/or be deemed repeated on each date a Transaction is entered into):
- a. you (or any of them if you consist of more than one person) and each of the Authorized Signatory confirm that all information and documents given to us for the purpose of the Agreement, any Services or Transaction ("Data") is valid, true, complete, accurate and up-to-date. You and each Authorized Signatory will promptly notify us of any material change to such Data. You and each Authorized Signatory authorize us to contact any sources and banks to obtain or verify any Data however acknowledge that we are under no obligation to do so. You acknowledge and agree that if we do not receive any such notification for change, we will be entitled to rely on and act in accordance with the Data that we have received from you;
  - b. you (if a corporation) are duly incorporated and are validly existing under the laws of your country of incorporation, and have full power, authority, capacity and legal right to own your property and assets, to carry on business as it is being conducted and to execute the Agreement;
  - c. you have full power, authority, capacity and legal right to request any Services and to enter into any Transactions contemplated by the Services;
  - d. you have taken all necessary actions (including but not limited to the obtaining of all consents, licenses, registrations or filings and the taking of all corporate action (if applicable) required or desirable to be done, fulfilled, or performed in order to (i) enable you to lawfully enter into, exercise your rights under, perform and comply with your obligations under the Agreement; (ii) make the Agreement admissible in evidence in your country of incorporation or residence and in Hong Kong; and (iii) to enable you to create the security under each of the Security Document to which you are a party and to ensure that the relevant security has and will have the priority and ranking which it is expressed to have in the relevant Security Document;
  - e. that the Agreement constitutes legal, valid and binding obligations of you and enforceable against you in accordance with its respective terms;
  - f. that no litigation, arbitration or administrative proceedings of or before any court, tribunal, arbitral or administrative body or government agency is currently taking place, pending or threatened against or otherwise affecting you, your business or assets;
  - g. that your utilization of the Services or Facilities, instructions being given by you to us and your performance of your obligations will not contravene any laws (including tax and supervisory regulations), regulations, rules, codes, customs and usages (i) applicable to you, or (ii) of the location, market, or local regulatory bodies where any Services are effected or Facilities are utilized, including provisions laid down by stock exchanges, clearing houses, self-regulating organizations; or (iii) will not contravene any contractual terms in any relevant prospectus or offering memorandum or any requirements imposed by an issuer, or (iv) any requirements in any agreement entered into with or requirements imposed on us by any of our agents and service providers;
  - h. that you have not committed or been convicted of tax crimes and that you adhere to all legal and regulatory provisions applicable to you by reason of your citizenship or residence. This implies also the respect of applicable tax rules and the filing of tax returns in conformity with the legal obligations to which you are subject;
  - i. that there is no Potential Event of Default;
  - j. you are entering into the Agreement and each Transaction as principal and not as agent of any person; and

- k. where we have notified you that an eligibility requirement applies for your utilization of any Services or Facilities, unless you otherwise indicate to us, you fulfil such eligibility requirement.

15.2 You agree and undertake with us as follows (which undertakings shall be deemed repeated on a continuous basis for as long as you utilize the Services and/or be deemed repeated on each date a Transaction is entered into):

- a. to effect within the requisite time all stamping, approval or authorization (including without limitation any exchange control approvals), filing and/or registration of all documents which may be required under the laws of any relevant jurisdiction or required by any applicable governmental or monetary authority or agency; and that you will promptly do all requisite periodic filing and registration;
- b. to warrant that all required registrations and filings have been done or will be done within the requisite time, and that it will promptly do all required periodic filing and registration effect all stamping, filing, approval, authorization (including without limitation any exchange control approvals) or registration of all documents which may be required under the laws of any relevant jurisdiction;
- c. to forthwith furnish such financial and other information to us as we may request from time to time including any documentary or written evidence to confirm that you comply with all relevant eligibility requirements as stipulated by us or as required under applicable Laws or by relevant product issuers;
- d. to forthwith and in event within two (2) days of the occurrence of an Event of Default notify us of such occurrence; providing us details of the same and action you propose to take with respect thereto;
- e. to immediately inform us of any changes to the above representations and warranties or in the event that such representations or warranties are no longer accurate or correct;
- f. on our request, to do or procure the doing of all act acts and things and execute or procure the execution of all such instruments and documents as we may in our absolute discretion consider necessary or desirable for giving full effect to the Agreement, the Services, and Facilities or for securing to us the full benefits of all rights, powers and remedies conferred upon us;
- g. to assume at all times the sole responsibility for the consistency of each Transaction entered into under any Services with applicable Laws, including but not limited to enter into and perform your obligation under such Transactions; comply with all current and future securities, derivatives or other public disclosure or reporting requirements (for instance, disclosure of interests pursuant to Part XV of the SFO or the equivalent (or similar) in any other jurisdiction) applicable to each Transaction and you will not hold us liable in this respect;
- h. to ensure that each Security Provider will abide by all these representations, warranties and undertakings;
- i. at your cost and expense, keep all Collateral insured and keep such insurance up to date against such risks and contingencies as we may require, with an insurance company approved by us and policies shall contain such terms and conditions as we may require; and
- j. where you are a trustee, to provide us with a copy of the most updated trust deed or other instruments constituting the trust if required by us upon account opening or at any other time. Notwithstanding this, we shall be deemed not to have knowledge, actual, constructive or otherwise, of the provisions in the document constituting or evidencing the trust other than for the purpose of ascertaining the identity of the settler, the beneficiaries and trustees. We have no duty or obligation to review the terms of the document constituting or evidencing the trust, the powers and duties of the trustee or to determine whether the trustee is in breach of the provisions of the trust.

15.3 To reinforce our firm stance against tax illicit activities and to meet the legal and compliance requirements in connection with the detection, investigation and prevention of money laundering, terrorist financing, tax evasion, fraud, other financial crime or any acts or attempts to circumvent or violate any laws relating to these matters, we shall take all necessary actions including but not limited to routinely screening, monitoring and reviewing you and your transactions for such purposes. You confirm that you understand that your tax status will be subject to such screening and monitoring.

## **16. Risk disclosure**

- 16.1 You accept all risks arising from your application and maintenance of Account relationship and acceptance of any of the Services made available by us, including but not limited to, any Loss suffered as a result of entering into any investment or other Transactions. Your attention is drawn to and you acknowledge that you have read and fully understood the Risk Disclosure Statement and all documents referred to therein (as evidenced by your signature thereto in your Account Opening Form).
- 16.2 Subject to Clauses 1.2B and 1.2C of Section 3, in accepting any Services made available by us, you acknowledge that you also make your own assessment having regard to your own circumstances including but not limited to your financial situation, investment experience and investment objectives, and based on your own judgment. We are not obliged to advise you or make recommendation for you. Subject to Clauses 1.2B and 1.2C of Section 3, in the event that we provide advisory services to you, such advice and recommendations are given or made diligently with reasonable care based on analyses and available alternatives we should reasonably know to exist .
- 16.3 You understand and acknowledge that a rate quoted, determined, or concluded for a Transaction does not necessarily represent (i) the actual terms at which new Transactions could be entered into, (ii) the actual terms at which existing Transaction could be liquidated or unwound, or (iii) the calculation or estimate of an amount that would be payable following the early termination of such Transaction.
- 16.4 You accept all risks inherent in us being authorized to accept and act on oral, telephone, facsimile or electronic instructions (as agreed to by us) subject to the terms in Clause 1 above.
- 16.5 We undertake that in relation to derivative products, including futures contracts and options, we will, upon your written request, provide product specification and any prospectus or other offering document concerning such products to you.
- 16.6 You acknowledge that you have read and understand the Risk Disclosures set out in Section [7] of these Terms and Conditions.

## **17. Service charges, expenses and interest**

- 17.1 We are entitled to levy fees and charges for the Services in accordance with our prevailing rates which may be varied from time to time, or

as otherwise as agreed with you. Paid fees and charges will be shown in your statement of account, or in separate advice. Fees and charges paid are not refundable unless we have agreed otherwise for any Services.

17.2 You shall pay interest on any amount owing to us at a rate and on such basis as shall be determined by us and agreed with you or otherwise specified in a Facility Letter. Interest accrues on all sums payable by you from the due date or, if earlier, the date a Facility is utilized or we paid the sum on your behalf to the date of actual repayment (before and after judgment). Such interest is payable on demand, and is calculated by reference to the actual number of days divided by 360 or 365 according to our practice for the relevant currency as follows, and will be compounded monthly:

- a. for Hong Kong dollars, Pound Sterling and Singapore Dollar: 365-day year; and
- b. for other currencies: 360-day year.

17.3 We are authorized to debit the Account or any other accounts for such service fees, expenses, interest or default interest.

17.4 You acknowledge and agree that we may pay to or accept and retain for our sole benefit from any agents, counterparties or Affiliates all normal banking charges, custody charges, commissions, spread, rebates and fees in connection with the provision of any of the Services, without being obliged to account for or disclose to you insofar as permitted by applicable Laws.

17.5 Remuneration of our sales staff may consist of fixed and variable components. The award of variable remuneration correlates in part with the staff's performance in financial and non-financial factors.

## **18. Termination or variation of services**

18.1 Notwithstanding any other provision of the Agreement, all Services are made available to you on an uncommitted basis and we may at any time and from time to time, vary, suspend or terminate any or all the Services, take all necessary measures and/or suspend or close the relevant Account(s), without prior notice to you and without liability or disclosing any reasons to you, and reserve the right to require you to repay immediately all outstanding amounts owed to us (as determined by us) under such Services which have been terminated except that, where you are an Individual Customer, we may at any time, by giving you at least 30 days' prior notice or (upon your request and where practicable) a longer period of notice, close your Account(s). We may, under exceptional circumstances (for example, where the Account(s) is being used or is suspected of being used for illegal activities or if your account has a zero balance), close your Account(s) with shorter notice or without prior notice. Subject to applicable Laws, we may, but are not obliged to, give you a reason for closing your Account(s).

18.2 We may refuse to provide any new Service or terminate any or all Services to you or block or close your account(s) or take any actions necessary for us, our Affiliates or any of our group companies for compliance with our/its obligations as referred to in Clauses 3.9, 8 and 11 above in the event that (i) you or any entity or person whose information is required for opening/maintaining of your account and/or provision of products and services to you ("Relevant Person") fails to provide promptly any information as we, our Affiliates or any of our group companies reasonably request(s); (ii) you or the Relevant Person fails to give us consent or waiver necessary to permit us, our Affiliates or any of our group companies or our/its third party service provider to carry out the actions described in Clauses 3.9, 8 and 11 above; or (iii) there is any suspicion of crime or unlawful act or attempt or associated risk.

18.3 Without prejudice to any other provisions of these Terms and Conditions, at any time after the occurrence of an Event of Default, we may without notice to you suspend or terminate any or all Services whereupon the Total Liabilities and Obligations shall be immediately becoming due and payable, any Collateral and all other rights, powers and remedies of us shall become immediately enforceable and we shall become immediately entitled to exercise any and all of the same.

18.4 You may request termination of any Services upon giving us prior written notice provided such termination shall not discharge or affect any of your accrued, existing or contingent liabilities and obligations (including without limitation the obligation to immediately repay in full any cost incurred or attributed to the liquidation of any Transactions entered by you under any Services).

18.5 Where any grounds or reasons have arisen for us to suspend or terminate any Services and/or Account under this clause 17, in addition to and without prejudice to any other rights we have under this clause 17, we may in our sole and absolute discretion cancel any orders or instructions, liquidate any of your holdings or positions, pass on any additional fees, costs and expenses incurred by us and take such actions as we consider appropriate without notifying you or obtaining your prior consent and if requested by us, you agree to transfer all your holdings or positions in the manner and within the timeframe stipulated by us. You agree, acknowledge and accept that you shall be liable for all costs and expenses incurred by us in taking any of the foregoing action and any tax that may be payable (including withholding tax) on any income, interest, proceeds and distributions and you agree to be subject to the maximum tax rate (or any other tax rate as we may determine in our absolute discretion).

## **19. Appointment of agents**

19.1 We may appoint or utilize agents (including but not limited to any brokers, dealers, custodians, sub-custodians, depositories, clearing house, advisors, attorneys, correspondents and Nominee) who may in turn, appoint its group entities or third parties, in Hong Kong or elsewhere, and any Affiliates and delegate to any such persons the performance of our duties in connection with any Services and exercise of our rights upon such terms as we may deem fit and you shall be bound by the same. We may also appoint any agent to take delivery and to be registered as Nominee of any of your assets, in any part of the world.

## **20. Conflict of roles**

20.1 We may (without your prior consent) effect Transactions for or on your behalf through an agent and/or a counterparty which is related to us whether directly or indirectly or through or with another client of us even if a conflict of interest may arise. We may also (without your prior consent) effect Transaction for and on your behalf in which we have a direct or indirect interest (whether material or not). We shall take all reasonable steps to ensure you receive fair treatment and that transaction execution is consistent with best execution standards in the event that we have any such interest or in the event of an actual or potential conflict arising.

20.2 Without prejudice to the generality of this Clause 20, and subject to us taking reasonable care to ascertain the terms are the best in the market at the relevant time and to ensure that transaction execution is consistent with best execution standards, we and the Affiliates may at any time have an interest in a Transaction, including but not limited to acting as agent for another party; acting as principal in selling our own property; receiving and retaining commission from other persons to a Transaction and/or from you; executing a Transaction with prior

knowledge of other related transactions; being a holder, dealer or market maker in securities or other investments purchased or sold by you; or otherwise participating or having an interest in an issue or issuer of securities.

## **21. Assignment**

- 21.1 No assignment: You shall not assign or transfer any of your rights, interests, powers or obligations whatsoever and howsoever under the Agreement, Facility Letter and/or any Security Document, any Services or any Transactions without our prior written consent.
- 21.2 Our right to assign: The Agreement, any Facility Letter, any Security Document and any Transactions shall operate for the benefit of us and our successors and assigns, notwithstanding any change by way of amalgamation, consolidation or otherwise the constitution of us or any such successor or assign. We may assign or otherwise transfer all or any of our rights, interests, powers or obligations under the Agreement, any Facility Letter, any Security Document and/or any Transactions and may deliver the same to the assignee(s), who shall thereupon become vested with all rights, interests and powers in respect thereof, which were formerly vested in us. We shall be released and discharged from any liability or responsibility in respect of Collateral so transferred shall retain all our rights, interests and powers in respect of Collateral not so transferred.

## **22. Waiver and severability**

- 22.1 No waiver: No failure or delay by us in exercising any right, power or remedy under the Agreement and/or any Facility Letter, Security Document shall impair such right, power or remedy or operate as a waiver, nor shall any single or partial exercise of the same preclude any further exercise or the exercise of any other right, power or remedy. The rights, powers and remedies provided in the Agreement and any Facility Letter or Security Document are cumulative and do not exclude any other rights, powers and remedies provide by law. Each of our rights, powers and remedies shall continue in full force and effect until and unless specifically amended or waived in writing by us. We may grant time or other indulgence to you or the Security Provider or any of them or any other person, without impairing or affecting in any way any of our rights as against you or the Security Provider or such other persons.
- 22.2 Severability: If at any time any provision of the Agreement or any Facility Letter or Security Document is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, the legality, validity and enforceability of such provision under the law of any other jurisdiction and of the remaining provisions shall not be affected or impaired thereby.

## **23. Communications**

- 23.1 Any notice, demand or communication to be given by us to you shall be deemed to have been given if:
- sent by hand or post to any address provided by you or such other address you may notify us from time to time;
  - sent by facsimile to a facsimile number provided by you or such other facsimile number you may notify us from time to time;
  - sent by electronic mail or SMS to the electronic mail address or number provided by you or such other electronic mail address or number you may notify us from time to time;
  - prominently displayed on the website or at the premises of Private Banking;
  - published as an advertisement in a Hong Kong newspaper.
- 23.2 Any notice, demand or communication sent by us shall be deemed (notwithstanding that it may not be in fact be received by you) to have been received on the day of dispatch, if delivered by hand, facsimile or electronic transmission; or two (2) days after the date of posting in the case of local mail; five (5) days after the date of posting in the case of overseas mail and three (3) Business Days after being displayed or published in accordance with the above Clause 22.1(d) or (e).

## **24. Governing law**

- 24.1 These Terms and Conditions and all Transactions with you are, unless otherwise agreed, governed by Hong Kong law. You and we agree to submit to the non-exclusive jurisdiction of the Hong Kong courts.
- 24.2 Where you do not have an address in Hong Kong, you undertake to nominate an agent ("Process Agent") with an address in Hong Kong to accept service of any legal process in Hong Kong on your behalf and service on the Process Agent so appointed shall be deemed to constitute service on you. If you fail to appoint such a Process Agent within 5 Business Days of such request from us, then we shall be entitled to appoint a Process Agent on behalf of you, in your name and at your expense. We shall notify you forthwith of the appointment of such a Process Agent and service on this Process Agent shall be deemed to constitute service on you.
- 24.3 To the extent that you may in any jurisdiction claim for you or your assets immunity from suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process and to the extent that in any such jurisdiction there may be attributed to yourself or your assets such immunity (whether or not claimed), you hereby irrevocably agree not to claim and hereby irrevocably waive such immunity to the full extent permitted by the laws of such jurisdiction.
- 24.4 A person who is not a party to the Agreement has no right either under the Contracts (Rights of Third Parties) Ordinance (Cap. 623 of the Laws of Hong Kong), if applicable, or otherwise to enforce or to enjoy the benefit of any term of this Agreement, except the Bank or its Affiliates may enforce any rights or benefits of indemnity, limitation, exclusion of liability or any other rights and benefits in the Agreement.
- 24.5 No consent from the persons referred to in this Clause is required to vary or rescind the Agreement (whether or not in a way that varies or extinguishes rights or benefits in favor of those third parties).

### Section 3: Investment Services Terms and Conditions

This Section 3 (including each Annex) applies to the Investment Services we provide to you including securities dealing, fund subscription and derivative and structured product services.

#### 1. General terms

The following general terms apply to each of the Investment Services set out in this Section 3.

- 1.1 Reimbursement: You acknowledge that in respect of any Transaction effected with you, we may (but are not obliged to) enter into funding, hedging and/or other arrangements. Where you have not performed an obligation under any Transactions, you agree to reimburse us for any loss or cost we reasonably incur (which shall be determined by us in good faith) in varying and/or terminating such arrangements.
- 1.2 Condition precedent for us to act: We will only be obliged to make payment or delivery as specified in a Confirmation if on the date of payment or delivery:
  - a. no Event of Default or Potential Event of Default and is continuing;
  - b. no Early Termination Date (as defined in Clause 1.5(a) below) in respect of the relevant Transaction has occurred or been effectively designated.
- 1.2A In relation to any Transaction of a product that you enter into with us that is subject to these terms:
  - a. we may solicit the sale of or recommend a product to you in accordance with Clause 1.2B below; and/or
  - b. you may enter into that Transaction with us without, or inconsistent with, any solicitation or recommendation from us in accordance with Clause 1.2C below.

We do not assume any advisory duty of care or obligation in the solicitation of the sale or recommendation of any product to other than to ensure reasonable suitability as set out in Clauses 1.2A(a) and 1.2B of Section 3 or as required by Laws.

- 1.2B Transactions entered into with us, with solicitation of the sale or recommendation of products
  - 1.2B.1 If we solicit the sale of or recommend any Financial Product to you, the Financial Product must be reasonably suitable for you having regard to your financial situation, investment experience and investment objectives. No other provision of these Terms and Conditions or any other document we may ask you to sign and no statement we may ask you to make derogates from this Clause. This Clause 1.2B.1 shall not apply to any customers who are Professional Investors (defined in Clause 1.2B.5 below).
  - 1.2B.2 For the purpose of this Clause 1.2B, "Financial Product" means any securities, futures contracts or leveraged foreign exchange contracts, each as defined under the SFO. Regarding "leveraged foreign exchange contracts", it is only applicable to those traded by persons licensed for Type 3 regulated activity.
  - 1.2B.3 Without prejudice to Clause 1.2B.1 above, before you enter into a Transaction with us, you accept and agree to the following, and we will rely on your acceptance of and agreement to the following:
    - a. any information you provide to us, including for the purpose of us assessing your suitability in accordance with Clause 1.2B.1 above, is valid, true, complete, accurate and up-to-date;
    - b. prior to entering into the Transaction, you will have read and understood all relevant product documentation (including any indicative termsheets), the nature, risks of and the terms and conditions governing the Transaction and any associated margin requirements;
    - c. if circumstances relating to you, the product or its issuer change, or if market conditions change, the product which we solicited the sale of or recommended to you may no longer remain suitable for you;
    - d. we have no ongoing responsibility to ensure that a product we have solicited or recommended to you remains suitable for you;
    - e. in order to make an informed investment decision, you would need to:
      - i. understand the nature, terms and risks of the product; and
      - ii. consider your own circumstances, including but not limited to your financial situation, investment experience and investment objectives; and
    - f. where necessary, you will seek independent professional advice about the product that you wish to buy.
  - 1.2B.4 If any provision in these Terms and Conditions or in any other document signed or statement made by you at our request provides that you purport to acknowledge that no reliance is placed on any recommendation made or advice given by us, such provision shall have no effect. This Clause 1.2B.4 does not apply to any customers who are Professional Investors (defined in Clause 1.2B.5 below).
  - 1.2B.5 For the purposes of this clause, "Professional Investors" means customers to whom, by reason of our compliance with the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission ("Code of Conduct"), to whom we are not required to assume or discharge any obligation for ensuring the suitability of any financial product, complex product (as defined in the Code of Conduct) or other products when recommended or solicited by us.
  - 1.2B.6 Where we solicit the sale of or recommend any product or service, not being a financial product, to you, we may (but are not obliged to) assess whether the product or service is reasonably suitable for you.
- 1.2C Transactions entered into with us, without or inconsistent with any solicitation, recommendation, or advice from us

- 1.2C.1 For any Transaction that you enter into with us, without, or inconsistent with, any solicitation or recommendation from us, before entering into such transactions, you accept and agree to the following, and we will rely on your acceptance of the following:
- a. we shall provide an execution only service in respect of the Transaction;
  - b. the Transaction is entered into by you solely at your own request and based on your own judgment;
  - c. you are fully aware of and understand the nature, terms and risks of the Transaction;
  - d. you have considered your own circumstances, including but not limited to your financial situation, investment experience and investment objectives;
  - e. where necessary, you will seek independent professional advice about the Transaction;
  - f. we do not provide advisory services and therefore do not assume any advisory duty of care or obligation in relation to the Transaction; and
  - g. subject to Clause 9 of Section 2, we are not liable for any loss (including indirect or consequential loss), cost or damage of any kind incurred or suffered by you or any other person with respect to the Transactions other than as required by any applicable Laws.
- 1.3 Your representations and warranties: You represent and warrant (with the following representations and warranties deemed to be repeated on each date that a Transaction is entered into) to us that:
- a. you have sufficient knowledge and experience in financial and business matters and expertise in assessing credit, operational and market risks, are capable of evaluating the merits, risks and suitability of entering into each Transaction, and are capable of assuming and assumes the risks of each Transaction;
  - b. you will make your own independent appraisal of, and investigation into, our business, financial condition, prospects, creditworthiness, status and affairs and the legal, financial, tax, accounting and other evaluations of the merits and the risks of entering into each Transaction;
  - c. you have conducted your own independent review and sought such independent professional advice (including, where relevant, as to the correct tax and accounting treatment of each transaction) as you have deemed appropriate to determine that each Transaction (i) is fully consistent with your risk appetite, financial situation, investment experience, investment objectives and investment horizon; (ii) complies and is fully consistent with all investment policies, guidelines and restrictions applicable to you (if any); and (iii) is fit, proper and suitable for you, notwithstanding any risk inherent in entering into that Transaction; and
  - d. unless it has been specifically agreed under a separate agreement that we are providing advisory services to you, you understand that we are not acting as a fiduciary or an advisor to you and all decisions have been the result of arm's length negotiations between you and us.
- 1.4 Disclaimer: For the avoidance of doubt, any commentaries, financial information and data provided to you by us are for reference only, are not intended for trading or other purposes and should not be construed as advice. You acknowledge that:
- a. such commentaries, financial information and data may be provided to us by other persons or compiled by us from information and materials provided by other persons;
  - b. we do not warrant, represent or guarantee the accuracy, truth, reliability, adequacy, timeliness or completeness of such commentaries, financial information or data or whether it is fit for any particular purpose; and
  - c. making available such commentaries, financial information or data or any advertisement, marketing or promotional materials, market or product information or other factual information relating to a product to you shall not, by itself, constitute solicitation of the sale or recommendation of any product.
- 1.5 Early termination
- a. If an Event of Default occurs and is continuing, we will have the right to designate a day as an "Early Termination Date" in respect of all outstanding Transactions. The Early Termination Date will occur on the date so designated, whether or not the relevant Event of Default is then continuing.
  - b. Upon the designation of the Early Termination Date, we will no longer be obliged to make any further payment and/or delivery in respect of all Transactions in effect immediately before the Early Termination Date (whether or not any such obligation has matured prior to the Early Termination Date). The amount, if any, payable in respect of an Early Termination Date shall be determined by us as the Early Termination Amount (as defined in Clause 4.8 below).
  - c. Following the occurrence of an Early Termination Date, we will calculate the Early Termination Amount and will notify you of such amount, indicating in reasonable detail the basis of such calculations. If that amount is a positive number you will pay it to us; if it is a negative number, we will pay the absolute value of that amount to you. If any amount to be paid by you is not paid when due, we will (to the extent permitted by applicable Laws) be entitled to interest on demand on such amount for the period from (and including) the relevant Early Termination Date to (but excluding) the date of actual payment. Such interest will accrue daily at a rate as determined by us from time to time.
- 1.6 New Services and products
- a. We may from time to time originate new Services and products. In the event that you wish to utilize such Services or products, we may request you to sign or acknowledge receipt of such additional Service or product documentation relating to those new Services and products. Terms and conditions relating to any such Service or product contained in any such Service or product documentation shall be deemed to be incorporated herein by express reference with effect from the date on which they are signed, acknowledgment of receipt is received by us or the first Instruction for a Transaction to which they relate is received by us (whichever is the earliest).



- b. On your request, we will provide to you product specifications and any product prospectus or other offering documents relating to derivative products and a full explanation of margin requirements and procedures (where relevant).

## **2. Securities dealing**

- 2.1 The provision of Securities dealing Services to you by us as agent for you shall be without prejudice to our right to contract as counterparty on our own behalf. You represent and warrant that you are not the issuer or the officer, director or controlling person of an entity which is the issuer, of the Securities which are the subject of a particular Transaction.
- 2.2 You may instruct us and we may on your behalf purchase, sell and/or otherwise deal in Securities subject to the rules of the relevant stock exchange, clearing house or depository or customs, provided that:
  - a. we will place orders for the purchase of Securities only if you have free and clear funds on deposit with us or you have arranged to make sufficient funds available in advance to meet the obligations of such purchase to our satisfaction; and
  - b. we will only place orders for the sale of Securities provided such Securities are in your account free of liens and other encumbrances whatsoever.
- 2.3 We are authorized to purchase Securities from or through any banks, brokers, financial and other institutions pursuant to your instructions and you agree to be bound by and confirm that you are in full compliance with, the terms and conditions applicable to such Securities and their issuance and authorize us on your behalf, to sign any application or subscription form in reliance on your statement herein and to agree to the terms and conditions thereof. You agree that you are bound to make such purchase upon your instructions (including an Oral Instruction) to us, if applicable. You acknowledge that you have the right to request for examination copies of the relevant termsheet and the documentation constituting the Securities before making an investment decision. In the case of Securities in the secondary market, we make no representation that the relevant prospectus or offering memorandum is the most updated version. To the extent you do not make such a request, you are deemed to have waived the right to do so and the final terms and conditions of the Transaction as set out in the documentation will be binding on you. You warrant that in respect of each purchase you shall read the prospectus and other relevant documents relating to such Securities (including those of the issuer of such Securities) and immediately (and in any event prior to such purchase) notify us in the event that you are under any restriction whatsoever in respect of such purchase. You are responsible for making all investment decisions to buy, sell or otherwise deal in the Securities. You shall provide additional information as may be required under any such application or subscription form signed by us on your behalf. Failure to provide such information may, among other things, lead to an instruction not being effected or may result in the redemption of an investment or suspension of redemption rights of an investment.
- 2.4 Unless agreed otherwise, we are responsible for the safekeeping of all Securities that you acquire through us hereunder and the settlement on your behalf of Transactions effected by us hereunder. We will hold the Securities in a safe place and may, at our absolute discretion, place any or all of the Securities with custodians or sub-custodians such as correspondent banks, depositories or other institutions wherever located, as we at our absolute discretion may select, upon their customary terms and conditions or as agreed by us and permitted by applicable Laws. Securities designated to be placed in custody with a custodian or sub-custodian shall be delivered to the custodian or sub-custodian by us in our own name or that of a Nominee (or your name in a sub-account where so required), but for your account and at your sole risk and expense, with instructions to safeguard and manage such Securities in conformity with the applicable Laws. We shall not be liable for the acts, omissions and/or insolvency of any custodian or sub-custodian selected by us in good faith and our only obligation to you in respect of the same is, at your cost and expense, to assign to you any right of recourse in respect of the custodians or sub-custodians where the same are capable of being assigned pursuant to applicable Laws. We may accept for safe custody such other Securities that are delivered by you provided they are delivered at your own risk and we have the absolute discretion not to accept or to return such Securities which are not acceptable to us in such manner as we see fit.
- 2.5 Securities which are traded exclusively or primarily outside Hong Kong shall, unless we notify you otherwise, be held in custody abroad at your sole risk and expense. Securities held in custody outside Hong Kong are subject to the applicable Laws of the relevant overseas jurisdiction. Consequently, such Securities may not enjoy the same protection as that conferred on Securities held in custody in Hong Kong.
- 2.6 We are authorized, but not obliged, to register all registrable Securities forming part of the Securities, in our name or that of a Nominee, custodian or sub-custodian. For that purpose, we are appointed as your agent to enter into any agreement on your behalf, or where required, you shall sign and execute the requisite instruments of transfer and other documents. We may pool your Securities with property of other clients of ours (or other clients of a custodian or sub-custodian or their agents), in which case:
  - a. individual client entitlements may not be identified by separate certificates, or other physical documents of title, entries on the register or equivalent electronic records;
  - b. any distribution of entitlements to any benefits or entitlements arising as a result of corporate action of the relevant issuer will be allocated pro rata provided that (i) fractions of entitlements that arise as a result of this process will be rounded down to the nearest whole unit or share; and (ii) the accumulated amount of any undistributed entitlements arising as a result of this process will be sold and the proceeds allocated pro rata;
  - c. where there is an allocation or rights issue with rights weighted towards smaller investors, our allocation may be less than it otherwise would have been; and
  - d. we will maintain a record of your interest in any Securities that have been pooled.
- 2.7 Where the Securities or any part thereof are not registrable in our name or that of a Nominee or custodian or sub-custodian we have elected you acknowledge that we shall have no duty to request payment of or to receive interest, dividends, other payments or distributions in respect of such unregistrable Securities and we will not be liable for you for any claims arising from the unregistered Securities not being genuine nor any interest, dividends, other payments or distributions in respect of the unregistrable Securities.
- 2.8 You shall charge all Securities deposited with us from time to time as Collateral for the discharge of the Total Liabilities and Obligations. We shall not be obliged to release any of the Securities unless the Total Liabilities and Obligations have been fully paid and discharged. If you fail to fully pay the Total Liabilities and Obligations due to us upon demand, we may sell or dispose of all or part of the Securities in such manner as we think fit and apply the net proceeds received, after payment of all expenses incurred, towards discharge of the Total Liabilities and Obligations.

- 2.9 We shall not be responsible for any Loss which may arise in exercising our power of sale or disposal. A statement or certificate by any of our officers that our power of sale or disposal has become exercisable shall be conclusive evidence of that fact in favor of any purchaser or other person to whom any of the Securities may be transferred.
- 2.10 You shall fully indemnify us against all claims which may be made against us (a) by a purchaser or a person by reason of any defect in your title (or lack thereof) to any of the Securities or by reason of any of the Securities not being genuine; and (b) for us carrying out your instruction to purchase, sell or otherwise deal in Securities.
- 2.11 We are authorized and empowered only in respect of any Securities registered in our name or that of a Nominee and upon instructions from you:
- a. to request payment of and to receive all interest, dividends or other payments or distributions in respect of the Securities and, in connection therewith, to provide such indemnities as we may in our discretion think fit;
  - b. to surrender any of the Securities against receipt of monies payable at maturity or on redemption if called prior to maturity provided that, where Securities are called for redemption prior to maturity, we shall have no duty or responsibility to present the Securities for redemption unless, after the call is made, you request us in writing to do so not less than three (3) Business Days before the redemption date;
  - c. where monies are payable in respect of any of the Securities in more than one currency, to collect them in such currency as may be permitted by law and as we may in our absolute discretion determine;
  - d. in our absolute discretion, to comply with (i) the provisions of any Laws now or hereafter in force which purports to impose on a holder of any Securities a duty to take or refrain from taking any action in connection with any of the Securities or with any payment, distribution or money payable in respect of the securities, or (ii) any agreement signed by us on your behalf in connection with your subscription for the Securities, including the right to sell the Securities or take such other action without further consent required from you in order to prevent breach or non-compliance by us of such agreement;
  - e. to exchange any of the Securities in interim or temporary form for Securities in definitive form;
  - f. unless otherwise requested by you, to dispose of any money received or collected as aforesaid or received as proceeds of sale of any of the Securities or otherwise by us by crediting your account; and
  - g. at our absolute discretion, to take up, call for, receive, hold, sell or dispose of fractional Securities which may accrue from the holding of the Securities for our own account and benefit.
- 2.12 We shall have no duty or responsibility to attend any meeting or to exercise any vote pursuant to our holding of the Securities or take any action pursuant to any rights or obligations conferred or imposed by reason of such holding (including but not limited to any amendments to the terms and conditions of the Securities, allotment, subscription, conversion, consolidation, reorganization, merger, receivership, bankruptcy, winding up or other insolvency proceedings or any compromise or arrangement) or to deposit any of the Securities in connection therewith or otherwise, except to take reasonable steps to act in accordance with prior written instructions received no later than three (3) Business Days before the relevant date and upon such terms and conditions and subject to being indemnified against any fees, charges and expenses that we may incur provided always that if we shall not receive instructions as aforesaid, then we shall be entitled (but not obliged) to do any of the matters hereinbefore referred to in our absolute discretion, regardless of the impact which such matters may have on you and free from all liabilities in respect thereof, whatsoever and howsoever incurred.
- 2.13 We shall have no duty or responsibility in respect of any proxy, circular, or other document received by us in respect of the Securities or to send any proxy, circular or other document to or to give any notice of the receipt of the same to you except in the event we have sole control of your Securities, in which case our duty and responsibility to you are solely limited to responding promptly to any reasonable request by you for the provision of information then available to us in relation to any corporate action in respect of those Securities. In respect of any event notifications received by us in respect of which we have not received your timely instructions, we may, but not obliged to, take the default action as described or referred to in such notification.
- 2.14 You acknowledge that you will be liable and that we shall have no responsibility for any liabilities in respect of unpaid calls or any other sums, costs or expenses payable in respect of any Securities held by us on your behalf.
- 2.15 With regard to any purchase of Securities pursuant to your instructions, we will not be liable to you in any way whatsoever if the issuer, seller or broker (or their agent) of the relevant Securities fails to make good, valid or timely delivery to us of the relevant Securities and whether or not payment by us has been made on your behalf.
- 2.16 You acknowledge that our sole responsibility with regard to the proceeds of any sale of Securities pursuant to your instructions or any authority otherwise conferred on us is to receive payment by way of cheque, bank draft or any other appropriate form of such proceeds from the purchaser (or its agent) of the relevant Securities, provided that we will not be liable to pay to you any such proceeds of sale or be liable to you in any way for such payment to us by any purchaser (or its agent) which is not honored by the banker upon whom that payment is drawn or otherwise not good and valid payment by that purchaser. You further acknowledge that we may deliver the relevant Securities contemporaneously with the receipt of such payment or purported payment in any case.
- 2.17 We may return Securities of the same class, denomination and nominal amount as the Securities in your account but shall not be obliged to return Securities bearing serial numbers (if any) identical to those delivered to us. Delivery will be made to such location and at such time as may be agreed at your sole risk and expense. Where necessary or appropriate, we will transfer such Securities into your name or that of your Nominee.
- 2.18 Your instructions to purchase, sell and/or otherwise deal in a collective investment scheme such as mutual funds may be executed in accordance with our usual practice and as such may not be effected on the same day the instruction is placed (and in particular (but without prejudice to the generality of the foregoing) you acknowledge that an instruction to purchase, sell and/or otherwise deal in a mutual fund may take significantly longer to execute). We shall not be responsible for any price difference as a result of executing the instruction in accordance with our usual practice.
- 2.19 Settlement and payment of Securities and for delivery of Securities out of custody may be effected by us in accordance with customary or

established practices and procedures in the jurisdiction or market concerned, including without limitation, delivering any Securities against a receipt with the expectation of receiving later payment and other settlement procedures not involving delivery versus payment. In this respect, if we credit your account with the cash or other assets before their actual receipt by us, we may reverse such credit at any time before actual receipt and charge you such amounts by way of interest or otherwise to put us in the position we would have been in had the credit not been made. We may debit your account with investments, cash or other assets on or before the date they are due to be transferred to a third party even though actual settlement has not yet occurred. We may reverse such debit at any time before the actual settlement. You accept that you may not rely on any of such credit or debit until actual settlement. The procedures described herein are of an administrative nature and do not amount to an agreement by us to make loans or investments available to you.

- 2.20 You agree and acknowledge that (apart from our right of charge, lien and set off as set out herein) any Nominee, custodian or sub-custodian appointed by us may claim a lien or security interest over any of your Securities held by them.
- 2.21 You shall ensure that all requirements including limits and other restrictions (such as limits on price, volume, total position amount, order origin etc) under applicable Laws or set by us are complied with. If any such limits are exceeded, we may liquidate any of your positions and take such actions as we consider appropriate without notifying you or obtaining your prior consent.
- 2.22 Unless we otherwise agree in writing, you acknowledge that all your sell instructions are long sales. You acknowledge and agree that no short sales (as defined in any applicable Laws and stock exchange rules) are permitted or may be conducted.
- 2.23 You undertake that you will not engage or attempt to engage in any market misconduct or any activities which will result in violation of any Laws of any jurisdiction. You and any person acting on your behalf acknowledge that it is your sole responsibility to understand and comply with all applicable Laws (including those relating to tax) and stock exchange rules, any restrictions on acquisition of securities by foreign investors (including obtaining any approval or consent as required, complying with pre-completion filing and post-completion filing requirements), securities obligations including obligations relating to disclosure of interest, position reporting and restrictions on limits in all jurisdictions, contractual requirements applicable to the Transactions and other regulations (including any applicable provisions prescribed by stock exchanges, clearing houses, self-regulating organizations or by the issuer of Securities such as in respect of your eligibility and suitability). You may only execute Transactions in those products and markets in respect of which you meet the requirements set by us, issuers of Securities, the relevant stock exchange or clearing house, and any other regulators. To the maximum extent permitted by Law, we are entitled to take all necessary measures at your risk and expense without prior notification to you in order to rectify any market misconduct or violation of securities laws (including but not limited to offsetting any positions or borrowing securities).

### **3. Fund subscription**

- 3.1 We are authorized to:
  - a. debit the investment amount, the placement fee (if any), any recalls of capital, additional capital contributions and all other fees, commissions and charges that may arise out of your instruction to subscribe for or invest in any fund ("the Fund") from [any of your accounts as we consider appropriate; and
  - b. execute such documents and/or take such actions as necessary to subscribe for the Fund on your behalf.
- 3.2 We are not obliged to accommodate your investment in part or full.
- 3.3 You agree and acknowledge that:
  - a. you will read and ensure that you understand the offering document in connection with the Fund ("Offering Document"), in particular and where applicable, the sections of the Offering Document on risk factors, conflicts of interest, transfer restrictions, redemption, compulsory redemption, suitability requirements, eligibility of investors and limitation on transferability;
  - b. our investment in the Fund may not be principal protected and is further subject to the risk factors as described in the Offering Document. You are willing to accept such risks;
  - c. the Fund will be investing in the assets described in the Offering Document;
  - d. an investment in the Fund may have limited liquidity. Interests in the Fund may not be freely transferable and the Fund may suspend the redemption rights of interest holders. Interest in the Fund may only be redeemed subject to restrictions, procedures and notice requirements (if any) as set out in the Offering Document;
  - e. the Fund and/or the investment manager of the Fund may have the power to compulsorily redeem any or all of an interest in the Fund under certain circumstances; and
  - f. prior to the date of acceptance by the Fund of the subscription made by us and/or a Nominee on your behalf, any valuation of your beneficial holding in the Fund of which we inform you (whether in any Account statement or otherwise) is indicative only and should not be construed as confirmation by us of acceptance by the Fund of the subscription amount in whole or in part.
- 3.4 You agree, confirm, represent and warrant on an ongoing basis, with each deemed to be repeated by you in relation to each subscription for the Fund which we and/or a Nominee may make on your instruction, that:
  - a. you will comply with all declarations, undertakings, indemnities, representations and warranties set out in the relevant subscription document for the Fund and you agree to be bound by the terms thereof as if they were set out in full herein. You understand that we and/or a Nominee will be relying upon this confirmation and such other information that you have provided in order to subscribe for the Fund on your behalf and you further agree to inform us immediately if such confirmation or information is no longer accurate;
  - b. you have sufficient knowledge and experience to make your own evaluation of the merits and risks of subscribing for the Fund, including tax implications and suitability of the Fund having regard to your own circumstances including but not limited to your financial situation, investment experience and investment objectives. You acknowledge that you are capable of assuming such risks and you have taken/will take advice from independent professional advisors as you deem necessary;
  - c. you will comply with the sale and/or transfer restrictions set out in the Offering Document;

- d. you are an eligible investor of the Fund;
- e. you agree to waive all "Most Favoured Nations" provisions, if any, in respect of your subscription for the Fund and agree that we have not been given any assurance and/or commitment whatsoever to you not to provide preferential terms to other investors;
- f. you have/will have full power, authority and legal right to purchase an interest in the Fund and such purchase and/or beneficial holding does not contravene any applicable Law binding on you;
- g. we may rely upon valuations from the Fund and/or third parties for the purposes of reporting to you the value of your beneficial interest in the Fund and under no circumstances shall we be under any duty to verify the accuracy or otherwise of such valuations;
- h. any and all representations made by us and/or a Nominee in relation to you (if any, relying on information provided by you) are accurate and correct and you shall not do any act which may as a consequence cause a breach of such representations;
- i. you shall indemnify us and/or a Nominee for any losses, damages and/or costs (including but not limited to legal fees) that we/they may incur as a consequence of subscribing to or otherwise acquiring an interest in the Fund on your behalf;
- j. you release us and/or a Nominee from any monitoring obligations and responsibilities to your investment in the Fund and we and/or a Nominee shall have no responsibility for the performance of your investment in the Fund;
- k. in the event that we and/or a Nominee acquire or have acquired interests in the Fund for our other clients, the Fund may treat such interests on an aggregate basis which may affect certain of your rights as beneficial owner of the Fund (including but not limited to voting rights (if any) and the timing of repayment of redemption proceeds). We and/or a Nominee shall be entitled to act or not to act as we/they in our/their absolute discretion deem appropriate and shall not be liable to you for any loss and/or damage suffered by you as a consequence; and
- l. whilst we have read documentation in relation to the Fund to satisfy our own requirements in relation to us or a Nominee subscribing for the Fund on your behalf, we have not necessarily read all the documentation which may be referred to in the Offering Document and accordingly you should make your own enquires for any further documentation.

#### 4. Derivative and structured products

This Clause 4 contains a definition section and 6 annexes, with each Annex containing product specific provisions and definitions in respect of a type of derivative or structured product Transaction. If, in the future, we wish to expand the list of derivative and structured products, we will add an additional Annex. At the Transaction level, the terms of each Transaction are evidenced by a Confirmation.

##### Definitions

- 4.1 "American" means a style of Transaction pursuant to which the right or rights granted are exercisable during an Exercise Period that consists of a period of days.
- 4.2 "Business Day Convention" means the convention for adjusting any relevant date if it would otherwise fall on a day that is not a Business Day. The following terms, when used in conjunction with the term "Business Day Convention" and a date, shall mean that an adjustment will be made if that date would otherwise fall on a day that is not a Business Day so that:
  - a. if "Following" is specified, that date will be the first following day that is a Business Day;
  - b. if "Modified Following" is specified, that date will be the first following day that is a Business Day unless that day falls in the next calendar month, in which case that date will be the first preceding day that is a Business Day; and
  - c. if "Preceding" is specified, that date will be the first preceding day that is a Business Day.

The Business Day Convention applicable to a date will be specified in the relevant Confirmation, or if a Business Day Convention is not so specified for that date, shall be Modified Following.
- 4.3 "Buyer" means the party specified as such in a Confirmation.
- 4.4 "Calculation Agent" means Nanyang Commercial Bank, Limited or any other person specified in the relevant Confirmation.
- 4.5 "Cash Settlement" means that "Cash Settlement" is applicable to such Transaction and the Seller grants to the Buyer pursuant to such Transaction the right to cause the Seller to pay to the Buyer the Cash Settlement Amount applicable to such Transaction on the relevant date, and "Cash-Settled" means that Cash Settlement is applicable to that Transaction.
- 4.6 "Clearance System" means the Central Clearing and Settlement System of Hong Kong ("CCASS"), Euroclear Bank S.A./N.V., Clearstream Banking S.A. or such other applicable clearance system (through which transfers of the number of the Linked Stock which form the Stock Amount are customarily settled as approved by the Issuer), or any successor to such clearance system.
- 4.7 "Commencement Date" means, in respect of an American style Transaction, the date specified as such in the relevant Confirmation or, if such a date is not specified, the Trade Date.
- 4.8 "Early Termination Amount" with respect to the Agreement and the Terminated Transactions means, as determined by us in our absolute discretion, an amount in the Termination Currency which is equivalent to the amount determined by us as of the Early Termination Date to be our total loss and costs (or gain, in which case expressed as a negative number) in connection with the Agreement and all the Terminated Transactions (including, without limitation, loss of bargain, costs and losses resulting from unwinding hedging operations and costs of funding (or any gain resulting from any of them) that we may suffer or incur or may have suffered or incurred under the then prevailing circumstances in replacing, or in providing for us the economic equivalent of:
  - a. the material terms of the Terminated Transactions, including the payments and deliveries by the parties that would, but for the occurrence of the relevant Early Termination Date, have been required after that date; and

- b. the option rights of the parties in respect of the Terminated Transactions.

In determining the Early Termination Amount, we may consider any relevant information, including, without limitation one or more of the following types of information:

- i. quotations (either firm or indicative) for replacement transactions supplied by one or more third parties that may take into account our creditworthiness at the time the quotation is provided and the terms of any relevant documentation, including credit support documentation, between us and the third party providing the quotation;
- ii. information consisting of relevant market data in the relevant market supplied by one or more third parties including, without limitation, relevant rates, prices, yields, yield curves, volatilities, spreads, correlations or other relevant market data in the relevant market; or
- iii. information of the types described in (i) or (ii) above from internal sources (including any of our Affiliates) if that information is of the same type used by us in the regular course of our business for the valuation of similar transactions.

Without duplication of amounts calculated based on information described in sub clauses (i), (ii) or (iii) above, or other relevant information, we may in addition consider in calculating an Early Termination Amount any loss or cost incurred in connection with our terminating, liquidating or re-establishing any hedge related to the Terminated Transactions (or any gain resulting from any of them).

We may apply different valuation methods to Terminated Transactions or groups of Terminated Transactions depending on the type, complexity, size or number of the Terminated Transactions or group of Terminated Transactions.

The parties agree that the Early Termination Amount is a reasonable pre-estimate of loss and not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future risks.

- 4.9 "Early Termination Date" means the date designated by us, if an Event of Default occurs and is continuing, as an "Early Termination Date" in respect of all outstanding Transactions. The Early Termination Date will occur on the date so designated, whether or not the relevant Event of Default is then continuing.
- 4.10 "European" means a style of Transaction pursuant to which the right or rights granted are exercisable only on the Expiration Date.
- 4.11 "Exchange" means:
- a. in respect of an Index (as defined in Annex C) relating to an Index Option Transaction (as defined in Annex C) or Index Basket Option Transaction (as defined in Annex C), each exchange or quotation system specified as such for such Index in the relevant Confirmation or any successor to such exchange or quotation system;
  - b. in respect of a Share (as defined in Annex C) relating to a Share Option Transaction (as defined in Annex C) or Share Basket Option Transaction (as defined in Annex C), each exchange or quotation system specified as such for such Share in the relevant Confirmation or any successor to such exchange or quotation system; or
  - c. in respect of a Bond (as defined in Annex D) relating to a Bond Option Transaction (as defined in Annex D), each securities exchange or trading market specified as such for such Bond in the relevant Confirmation or any successor to such securities exchange or trading market.
- If the specified Exchange ceases to list or otherwise include the Bonds or the Shares (as applicable), we will, in our absolute discretion, nominate an alternative exchange.
- 4.12 "Exchange Business Day" means any day that is (or, but for the occurrence of a Market Disruption Event (as defined in Annex C), would have been) a trading day on the Exchange and, in the case of an Equity Option Transaction (as defined in Annex C), each Related Exchange, other than a day on which trading on that Exchange (or that Related Exchange, if applicable) is scheduled to close prior to its regular weekday closing time.
- 4.13 "Exercise Date" means, in respect of each exercise or deemed exercise of rights under a Transaction, the day during the Exercise Period on which that exercise or deemed exercise occurs.
- 4.14 "Exercise Period" means the dates and times during which an Option Transaction may be exercised as specified in the relevant Confirmation, and if none are specified:
- a. in respect of a European style Transaction, the Expiration Date between 9:00 a.m. (Hong Kong local time) and 2:00 p.m. (Hong Kong local time); and
  - b. in respect of an American style Transaction (other than a Precious Metal Option Transaction), all days which are Exchange Business Days from, and including, the Commencement Date to, and including, the Expiration Date between 9:00 a.m. (Hong Kong local time) and 2:00 p.m. (Hong Kong local time).
- 4.15 "Expiration Date" means the date specified as such in the relevant Confirmation or, if that date is not a Business Day, the next following day that is a Business Day.
- 4.16 "Expiration Time" means the time specified as such in the relevant Confirmation and if none is so specified, 2:00 p.m. (Hong Kong local time).
- 4.17 "Maximum Number of Options" means in respect of a Transaction to which multiple exercise is applicable, the number specified as such in the relevant Confirmation.
- 4.18 "Minimum Number of Options" means in respect of a Transaction to which multiple exercise is applicable, the number specified as such in the relevant Confirmation.
- 4.19 "Number of Options" means the number specified as such in a Confirmation.

- 4.20 "Notice of Exercise" means irrevocable notice delivered by the Buyer to the Seller prior to or at the Expiration Time on the Expiration Date (which may be delivered by fax or telephone) of the Buyer's exercise of the rights granted pursuant to a Transaction.
- 4.21 "Option" means each unit into which a Transaction is divided for the purposes of exercise, valuation or settlement.
- 4.22 "Physical Settlement" means that:
- in the case of an Equity Option Transaction (as defined in Annex C) which is a Call (as defined in Annex C), the Buyer will pay to the Seller the Settlement Price (as defined in Annex C) and the Seller will deliver to the Buyer the Number of Shares to be Delivered (as defined in Annex C) or the Number of Baskets to be Delivered (as defined in Annex C), as the case may be;
  - in the case of an Equity Option Transaction (as defined in Annex C) which is a Put (as defined in Annex C), the Seller will pay to the Buyer the Settlement Price (as defined in Annex C) and the Buyer will deliver to the Seller the Number of Shares to be Delivered (as defined in Annex C) or the Number of Baskets to be Delivered (as defined in Annex C), as the case may be;
  - in the case of a Bond Option Transaction (as defined in Annex D) which is a Call (as defined in Annex D), the Buyer will pay to the Seller the Strike Price (as defined in Annex D) and the Seller will deliver to the Buyer the Bonds to be Delivered (as defined in Annex D); and
  - in the case of a Bond Option Transaction (as defined in Annex D) which is a Put (as defined in Annex D), the Seller will pay to the Buyer the Strike Price (as defined in Annex D) and the Buyer will deliver to the Seller the Bonds to be Delivered (as defined in Annex D),
- and "Physically-Settled" means that Physical Settlement is applicable to such Transaction.
- 4.23 "Precious Metal(s)" means gold, silver, platinum, palladium or any other metals which we may from time to time decide to include as a Precious Metal.
- 4.24 "Premium", in respect of any Transaction, means the purchase price of the Transaction as agreed upon by the parties, and payable by the Buyer to the Seller thereof.
- 4.25 "Premium Payment Date", in respect of any Transaction, means the date on which the Premium is due and payable, as agreed to at the time the Transaction is entered into, as evidenced in a Confirmation.
- 4.26 "Related Exchange" means, in respect of an Equity Option Transaction (as defined in Annex C), each exchange or quotation system specified as such in the relevant Confirmation or any successor to such exchange or quotation system.
- 4.27 "Seller" means the party specified as such in a Confirmation.
- 4.28 "Settlement Currency" means the currency specified as such in the Confirmation and, if none is specified, the currency in which the Premium is denominated.
- 4.29 "Terminated Transactions" means all Transactions in effect immediately before [designation of] the Early Termination Date.
- 4.30 "Termination Currency" means Hong Kong dollars.
- 4.31 "Trade Date" means the date on which the parties enter into a Transaction.
- 4.32 "Valuation Date" means:
- in respect of an Equity Option Transaction (as defined in Annex C), each date specified as such in the relevant Confirmation and if none is specified, each Exercise Date (unless there is a Market Disruption Event in which case, see Clause 8.2 of Annex C);
  - in respect of an FX Transaction (as defined in Annex A), each date specified as such in the relevant Confirmation and if none is specified, two (2) Business Days prior to the Settlement Date;
  - in respect of a Currency Option Transaction (as defined in Annex A), each date specified as such in the relevant Confirmation and if none is specified, the Exercise Date; and
  - in respect of a Bond Option Transaction (as defined in Annex D), each date specified as such in the relevant Confirmation and if none is specified, the Exercise Date.
- 4.33 "Valuation Time" means the time specified as such in the relevant Confirmation or, if no such time is specified, 2 p.m. (Hong Kong time).

## **Annex A: FX and currency option transactions**

### **1. INTERPRETATION**

- 1.1 This Annex A sets out additional provisions and definitions (in respect of which see Clause 9 of this Annex A) applicable to Transactions that are FX Transactions and Currency Option Transactions. In this Annex A:
- a. "FX Transaction" means an over-the-counter Transaction providing for the purchase of an agreed amount of one currency by one party to such Transaction in exchange for the sale by it of an agreed amount of another currency to the other party to such Transaction on a spot or forward basis; and
  - b. "Currency Option Transaction" means an over-the-counter Transaction entitling the Buyer, upon exercise, to purchase from the Seller at the Strike Price, a specified quantity of Call Currency and to sell to the Seller at the Strike Price a specified quantity of Put Currency.
- 1.2 In the event of any inconsistency between this Annex A and other provisions of these Terms and Conditions, this Annex A will prevail for the purposes of the relevant FX Transactions and Currency Option Transactions. In the event of any inconsistency between this Annex A and the provisions of a Confirmation, that Confirmation will prevail for the purposes of the relevant Transaction.

### **2. AGREEMENT TO PERFORM**

- 2.1 On the Premium Payment Date, the Buyer will pay to the Seller the Premium.
- 2.2 The Seller grants to the Buyer, upon the exercise of a Currency Option Transaction:
- a. if Deliverable is applicable, the right, but not the obligation, in the case of a Call Option, to purchase from the Seller the Call Currency Amount at the Strike Price and in the case of a Put Option, to sell to the Seller the Put Currency Amount at the Strike Price; or
  - b. if Non-Deliverable is applicable, the right, but not the obligation, to cause the Seller to pay to the Buyer the In the Money Amount, if any, on the Settlement Date,
- in each case in accordance with Clause 4 of this Annex A. Unless the parties otherwise specify in the Confirmation, Deliverable will be deemed to apply to a Currency Option Transaction.
- 2.3 In the case of an FX Transaction:
- a. We will, upon your request, use all reasonable efforts to enter for and on behalf of and at your risk into Transactions for the sale and/or purchase of foreign currencies approved by us at the prices or rates specified by you.
  - b. You acknowledge and accept that we may not be able to conclude Transactions at the specified prices or rates due to various circumstances (such as rapid changes in prices or exchange rates).
  - c. The parties will pay the amounts specified as payable by them in accordance with Clause 4 of this Annex A.
  - d. All FX Transactions are to be concluded on the basis that actual delivery or receipt of the underlying or cash settlement of differences is contemplated except where it is expressly provided that no actual delivery is required or possible.

### **3. EXERCISE OF CURRENCY OPTION TRANSACTIONS**

- 3.1 Exercise
- a. The Buyer may exercise the rights granted pursuant to a Currency Option Transaction by giving to the Seller a Notice of Exercise which shall constitute an irrevocable election and undertaking by the Buyer to exercise the Currency Option Transaction:
    - i. in respect of an American style Option, if received during the Exercise Period, and
    - ii. in respect of a European style Option, if received on the Exercise Date prior to the Expiration Time,unless Automatic Exercise (as set out in Clause 3.3 of this Annex A) is applicable, in which case the Currency Option Transaction is deemed exercised pursuant to that Clause 3.3.
  - b. If a Notice of Exercise has not been received by the Seller prior to or at the Expiration Time on the Expiration Date (and Automatic Exercise is not applicable), the right or rights granted pursuant to a Currency Option Transaction will expire and become void and of no effect.
- 3.2 Exercise in whole or in part
- The right or rights granted pursuant to a Currency Option Transaction may be exercised in whole or in part. If the right or rights granted pursuant to a Currency Option Transaction are exercised in part, the unexercised portion shall not be extinguished thereby but shall remain a Currency Option Transaction to the extent of such unexercised portion until the earlier of (a) the expiration of the Currency Option Transaction or (b) an exercise of the right or rights granted pursuant to the Currency Option Transaction that leaves no remaining unexercised portion thereof.
- 3.3 Automatic Exercise
- a. Unless the parties otherwise specify, "Automatic Exercise" will be deemed to apply to a Transaction.
  - b. If "Automatic Exercise" applies to a Currency Option Transaction, then, each Option not previously exercised under that Currency Option Transaction will be deemed to be automatically exercised as of the Expiration Time on the Expiration Date if the In-the-Money Amount of the Currency Option Transaction at such Expiration Time equals or exceeds the product of:

- i one percent of the Strike Price; and
- ii the Call Currency Amount or the Put Currency Amount, as appropriate.

- c. In the case of a Deliverable Currency Option Transaction, if Automatic Exercise occurs, the Seller will settle such Transaction in accordance with Clause 4.3 of this Annex A.

### 3.4 Roll-over of FX Transactions and Currency Option Transactions

- a. At any time on or before the Settlement Date of any FX Transaction or Currency Option Transaction, you may request and we may, in our absolute discretion, agree to exchange matured obligations under such FX Transaction or Currency Option Transaction for future obligations on such terms as we and you shall agree.
- b. In the absence of any request from you to so exchange obligations, we may (but are not obliged to) in our absolute discretion as we deem fit (i) exchange matured obligations under the relevant FX Transaction or Currency Option Transaction for future obligations for such amount, duration and costs and subject to and upon such other terms and conditions as we may in our absolute discretion impose and we may credit or, as the case may be, debit the relevant account for trading in FX Transactions or Currency Option Transactions accordingly; (ii) deem you to have entered into an offsetting spot contract with us immediately prior to the maturity of any FX Transaction or Currency Option Transaction, or (iii) consider each FX Transaction or Currency Option Transaction and deal with the matter in such manner as we may, in our absolute discretion, consider appropriate.

- 3.5 Notwithstanding this Clause 3, Currency Option Transactions may be exercised or deemed exercised only if (a) in the case of any Knock-Out Event Type, such Knock-Out Barrier Event has not occurred on a Barrier Event Determination Date; or (b) in the case of any Knock-In Event Type, such Knock-In Barrier Event has occurred on a Barrier Event Determination Date.

### 3.6 Optional Early Termination

- a. If it is agreed that optional early termination will apply ("Optional Early Termination Transaction"), the party specified as such in the related Confirmation as the exercising party may, during the period as specified in the related Confirmation or, if such period is not specified, the Exercise Period, give a Notice of Exercise to the other party of its exercise of the right or rights granted by the other party to early terminate that FX Transaction or Currency Option Transaction and that notice will be deemed to be irrevocable. If neither party is specified as such in the related Confirmation as the exercising party, both parties are deemed to be allowed to give such Notice of Exercise.
- b. If a Notice of Exercise has not been received by the non-exercising party prior to the time specified in the related Confirmation or, if such time is not specified, the Expiration Time, on the Expiration Date the right or rights granted pursuant to an Optional Early Termination Transaction will expire and become void and of no effect.
- c. Unless otherwise specified in the related Confirmation, an Optional Early Termination Transaction may be exercised only in whole.

## 4. SETTLEMENT

### 4.1 Deliverable FX Transaction

Under a Deliverable FX Transaction, on the Settlement Date, each party will pay the amount specified as payable by it in the relevant Confirmation.

### 4.2 Non-Deliverable FX Transaction

Under a Non-Deliverable FX Transaction, on the Settlement Date (a) if the Settlement Currency Amount is a positive number, the Reference Currency Buyer will pay that amount in the Settlement Currency to the Reference Currency Seller; or (b) if the Settlement Currency Amount is a negative number, the Reference Currency Seller will pay the absolute value of that amount in the Settlement Currency to the Reference Currency Buyer.

### 4.3 Deliverable Currency Option Transaction

In respect of an Exercise Date under a Deliverable Currency Option Transaction, the Buyer will pay to the Seller the Put Currency Amount and the Seller will pay to the Buyer the Call Currency Amount on the Settlement Date.

### 4.4 Non-Deliverable Currency Option

In respect of an Exercise Date under a Non-Deliverable Currency Option Transaction, the Seller will pay to the Buyer the In-the-Money Amount, if positive, on the Settlement Date.

### 4.5 Optional Early Termination Transaction

In respect of an Optional Early Termination Transaction, the Early Termination Amount shall be cash-settled on the date and by whom is specified in the related Confirmation.

## 5. CALCULATION OF RATES

### 5.1 Multiple Price Sources

If the currency exchange rate specified in the applicable Settlement Rate Option is published or announced by more than one price source and the price source referred to in such Settlement Rate Option fails to publish or announce that currency exchange rate on the Valuation Date (or, if different, the day on which rates for that date would, in the ordinary course, be published or announced by such price source), then the Spot Rate for that Valuation Date will be determined by us using any other available price source which actually publishes or announces such currency exchange rate on such Valuation Date (or, if different, the day on which rates for that date would, in the ordinary course, be published or announced by the relevant price source) as the applicable Settlement Rate Option.



## 5.2 Official Successor Rate

If the currency exchange rate specified in the applicable Settlement Rate Option is reported, sanctioned, recognized, published, announced or adopted (or other similar action) by the relevant Government Authority, and such currency exchange rate ceases to exist and is replaced by the Official Successor Rate, then the Spot Rate for the relevant Valuation Date will be determined by us in our absolute discretion.

## 6. DISRUPTION

- 6.1 Notwithstanding anything to the contrary in this Annex A, upon the occurrence of a Disruption Event, we shall determine the Settlement Rate or manner of settlement taking into account all available information that it deems relevant. We shall, as soon as practicable following the occurrence of the relevant event or circumstance, notify you of such alternative basis for the determination of the Settlement Rate or manner of settlement, as the case may be.

## 7. NETTING

- 7.1 With respect to Currency Option Transactions, the parties agree that any Call Option or any Put Option written by a party will automatically be terminated and discharged, in whole or in part, as applicable, against a Call Option or a Put Option, respectively, written by the other party, such termination and discharge to occur automatically upon the payment in full of the last Premium payable in respect of such Currency Option Transactions, provided that such termination and discharge may only occur in respect of Currency Option Transactions:

- a. each being with respect to the same Put Currency and the same Call Currency;
- b. each having the same Expiration Date and Expiration Time;
- c. each being of the same style, either both being American style Currency Option Transactions or both being European style Currency Option Transactions;
- d. each having the same Strike Price; and
- e. neither of which shall have been exercised by delivery of a Notice of Exercise,

and, upon the occurrence of such termination and discharge, neither party shall have any further obligation to the other party in respect of the relevant Currency Option Transactions or, as the case may be, parts thereof so terminated and discharged. In the case of a partial termination and discharge of a Currency Option Transaction (as where the relevant Currency Option Transactions are for different amounts of the same Currency Pair), the remaining portion of such Currency Option Transaction shall continue to be a Currency Option Transaction.

- 7.2 The parties agree that with respect to FX Transactions and Currency Option Transactions which have been exercised, we may at anytime elect in respect of two or more such Transactions that a net amount will be determined (in accordance with payment netting stipulated in the General Terms and Conditions) in respect of all amounts payable on the same date in the same currency in respect of such Transactions, regardless of whether such amounts are payable in respect of the same Transaction.

## 8. ADDITIONAL DISRUPTION EVENT PROVISIONS FOR OFFSHORE DELIVERABLE CHINESE RENMINBI FX AND CURRENCY OPTION TRANSACTIONS

### 8.1 Additional Disruption Event

Notwithstanding anything to the contrary in any applicable Annex, in the case of offshore Deliverable Chinese Renminbi FX and Currency Option Transactions, upon the occurrence of a CNY Disruption Event, as determined by us in our sole discretion, we shall determine the Settlement Rate, Settlement Currency and/or other settlement terms taking into account all available information that we deem relevant. We shall, as soon as practicable following the occurrence of the relevant event or circumstance, notify you of such alternative basis for the determination of the Settlement Rate, Settlement Currency and/or other settlement terms, as the case may be.

### 8.2 Definitions

In this Clause 8:

- a. "CNY" means Renminbi.
- b. "CNY Disruption Event" means any of CNY Illiquidity, CNY Inconvertibility or CNY Non-Transferability.
- c. "CNY Illiquidity" means the occurrence of any event that makes it impossible (where it had previously been possible) for a party to the Transaction to obtain a firm quote of an offer price in respect of an amount in CNY equal to the Notional Amount, a Fixed Amount, a Floating Amount, an Initial Exchange Amount, an Interim Exchange Amount, a periodical exchange amount, a Final Exchange Amount, a Call Currency Amount, a Put Currency Amount or any other amount to be paid under the Transaction (the "Relevant Disrupted Amount"), in each case on the relevant Settlement Date, Payment Date or Exchange Date (as the case may be), either in one transaction or a commercially reasonable number of transactions that, when taken together, is no less than such Relevant Disrupted Amount, in the general CNY exchange market in the Offshore CNY Centre in order to perform its obligations under the Transaction. For the avoidance of doubt, the inability for a party to obtain such firm quote solely due to issues relating to its creditworthiness shall not constitute a CNY Illiquidity.
- d. "CNY Inconvertibility" means the occurrence of any event that makes it impossible (where it had previously been possible) for a party to the Transaction to convert an amount of CNY no less than the Relevant Disrupted Amount into or from USD (or, if the Settlement Currency specified in the Fallback Matrix for the applicable Currency Pair is a currency other than USD, then such Settlement Currency) in the general CNY exchange market in the Offshore CNY Centre, other than where such impossibility is due solely to the failure of that party to comply with any law, rule or regulation enacted by any Governmental Authority (unless such law, rule or regulation is enacted after the Trade Date of the Transaction and it is impossible for such party, due to an event beyond its control, to comply with such law, rule or regulation). For the avoidance of doubt, the inability for a party to convert CNY solely due to issues relating to its creditworthiness shall not constitute a CNY Inconvertibility.

- e. "CNY Non-Transferability" means the occurrence of any event that makes it impossible (where it had previously been possible) for a party to the Transaction to transfer CNY between accounts inside the Offshore CNY Centre or from an account inside the Offshore CNY Centre to an account outside the Offshore CNY Centre and outside Mainland China or from an account outside the Offshore CNY Centre and outside Mainland China to an account inside the Offshore CNY Centre, other than where such impossibility is due solely to the failure of that party to comply with any law, rule or regulation enacted by any Governmental Authority (unless such law, rule or regulation is enacted after the Trade Date of the Transaction and it is impossible for such party, due to an event beyond its control, to comply with such law, rule or regulation). For the purpose of CNY Non-Transferability only, a segregated Chinese Renminbi fiduciary cash account with the People's Bank of China and operated by the Bank shall be deemed to be an account inside Hong Kong.
- f. "Governmental Authority" means any de facto or de jure government (or any agency or instrumentality thereof), court, tribunal, administrative or other governmental authority or any other entity (private or public) charged with the regulation of the financial markets (including the central bank) of Mainland China and the Offshore CNY Centre.
- g. "Mainland China" means the People's Republic of China (excluding the Hong Kong Special Administrative Region of the People's Republic of China, the Macau Special Administrative Region of the People's Republic of China and the Taiwan Special Administrative Region of the People's Republic of China).
- h. "Offshore CNY Centre" means the jurisdiction specified in the relevant Confirmation. If no Offshore CNY Centre is specified in the relevant Confirmation, the Offshore CNY Centre shall be Hong Kong.

For the avoidance of doubt, references to "general CNY exchange market in the Offshore CNY Centre" in the definitions of CNY Illiquidity and CNY Inconvertibility refer to purchase, sale, lending or borrowing of CNY for general purposes (including, but not limited to, funding), and therefore any purchase or sale of CNY where such CNY is required by applicable Law for settlement of any cross-border trade transaction with an entity in Mainland China, or any purchase or sale of CNY for personal customers residing in that Offshore CNY Centre, would not be a purchase or sale made in such general CNY exchange market.

## 9. DEFINITIONS

- 9.1 "Automatic Termination" means that the Transaction shall terminate and be deemed canceled, in whole and not in part, effective on the date specified for such termination in the related Confirmation as it relates to the occurrence or non-occurrence of a Barrier Event, as the case may be, without payment of any settlement amount, breakage costs, or other amounts representing the future value of the Transaction.
- 9.2 "Barrier" means a type of Currency Option Transaction that, subject to any applicable condition precedent, would change the terms of the Currency Option Transaction upon occurrence or non-occurrence of a Barrier Event, as the case may be, in the manner defined in the Event Type specified in the related Confirmation.
- 9.3 "Barrier Determination Agent" means the party who determines whether or not a Barrier Event has occurred. The Barrier Determination Agent shall be the Calculation Agent, unless otherwise specified in the Confirmation.
- 9.4 "Barrier Event" means an event that, if specified as applicable to a Transaction in the related Confirmation, would give rise to a change to the terms of the Transaction in the manner defined in the Event Type specified in the related Confirmation. The occurrence of a Barrier Event shall be determined in good faith and in a commercially reasonable manner by the Barrier Determination Agent.
- 9.5 "Barrier Event Determination Date" means (a) if a Barrier Event Rate Source is specified in the related Confirmation, any day in the Event Period on which the Barrier Event Rate Source should be and is available; or (b) if a Barrier Event Rate Source is not specified in the related Confirmation, or if the Barrier Event Rate Source specified in the related Confirmation is not available on a day that otherwise would have been a Barrier Event Determination Date, any day in the Event Period in respect of which a Spot Rate may be determined for purposes of determining the occurrence of a Barrier Event; provided however that a Barrier Event Determination Date shall be limited to any particular day or days during the Event Period specified as a Barrier Event Determination Date in the related Confirmation. Unless otherwise specified in the related Confirmation, a Barrier Event Determination Date shall not be subject to adjustment in accordance with any Business Day Convention.
- 9.6 "Barrier Event Rate Source" means, in respect of the determination of a Barrier Event, the Settlement Rate Option or any other rate source specified as such in the related Confirmation.
- 9.7 "Barrier Level" means the currency exchange rate specified as such in the related Confirmation, which is the currency exchange rate at which the occurrence of a Barrier Event is determined.
- 9.8 "Binary" means a type of Barrier Currency Option Transaction that, subject to any applicable condition precedent, would entitle the Buyer to receive from the Seller a Settlement Amount upon the occurrence or non-occurrence of a Barrier Event, as the case may be, in the manner defined in the Event Type specified in the related Confirmation.
- 9.9 "Call" means a type of Currency Option Transaction entitling the Buyer upon exercise:
  - a. in the case of a Deliverable Currency Option Transaction, to purchase from the Seller the Call Currency Amount at the Strike Price; and
  - b. in the case of a Non-Deliverable Currency Option Transaction, to receive from the Seller the In-the-Money Amount, if positive,
 in each case, as more particularly provided in the relevant Confirmation.
- 9.10 "Call Currency" means the currency specified as such in the relevant Confirmation or, if such a currency is not specified, the currency that is to be purchased by the Buyer.
- 9.11 "Call Currency Amount" means the aggregate amount of Call Currency to be purchased upon the exercise of a Currency Option Transaction as specified in the relevant Confirmation or, if such an amount is not specified, the Put Currency Amount multiplied by the Strike Price (where the Strike Price is expressed as the amount of Call Currency to be paid per one unit of Put Currency).
- 9.12 "Currency Pair" means (a) in respect of a Deliverable FX Transaction, the currencies specified as being deliverable for a Transaction in the relevant Confirmation; (b) in respect of a Non-Deliverable FX Transaction, the Reference Currency and the Settlement Currency; (c) in respect

of a Currency Option Transaction that is not a Binary, the Call Currency and the Put Currency; and (d) in respect of a Binary Currency Option Transaction, the currency specified as applicable to the Barrier Level in the relevant Confirmation.

- 9.13 "Deliverable" means that such Transaction will settle in accordance with Clause 4.1 or Clause 4.3 of this Annex A (as applicable).
- 9.14 "Disruption Event" means the occurrence of any event which, in our absolute determination, makes it illegal, impossible or otherwise impracticable:
- a. to convert the Reference Currency into the currency of the Currency Pair that is not the Reference Currency in the country for which the Reference Currency is the lawful currency through customary legal channels, including a situation where the currency exchange rate specified in the Settlement Rate Option splits into dual or multiple currency exchange rates;
  - b. to deliver the currency of the Currency Pair that is not the Reference Currency from accounts inside the country for which the Reference Currency is the lawful currency to accounts outside such country, or to deliver the Reference Currency between accounts inside the country for which the Reference Currency is the lawful currency or to a party that is a non-resident of such country;
  - c. to obtain a firm quotation for the Settlement Rate on the Valuation Date;
  - d. to obtain the Settlement Rate on the Valuation Date or if such rate is commercially unreasonable in our absolute determination; or
  - e. for a party to fulfill its obligations under a Transaction and generally to fulfill obligations similar to such party's obligations under that Transaction.
- 9.15 "Event Type" means a Barrier Event specified in the related Confirmation as applicable to a Transaction. When specified in the related Confirmation as applicable to a Transaction as a Barrier Event, the following Event Types have the indicated meanings:
- a. "Double Knock-In" means that if the Spot Exchange Rate on a Barrier Event Determination Date is either (i) greater than or equal to the Upper Barrier Level; or (ii) less than or equal to the Lower Barrier Level, then the Transaction shall settle in accordance with Clause 4 of this Annex A; otherwise, in the absence of such Barrier Event, Automatic Termination shall apply to the Transaction at the Event Period End Date and Time.
  - b. "Double Knock-Out" means that if the Spot Exchange Rate on a Barrier Event Determination Date is either (i) greater than or equal to the Upper Barrier Level; or (ii) less than or equal to the Lower Barrier Level, then Automatic Termination shall apply to the Transaction upon such occurrence; otherwise, in the absence of such Barrier Event, the Transaction shall settle in accordance with in accordance with Clause 4 of this Annex A.
  - c. "Double No-Touch Binary" means that if the Spot Exchange Rate on a Barrier Event Determination Date is either (i) greater than or equal to the Upper Barrier Level; or (ii) less than or equal to the Lower Barrier Level, then Automatic Termination shall apply to the Transaction upon such occurrence; otherwise, in the absence of such Barrier Event, the Transaction shall settle on the Settlement Date by the payment by the Seller to the Buyer of the Settlement Amount, notwithstanding Clause 4 of this Annex A.
  - d. "Double One-Touch Binary" means that if the Spot Exchange Rate on a Barrier Event Determination Date is either (i) greater than or equal to the Upper Barrier Level; or (ii) less than or equal to the Lower Barrier Level, then the Transaction shall settle on the Settlement Date by the payment by the Seller to the Buyer of the Settlement Amount, notwithstanding Clause 4 of this Annex A; otherwise, in the absence of such Barrier Event, Automatic Termination shall apply to the Transaction at the Event Period End Date and Time.
  - e. "Knock-In" means that if the Spot Exchange Rate on a Barrier Event Determination Date, based on the Spot Exchange Rate Direction, is equal to or beyond the Barrier Level, then the Transaction shall settle in accordance with Clause 4 of this Annex A; otherwise, in the absence of such Barrier Event, Automatic Termination shall apply to the Transaction at the Event Period End Date and Time.
  - f. "Knock-Out" means that if the Spot Exchange Rate on a Barrier Event Determination Date, based on the Spot Exchange Rate Direction, is equal to or beyond the Barrier Level, then Automatic Termination shall apply to the Transaction upon such occurrence; otherwise, in the absence of such Barrier Event, the Transaction shall settle in accordance with Clause 4 of this Annex A.
  - g. "No-Touch Binary" means that if the Spot Exchange Rate on a Barrier Event Determination Date, based on the Spot Exchange Rate Direction, is equal to or beyond the Barrier Level, then Automatic Termination shall apply to the Transaction upon such occurrence; otherwise, in the absence of such Barrier Event, the Transaction shall settle on the Settlement Date by the payment by the Seller to the Buyer of the Settlement Amount, notwithstanding Clause 4 of this Annex A.
  - h. "One-Touch Binary" means that if the Spot Exchange Rate on a Barrier Event Determination Date, based on the Spot Exchange Rate Direction, is equal to or beyond the Barrier Level, then the Transaction shall settle on the Settlement Date by the payment by the Seller to the Buyer of the Settlement Amount, notwithstanding Clause 4 of this Annex A; otherwise, in the absence of such Barrier Event, Automatic Termination shall apply to the Transaction at the Event Period End Date and Time.

An Event Type may be specified by reference to any Event Type defined above or, if not defined above, by defining the Event Type in the related Confirmation.

- 9.16 "Event Period" means the period commencing on and including the Event Period Start Date and Time, and ending on and including the Event Period End Date and Time, provided however that if the Event Period Start Date and Time and the Event Period End Date and Time are the same, the Event Period shall be deemed to occur at such time on such date.
- 9.17 "Event Period End Date and Time" means the date and time specified as such in the related Confirmation. If such date and time are not so specified, the Event Period End Date and Time shall be deemed to be the Expiration Date at the Expiration Time.
- 9.18 "Event Period Start Date and Time" means the date and time specified as such in the related Confirmation. If such date and time are not so specified, the Event Period Start Date and Time shall be deemed to be the Trade Date at the time the Transaction was entered into.
- 9.19 "Forward Rate" means the currency exchange rate, expressed as the amount of Reference Currency per one unit of Settlement Currency, specified as such in the relevant Confirmation or, if such a rate is not specified, the currency exchange rate obtained by dividing the Reference

Currency Notional Amount by the Notional Amount.

- 9.20 "Government Authority" means any nation, state or government, any province or other political subdivision thereof, any body, agency or ministry, any taxing, monetary, foreign exchange or other authority, court, tribunal or other instrumentality and any other entity exercising, executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.
- 9.21 "In-the-Money Amount" means, in respect of a Valuation Date:
- a. if the parties have specified a Settlement Currency in a Confirmation, the amount, if positive, expressed in the Settlement Currency calculated on a formula basis as follows:
    - i. in the case of a Currency Option Transaction where the Reference Currency is the Put Currency and the Settlement Currency is the Call Currency:
$$\text{In-the-Money Amount} = \left[ \text{Call Currency Amount} \times \left( \frac{\text{Settlement Rate} - \text{Strike Price}}{\text{Settlement Rate}} \right) \right]$$
where both the Strike Price and the Settlement Rate are quoted in terms of the amount of Reference Currency per one unit of Settlement Currency; and
    - ii in the case of a Currency Option Transaction where the Reference Currency is the Call Currency and the Settlement Currency is the Put Currency:
$$\text{In-the-Money Amount} = \left[ \text{Put Currency Amount} \times \left( \frac{\text{Strike Price} - \text{Settlement Rate}}{\text{Settlement Rate}} \right) \right]$$
where both the Strike Price and the Settlement Rate are quoted in terms of the amount of Reference Currency per one unit of Settlement Currency; or
  - b. if a Settlement Currency is not specified, the amount, if positive, calculated on a formula basis as follows:
    - i. in the case of a Call, the excess of the Settlement Rate over the Strike Price, multiplied by the Call Currency Amount, where both the Strike Price and the Settlement Rate are quoted in terms of the amount of Put Currency to be paid per one unit of Call Currency; and
    - ii in the case of a Put, the excess of the Strike Price over the Settlement Rate, multiplied by the Put Currency Amount, where both the Strike Price and the Settlement Rate are quoted in terms of the amount of Call Currency to be paid per one unit of Put Currency; or
  - c. if a Settlement Amount is specified, the amount so specified in the related Confirmation.
- 9.22 "Lower Barrier Level" means, with respect to a Barrier Event involving two Barrier Levels, the currency exchange rate specified as such in the related Confirmation.
- 9.23 "Non-Deliverable" means, if specified in a Confirmation to be applicable to a Transaction, that such Transaction will settle in accordance with Clause 4.2 or 4.4 of this Annex A (as applicable).
- 9.24 "Notional Amount" means:
- a. in respect of Deliverable FX Transaction or a Deliverable Currency Option Transaction, the quantity of currency specified as such in the related Confirmation; and
  - b. in respect of a Non-Deliverable FX Transaction or a Non-Deliverable Currency Option Transaction, the quantity of Settlement Currency specified as such in the relevant Confirmation or, if such an amount is not specified (i) in the case of a Non-Deliverable FX Transaction, the quantity of the Settlement Currency equal to the Reference Currency Notional Amount divided by the Forward Rate; or (ii) in the case of a Non-Deliverable Currency Option Transaction, whichever of the Call Currency Amount or the Put Currency Amount that is denominated in the Settlement Currency.
- 9.25 "Official Successor Rate" means a successor currency exchange rate that is reported, sanctioned, recognized, published, announced or adopted (or other similar action) by a Government Authority.
- 9.26 "Put" means a type of Currency Option Transaction entitling the Buyer upon exercise:
- a. in the case of a Deliverable Currency Option Transaction, to sell to the Seller the Put Currency Amount at the Strike Price; and
  - b. in the case of a Non-Deliverable Currency Option Transaction, to receive from the Seller the In-the-Money Amount, if positive, calculated in accordance with Clause 4 of this Annex A,
- in each case, as more particularly provided in the relevant Confirmation.
- 9.27 "Put Currency" means the currency specified as such in the relevant Confirmation or, if such a currency is not specified, the currency that is to be sold by the Buyer.
- 9.28 "Put Currency Amount" means the aggregate amount of Put Currency to be sold upon the exercise of a Transaction as specified in the relevant Confirmation or, if such amount is not specified, the Call Currency Amount divided by the Strike Price (where the Strike Price is expressed as the amount of Call Currency to be paid per one unit of Put Currency).
- 9.29 "Reference Currency" means, in respect of a Transaction, the currency specified as the Reference Currency or the local currency, as the case may be, in the relevant Confirmation.

- 9.30 "Reference Currency Buyer" means, in respect of a Transaction, the party specified as such in the relevant Confirmation or, if such a party is not specified, the party to which the Reference Currency is owed (or would have been owed if the Transaction were a Deliverable Transaction) on the Settlement Date.
- 9.31 "Reference Currency Notional Amount" means:
- in respect of a Deliverable FX Transaction or a Deliverable Currency Option Transaction, the quantity of Reference Currency specified in the relevant Confirmation; and
  - in respect of a Non-Deliverable FX Transaction or a Non-Deliverable Currency Option Transaction, the quantity of Reference Currency specified as such in the related Confirmation or, if such an amount is not specified (i) in the case of a Non-Deliverable FX Transaction, the quantity of Reference Currency equal to the Notional Amount multiplied by the Forward Rate; or (ii) in the case of a Non-Deliverable Currency Option Transaction, whichever of the Call Currency Amount or the Put Currency Amount that is denominated in the Reference Currency.
- 9.32 "Reference Currency Seller" means, in respect of a Transaction, the party specified as such in the relevant Confirmation or, if such a party is not specified, the party which owes (or would have owed if the Transaction were a Deliverable Transaction) the Reference Currency on the Settlement Date.
- 9.33 "Relevant Currency" means, any of the Call Currency, Put Currency or Reference Currency and "Relevant Currencies" means all of them.
- 9.34 "Settlement Amount" means the currency and amount specified as such in the related Confirmation, which for the purposes of Non-Deliverable Currency Option, shall be deemed the In-the-Money Amount and such amount shall always be positive.
- 9.35 "Settlement Currency Amount" means an amount expressed in the Settlement Currency calculated on a formula basis as follows:
- $$\text{Settlement Currency Amount} = \left[ \text{Notional Amount} \times \left( 1 - \frac{\text{Forward Rate}}{\text{Settlement Rate}} \right) \right]$$
- where both the Forward Rate and the Settlement Rate are quoted in terms of the amount of Reference Currency per one unit of Settlement Currency.
- 9.36 "Settlement Date" means, in respect of a Transaction, the date specified as the Settlement Date in the relevant Confirmation, subject to adjustment in accordance with the Following Business Day Convention unless another Business Day Convention is specified in the relevant Confirmation to be applicable to that Settlement Date.
- 9.37 "Settlement Rate" means, for any Valuation Date in respect of a Settlement Date, the currency exchange rate equal to (a) the Settlement Rate specified in the relevant Confirmation; or (b) if a Settlement Rate is not so specified, the Spot Rate for that Valuation Date.
- 9.38 "Settlement Rate Option" means, in respect of the calculation of an In-the-Money Amount, the Settlement Rate Option specified as such (or deemed specified) in the relevant Confirmation.
- 9.39 "Spot Exchange Rate" when used in conjunction with the term "Barrier Event" means (a) if a Barrier Event Rate Source is specified in the related Confirmation, a Spot Rate that is based on the price for a foreign exchange transaction involving the Currency Pair (or cross-rates constituting such Currency Pair) as determined on each Barrier Event Determination Date in accordance with the Barrier Event Rate Source; or (b) if a Barrier Event Rate Source is not specified in the related Confirmation or is not available on a Barrier Event Determination Date, a Spot Rate that is based on the price for one or more actual foreign exchange transactions in the Spot Market involving the Currency Pair (or cross-rates constituting such Currency Pair) for settlement in accordance with the convention for the Currency Pair, as determined on each Barrier Event Determination Date in good faith and in a commercially reasonable manner by the Barrier Determination Agent. If not specified for the Barrier Event Rate Source or otherwise in the related Confirmation, Spot Exchange Rate of the Currency Pair shall be expressed as a fraction in terms of the amount of numerator currency that can be exchanged for one unit of denominator currency.
- 9.40 "Spot Exchange Rate Direction" means the direction at which the Spot Exchange Rate must touch or cross the Barrier Level in order to initiate a Barrier Event, which shall be as specified in the related Confirmation as either (a) "Greater than or equal to the Barrier Level"; or (b) "Less than or equal to the Barrier Level." Parties may specify an Initial Spot Price in the related Confirmation for purposes of determining the direction from which the Spot Exchange Rate has crossed the Barrier Level.
- 9.41 "Spot Market" means the global spot foreign exchange market, open continuously from 5:00 a.m. Sydney time on a Monday in any week to 5:00 p.m. New York time on the Friday of that week.
- 9.42 "Spot Rate" means, for any Valuation Date, the currency exchange rate determined in accordance with the specified (or deemed specified) Settlement Rate Option, or if a Settlement Rate Option is not specified (or deemed specified), the currency exchange rate at the time at which such rate is to be determined for foreign exchange transactions in the relevant Currency Pair for value on the Settlement Date, as determined by us.
- 9.43 "Strike Price" means the currency exchange rate specified as such in the relevant Confirmation, which is the currency exchange rate at which the Currency Pair will be exchanged upon the exercise (or deemed exercise) of the right or rights granted pursuant to a Currency Option Transaction.
- 9.44 "Unscheduled Holiday" means that a day is not a Business Day and the market was not aware of such fact (by means of a public announcement or by reference to other publicly available information) until a time later than 9:00 a.m. local time in the principal financial centre(s) of the Reference Currency two Business Days prior to a scheduled valuation date.
- 9.45 "Upper Barrier Level" means, with respect to a Barrier Event involving two Barrier Levels, the currency exchange rate specified as such in the related Confirmation.

## **Annex B: Swap transactions**

### **1. INTERPRETATION**

- 1.1 This Annex B sets out additional provisions and definitions (in respect of which see Clause 12 of this Annex B) applicable to Transactions that are Swap Transactions. In this Annex B:
- "Swap Transaction" means any Transaction which is a rate swap, a basis swap, a forward rate transaction, an interest rate cap, an interest rate floor, an interest rate collar, cross currency interest rate swap, currency swap or a Swaption.
  - "Swaption" means an over-the-counter Option Transaction relating to a Swap Transaction.
- 1.2 In the event of any inconsistency between this Annex B and other provisions of these Terms and Conditions, this Annex B will prevail for the purposes of the relevant Swap Transaction. In the event of any inconsistency between this Annex B and the provisions of a Confirmation, that Confirmation will prevail for the purposes of the relevant Transaction.

### **2. FIXED RATE PAYER AND FLOATING RATE PAYER**

- 2.1 The Fixed Rate Payer is obliged (a) to make payments from time to time during the Term of the Swap Transaction of amounts calculated by reference to a fixed per annum rate; or (b) to make one or more payments of a Fixed Amount.
- 2.2 The Floating Rate Payer is obliged (a) to make payments from time to time during the Term of the Swap Transaction of amounts calculated by reference to a floating per annum rate; or (b) to make one or more payments of a Floating Amount.

### **3. PAYMENTS**

#### **3.1 Payment of a Fixed Amount**

The Fixed Amount payable by the Fixed Rate Payer on a Payment Date will be:

- if an amount is specified for the Swap Transaction as the Fixed Amount payable by that party for that Payment Date or for the related Calculation Period, that amount; or
- if an amount is not specified for the Swap Transaction as the Fixed Amount payable by that party for that Payment Date or for the related Calculation Period, an amount calculated for that Payment Date or for the related Calculation Period as follows:

$$\text{Fixed Amount} = \text{Notional Amount} \times \text{Fixed Rate} \times \text{Fixed Rate Day Count Fraction}$$

#### **3.2 Payment of a Floating Amount**

Subject to Clause 3.4 of this Annex B, the Floating Amount payable by the Floating Rate Payer on a Payment Date will be an amount calculated on a formula basis for that Payment Date or for the related Calculation Period as follows:

$$\text{Floating Amount} = \text{Notional Amount} \times (\text{Floating Rate} \pm \text{Spread}) \times \text{Floating Rate Day Count Fraction}$$

#### **3.3 Calculation of Fixed and Floating Amounts**

We are responsible for:

- calculating the applicable Floating Rate, if any, for each Payment Date or for each Calculation Period;
- calculating any Floating Amount payable on each Payment Date or for each Calculation Period;
- calculating any Fixed Amount payable on each Payment Date or for each Calculation Period;
- giving notice to you on the Calculation Date for each Payment Date or for each Calculation Period, specifying:
  - the Payment Date;
  - the party or parties required to make the payment or payments then due;
  - the amount or amounts of the payment or payments then due; and
  - reasonable details as to how the amount or amounts were determined; and
- if, after notice is given, there is a change in the number of days in the relevant Calculation Period and the amount(s) of the payment(s) due for that Payment Date or for that Calculation Period, promptly giving you notice of those changes, with reasonable details as to how those changes were determined.

#### **3.4 Negative Interest Rates**

- For the purpose of the calculation of a Floating Amount payable by a party, if the "Negative Interest Rate Method" is applicable to a Swap Transaction and the Floating Amount payable by a party on a Payment Date is a negative number (either due to a quoted negative Floating Rate or by operation of a Spread that is subtracted from the Floating Rate), then the Floating Amount payable by that party on that Payment Date will be deemed to be zero, and the other party will pay to that party the absolute value of the negative Floating Amount as calculated, in addition to any amounts otherwise payable by the other party for the related Calculation Period, on that Payment Date. Any amounts paid by the other party with respect to the absolute value of a negative Floating Amount will be paid to such account as the receiving party may designate (unless such other party gives timely notice of a reasonable objection to such designation) in the currency in which that Floating Amount would have been paid if it had been a positive number (and without regard

to the currency in which the other party is otherwise obligated to make payments).

- b. Unless the parties specify otherwise, the Negative Interest Rate Method will be deemed to apply to a Swap Transaction.

#### **4. PAYMENTS**

- 4.1. In respect of a Swaption, the Buyer will, on each Premium Payment Date, pay to the Seller the Premium, if any, in respect of that Premium Payment Date.
- 4.2. In respect of a Swaption, the Seller grants to the Buyer, upon the exercise or deemed exercise of the Swaption:
  - a. if Cash Settlement is applicable, the right to cause the Seller to pay to the Buyer the Cash Settlement Amount, if any, on the relevant Cash Settlement Payment Date; and
  - b. if Physical Settlement is applicable, the right to cause the Underlying Swap Transaction to become effective.

#### **5. NOTIONAL AMOUNT OF SWAPTION**

- 5.1 In the event that, pursuant to the terms of a Swaption, the Notional Amount of an Underlying Swap Transaction is deemed to be reduced, either for purposes of exercise or for calculating future payments under the Underlying Swap Transaction, any reduction in the Currency Amount of one party to the Underlying Swap Transaction will result in an immediate and proportionate reduction in the Currency Amount of the other party.

#### **6. EXERCISE OF SWAPTION**

##### **6.1 Exercise**

- a. The Buyer may exercise the rights granted pursuant to a Swaption by giving to the Seller a Notice of Exercise which shall constitute an irrevocable election and undertaking by the Buyer to exercise the Swaption:
  - i. in respect of an American style Swaption, if received during the Exercise Period; and
  - ii. in respect of a European style Swaption, if received on the Exercise Date prior to the Expiration Time,unless Automatic Exercise (as set out in Clause 6.4 of this Annex B) or Fallback Exercise (as set out in Clause 6.5 of this Annex B) is applicable, in which case the Swaption is deemed exercised pursuant to such Clause.
- b. If a Notice of Exercise has not been received by the Seller prior to or at the Expiration Time on the Expiration Date (and Automatic Exercise or Fallback Exercise is not applicable), the right or rights granted pursuant to the Swaption will expire and become void and of no effect.
- c. In the case of a Swaption to which Partial Exercise or Multiple Exercise is applicable, the Buyer must specify in the notice the Notional Amount of the Underlying Swap Transaction in respect of which the Swaption is being exercised on the relevant Exercise Date. Unless the parties specify otherwise in the related Confirmation, Buyer will execute and deliver to Seller a written confirmation confirming the substance of any telephonic notice within one Business Day of that notice. Failure to provide that written confirmation will not affect the validity of the telephonic notice.

##### **6.2 Partial Exercise**

If "Partial Exercise" is specified to be applicable to an European style Swaption, Buyer may exercise all or less than all the Notional Amount of the Underlying Swap Transaction on the Expiration Date, but may not exercise less than the Minimum Notional Amount, and, if an amount is specified as the "Integral Multiple" in the related Confirmation, the Notional Amount exercised must be equal to, or be an integral multiple of, the amount so specified. Any attempt to exercise (a) less than the Minimum Notional Amount will be ineffective; and (b) a Notional Amount not equal to, or an integral multiple of, the Integral Multiple will be deemed to be an exercise of a Notional Amount equal to the next lower integral multiple of the Integral Multiple (the Notional Amount of the Underlying Swap Transaction exceeding that amount being deemed to remain unexercised).

##### **6.3 Multiple Exercise**

- a. If "Multiple Exercise" is specified to be applicable to an American style Swaption, the Buyer may exercise all or less than all the unexercised Notional Amount of the Underlying Swap Transaction on one or more days in the Exercise Period, but on any such day may not exercise less than the Minimum Notional Amount or more than the Maximum Notional Amount and, if an amount is specified as the "Integral Multiple" in the related Confirmation, the Notional Amount exercised must be equal to, or be an integral multiple of, the amount so specified.
- b. Any attempt to exercise on any day in the Exercise Period:
  - i. more than the Maximum Notional Amount will be deemed to be an exercise of the Maximum Notional Amount (the Notional Amount of the Underlying Swap Transaction exceeding the Maximum Notional Amount being deemed to remain unexercised);
  - ii. less than the Minimum Notional Amount will be ineffective; and
  - iii. a Notional Amount not equal to or an integral multiple of the Integral Multiple will be deemed to be an exercise of a Notional Amount equal to the next lower integral multiple of the Integral Multiple (the Notional Amount of the Underlying Swap Transaction exceeding that amount being deemed to remain unexercised).

Notwithstanding the foregoing, on any day in the Exercise Period other than the Expiration Date, the Buyer may exercise any Notional Amount of the Underlying Swap Transaction that does not exceed the Maximum Notional Amount if it exercises all the Notional Amount

of the Underlying Swap Transaction remaining unexercised. On the Expiration Date, the Buyer may exercise the entire Notional Amount of the Underlying Swap Transaction remaining unexercised.

#### 6.4 Automatic Exercise

If "Automatic Exercise" is specified to be applicable to a Swaption, then the Notional Amount of the Underlying Swap Transaction not previously exercised under that Swaption will be deemed to be exercised at the Expiration Time on the Expiration Date if at such time the Buyer is in-the-money (in respect of which, see Clauses 6.6 and 9.1 of this Annex B) unless:

- a. at such time the difference between the Settlement Rate and the Fixed Rate under the Relevant Swap Transaction is less than any applicable Threshold; or
- b. prior to such time the Buyer notifies the Seller (orally, including by telephone, or in writing) that it does not wish Automatic Exercise to apply.

If either party believes that exercise pursuant to the provisions of this Clause 6.4 has occurred, it will immediately notify the other party. Failure to provide that notification will not affect the validity of such exercise.

#### 6.5 Fallback Exercise

If "Automatic Exercise" is not specified to be applicable to a Swaption, "Fallback Exercise" will be deemed to apply to any Swaption in respect of which the Underlying Swap Transaction is an Interest Rate Swap. If Fallback Exercise is applicable to a Swaption, then the Notional Amount of the Underlying Swap Transaction not previously exercised under that Swaption will be deemed to be exercised at the Expiration Time on the Expiration Date if at such time Buyer is in-the-money (in respect of which, see Clauses 6.6 and 9.1 of this Annex B) unless:

- a. at such time the difference between the Settlement Rate and the Fixed Rate under the Relevant Swap Transaction is less than one tenth of a percentage point (0.10% or 0.001); or
- b. prior to such time the Buyer notifies the Seller (orally, including by telephone, or in writing) that it does not wish Fallback Exercise to apply.

If either party believes that exercise pursuant to the provisions of this Clause 6.5 has occurred, it will immediately notify the other party. Failure to provide that notification will not affect the validity of such exercise.

#### 6.6 Settlement Rate on Automatic or Fallback Exercise

For the purposes of Clauses 6.4 and 6.5 of this Annex B and determining whether the Buyer is in-the-money, and for purposes of the definition of Settlement Rate (in this Annex B) where a Swaption is deemed to be exercised pursuant to the provisions of Clauses 6.4 and 6.5 of this Annex B:

- a. where Cash Settlement is specified to be applicable to a Swaption, the Settlement Rate will be:

Where we determine the Settlement Rate at approximately the Expiration Time on the Expiration Date, the Settlement Rate will be the rate determined by us on the basis of the par swap rates quoted by the Cash Settlement Reference Banks using the relevant Quotation Rate (or, if a Quotation Rate is not specified in the related Confirmation, using "mid" as the relevant Quotation Rate), as of the Expiration Time on the Expiration Date, for Swap Transactions in the currency in which the Relevant Swap Transaction is denominated for a period equivalent to the remaining Term of the Relevant Swap Transaction and with dealers in the relevant market of the highest credit standing which satisfy all the credit criteria which such Cash Settlement Reference Banks apply generally at the time in deciding whether to offer or make an extension of credit. If five quotations are provided as requested, the Settlement Rate will be calculated by eliminating the highest and lowest rates and taking the arithmetic mean of the remaining rates. If at least three, but fewer than five, quotations are provided, the Settlement Rate will be the arithmetic mean of the quotations. If fewer than three quotations are provided as requested, the Settlement Rate will be determined by us in good faith and in commercially reasonable manner; and

- b. where Physical Settlement is specified to be applicable to a Swaption, the Settlement Rate will be:

Where we determine the Settlement Rate at approximately the Expiration Time on the Expiration Date, the Settlement Rate will be the rate determined by us on the basis of the par swap rates quoted by the Cash Settlement Reference Banks using "mid" as the relevant Quotation Rate, as of the Expiration Time on the Expiration Date, for Swap Transactions in the currency in which the Relevant Swap Transaction is denominated for a period equivalent to the remaining Term of the Relevant Swap Transaction and with dealers in the relevant market of the highest credit standing which satisfy all the credit criteria which such Cash Settlement Reference Banks apply generally at the time in deciding whether to offer or make an extension of credit. If five quotations are provided as requested, the Settlement Rate will be calculated by eliminating the highest and lowest rates and taking the arithmetic mean of the remaining rates. If at least three, but fewer than five, quotations are provided, the Settlement Rate will be the arithmetic mean of the quotations. If fewer than three quotations are provided as requested, the Settlement Rate will be determined by us in good faith and in commercially reasonable manner.

### 7. SETTLEMENT OF SWAPTION

#### 7.1 Physical Settlement of Swaption

In respect of each Exercise Date under a Swaption to which Physical Settlement is applicable or is deemed to be applicable, subject to any applicable condition precedent, the Underlying Swap Transaction will become effective and the Notional Amount of the Underlying Swap Transaction will (subject to the provisions of Clause 6.2 of this Annex B, if Partial Exercise is applicable, or Clause 6.3 of this Annex B, if Multiple Exercise is applicable) be equal to the Notional Amount specified in the relevant notice of exercise.

#### 7.2 Cash Settlement of Swaption

In respect of each Exercise Date under a Swaption to which Cash Settlement is applicable or is deemed to be applicable (a) if Buyer is the party which is in-the-money (in respect of which, see Clause 9.1 of this Annex B), the Seller will pay to the Buyer, subject to any applicable



condition precedent, the Cash Settlement Amount, if any, on the relevant Cash Settlement Payment Date; and (b) if the Seller is the party which is in-the-money (in respect of which, see Clause 9.1 of this Annex B), no amount will be payable. If the Swaption is deemed to be exercised pursuant to the provisions of Clause 6.4 or 6.5 of this Annex B, Seller will pay to Buyer, subject to any applicable condition precedent, the Cash Settlement Amount, if any, on the day that is two Business Days after either party notifies the other party, in accordance with the provisions of 6.4 or 6.5 of this Annex B, that it believes such exercise has occurred.

## **8. CASH SETTLEMENT METHODS FOR SWAPTIONS**

### **8.1 Cash Price**

If "Cash Price" is specified in the related Confirmation to be the Cash Settlement Method applicable to a Swaption, the Cash Settlement Amount will be an amount determined by us in our absolute discretion with respect to the Relevant Swap Transaction as of the Cash Settlement Valuation Time on the Cash Settlement Valuation Date, the necessary changes being made, as though (a) the Relevant Swap Transaction were the only Terminated Transaction; (b) the Cash Settlement Payment Date was an Early Termination Date; and (c) the Cash Settlement Currency were the Termination Currency. Notwithstanding the definition of "Early Termination Amount", we will determine the Cash Settlement Amount on the basis of quotations (either firm or indicative) for a replacement transaction supplied by Cash Settlement Reference Banks (but we may not take into account any loss or cost incurred by a party in connection with its terminating, liquidating or re-establishing any hedge related to the Relevant Swap Transaction (or any gain resulting from any of them)). We will ask each Cash Settlement Reference Bank to provide a quotation using the Quotation Rate specified in the related Confirmation. In providing quotations, the Cash Settlement Reference Banks will be asked to assume that we are a dealer in the relevant market of the highest credit standing which satisfies all the credit criteria which such Cash Settlement Reference Banks apply generally at the time in deciding whether to offer or make an extension of credit, and no account will be taken of any existing Security Document. Notwithstanding the definition of "Early Termination Amount", if fewer than three quotations are provided, the Cash Settlement Amount will be determined by us in good faith and using commercially reasonable procedures.

### **8.2 Par Yield Curve - Adjusted**

If "Par Yield Curve - Adjusted" is specified in the related Confirmation to be the Cash Settlement Method applicable to a Swaption, the Cash Settlement Amount will be an amount calculated as the present value of an annuity equal to the difference between:

- a. the amounts that would be payable by the Fixed Rate Payer under the Relevant Swap Transaction if the Fixed Rate were the Settlement Rate; and
- b. the amounts payable by the Fixed Rate Payer under the Relevant Swap Transaction.

The discount rate used to calculate such present value will be equal to the Settlement Rate, and such present value will be calculated using the Payment Dates applicable to the Fixed Rate Payer under the Relevant Swap Transaction.

### **8.3 Zero Coupon Yield - Adjusted**

If "Zero Coupon Yield - Adjusted" is specified in the related Confirmation to be the Cash Settlement Method applicable to a Swaption, the Cash Settlement Amount will be an amount calculated as the present value of an annuity equal to the difference between:

- a. the amounts that would be payable by the Fixed Rate Payer under the Relevant Swap Transaction if the Fixed Rate were the Settlement Rate; and
- b. the amounts payable by the Fixed Rate Payer under the Relevant Swap Transaction.

The discount factors used to calculate such present value will be calculated from a current zero coupon curve agreed between the parties and using the Payment Dates applicable to the Fixed Rate Payer under the Relevant Swap Transaction. If the parties are unable to agree on such current market zero coupon curve, the Cash Settlement Amount will be determined as if the parties had specified "Cash Price" to be the applicable Cash Settlement Method.

### **8.4 Par Yield Curve - Unadjusted**

If "Par Yield Curve - Unadjusted" is specified in the related Confirmation to be the Cash Settlement Method applicable to a Swaption the Cash Settlement Amount will be an amount calculated as the present value of an annuity equal to the difference between:

- a. the amounts that would be payable by the Fixed Rate Payer under the Relevant Swap Transaction if the Fixed Rate were the Settlement Rate; and
- b. the amounts payable by the Fixed Rate Payer under the Relevant Swap Transaction.

The discount rate used to calculate such present value will be equal to the Settlement Rate. Such annuity payment and discounting shall be calculated based on Payment Dates applicable to the Fixed Rate Payer under the Relevant Swap Transaction without regard to adjustment based on any Business Day Convention.

## **9. IN-THE-MONEY AND OUT-OF-THE MONEY FOR A SWAPTION**

### **9.1 In-the-money**

A party to a Swaption is "in-the-money" in respect of an Exercise Date if (a) such party is the Fixed Rate Payer under the Relevant Swap Transaction and the Settlement Rate exceeds the Fixed Rate under the Relevant Swap Transaction; or (b) such party is the Floating Rate Payer under the Relevant Swap Transaction and the Fixed Rate under the Relevant Swap Transaction exceeds the Settlement Rate, and, if a method for determining the Settlement Rate is not specified in the related Confirmation, "ISDA Source" will be deemed to have been specified.

### **9.2 Out-of-the-money**

A party to a Swaption is "out-of-the-money" in respect of an Exercise Date if (a) such party is the Floating Rate Payer under the Relevant Swap Transaction and the Settlement Rate exceeds the Fixed Rate under the Relevant Swap Transaction or (b) such party is the Fixed Rate Payer under the Relevant Swap Transaction and the Fixed Rate under the Relevant Swap Transaction exceeds the Settlement Rate, and, if a method for determining the Settlement Rate is not specified in the related Confirmation, "ISDA Source" will be deemed to have been specified.

## **10. CORRECTIONS TO PUBLISHED AND DISPLAYED RATES FOR SETTLEMENT RATE**

10.1 For the purposes of determining the Settlement Rate for any day:

- a. in any case where the Settlement Rate for a day is based on information obtained from the Reuters Screen, Telerate or the Bloomberg Screen, that Settlement Rate will be subject to the corrections, if any, to that information subsequently displayed by that source within one hour of the time when such rate is first displayed by such source; and
- b. in the event that a party to any Swaption notifies the other party of any correction referred to in subsection (a) above no later than 15 Business Days after the expiration of the period referred to in such subsection, an appropriate amount will be payable as a result of such correction (whether such correction is made or such notice is given before or after the Cash Settlement Payment Date together with interest on that amount at a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant party (as certified by it) of funding that amount for the period from, and including, the day on which, based on such correction, a payment in the incorrect amount was first made to, but excluding, the day of payment of the refund or payment resulting from such correction.

## **11. ADDITIONAL DISRUPTION EVENT PROVISIONS FOR OFFSHORE DELIVERABLE CHINESE RENMINBI SWAP TRANSACTIONS**

11.1 Additional Disruption Event

Notwithstanding anything to the contrary in any applicable Annex, in the case of offshore Deliverable Chinese Renminbi Swap Transactions, upon the occurrence of a CNY Disruption Event, as determined by us in our sole discretion, we shall determine the Settlement Rate, Settlement Currency and/or other settlement terms taking into account all available information that we deem relevant. We shall, as soon as practicable following the occurrence of the relevant event or circumstance, notify you of such alternative basis for the determination of the Settlement Rate, Settlement Currency and/or other settlement terms, as the case may be.

11.2 Definitions

In this Clause 11:

- a. "CNY" means Renminbi.
- b. "CNY Disruption Event" means any of CNY Illiquidity, CNY Inconvertibility or CNY Non-Transferability.
- c. "CNY Illiquidity" means the occurrence of any event that makes it impossible (where it had previously been possible) for a party to the Transaction to obtain a firm quote of an offer price in respect of an amount in CNY equal to the Notional Amount, a Fixed Amount, a Floating Amount, an Initial Exchange Amount, an Interim Exchange Amount, a periodical exchange amount, a Final Exchange Amount, a Call Currency Amount, a Put Currency Amount or any other amount to be paid under the Transaction (the "Relevant Disrupted Amount"), in each case on the relevant Settlement Date, Payment Date or Exchange Date (as the case may be), either in one transaction or a commercially reasonable number of transactions that, when taken together, is no less than such Relevant Disrupted Amount, in the general CNY exchange market in the Offshore CNY Centre in order to perform its obligations under the Transaction. For the avoidance of doubt, the inability for a party to obtain such firm quote solely due to issues relating to its creditworthiness shall not constitute a CNY Illiquidity.
- d. "CNY Inconvertibility" means the occurrence of any event that makes it impossible (where it had previously been possible) for a party to the Transaction to convert an amount of CNY no less than the Relevant Disrupted Amount into or from USD (or, if the Settlement Currency specified in the Fallback Matrix for the applicable Currency Pair is a currency other than USD, then such Settlement Currency) in the general CNY exchange market in the Offshore CNY Centre, other than where such impossibility is due solely to the failure of that party to comply with any law, rule or regulation enacted by any Governmental Authority (unless such law, rule or regulation is enacted after the Trade Date of the Transaction and it is impossible for such party, due to an event beyond its control, to comply with such law, rule or regulation). For the avoidance of doubt, the inability for a party to convert CNY solely due to issues relating to its creditworthiness shall not constitute a CNY Inconvertibility.
- e. "CNY Non-Transferability" means the occurrence of any event that makes it impossible (where it had previously been possible) for a party to the Transaction to transfer CNY between accounts inside the Offshore CNY Centre or from an account inside the Offshore CNY Centre to an account outside the Offshore CNY Centre and outside Mainland China or from an account outside the Offshore CNY Centre and outside Mainland China to an account inside the Offshore CNY Centre, other than where such impossibility is due solely to the failure of that party to comply with any law, rule or regulation enacted by any Governmental Authority (unless such law, rule or regulation is enacted after the Trade Date of the Transaction and it is impossible for such party, due to an event beyond its control, to comply with such law, rule or regulation). For the purpose of CNY Non-Transferability only, a segregated Chinese Renminbi fiduciary cash account with the People's Bank of China and operated by the Bank shall be deemed to be an account inside Hong Kong.
- f. "Governmental Authority" means any de facto or de jure government (or any agency or instrumentality thereof), court, tribunal, administrative or other governmental authority or any other entity (private or public) charged with the regulation of the financial markets (including the central bank) of Mainland China and the Offshore CNY Centre.
- g. "Mainland China" means the People's Republic of China (excluding the Hong Kong Special Administrative Region of the People's Republic of China, the Macau Special Administrative Region of the People's Republic of China and the Taiwan Special Administrative Region of the People's Republic of China).
- h. "Offshore CNY Centre" means the jurisdiction specified in the relevant Confirmation. If no Offshore CNY Centre is specified in the relevant Confirmation, the Offshore CNY Centre shall be Hong Kong.

For the avoidance of doubt, references to "general CNY exchange market in the Offshore CNY Centre" in the definitions of CNY Illiquidity and

CNY Inconvertibility refer to purchase, sale, lending or borrowing of CNY for general purposes (including, but not limited to, funding), and therefore any purchase or sale of CNY where such CNY is required by applicable Law for settlement of any cross-border trade transaction with an entity in Mainland China, or any purchase or sale of CNY for personal customers residing in that Offshore CNY Centre, would not be a purchase or sale made in such general CNY exchange market.

## 12. DEFINITIONS

- 12.1 "Calculation Date" means the earliest day on which it is practicable to provide the notice that we are required to give for that Payment Date or for that Calculation Period.
- 12.2 "Calculation Period" means each period from, and including, one Period End Date of that party to, but excluding, the next following applicable Period End Date during the Term of the Swap Transaction, except that (a) the initial Calculation Period for the party will commence on, and include, the Effective Date and (b) the final Calculation Period for the party will end on, but exclude, the Termination Date.
- 12.3 "Cash Settlement" specified as applying to a Swaption means, if exercised, the Swaption will be settled in accordance with Clause 7.2 of this Annex B.
- 12.4 "Cash Settlement Amount" means, in respect of a Swaption, and in respect of an Exercise Date, an amount determined by us in accordance with the Cash Settlement Method specified in the Confirmation expressed as an amount of the Cash Settlement Currency.
- 12.5 "Cash Settlement Currency" means, in respect of a Swap Transaction, the currency, if any, specified as such in the related Confirmation, and, if no currency is specified as such in the related Confirmation:
  - a. if the Underlying Swap Transaction or the Swap Transaction, as appropriate, involves one currency, that currency; or
  - b. if the Underlying Swap Transaction or the Swap Transaction, as appropriate, involves more than one currency, the currency specified as the Termination Currency.
- 12.6 "Cash Settlement Method" means, in respect of a Swap Transaction and the calculation of a Cash Settlement Amount, the Cash Settlement Method specified as such, which may be specified by reference to any of the methods set forth in Clause 8 of this Annex B or may be specified by defining the Cash Settlement Method in the related Confirmation, and if no Cash Settlement Method is specified in the Confirmation the Cash Settlement Method shall be Cash Price.
- 12.7 "Cash Settlement Payment Date" means, in respect of an Exercise Date and a Swaption, the date specified as such in the related Confirmation (or determined pursuant to a method specified for such purpose), subject to adjustment in accordance with the Following Business Day Convention unless otherwise specified in the Confirmation.
- 12.8 "Cash Settlement Reference Banks" means five institutions selected by us in our absolute discretion.
- 12.9 "Cash Settlement Valuation Date" means, in respect of an Exercise Date, the date specified as such in the related Confirmation (or determined pursuant to a method specified for such purpose), subject to adjustment in accordance with the Modified Following Business Day Convention, unless otherwise specified in the Confirmation. Unless the parties specify otherwise, the Cash Settlement Valuation Date will be in respect of a Swaption, the Exercise Date.
- 12.10 "Cash Settlement Valuation Time" means, in respect of an Option Transaction, the time specified as such in the related Confirmation.
- 12.11 "Currency Amount" means, in respect of a party and any Calculation Period for a Swap Transaction involving more than one currency, the amount specified as such for the Swap Transaction or that party.
- 12.12 "Effective Date" means the date specified as such in the relevant Confirmation, which date is the first day of the Term of the Swap Transaction.
- 12.13 "Final Exchange Amount" means, in respect of a Transaction and a party, an amount that is specified as such for that party and, subject to any applicable condition precedent, is payable by that party on an applicable Final Exchange Date.
- 12.14 "Final Exchange Date" means, in respect of a Transaction and a party, each date specified as such in the relevant Confirmation.
- 12.15 "Fixed Amount" means an amount that is payable by that Fixed Rate Payer on an applicable Payment Date and is specified in a Confirmation.
- 12.16 "Fixed Rate Day Count Fraction" means, in respect of any calculation of a Fixed Amount, the Fixed Rate Day Count Fraction specified in the relevant Confirmation for the Swap Transaction or the Fixed Rate Payer and, if none is so specified, the Day Count Fraction determined by us in our absolute discretion.
- 12.17 "Fixed Rate" means, for any Payment Date or for any Calculation Period in respect of a Payment Date, a rate, expressed as a decimal, equal to the per annum rate specified as such in the relevant Confirmation for the Swap Transaction or that party.
- 12.18 "Fixed Rate Payer" means the party specified as such in the relevant Confirmation.
- 12.19 "Floating Amount" means an amount that is payable by that Floating Rate Payer on an applicable Payment Date.
- 12.20 "Floating Rate Day Count Fraction" means, in respect of any calculation of a Floating Amount the Floating Rate Day Count Fraction specified for the Swap Transaction or the Floating Rate Payer and, if none is so specified, the Day Count Fraction determined by us in our absolute discretion.
- 12.21 "Floating Rate Option" means, in respect of a Swap Transaction and the calculation of a Floating Amount, the Floating Rate Option specified as such, or may be specified by defining the Floating Rate Option in the relevant Confirmation.
- 12.22 "Floating Rate Payer" means the party specified as such in the relevant Confirmation.
- 12.23 "Floating Rate" means, for any Calculation Period in respect of a Payment Date or for any Reset Date, a rate, expressed as a decimal, equal

to:

- a. if a cap rate is specified in the relevant Confirmation, the excess, if any, of a rate determined pursuant to subparagraph (c) below over the cap rate so specified;
- b. if a floor rate is specified in the relevant Confirmation, the excess, if any, of the floor rate so specified over a rate determined pursuant to subparagraph (c) below; and
- c. in all other cases and for the purposes of paragraphs (a) and (b) above, if a per annum rate is specified to be the Floating Rate applicable to that Calculation Period or Reset Date as such in the relevant Confirmation, the Floating Rate so specified, or if no such rate is specified, the Relevant Rate for the Reset Date during or in respect of that Calculation Period.

- 12.24 "Initial Exchange Amount" means, in respect of a Transaction and a party, an amount that is specified as such for that party and, subject to any applicable condition precedent, is payable by that party on the Initial Exchange Date.
- 12.25 "Initial Exchange Date" means, in respect of a Transaction and a party, the date specified as such in the relevant Confirmation.
- 12.26 "Interest Rate Swap" means a transaction pursuant to which one party is required to make periodic payments of a fixed amount (or an amount calculated by applying a fixed rate to a non-amortizing notional amount) and the other party is required to make periodic payments of amounts in the same currency calculated by applying a floating rate to a non-amortizing notional amount.
- 12.27 "Interim Exchange Amount" means, in respect of a Transaction and a party, an amount that is specified as such (or determined pursuant to a method specified for such purpose) for that party and, subject to any applicable condition precedent, is payable by that party on an applicable Interim Exchange Date.
- 12.28 "Interim Exchange Date" means, in respect of a Transaction and a party, each date specified as such in the relevant Confirmation (or determined pursuant to a method specified for such purpose).
- 12.29 "Maximum Notional Amount" means, in respect of a Swaption to which Multiple Exercise is applicable, the amount, if any, specified as such in the related Confirmation.
- 12.30 "Minimum Notional Amount" means, in respect of a Swaption to which Multiple Exercise or Partial Exercise is applicable, the amount, if any, specified as such in the related Confirmation.
- 12.31 "Notional Amount" means, in respect of a Swap Transaction (other than a Swaption) the amount specified as such in the relevant Confirmation. In respect of a Swaption, "Notional Amount" means:
- a. if the Underlying Swap Transaction involves one currency, the Notional Amount of the Underlying Swap Transaction as appropriate; or
  - b. if the Underlying Swap Transaction involves more than one currency, the Currency Amount in respect of Buyer.
- 12.32 "Payment Date" means each day during the Term of the Swap Transaction so specified in the relevant Confirmation and the Termination Date except that (a) (unless otherwise specified) each Payment Date shall be subject to adjustment in accordance with the Modified Following Business Day Convention; and (b) a Payment Date in respect of a Fixed Rate Payer may be a specified day prior to the Effective Date where the Floating Amounts payable by the Floating Rate Payer are calculated by reference to a cap rate or floor rate.
- 12.33 "Period End Date" means each Payment Date in relation to a party during the Term of the Swap Transaction.
- 12.34 "Physical Settlement" specified as applying to a Swaption means, if exercised, the Swaption will be settled in accordance with Clause 7.1 of this Annex B.
- 12.35 "Quotation Rate" means, in respect of a Swaption the rate specified as such in the related Confirmation and which may be a "bid", "ask" or "mid" rate.
- 12.36 "Relevant Rate" means for any day, a per annum rate, expressed as a decimal, equal to:
- a. if such a day is a Reset Date, the rate determined with respect to that day for the specified Floating Rate Option as provided in the Confirmation; or
  - b. if such day is not a Reset Date, the Relevant Rate determined pursuant to sub-paragraph (a) above for the next preceding Reset Date.
- 12.37 "Relevant Swap Transaction" means in respect of a Swaption and in respect of an Exercise Date, a Swap Transaction on the same terms as the Underlying Swap Transaction but with a Notional Amount equal to the Notional Amount of the Underlying Swap Transaction exercised or deemed exercised on that Exercise Date.
- 12.38 "Reset Date" means:
- a. if "Arrears Setting" is specified in the relevant Confirmation, in respect of each Calculation Period, the first day of the next following Calculation Period or, in the case of the final Calculation Period, the Termination Date; and
  - b. in all other cases, each day specified as such in the relevant Confirmation, subject to adjustment in accordance with the Modified Following Business Day Convention, unless an adjustment in accordance with that Business Day Convention would cause a Reset Date to fall on the Payment Date in respect of the Calculation Period to which that Reset Date relates, in which case that Reset Date shall be adjusted in accordance with the Preceding Business Day Convention.
- 12.39 "Spread" means the per annum rate, expressed as a decimal, if any, specified as such in the relevant Confirmation. For the purpose of determining a Floating Amount, if positive, the Spread will be added to the Floating Rate and, if negative, the Spread will be subtracted from the Floating Rate.

- 12.40 "Term" means the period commencing on the Effective Date and ending on the Termination Date of a Swap Transaction.
- 12.41 "Termination Date" means the date specified as such in the relevant Confirmation, which date is the last day of the Term of the Swap Transaction.
- 12.42 "Threshold" means the percentage, if any, specified as such in the related Confirmation (or determined pursuant to a method specified for such purpose).
- 12.43 "Underlying Swap Transaction" means, in respect of a Swaption, a Swap Transaction, the terms of which are identified in the related Confirmation.

## **Annex C: Equity option transactions**

### **1. INTERPRETATION**

- 1.1 This Annex C sets out additional provisions and definitions (in respect of which see Clause 11 of this Annex C) applicable to Transactions that are Equity Option Transactions. In this Annex C:
- a. "Basket" means, in respect of an Index Basket Transaction, a basket composed of each Index specified in the relevant Confirmation in the relative proportions indicated in that Confirmation and, in the case of a Share Basket Transaction, a basket composed of Shares of each Issuer in the relevant Confirmation in the relative proportions and numbers of Shares of each Issuer specified in that Confirmation.
  - b. "Equity Option Transaction" means a transaction that is an Index Option Transaction, a Share Option Transaction, an Index Basket Option transaction or a Share Basket Option Transaction.
  - c. "Index" means the index specified as such in the relevant confirmation.
  - d. "Index Basket Option Transaction" means an over-the counter equity Option Transaction relating to a basket of Indices.
  - e. "Index Option Transaction" means an over-the-counter equity Option Transaction relating to a single Index.
  - f. "Shares" means the shares or other securities specified as such in the relevant Confirmation.
  - g. "Share Basket Option Transaction" means an over-the counter equity Option Transaction relating to a basket of Shares.
  - h. "Share Option Transaction" means any over-the counter equity Option Transaction relating to a single Share.
- 1.2 In the event of any inconsistency between this Annex C and other provisions of these Terms and Conditions, this Annex C will prevail for the purposes of Equity Option Transactions. In the event of any inconsistency between this Annex C and the provisions of a Confirmation, that Confirmation will prevail for the purposes of the relevant Transaction.

### **2. AGREEMENT TO PERFORM**

- 2.1 On the Premium Payment Date, the Buyer will pay to the Seller the Premium.
- 2.2 The Seller grants to the Buyer,
- a. in the case of a Call, upon the exercise of a Physically-Settled Equity Option Transaction, the right, but not the obligation, to cause the Seller to deliver to the Buyer the Number of Shares to be Delivered or the Number of Baskets to be Delivered, as the case may be, and the Buyer will pay to the Seller the Settlement Price;
  - b. in the case of a Put, upon the exercise of a Physically-Settled Equity Option Transaction, the right, but not the obligation, to cause the Buyer to deliver to the Seller the Number of Shares to be Delivered or the Number of Baskets to be Delivered, as the case may be, and the Seller will pay to the Buyer the Settlement Price; or
  - c. in the case of a Cash-Settled Equity Option Transaction, the right, but not the obligation, to cause the Seller to pay to the Buyer the Cash Settlement Amount, if any, on the relevant Cash Settlement Payment Date,

in each case in accordance with Clause 4 or 5 of this Annex C (as applicable). Unless the parties otherwise specify, Physical Settlement will be deemed to apply to a Share Option Transaction and a Share Basket Option Transaction.

### **3. PROCEDURE FOR EXERCISE**

- 3.1 Exercise
- a. The Buyer may exercise the rights granted pursuant to an Equity Option Transaction by giving to the Seller a Notice of Exercise which shall constitute an irrevocable election and undertaking by the Buyer to exercise the Equity Option Transaction:
    - i in respect of an American style Option, if received during the Exercise Period; and
    - ii in respect of an European style Option, if received on the Exercise Date prior to the Expiration Time,unless Automatic Exercise (as set out in Clause 3.3 of this Annex C) is applicable, in which case the Equity Option Transaction is deemed exercised pursuant to that Clause 3.3.
  - b. If a Notice of Exercise has not been received by the Seller prior to or at the Expiration Time on the Expiration Date (and Automatic Exercise is not applicable), the right or rights granted pursuant to an Equity Option Transaction will expire and become void and of no effect.
- 3.2 Multiple Exercise
- a. If "Multiple Exercise" applies to an American style Equity Option Transaction, the Buyer may exercise all or less than all the unexercised Options on one or more Exchange Business Days in the Exercise Period, but on any such Exchange Business Day may not exercise less than the Minimum Number of Options or more than the Maximum Number of Options and, if a number is specified as the "Integral Multiple" in the relevant Confirmation, the number of exercised Options must be equal to, or be an integral multiple of, the number so specified.
  - b. Any attempt to exercise on any Exchange Business Day in the Exercise Period:
    - i more than the Maximum Number of Options, will be deemed to be an exercise of the Maximum Number of Options (the number

of Options, if any, exceeding the Maximum Number of Options being deemed to remain unexercised);

- ii less than the Minimum Number of Options, will be ineffective; and
  - iii an amount of Options not equal to or an integral multiple of the Integral Multiple, will be deemed to be an exercise of a number of Options equal to the next lowest integral multiple of the Integral Multiple (the number of Options exceeding that number being deemed to remain unexercised).
- c. In the event that the number of Options remaining unexercised on the Expiration Date is less than the Minimum Number of Options, that number of Options will remain unexercised. In the event that the number of Options remaining unexercised on the Expiration Date is greater than the Maximum Number of Options, the Buyer may exercise only the specified Maximum Number of Options and the excess will remain unexercised.
- d. Unless the parties specify otherwise, Multiple Exercise will be deemed to apply to any American style Equity Option Transaction.

### 3.3 Automatic Exercise

- a. Unless the parties otherwise specify and subject to Clause 3.2(d) of this Annex C, Automatic Exercise will be deemed to apply to a Transaction.
- b. If "Automatic Exercise" is specified (or deemed to be specified) to be applicable to an Equity Option Transaction, then each Option not previously exercised under that Equity Option Transaction will be deemed to be automatically exercised:
- i where Cash Settlement applies, at the Expiration Time on the Expiration Date, unless the Buyer notifies the Seller (by telephone or in writing) prior to the Expiration Time on the Expiration Date that it does not wish Automatic Exercise to occur; and
  - ii. where Physical Settlement applies, at the Expiration Time on the Expiration Date if at such time the Option is In-the-Money, as determined by us, unless:
    - (1) the Buyer notifies the Seller (by telephone or in writing) prior to the Expiration Time on the Expiration Date that it does not wish Automatic Exercise to occur; or
    - (2) the Reference Price necessary to determine that the Option is In-the-Money cannot be determined at the Expiration Time on the Expiration Date,

in which case Automatic Exercise will not apply.

## 4. PHYSICAL SETTLEMENT

- 4.1 In respect of each Exercise Date under an Equity Option Transaction to which Physical Settlement applies, on the relevant Settlement Date:
- a. in the case of a Call, the Buyer will pay to the Seller the Settlement Price and the Seller will deliver to the Buyer the Number of Shares to be Delivered or the Number of Baskets to be Delivered, as the case may be; and
  - b. in case of a Put, the Buyer will deliver to the Seller the Number of Shares to be Delivered or the Number of Baskets to be Delivered, as the case may be, and the Seller will pay to Buyer the Settlement Price.
- 4.2 Such payment and delivery will be made on the relevant Settlement Date through the relevant Clearance System(s) at the accounts specified in the relevant Confirmation and, if possible through the relevant Clearance System(s), will be made on a delivery versus payment basis.
- 4.3 Following exercise of an Option under an Equity Option Transaction to which Physical Settlement applies, all expenses relating to transfer of the relevant Shares to be delivered (such as any stamp duty or stock exchange tax) will be payable by you and you agree to indemnify us for all such expenses.
- 4.4 Following exercise of an Option under an Equity Option Transaction to which Physical Settlement applies, all dividends on the relevant Shares to be delivered will be payable to the party that would receive such dividends according to market practice for a sale of such Shares executed on the Exercise Date to be settled through the relevant Clearance System.
- 4.5 Failure by us to deliver, when due, the relevant Shares under that Transaction will not constitute a default by us if we are unable to deliver such Shares due to illiquidity in the market for such Shares and if we (a) notify you within one Clearance System Business Day of the relevant Exercise Date to that effect; and (b) deliver on the Settlement Date such number of Shares, if any, as we can deliver to you on that date. In such cases we shall, by notice to you, in lieu of Physical Settlement, satisfy our obligation in respect of the Shares under the relevant Transaction by payment to you of an amount equal to the market value of the Shares, as determined by us using such market information available to us as we, in our absolute discretion, may select, which have not been so delivered.
- 4.6 If, in respect of each exercise of Options under an Equity Option Transaction to which Physical Settlement applies, you fail to perform any obligation required to be settled by delivery, you will indemnify us on demand for any Loss (including the costs of borrowing the relevant Shares, if applicable) resulting from such failure. A certificate signed by us setting out such Loss in reasonable detail will be conclusive evidence that they have been incurred.
- 4.7 In respect of each exercise of an Option under a Physically-settled Share Option Transaction, the party required to deliver the relevant Shares agrees that it will convey, and, on each date that it delivers such Shares, represents that it has conveyed, good title to the Shares it is required to deliver, free and clear of any lien, charge, claim or other encumbrance (other than a lien routinely imposed on all securities in the relevant Clearance System).

## 5. CASH SETTLEMENT OF OPTIONS

- 5.1 In respect of each Exercise Date under an Equity Option Transaction to which Cash Settlement applies, subject to any applicable condition precedent, the Seller will pay to the Buyer the Cash Settlement Amount, if any, on the relevant Cash Settlement Payment Date for all Options exercised or deemed exercised on that Exercise Date.

## **6. ADJUSTMENTS TO AND CORRECTIONS OF INDEX**

- 6.1 If, on or prior to any Valuation Date in respect of an Index Option Transaction or Index Basket Option Transaction, a relevant Index sponsor:
- makes a material change in the formula for or the method of calculating that Index or in any other way materially modifies that Index (other than a modification prescribed in that formula or method); or
  - fails to calculate and announce a relevant Index,

then we shall calculate the relevant Settlement Price, using the level for that Index as at that Valuation Date as determined by us in accordance with the formula for and method of calculating that Index last in effect prior to that change or failure.

- 6.2 If, in respect of an Index Option Transaction or Index Basket Option Transaction, the level of an Index published on a given day and used or to be used by us to calculate the Settlement Price, is subsequently corrected and the correction published by that Index sponsor within 30 days of the original publication, we may notify you of (a) that correction; and (b) the amount that is payable as a result of that correction and you shall pay to us such amount, together with interest on that amount at a rate per annum equal to the cost (without proof or evidence of any actual cost) to us of funding that amount for the period from and including the day on which a payment originally was (or was not) made, to but excluding the day of payment of the refund or payment resulting from that correction.

## **7. ADJUSTMENTS TO SHARES AND ADDITIONAL DISRUPTION EVENTS**

### **7.1 Potential Adjustment Event**

Following the declaration by the Issuer of any Potential Adjustment Event, we will determine whether such Potential Adjustment Event has a diluting or concentrative effect on the theoretical value of the relevant Shares and, if so, will:

- make the corresponding adjustment(s), if any, to any one or more of the Strike Price, the number of Options and the Option Entitlement and, in any case, any other variable relevant to the exercise, settlement or payment terms of that Transaction as we determine appropriate to account for that diluting or concentrative effect; and
- determine the effective date(s) of the adjustment(s).

We may (but need not) determine the appropriate adjustment(s) by reference to the adjustment(s) in respect of such Potential Adjustment Event made by an options exchange to options on the relevant Shares traded on that options exchange.

### **7.2 Merger Event and Tender Offers**

If there is any Merger Event or Tender Offer in respect of any Shares, we will make corresponding adjustments, if any, to any one or more of:

- in respect of a Share Option Transaction, the Strike Price, the number of Options and the Option Entitlement; and
- in respect of a Share Basket Option Transaction, the Strike Price, the number of Options, the Option Entitlement and the number of Shares comprised in the Basket;

and in any case, any term of the Transaction, including but not limited to any other variable relevant to the exercise, settlement or payment terms of that Transaction, which adjustment will be effective as of the date determined by us to be the effective date of the corresponding adjustment made by the Exchange.

### **7.3 Nationalization, Insolvency and Delisting**

If there is any Nationalization, Insolvency or Delisting, we will in the case of a Share Option Transaction or a Share Basket Option Transaction, cancel the Option Transaction as of the Announcement Date and the Seller will pay to the Buyer the Payment Upon Nationalization, Insolvency or Delisting not later than three Business Days following determination of such amount by us.

### **7.4 Additional Disruption Events**

- On the occurrence of a Change in Law, Insolvency Filing in respect of the Issuer (in the case of a Share Option Transaction or a Share Basket Option Transaction only), or a Hedging Disruption, we may elect to terminate an Equity Option Transaction by giving notice to the other party specifying the date of such termination, in which event the Equity Option Transaction will terminate and we will determine the Cancellation Amount payable by one party to the other and the date of payment of such Cancellation Amount.
- On the occurrence of Increased Cost of Hedging, we may either:
  - adjust the Strike Price, spread or any other variable with respect to the Equity Option Transaction, or
  - terminate the Equity Option Transaction by giving notice to the other party specifying the date of such termination, in which event the Equity Option Transaction will terminate and we will determine the Cancellation Amount payable by one party to the other and the date of payment of such Cancellation Amount.

## **8. MARKET DISRUPTION EVENT**

- 8.1 We shall as soon as reasonably practicable under the circumstances notify the parties or other party, as the case may be, of the existence of a Market Disruption Event on any day that, but for the occurrence or existence of a Market Disruption Event, would have been a Valuation Date.
- 8.2 If there is a Market Disruption Event on a Valuation Date, then we shall determine an alternative Valuation Date as soon as reasonably practicable thereafter.



## 9. SETTLEMENT DISRUPTION EVENT

- 9.1 If a Settlement Disruption Event prevents delivery of the Shares on the Settlement Date, then the Settlement Date will be the first succeeding day on which delivery of the Shares can take place through the relevant Clearance System. If a Settlement Disruption Event prevents settlement on each of the ten relevant Clearance System Business Days immediately following the original date that, but for the Settlement Disruption Event, would have been the Settlement Date, the Shares will be delivered in any other commercially reasonable manner available to the parties and the Settlement Date will be the date designated as such by us. If settlement is prevented beyond such time, we may take such steps as we, in our sole and absolute discretion, deem necessary.

## 10. FX PROVISIONS

- 10.1 If, with respect to a Transaction, any amount to be calculated or determined is different from the Settlement Currency, the Calculation Agent acting in good faith and in a commercially reasonable manner shall determine the amount in the Settlement Currency, using the exchange rate actually obtained for converting the relevant proceeds (or any amounts in connection with) into the Settlement Currency.

## 11. DEFINITIONS

- 11.1 "Announcement Date" means (a) in respect of a Nationalization, the date of the first public announcement of a firm intention to nationalize (whether or not amended or on the terms originally announced) that leads to the Nationalization; and (b) in respect of an Insolvency, the date of the first public announcement of the institution of a proceeding or presentation of a petition or passing of a resolution (or other analogous procedure in any jurisdiction) that leads to the Insolvency, in each case as determined by us.

- 11.2 "Call" means an Equity Option Transaction entitling the Buyer upon exercise:

- a. where Cash Settlement applies, to receive from the Seller the Cash Settlement Amount if the Settlement Price exceeds the Strike Price; and
- b. where Physical Settlement applies, to purchase Shares or Baskets of Shares from the Seller at the Settlement Price,

in each case, as more particularly provided in the relevant Confirmation.

- 11.3 "Cancellation Amount" means, the amount of our Loss, that are or would be incurred under then prevailing circumstances (expressed as a positive number) or our gains that are or would be realized under then prevailing circumstances (expressed as a negative number) in replacing, or in providing for us the economic equivalent of (a) the material terms of the Share Option Transaction or the Share Basket Option Transaction; and (b) the option rights of the parties in respect of the Share Option Transaction or the Share Basket Option Transaction.

The Cancellation Amount will be determined by us, acting in good faith and in a commercially reasonable manner. The Cancellation Amount will be determined as of the date that the Share Option Transaction or the Share Basket Option Transaction is terminated or cancelled or, if that would not be reasonable, as of the date or dates following the date that the Share Option Transaction or the Share Basket Option Transaction is terminated or cancelled as would be commercially reasonable.

- 11.4 "Cash Settlement Amount" means, in respect of an Equity Option Transaction, in respect of each Valuation Date:

- a. under an Index Option Transaction or Index Basket Option Transaction, an amount, as calculated by us, equal to the number of Options exercised or deemed exercised on the relevant Exercise Date multiplied by the Strike Price Differential multiplied by one unit of the Settlement Currency multiplied by the Multiplier, if any; and
- b. under a Share Option Transaction or Share Basket Option Transaction, an amount, as calculated by us, equal to the number of Options exercised or deemed exercised on the relevant Exercise Date multiplied by the Option Entitlement multiplied by the Strike Price Differential.

- 11.5 "Cash Settlement Payment Date" means, in respect of each Exercise Date, the date specified or otherwise determined as provided in the relevant Confirmation or if no such date is specified, as determined by us.

- 11.6 "Change in Law" means that, on or after the Trade Date of the Equity Option Transaction (a) due to the adoption of or any change in any applicable Laws (including, without limitation, any tax law); or (b) due to the promulgation of or any change in the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable Laws (including any action taken by a taxing authority), we determine that (a) it will, or there is a substantial likelihood that it will, within the next 30 calendar days, but before the Expiration Date of the Transaction become, or it has become illegal to hold, acquire or dispose of Shares relating to the Share Option Transaction or the Share Basket Option Transaction or any securities comprised in the relevant Index relating to the Index Option Transaction or the Index Basket Option Transaction; or (b) will incur a materially increased cost in performing its obligations under the Equity Option Transaction (including, without limitation, due to any increase in tax liability, decrease in tax benefit or other adverse effect on its tax position).

- 11.7 "Delisting" means that the Exchange announces that pursuant to the rules of such Exchange, the Shares cease (or will cease) to be listed, traded or publicly quoted on the Exchange for any reason (other than a Merger Event or Tender Offer) and are not immediately re-listed, re-traded or re-quoted on an exchange or quotation system located in the same country as the Exchange (or, where the Exchange is within the European Union, in any member state of the European Union).

- 11.8 "Early Closure" means the closure on any Exchange Business Day of the relevant Exchange or any Related Exchange(s) prior to its Scheduled Closing Time unless such earlier closing time is announced by such Exchange(s) or Related Exchange(s) at least one hour prior to the earlier of (a) the actual closing time for the regular trading session on such Exchange(s) or Related Exchange(s) on such Exchange Business Day; and (b) the submission deadline for orders to be entered into the Exchange or Related Exchange system for execution at the Expiration Time on such Exchange Business Day.

- 11.9 "Exchange Disruption" means any event (other than an Early Closure) that disrupts or impairs (as determined by us) the ability of market participants in general (a) to effect transactions in, or obtain market values for, any securities comprised in the relevant Index, the Shares on the Exchange; or (b) to effect transactions in, or obtain market values for, futures or options contracts on the relevant Index or relating to the Share on any relevant Related Exchange if, in any such case, any suspension or limitation is, in our determination, material.

- 11.10 "Hedging Disruption" means that we are unable, after using commercially reasonable efforts, to (a) acquire, establish, re-establish, substitute, maintain, unwind or dispose of any transaction(s) or asset(s) we deem necessary to hedge the equity price risk (or any other relevant price risk including, but not limited to, the currency risk) of entering into and performing our obligations with respect to the Equity Option Transaction (any such transactions or assets, a "Bank Hedge"); or (b) freely realize, recover, receive, remit or transfer out of or into the relevant jurisdiction the proceeds of or any amounts in connection with a Bank Hedge.
- 11.11 "Increased Cost of Hedging" means that we would incur a materially increased (as compared with circumstances existing on the Trade Date) amount of tax, duty, expense or fee (other than brokerage commissions) to (a) acquire, establish, re-establish, substitute, maintain, unwind or dispose of a Bank Hedge; or (b) freely realize, recover, receive, repatriate, remit or transfer out of or into the relevant jurisdiction the proceeds of or any amounts in connection with a Bank Hedge.
- 11.12 "Insolvency" means that by reason of the voluntary or involuntary liquidation, bankruptcy or insolvency or any analogous proceeding affecting an Issuer (a) all the Shares of that Issuer are required to be transferred to a trustee, liquidator or other similar official; or (b) holders of the Shares of the Issuer become legally prohibited from transferring them.
- 11.13 "Insolvency Filing" means that the Issuer institutes or has instituted against it by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organization or the jurisdiction of its head or home office, or it consents to a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official or it consents to such a petition.
- 11.14 "In-the-Money" means, unless otherwise specified in a Confirmation, in respect of a Physically-settled Share Option Transaction, in the case of a Call, that the Reference Price is equal to or greater than 101 percent of the Strike Price and, in the case of a Put, that the Reference Price is less than or equal to 99 percent of the Strike Price.
- 11.15 "Issuer" means the issuer of the relevant Shares.
- 11.16 "Market Disruption Event" means, in our sole opinion, the occurrence or existence of:
- a Trading Disruption;
  - an Exchange Disruption, or
  - an Early Closure.
- 11.17 "Merger Date" means, in respect of a Merger Event, the date upon which all holders of the relevant Shares (other than, in the case of a takeover offer, Shares owned or controlled by the offeror) have agreed or have irrevocably become obliged to transfer their Shares.
- 11.18 "Merger Event" means, in respect of any relevant Shares:
- any reclassification or change of such Shares that results in a transfer of or an irrevocable commitment to transfer all of such Shares outstanding;
  - any consolidation, amalgamation or merger of the Issuer with or into another entity (other than a consolidation, amalgamation or merger in which such Issuer is the continuing entity and which does not result in any such reclassification or change of all of such Shares outstanding); or
  - other takeover offer for such Shares that results in a transfer of or an irrevocable commitment to transfer all such Shares (other than such Shares owned or controlled by the offeror), in each case if the Merger Date is on or before, in the case of a Physically-Settled Option transaction, the Expiration Date or, in any other case, the final Valuation Date.
- 11.19 "Multiplier" means the percentage or amount, if any, specified as such in a Confirmation.
- 11.20 "Nationalization" means that all the Shares or all the assets or substantially all the assets of an Issuer are nationalized, expropriated or are otherwise required to be transferred to any governmental agency, authority or entity.
- 11.21 "Number of Baskets to be Delivered" means, in respect of an Exercise Date under a Share Basket Option Transaction, the number of Baskets equal to the number of Options exercised or deemed exercised on that Exercise Date multiplied by the Option Entitlement. In the event that a Basket to be Delivered comprises a fraction of a Share, the number of such Shares comprised in that Basket shall be rounded down to the nearest whole Share.
- 11.22 "Number of Shares to be Delivered" means, in respect of an Exercise Date under a Share Option Transaction, the number of Shares equal to the number of Options exercised or deemed exercised on that Exercise Date multiplied by the Option Entitlement, rounded down to the nearest whole Share.
- 11.23 "Option Entitlement" means, in respect of a Share Option Transaction, the number of Shares per Option specified as such in the relevant Confirmation and, in respect of a Basket Option Transaction, the number of Baskets per Option specified as such in the relevant Confirmation.
- 11.24 "Payment Upon Nationalization, Insolvency or Delisting" means an amount denominated in the currency for settlement of the Transaction as determined by us and equal to an amount determined by us in our absolute discretion as the fair value to the Buyer of an option with terms that would preserve for the Buyer the economic equivalent of any payment or delivery by the parties in respect of the relevant Transaction that would have been required after the date (as determined by us in our absolute discretion) of the occurrence of the Nationalization, Insolvency or Delisting but for the occurrence of the Nationalization, Insolvency or Delisting.
- 11.25 "Potential Adjustment Event" means in our sole opinion, any of the following:
- a subdivision, consolidation or reclassification of relevant Shares (unless a Merger Event), or, a free distribution or dividend of any such Shares to existing holders by way of bonus, capitalization or similar issue;

- b. a distribution or dividend to existing holders of the relevant Shares of (i) such Shares, or (ii) other share capital or securities granting the right to payment of dividends and/or the proceeds of liquidation of the Issuer equally or proportionately with such payments to holders of such Shares, or (iii) any other type of securities, rights or warrants or other assets, in any case for payment (cash or other) at less than the prevailing market price as determined by us;
- c. an extraordinary dividend;
- d. a call by the Issuer in respect of relevant Shares that are not fully paid;
- e. a repurchase by the Issuer of relevant Shares whether out of profits or capital and whether the consideration for such repurchase is cash, securities or otherwise; or
- f. any other similar event that may have a diluting or concentrative effect on the theoretical value of the relevant Shares.

11.26 "Put" means an Equity Option Transaction entitling the Buyer upon exercise:

- a. where Cash Settlement applies, to receive from the Seller a Cash Settlement Amount if the Strike Price exceeds the Settlement Price; and
- b. where Physical Settlement applies, to sell Shares or Baskets of Shares to the Seller at the Settlement Price,

in each case as more particularly provided in the relevant Confirmation.

11.27 "Reference Price" means in respect of an Equity Option Transaction to which Physical Settlement applies, the price determined as provided in the relevant Confirmation at the Expiration Time on the Expiration Date or, if no means of determining such price is so provided:

- a. in the case of a Share Option Transaction, the Relevant Price of the Share; and
- b. in the case of a Share Basket Option Transaction, the sum of the values calculated at the Expiration Time on the Expiration Date for the Shares of each Issuer as the product of:
  - i. the Relevant Price (for which purpose the Valuation Time and the Valuation Date will be the Expiration Time and the Expiration Date) of such Share; and
  - ii. the number of such Shares comprised in the Basket.

11.28 "Relevant Price" on any day means, in respect of an Index, the level of such Index determined by us as provided in the relevant Confirmation at the Valuation Time on the Valuation Date or, if no means of determining the relevant Price is so provided, the level of the Index at the Valuation Time on the Valuation Date, and, in respect of a Share, the price per Share determined by us as provided in the relevant Confirmation at the Valuation Time on the Valuation Date or, if no means for determining the Relevant Price is so provided, the official price or, if there is no official price, the mid market price per Share on the Exchange at the Valuation Time on the Valuation Date.

11.29 "Scheduled Closing Time" means, in respect of an Exchange or Related Exchange and an Exchange Business Day, the scheduled weekday closing time of such Exchange or Related Exchange on such Exchange Business Day, without regard to after hours or any other trading outside of the regular trading session hours.

11.30 "Settlement Date" means, in relation to Shares to be Delivered in respect of an Exercise Date, the first day on which settlement of a sale of such Shares executed on that Exercise Date customarily would take place through the relevant Clearance System, unless a Settlement Disruption Event prevents delivery of such Shares on that day.

11.31 "Settlement Disruption Event" in relation to a Share means, in our sole opinion, an event beyond the control of the parties as a result of which the relevant Clearance System cannot clear the transfer of such Share.

11.32 "Settlement Price" means, in relation to a Valuation Date:

- a. in respect of an Index Option Transaction, the level of the Index determined by us at the Valuation Time on the Valuation Date;
- b. in respect of a Share Option Transaction to which Cash Settlement applies, the price per Share determined by us at the Valuation Time on the Valuation Date;
- c. in respect of a Share Option Transaction to which Physical Settlement applies, an amount equal to the Strike Price multiplied by the Number of Shares to be Delivered;
- d. in respect of an Index Basket Option Transaction, an amount for the Basket determined by us at the relevant Valuation Time(s) on the Valuation Date;
- e. in respect of a Share Basket Option Transaction to which Cash Settlement applies, a price for the Basket determined by us at the relevant Valuation Time(s) on the Valuation Date; and
- f. in respect of a Share Basket Option Transaction, to which Physical Settlement applies, an amount equal to the Strike Price multiplied by the Number of Baskets to be Delivered.

11.33 "Strike Price" means:

- a. in respect of an Index Option Transaction, the level of the relevant Index specified or otherwise determined as provided in the relevant Confirmation;
- b. in respect of a Share Option Transaction, the price per Share specified or otherwise determined as provided in the relevant Confirmation;

- c. in respect of an Index Basket Option Transaction, the amount per Basket specified or otherwise determined as provided in the relevant Confirmation; and
  - d. in respect of a Share Basket Option Transaction, the price per Basket specified or otherwise determined as provided in the relevant Confirmation.
- 11.34 "Strike Price Differential" means, unless otherwise provided in the relevant Confirmation, in respect of each Valuation Date, an amount equal to the greater of:
- a. the excess of:
    - i. in the case of a Call, the relevant Settlement Price over the Strike Price; or
    - ii. in the case of a Put, the Strike Price over the relevant Settlement Price; and
  - b. zero.
- 11.35 "Tender Offer" means a takeover offer, tender offer, exchange offer, solicitation, proposal or other event by any entity or person that results in such entity or person purchasing, or otherwise obtaining or having the right to obtain, by conversion or other means, greater than 10% and less than 100% of the outstanding voting shares of the Issuer, as determined by us, based upon the making of filings with governmental or self-regulatory agencies or such other information as we deem relevant.
- 11.36 "Trading Disruption" means, in our sole opinion, the occurrence or existence on any Exchange Business Day of any suspension of or limitation imposed on trading (by reasons of movements in price exceeding limits permitted by the relevant exchange or otherwise), on the relevant Exchange(s) in any securities comprised in the relevant Index, the Share on the Exchange or in options contracts or futures contracts on the relevant Index or relating to the Share on any Related Exchange if, in any such case, such suspension or limitation is, in our determination, material.

## **Annex D: Bond option transactions**

### **1. INTERPRETATION**

- 1.1 This Annex D sets out additional provisions and definitions (in respect of which see Clause 8 of this Annex D) applicable to Transactions that are Bond Option Transactions. In this Annex D:
- a. "Bonds" means, in respect of a Bond Option Transaction, the bonds or debt securities issued by an issuer with the specified coupon, price and maturity.
  - b. "Bond Option Transaction" means any transaction that is an over-the-counter Option relating to Bonds.
- 1.2 In the event of any inconsistency between this Annex D and other provisions of these Terms and Conditions, this Annex D will prevail for the purposes of the relevant Bond Option Transaction. In the event of any inconsistency between this Annex D and the provisions of a Confirmation, that Confirmation will prevail for the purposes of the relevant Transaction.

### **2. AGREEMENT TO PERFORM**

- 2.1 On the Premium Payment Date, the Buyer will pay to the Seller the Premium.
- 2.2 The Seller grants to the Buyer, upon the exercise of a Bond Option Transaction,
- a. if Physical Settlement is applicable, the right, but not the obligation, to cause the Seller to deliver to the Buyer the Bonds to be Delivered on the Settlement Date; or
  - b. if Cash Settlement is applicable, the right, but not the obligation, to cause the Seller to pay to the Buyer the Cash Settlement Amount on the Settlement Date,

in each case in accordance with Clause 4 or 5 of this Annex D (as applicable). Unless the parties otherwise specify, Physical Settlement will be deemed to apply to a Bond Option Transaction.

### **3. EXERCISE OF BOND OPTION TRANSACTIONS**

#### **3.1 Exercise**

- a. The Buyer may exercise the rights granted pursuant to a Bond Option Transaction by giving the Seller a Notice of Exercise which shall constitute an irrevocable election and undertaking by the Buyer to exercise such Option:
  - i in respect of an American style Option, if received during the Exercise Period; and
  - ii. in respect of a European style Option, if received on the Exercise Date prior to the Expiration Time,

unless Automatic Exercise (as described in Clause 3.5 of this Annex D) is applicable, in which case the Bond Option Transaction is deemed exercised in accordance with Clause 3.5.

- b. If a Notice of Exercise has not been received by the Seller prior to or at the Expiration Time on the Expiration Date (and Automatic Exercise is not applicable), the right or rights granted pursuant to a Bond Option Transaction will expire and become void and of no effect.

#### **3.2 Partial Exercise**

If "Partial Exercise" is specified to be applicable to a European style Bond Option Transaction, the Buyer may exercise less than all the Number of Options of that Bond Option Transaction on the Expiration Date.

#### **3.3 Multiple Exercise**

- a. If "Multiple Exercise" is specified to be applicable to an American style Bond Option Transaction, the Buyer may exercise all or less than all the unexercised Options on one or more days in the Exercise Period, but on any such day may not exercise less than the Minimum Number of Options or more than the Maximum Number of Options and, if a number is specified as the "Integral Multiple" in the relevant Confirmation, the number of exercised Options must be equal to, or be an integral multiple of, the number so specified.
- b. Any attempt to exercise on any day in the Exercise Period:
  - i more than the Maximum Number of Options will be deemed to be an exercise of the Maximum Number of Options (the number of Options, if any, exceeding the Maximum Number of Options being deemed to remain unexercised);
  - ii less than the Minimum Number of Options will be ineffective; and
  - iii an amount of Options not equal to or an integral multiple of the Integral Multiple will be deemed to be an exercise of a number of Options equal to the next lowest integral multiple of the Integral Multiple (the number of Options exceeding that number being deemed to remain unexercised).
- c. In the event that the number of Options remaining unexercised on the Expiration Date is less than the Minimum Number of Options, that number of Options will remain unexercised. In the event that the number of Options remaining unexercised on the Expiration Date is greater than the Maximum Number of Options, the Buyer may exercise only the specified Maximum Number of Options and the excess will remain unexercised.

### 3.4 Number of Options Exercised

In the case of (a) a European style Bond Option Transaction to which Partial Exercise is applicable or (b) an American style Bond Option Transaction to which Multiple Exercise is applicable, the Buyer must specify in the Notice of Exercise the number of Options being exercised on the relevant Exercise Date and, subject to Clause 3.3 of this Annex D, in the event that Multiple Exercise is applicable or is deemed to apply and the number of Options remaining unexercised is less than the Minimum Number of Options or greater than the Maximum Number of Options, if the Buyer fails so to specify, the Buyer shall be presumed to have exercised all the unexercised Options on the relevant Exercise Date.

### 3.5 Automatic Exercise

- a. Unless the parties otherwise specify, Automatic Exercise will be deemed to apply to a Transaction.
- b. If "Automatic Exercise" is specified (or deemed to be specified) to be applicable to a Bond Option Transaction, then, in the event that Multiple Exercise is applicable and the number of Options remaining unexercised on the Expiration Date is less than the Minimum Number of Options or greater than the Maximum Number of Options, each Option not previously exercised under that Bond Option Transaction will be deemed to be automatically exercised:
  - i. where Cash Settlement is applicable, at the Expiration Time on the Expiration Date unless the Buyer notifies the Seller (by telephone or in writing) prior to the Expiration Time on the Expiration Date that it does not wish Automatic Exercise to occur; and
  - ii. where Physical Settlement is applicable, at the Expiration Time on the Expiration Date if at such time the Option is In-the-Money, as determined by us, unless:
    - (1) the Buyer notifies the Seller (by telephone or in writing) prior to the Expiration Time on the Expiration Date that it does not wish Automatic Exercise to occur; or
    - (2) the Reference Price necessary to determine that the Option is In-the-Money cannot be determined at the Expiration Time on the Expiration Date,

in which case Automatic Exercise will not apply.

## 4. PHYSICAL SETTLEMENT

- 4.1 In respect of each Exercise Date under a Bond Option Transaction to which Physical Settlement is applicable on the relevant Settlement Date,
  - a. in the case of a Call, the Buyer will pay to Seller the Bond Payment and the Seller will deliver to the Buyer the Bonds to be Delivered; and
  - b. in the case of a Put, the Buyer will deliver to the Seller the Bonds to be Delivered and the Seller will pay to the Buyer the Bond Payment.
- 4.2 Such payment and delivery will be made on the relevant Settlement Date through the relevant Clearance System to the accounts specified in the relevant Confirmation and, if possible, on a delivery versus payment basis.
- 4.3 Following exercise of an Option under a Bond Option Transaction to which Physical Settlement is applicable:
  - a. all expenses of transfer of the relevant Bonds (such as any stamp duty) will be payable by you and you agree to indemnify us for all such expenses of transfer; and
  - b. all distributions in relation to the relevant Bonds will be payable to the party that would receive such distributions according to the market practice for a sale of such Bonds executed on the Exercise Date settled through the relevant Clearance System.
- 4.4 In addition to any requirement that you provide security or assurances as a result of your failure to deliver the Bonds to be Delivered under a Bond Option Transaction, we may at any time, exercise a right to close out the Bond Option Transaction by the purchase of such Bonds (a "buy-in").
- 4.5 In the event that a party's failure to deliver is due to the non-existence of the Bonds to be Delivered or we are unable to exercise a buy-in, the Bond Option Transaction will be terminated in accordance with any applicable provisions set forth herein or in the relevant Confirmation.
- 4.6 In respect of each exercise of an Option under a Bond Option Transaction to which Physical Settlement is applicable, the party required to deliver the relevant Bonds agrees that it will convey, and, on the date that it delivers such Bonds, represents that it has conveyed, good title to the Bonds to be Delivered, free and clear of any lien, charge, claim or other encumbrance (other than a lien routinely imposed on all securities in the relevant Clearance System).

## 5. CASH SETTLEMENT

- 5.1 In respect of each Exercise Date under a Bond Option Transaction to which Cash Settlement is applicable, the Seller will pay to the Buyer, subject to any applicable condition precedent, the Cash Settlement Amount, if any, on the relevant Settlement Date for all Options exercised or deemed exercised on that Exercise Date.
- 5.2 For the purpose of determining the Spot Price on any day, if the price published or announced on a given day and used or to be used by us to determine a Spot Price is subsequently corrected we may notify the parties of (a) that correction and (b) the amount (if any) that is payable as a result of that correction. If, not later than 30 calendar days after publication or announcement of that correction, we give notice that an amount is so payable, the party that originally either received or retained such amount will, not later than three Business Days after the effectiveness of that notice, pay to the other party that amount together with interest on that amount (at a rate per annum determined by us) for the period from and including the day on which a payment originally was (or was not) made to but excluding the day of payment of the refund or payment resulting from that correction.

## 6. ADJUSTMENTS

- 6.1 If the issuer of the Bonds irrevocably converts those Bonds into other securities, a Bond Option Transaction will, unless otherwise specified in the relevant Confirmation, continue as set forth in the relevant Confirmation except that (a) the "Bonds" will mean such other securities and (b) we will adjust the Strike Price, the number of Options and/or the Option Entitlement as we deem appropriate to preserve the theoretical value of that Bond Option Transaction to the parties immediately prior to such conversion.
- 6.2 If, in our sole opinion, upon conversion of the Bonds into other securities, the theoretical value of the Bond Option Transaction cannot be preserved, we shall take such steps as we deem necessary.

## 7. SETTLEMENT DISRUPTION EVENT

- 7.1 If, in respect of any Bond Option Transaction to which Physical Settlement is applicable, there is a Settlement Disruption Event that prevents delivery of the Bonds on a day that, but for the occurrence of that Settlement Disruption Event would have been the Settlement Date, then the Settlement Date will be the first succeeding day determined by us on which delivery of the Bonds can take place through the relevant Clearance System, unless a Settlement Disruption Event prevents settlement on each day that the Clearance System is (or, but for the Settlement Disruption Event, would have been) open for business during the period ending 30 calendar days after the original date that, but for the Settlement Disruption Event, would have been the Settlement Date.
- 7.2 If the Settlement Date does not occur within 30 calendar days of the Settlement Disruption Event, the party required under that Bond Option Transaction to deliver the Bonds will use reasonable efforts to deliver the Bonds to be Delivered promptly thereafter in a commercially reasonable manner outside the Clearance System on a delivery versus payment basis.

## 8. DEFINITIONS

- 8.1 "Bond Payment" means, in respect of a Bond Option Transaction,
- a. if the Strike Price is stated as an amount in the relevant currency, an amount equal to the product of (A) the sum of (1) the Strike Price plus (2) accrued interest, if any, on the Option Entitlement computed by us in accordance with customary trade practices employed with respect to the Bonds; and (B) the number of Options exercised or deemed exercised on the relevant Exercise Date;
  - b. if the Strike Price is stated as a percentage of the nominal value of the Bonds (e.g., 103 percent of par), an amount equal to the product of: (A) the sum of (1) the Strike Price multiplied by the Option Entitlement plus (2) accrued interest, if any, on the Option Entitlement computed in accordance with customary trade practices employed with respect to the Bonds; and (B) the number of Options exercised or deemed exercised on the relevant Exercise Date; and
  - c. if the Strike Price is stated as a yield, an amount determined by us by a method specified in or pursuant to the relevant Confirmation.
- 8.2 "Bonds to be Delivered" means, in respect of an Exercise Date under a Bond Option Transaction, the Bonds in a nominal amount equal to the number of Options exercised or deemed exercised on that Exercise Date multiplied by the Option Entitlement.
- 8.3 "Call" means a type of Bond Option Transaction specified as such in the relevant Confirmation entitling, subject to any applicable condition precedent, the Buyer upon exercise:
- a. if Cash Settlement is applicable, to receive from the Seller on the relevant Settlement Date the Cash Settlement Amount if the Spot Price exceeds the Strike Price; and
  - b. if Physical Settlement is applicable, to purchase the Bonds from the Seller at the Strike Price,
- in each case as more particularly provided in that Confirmation.
- 8.4 "Cash Settlement Amount" means, in respect of a Bond Option Transaction, an amount, as calculated by us, equal to the number of Options exercised or deemed exercised on the relevant Exercise Date multiplied by the Strike Price Differential.
- 8.5 "In-the-Money" means, unless otherwise specified in a Confirmation, in respect of a Bond Option Transaction to which Physical Settlement is applicable, in the case of a Call, that the Reference Price is equal to or greater than 101 percent of the Strike Price and, in the case of a Put, that the Reference Price is less than or equal to 99 percent of the Strike Price.
- 8.6 "Option Entitlement" means the nominal amount, stated as an amount in the relevant currency, specified as such in the relevant Confirmation, which is the nominal amount of the relevant Bonds to which one Option relates.
- 8.7 "Put" means a type of Bond Option Transaction specified as such in the relevant Confirmation entitling, subject to any applicable condition precedent, the Buyer upon exercise:
- a. if Cash Settlement is applicable, to receive from the Seller on the relevant Settlement Date the Cash Settlement Amount if the Strike Price exceeds the Spot Price; and
  - b. if Physical Settlement is applicable, to sell the Bonds to the Seller at the Strike Price,
- in each case as more particularly provided in to that Confirmation.
- 8.8 "Reference Price" means, in respect of a Bond Option Transaction to which Physical Settlement is applicable, the price determined by us as provided in the relevant Confirmation at the Expiration Time on the Expiration Date or, if no means of determining such price is so provided, the Spot Price as of the Expiration Time on the Expiration Date as determined by us.
- 8.9 "Settlement Date" means, in respect of an Exercise Date, the date specified as such or otherwise determined as provided in the related Confirmation, subject to adjustment in accordance with the Following Business Day Convention.

- 8.10 "Settlement Disruption Event" in relation to a Bond means, in our sole opinion, an event beyond the control of the parties to the Bond Option Transaction as a result of which the Clearance System cannot clear the delivery of such Bond.
- 8.11 "Spot Price" means as determined by us in our absolute discretion:
- a. the Strike Price is stated as an amount in the relevant currency, the price of the Bonds equal in amount to the Option Entitlement; and
  - b. if the Strike Price is stated as a percentage of the nominal value of the Bonds, the price of the Bonds stated as a percentage of their nominal value, in each case, as of the Valuation Time on the relevant Exercise Date (or, if that date is not an Exchange Business Day, the next following Exchange Business Day).
- 8.12 "Strike Price" means either an amount expressed in the relevant currency or a percentage specified or otherwise determined as provided in the relevant Confirmation.
- 8.13 "Strike Price Differential" means, in respect of an Option,
- a. if the Strike Price is stated as an amount in the relevant currency, an amount equal to:
    - i. if the Bond Option Transaction is a Put, the greater of (1) the excess of the Strike Price over the Spot Price and (2) zero; and
    - ii. if the Bond Option Transaction is a Call, the greater of (1) the excess of the Spot Price over the Strike Price and (2) zero;
  - b. if the Strike Price is stated as a percentage of the nominal value of the Bonds, an amount equal to:
    - i. if the Bond Option Transaction is a Put, the greater of (1) the excess of the Strike Price multiplied by the Option Entitlement over the Spot Price multiplied by the Option Entitlement and (2) zero; and
    - ii. if the Bond Option Transaction is a Call, the greater of (1) the excess of the Spot Price multiplied by the Option Entitlement over the Strike Price multiplied by the Option Entitlement and (2) zero; and
    - iii. if the Strike Price is stated as a yield, an amount determined by a method specified in or pursuant to the relevant Confirmation.



## **Annex E: Linked deposit transactions**

### **1. INTERPRETATION**

- 1.1 This Annex E sets out additional provisions and definitions (in respect of which see Clause 7 of this Annex E) applicable to Transactions that are Linked Deposit Transactions. In this Annex E:
- a. "Linked Deposit Transaction" means a Transaction that is a Currency Linked Deposit Transaction, an Equity Linked Deposit Transaction or an Index Linked Deposit Transaction.
  - b. "Currency Linked Deposit Transaction" means a structured deposit Transaction linked to currency.
  - c. "Equity Linked Deposit Transaction" means a structured deposit Transaction linked to equity.
  - d. "Index Linked Deposit Transaction" means a structured deposit Transaction linked to an Index (as defined in Annex C).
- 1.2 In the event of any inconsistency between this Annex E and other provisions of these Terms and Conditions, this Annex E will prevail for the purposes of the relevant Linked Deposit Transaction. In the event of any inconsistency between this Annex E and the provisions of a Confirmation, that Confirmation will prevail for the purposes of the relevant Transaction.

### **2. PAYMENT OF PRINCIPAL AMOUNT**

- 2.1 You agree to deposit the Principal Amount in an account specified by us for such purpose, on the relevant Deposit Date and for value on that date.
- 2.2 The Principal Amount must be received on or before the close of business in Hong Kong on the Deposit Date. Once the Principal Amount has been so received for the Linked Deposit Transaction, it may not be withdrawn prior to the Maturity Date except in accordance with Clause 3 of this Annex E.
- 2.3 We reserve the right, in our absolute discretion, on or before the Deposit Date not to accept any funds received (or to accept only part of such funds) as the relevant Principal Amount for the Linked Deposit Transaction. In such event, we will notify you as soon as practicable and any funds received but not accepted as the Principal Amount will be paid to such account as notified by you or if we have not been notified of such account or that such account notified by you has ceased to be operative, to any account for you as we shall in our absolute discretion determine.

### **3. EARLY WITHDRAWAL**

- 3.1 You may not terminate the Linked Deposit Transaction before the Maturity Date without our approval in writing, which may be granted or withheld in our absolute discretion and on such terms and conditions as we may then determine.
- 3.2 You acknowledge that we and our Affiliates may enter into one or more hedging transactions or other arrangements in respect of the Linked Deposit Transaction. If we allow you to terminate the Linked Deposit Transaction prior to its Maturity Date, we shall be entitled to deduct any Loss incurred by us and our Affiliates in discharging any such related hedge or other arrangement from the Principal Amount or other amounts (if any) which are otherwise payable to you. In the event that the Principal Amount or other amounts (if any) are insufficient to indemnify or reimburse us in respect of such Loss, we shall be entitled to claim from you the amount of the remaining Loss and to exercise our rights of set-off under these Terms and Conditions or otherwise in respect of any other sums due from us or our Affiliates to you in respect of the Linked Deposit Transaction or otherwise.
- 3.3 Any payments of Principal Amount or other amounts (if any) to you by us upon the termination of the Transaction prior to its Maturity Date will be determined solely by us, and payment by us will be dependent upon our ability to successfully discharge any related hedge or arrangement.
- 3.4 No partial early withdrawal of the Principal Amount or partial early termination of the Linked Deposit Transaction is permitted at any time.

### **4. INTEREST AMOUNT**

The Interest Amount (in respect of the Principal Amount) will be paid on the Maturity Date to such account as notified by you to us at least two (2) Business Days prior to the Maturity Date or, if we have not been notified of such account or such account notified by you has ceased to be operative, to any of your accounts as we shall in our absolute discretion determine. We shall not be responsible for any loss or damage suffered by you for any delay in effecting such payment if the notice is not received within the time period stipulated herein.

### **5. PAYMENT TO YOU ON MATURITY DATE**

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

### **6. ADJUSTMENTS AND DISRUPTIONS**

Where the Linked Deposit Transaction is specified to be:

- 6.1 a Currency Linked Deposit Transaction:
- a. if the exchange rate for the Currency Pair (as defined in Annex A) (or the Fixing Rate, as the case may be) ceases to be determined by market forces and is instead determined by reference to an Official Successor Rate (as defined in Annex A), then the exchange rate for

the Currency Pair (or the Fixing Rate, as the case may be) will be determined by us in our absolute discretion;

- b. if any event occurs which, as determined by us in our absolute discretion, makes it illegal, impossible or otherwise impracticable:
- i. to convert any currency (the "reference currency") of the Currency Pair into the other currency of the Currency Pair in the country for which the reference currency is the lawful currency through customary legal channels, including a situation where the relevant currency exchange rate for such Currency Pair splits into dual or multiple currency exchange rates as determined by us in our absolute discretion;
  - ii. to deliver the reference currency from accounts inside the country for which the reference currency is the lawful currency to accounts outside such country, or to deliver the reference currency between accounts inside the country for which the reference currency is the lawful currency or to a party that is a non-resident of such country;
  - iii. to obtain firm quotations from banks and brokers for the calculation of the Fixing Rate (if applicable);
  - iv. to obtain quotations from banks and brokers for the calculation of the Fixing Rate (if applicable) or if such quotations are commercially unreasonable in our absolute discretion;
  - v. to determine the exchange rate for the Currency Pair; or
  - vi. for a party to fulfill its obligations under a Currency Linked Deposit Transaction and generally to fulfill obligations similar to such party's obligations under that Currency Linked Deposit Transaction,

we shall determine the exchange rate for the Currency Pair (or the Fixing Rate, as the case may be) or manner of settlement taking into account all available information that we deem relevant. We shall, as soon as practicable following the occurrence of the relevant event or circumstance, notify you of such alternative basis for the determination of the exchange rate for the Currency Pair (or the Fixing Rate, as the case may be) or manner of settlement, as the case may be.

6.2 an Index Linked Deposit Transaction:

Clause 6 of Annex C will apply to such Index Linked Deposit Transaction, except that references to Index Option Transaction and Basket Option Transaction will be to such Index Linked Deposit Transaction, references to Settlement Price will be to Interest Amount or Redemption Amount and references to Valuation Date will be to Fixing Date.

6.3 an Equity Linked Deposit Transaction:

- a. following the declaration by the Issuer of any Potential Adjustment Event, we will determine whether such Potential Adjustment Event has a diluting or concentrative effect on the theoretical value of the Linked Stock and, if so, will make the corresponding adjustment(s), if any, to the Equity Linked Deposit Transaction, including to the strike price or any other variable relevant to the exercise, settlement or payment terms of that Equity Linked Deposit Transaction as we determine appropriate to account for that diluting or concentrative effect and determine the effective date(s) of the adjustment(s).
- b. if there is any Merger Event in respect of any Linked Stock, we will make corresponding adjustments, if any, to the Equity Linked Deposit Transaction, including the strike price and any other variable relevant to the exercise, settlement or payment terms of the Equity Linked Deposit Transaction which adjustment will be effective as of the date determined by us.
- c. if there is any Nationalization, Delisting or Insolvency, we will as of a date determined by us cancel the Equity Linked Deposit Transaction and pay to you the fair market value of such Equity Linked Deposit Transaction as at the time of cancellation, taking into consideration all information which we deem relevant including but not limited to Loss in connection with any related hedging arrangements.

"Insolvency", "Issuer", "Nationalization", "Delisting", "Merger Event" and "Potential Adjustment Event" shall have the meanings given to them in Annex C. References in such definitions to Share shall mean the Linked Stock. References in the definition of Merger Event to Final Valuation Date shall mean the Fixing Date.

6.4 either an Index Linked Deposit Transaction or an Equity Linked Deposit Transaction:

Clause 8 of Annex C will apply to such Index Linked Deposit Transaction or Equity Linked Deposit Transaction, except that reference to Valuation Date shall be to Fixing Date.

## 7. DEFINITIONS

- 7.1 "Deposit Date" means the date specified or otherwise determined as provided in the relevant Confirmation.
- 7.2 "Fixing Date" means any fixing date or any observation date or pricing date or valuation date or similar date for obtaining the value of the asset linked to the Linked Deposit Transaction for the purpose of determining the Interest Amount or the Redemption Amount, as specified in the related Confirmation.
- 7.3 "Fixing Rate" means the rate, price, level or other value of the asset linked to the Linked Deposit Transaction calculated by the Calculation Agent on the Fixing Date as of a time and by a method specified in the related Confirmation.
- 7.4 "Interest Amount" means, in respect of the Principal Amount, the amount specified in or calculated by us in accordance with the provisions of the Confirmation.
- 7.5 "Linked Stock" means the shares or other securities specified as such in the related Confirmation.
- 7.6 "Maturity Date" means the date specified in or otherwise determined as provided in the relevant Confirmation provided, however, that if that date is not a Business Day, it shall be the next Business Day.
- 7.7 "Principal Amount" means the amount specified or otherwise determined as provided in the relevant Confirmation.

7.8 "Redemption Amount" means the amount specified in, or calculated in accordance with the provisions set out in, the Confirmation.

## **Annex F: Debt securities transactions**

### **1. INTERPRETATION**

- 1.1 This Annex F sets out additional provisions and definitions (in respect of which see Clause 10 of this Annex F) applicable to Transactions that are Purchase Contracts, Sale Contracts or Agency Transactions in respect of Debt Securities.
- a. "Agency Transaction" shall have the meaning ascribed thereto in Clause 6.1 of this Annex F.
  - b. "Debt Securities" means any notes, bills, bonds, debentures, debt instruments or other instruments creating or acknowledging indebtedness in respect of which we may in our absolute discretion agree to have dealings with you.
  - c. "Debt Securities Transaction" means a Purchase Contract, Sale Contract or Agency Transaction in respect of Debt Securities.
  - d. "Purchase Contract" shall have the meaning ascribed thereto in Clause 3.1 of this Annex F.
  - e. "Sale Contract" shall have the meaning ascribed thereto in Clause 3.4 of this Annex F.
- 1.2 In the event of any inconsistency between this Annex F and other provisions of these Terms and Conditions, this Annex F will prevail for the purposes of the relevant Purchase Contract, Sale Contract or Agency Transaction in respect of Debt Securities. In the event of any inconsistency between this Annex F and the other provisions of a Confirmation, that Confirmation will prevail for the purposes of the relevant Transaction.

### **2. THE SERVICE**

- 2.1 To utilize the Service, you will be required to establish and maintain a securities account with us.

### **3. PURCHASE AND SALE OF DEBT SECURITIES**

- 3.1 A contract for purchase of Debt Securities by you (the "Purchase Contract") shall be deemed to be irrevocably concluded by you with us (acting as principal under the Purchase Contract) subject to these Terms and Conditions (in particular, but without limitation, Clause 3.3 of this Annex F), if:
- a. you have indicated the intention to purchase a specified nominal amount of a specified type of Debt Securities at an offer price and with a Value Date quoted by us; and
  - b. we have agreed to sell the relevant Debt Securities to you in accordance with such terms.
- 3.2 At any time after the conclusion of the Purchase Contract, we shall be entitled to deduct or withhold the full amount of the Purchase Price and such applicable Accrued Interest as calculated and determined by us absolutely, together with any commission or charges or Transaction Duties payable by you in respect of the Transaction, from the credit balance and/or any pre-arranged credit facility of the settlement account and/or other designated account of you for the purpose of effecting settlement of the relevant Purchase Contract on the Value Date pursuant to Clause 5.1 of this Annex F.
- 3.3 Unless we otherwise agree, you shall ensure that at all times there is sufficient immediately available credit balance or pre-arranged credit facility in the settlement account and/or other designated account so that we may deduct or withhold the same or the relevant part thereof pursuant to Clause 3.2 of this Annex F after the conclusion of the Purchase Contract. In the event that the credit balance or pre-arranged credit facility available in the settlement account and/or other designated account is insufficient for the aforesaid purpose, we may, in our absolute discretion and without prejudice to our right to claim against you, revoke the Purchase Contract without prior notice to you.
- 3.4 A contract for sale of Debt Securities by you (the "Sale Contract") shall be deemed to be irrevocably concluded by you with us (acting as principal under the Sale Contract) subject to these Terms and Conditions (in particular, but without limitation, Clause 3.6 of this Annex F), if:
- a. you have indicated the intention to sell a specified nominal amount of a specified type of Debt Securities at a bid price and with a Value Date quoted by us; and
  - b. we have agreed to purchase the relevant Debt Securities from you according to such terms.
- 3.5 At any time after the conclusion of the Sale Contract, we shall be entitled to withhold an equivalent amount of the relevant Debt Securities held by us for you for the purpose of effecting settlement of the relevant Sale Contract on the Value Date pursuant to Clause 5.2 of this Annex F.
- 3.6 Unless we otherwise agree, you shall ensure that at all times there is a sufficient amount of immediately available unencumbered Debt Securities in your securities account so that we may withhold the same or the relevant part thereof pursuant to Clause 3.5 of this Annex F after the conclusion of the Sale Contract. In the event that the amount of the relevant Debt Securities in your securities account is insufficient for the aforesaid purpose, we may, in our absolute discretion and without prejudice to our right to claim against you, revoke the Sale Contract without prior notice to you.
- 3.7 You agree, to be fully liable for any Transaction Duties assessable or payable with respect to any Purchase Contract or Sale Contract and you shall indemnify us on demand against any payment made by us of any such Transaction Duties.
- 3.8 We may, in our absolute discretion, refuse to purchase any Debt Securities from you, notwithstanding that such Debt Securities may have been purchased or acquired by you from or through us under the Service or otherwise.

### **4. STANDING ORDERS FOR PURCHASE AND SALE OF DEBT SECURITIES**

- 4.1 We may, acting as principal, in our absolute discretion accept any standing order or instruction for purchase or sale of any Debt Securities (the "Standing Order") given by you. In such Standing Order, you will be required to specify the nominal amount of the relevant type of Debt Securities to be purchased or (as the case may be) sold by you together with the price offered by you and the applicable Value Date. The

Standing Order shall be deemed to expire at the applicable Closing Time on the same Hong Kong Business Day on which the Standing Order is given to and accepted by us, unless you have expressly specified otherwise and we have accepted. Prior to the expiration of the Standing Order, you shall not be entitled to revoke the Standing Order save with our express consent.

- 4.2 At any time after our acceptance of any Standing Order, we shall be entitled to deduct or withhold the credit balance and/or pre-arranged credit facility available in the settlement account and/or other designated account (in case of the Standing Order being for purchase of Debt Securities by you) or the applicable amount of the relevant Debt Securities in the securities account (in case the Standing Order being for sale of Debt Securities by you), pending our determination whether to execute the Standing Order, as if Clause 3.2 of this Annex F or (as the case may be) Clause 3.5 of this Annex F applies.
- 4.3 In respect of any Standing Order accepted by us, we may, at any time prior to its expiration, execute the Standing Order by giving notice of execution (the "Notice of Execution") to you so as to conclude a binding Purchase Contract or (as the case may be) Sale Contract with you in accordance with the terms specified in the Standing Order and subject to these Terms and Conditions. We will act as principal for ourselves under the Purchase Contract or (as the case may be) Sale Contract so concluded, and Clauses 3.2 and 3.3 of this Annex F shall apply to such Purchase Contract or (as the case may be) Clauses 3.5 and 3.6 of this Annex F shall apply to such Sale Contract.
- 4.4 The Notice of Execution shall be deemed conclusively and validly given by us to you under Clause 4.3 of this Annex F with immediate effect notwithstanding that you cannot be contacted personally so long as the relevant message has been left for you (or any of you where you consist of more than one person) by telephone, facsimile or e-mail at your telephone or facsimile number or e-mail address in our record.
- 4.5 For the avoidance of doubt, (a) if any Standing Order accepted by us has not been executed by us prior to its expiration, such Standing Order shall be deemed to have lapsed absolutely; and (b) we shall have no obligation whatsoever to execute any such Standing Order.
- 4.6 If any Purchase Contract or Sale Contract shall have been concluded pursuant to any Standing Order, we will deliver a Confirmation thereof to you.

## **5. SETTLEMENT OF PURCHASE CONTRACT OR SALE CONTRACT**

- 5.1 With respect to a Purchase Contract, we shall be entitled, as at the relevant Value Date, to debit your settlement account and/or other designated account with the Purchase Price, any applicable Accrued Interest and any commission or charges or Transaction Duties payable by you under or in respect of the Purchase Contract and apply the same in settlement of your payment obligations under or in respect of the Purchase Contract. If any credit balance and/or pre-arranged credit facility available in the settlement account and/or other designated account is deducted or withheld by us under Clause 3.2 of this Annex F in respect of the Purchase Contract, we shall first apply such balance or facility so deducted or withheld for the purpose of settling your payment obligations under or in respect of the Purchase Contract.

Subject always to the full settlement of your payment obligations under the Purchase Contract in the manner as aforesaid or in such other manner as we may agree, we shall then credit your securities account with the amount of the relevant Debt Securities which we are obliged to deliver to you under the relevant Purchase Contract, whereupon of the relevant Purchase Contract shall be deemed completely settled.

- 5.2 With respect to a Sale Contract, we shall be entitled, as at the relevant Value Date, to debit your securities account with the amount of the Debt Securities deliverable by you under the Sale Contract and apply the same in settlement of your delivery obligation under or in respect of the Sale Contract. If any amount of Debt Securities in the securities account is withheld by us under Clause 3.5 of this Annex F in respect of the Sale Contract, we shall be entitled to first apply such amount of Debt Securities so withheld for the purpose of discharging your delivery obligation under or in respect of the Sale Contract.

Subject always to the full delivery of the relevant Debt Securities by you in the manner as aforesaid or in such other manner as we may agree, we shall then credit your settlement account and/or other designated account with the relevant Sale Price and any applicable Accrued Interest (but subject to the deduction of any commission or charges or Transaction Duties payable by you under or in respect of the Sale Contract), whereupon of the relevant Sale Contract shall be deemed completely settled.

- 5.3 In the event that you fail to perform your payment or delivery obligation under a Purchase Contract or (as the case may be) Sale Contract on the Value Date, we shall be entitled (but not under any duty), without prior notice to you and without prejudice to our right to claim any Loss against you to revoke the Purchase Contract or (as the case may be) Sale Contract, or to effect a reverse Transaction with you at the then prevailing terms quoted or otherwise determined by us absolutely to counter the relevant Purchase Contract or (as the case may be) Sale Contract.
- 5.4 If any Value Date shall fall on a day which is not a Hong Kong Business Day, such Value Date shall, unless otherwise agreed between us and you, be deemed to be postponed to the succeeding Hong Kong Business Day.

## **6. ACTING AS YOUR AGENT**

- 6.1 We may elect to act as your agent in the provision of the Services contemplated in this Annex F, whether for purchase or sale of any Debt Securities, for subscription for new issues of any Debt Securities or for any other Transactions in any Debt Securities. If we so elect, we will inform you before we accept the relevant instruction or order given by you. Any Transaction in Debt Securities made or to be made by us as your agent under the Services contemplated in this Annex F shall be referred to as a "Agency Transaction" in this Annex F.
- 6.2 When we are acting as your agent for the purpose of conducting an Agency Transaction in any Debt Securities, the following provisions shall apply:
- We shall not be responsible for ensuring delivery of the relevant Debt Securities by the relevant Issuer or a seller to you or for ensuring payment by a buyer of the relevant Debt Securities to you, nor shall we be liable for any other breach or default on the part of any such Issuer, seller or buyer.
  - We shall not be liable to pay any amount (of proceeds, interest or otherwise) to you until that amount has actually been received by us in freely available cleared funds.

## **7. CUSTODY OF DEBT SECURITIES**

- 7.1 All the Debt Securities purchased or acquired by you pursuant to the Services, whether under a Purchase Contract or Agency Transaction or

otherwise, shall be held in your securities account for safe custody, subject to the following terms and conditions:

- a. Unless otherwise agreed by us, we shall have no duty to arrange for the Debt Securities held under the securities account or any part thereof to be transferred into your name or the name of such other third party as you may designate. We shall be entitled to deposit all such Debt Securities with such Custodian Authority (whether within or outside Hong Kong as we may determine absolutely) and register them in the name(s) of such Nominee(s) as we may deem fit.
- b. Unless we agree otherwise, you shall not be entitled to take physical delivery of the Debt Securities, either in Hong Kong or in any part of the world, irrespective of whether the Services are terminated.
- c. If we are unable to obtain your instructions or if you have not responded to our request for instructions within a reasonable period of time or if in our opinion it would involve undue delay or expense to obtain such instructions, we may, in our absolute discretion, take any action, exercise any right or satisfy for your account any liability or obligation arising in respect of the Debt Securities as we may deem advisable or expedient in the circumstances.
- d. As between us and you, the Debt Securities held in your securities account are fungible and can be pooled with the Debt Securities of our other customers.
- e. The Debt Securities shall be held by us at your sole risk, save and except in respect of loss or damage suffered by you by reason of our wilful misconduct or gross negligence in the performance of our duties under these Terms and Conditions.
- f. You shall pay to us on demand all applicable custodian fees and charges as agreed between the parties from time to time. Fees and charges that have been paid are non-refundable, notwithstanding the closure of your securities account or the relevant Debt Securities no longer being held by us in safe custody.
- g. We shall be fully authorized to enter into such other arrangement or agreement with the Custodian Authority relating to the custody of the Debt Securities or any part thereof as we may in our absolute discretion consider appropriate and you agree to abide by and be bound by the operational requirements of the Custodian Authority.

7.2 Except where we otherwise agree in writing at your request and subject to the terms of such agreement, we or our Nominee shall have no duty or responsibility in relation to any Debt Securities held in your securities account:

- a. to forward notices and communications received by us to you or for any failure to inform you in sufficient time for instructions to be given to us with regard to any matters referred to in any such notice or communications;
- b. to ascertain or inform you of any action taken concerning calls, conversions, offers, warrants, redemption, coupons, payments or any similar matters;
- c. to send proxies received by us or give any notice of the receipt of such proxies to you.

7.3 Notwithstanding the provision in Clause 7.2 of this Annex F, we or our Nominee shall not be precluded from acting in its/their absolute and unfettered discretion as regards attendance at meetings or voting in respect of any of the Debt Securities or as regards any subscription, conversion or other rights in respect thereof or as regards any merger, consolidation, reorganization, receivership, bankruptcy or insolvency proceedings, compromise or arrangement relating to any of the relevant Issuers or otherwise, provided always that we or our Nominee shall not be under any duty to investigate or participate therein or take any affirmative action in connection therewith except in accordance with written instructions from you and upon such conditions, indemnity and provision for expenses as we may require.

7.4 In relation to any money that we collect for you as custodian of any Debt Securities, we will (but subject to the deduction of any commission or charges payable by you) credit the same to your settlement account and/or other designated account as soon as practicable following receipt of such money in freely available cleared funds. Notwithstanding the foregoing, in the event that we shall have received the money in freely available funds on a value date earlier than the date on which we credit the money into your settlement account and/or other designated account due to the time difference between the place where we received the funds and Hong Kong, we shall only be obliged to account for interest from the date on which the money is credited to your settlement account and/or other designated account, but not from the value date on which we received the funds.

## **8. YOUR ACKNOWLEDGEMENTS AND UNDERTAKINGS**

8.1 You hereby acknowledge and represent to us that in respect of any Debt Securities which you intend to transact under the Services:

- a. You have full knowledge of the maturity date, coupon rate, interest payment dates, interest periods, denomination requirements and all other terms and conditions in respect of such Debt Securities.
- b. Redemption of, and payment of interest on, the Debt Securities are the sole obligations of the Issuer thereof and we shall not be liable in the event that any Issuer shall fail to redeem any such Debt Securities or fail to pay interest in accordance with the terms of such Debt Securities.
- c. Money payable to you on the redemption of Debt Securities may not be equal to the nominal amount of such Debt Securities.
- d. In respect of certain Debt Securities, the Issuer may have the option to redeem the Debt Securities partially at any time prior to their maturity. You acknowledge and accept the risk that the nominal amount of any Debt Securities held by us for you may, as a result of such partial redemption, fall below the applicable minimum denomination required for the purpose of trading the Debt Securities

so that you will not be in the position to sell the remaining Debt Securities to us by way of a Sale Contract, or otherwise sell or realize the same in the secondary market prior to their maturity.

8.2 If the terms of any Debt Securities prohibit or restrict ownership by any person by reason of their nationality or any sanctions regime, we shall have no duty to ascertain any such prohibition or restriction and/or notify you of the same before effecting any Sale Contract, Purchase Contract or Transactions.

- 8.3 You shall, upon our request, complete, provide information (which is valid, true, complete, accurate and up-to-date), sign and file any tax related forms, certificates, declarations or documents which any tax authority in any applicable jurisdiction may require us, any Nominee or any Custodian Authority to submit in respect of you or any Debt Securities held in your securities account.

## **9. MISCELLANEOUS**

- 9.1 The following provisions are applicable if any multi-currency account is designated by you:

- a. Where we intend to withhold or debit any amount from your settlement account and/or other designated account pursuant to this Annex F, we will, insofar as possible, withhold or debit the credit balance and/or pre-arranged credit facility in the settlement account and/or other designated account which are denominated in the corresponding currency of the amount to be withheld or debited, provided however that if such credit balance and/or pre-arranged credit facility in the correct currencies is insufficient or otherwise unavailable in the settlement account and/or other designated account, we may withhold credit balance and/or pre-arranged credit facility in your settlement account and/or other designated account in any other currencies in such amount(s) which we shall conclusively determine, on the basis of the prevailing rate(s) of exchange, to be equivalent to the relevant amount to be withheld or debited.
- b. Where we intend to credit any amount into your settlement account and/or other designated account pursuant to this Annex F, we will credit the amount into the settlement account if such amount is denominated in Hong Kong dollars, or in any other cases, into your multi-currency account.

- 9.2 The following provisions are applicable if multi-currency account is not designated by you:

- a. Where we intend to withhold or debit any amount not denominated in Hong Kong dollars from your settlement account pursuant to this Annex F, we shall be entitled to withhold the credit balance and/or pre-arranged credit facility in the settlement account in such amount which we shall conclusively determine, on the basis of the prevailing rate(s) of exchange, to be equivalent to the relevant amount to be withheld or debited.
- b. Where we intend to credit any amount not denominated in Hong Kong dollars into your settlement account pursuant to this Annex F, we shall be entitled, without prior notice to you, to convert the relevant amount into Hong Kong dollars at such prevailing rate of exchange as determined by us conclusively and to credit the resulting amount into the settlement account.

- 9.3 Any change of the settlement account shall only be effected as and when (a) we shall have received (i) in the case where you are an individual or you consist of several individuals (including a partnership), written instructions from you or, as the case may be, all the individuals comprising you, (ii) in the case where you are a company, a certified true copy of your board resolution, and (iii) in any other case, such duly authorized written instruction from you in form and substance satisfactory to us, requesting such change or application; AND (b) we have agreed to give effect to such change or application.

- 9.4 In addition to the custodian fees and charges referred to in Clause 7.1(f) of this Annex F, you undertake and agree to pay us fees or commissions for carrying out any Agency Transaction on your behalf or for agreeing to enter into any Purchase Contract or Sale Contract with you. Such fees and commissions are non-refundable.

- 9.5 Without prejudice to any other rights and/or remedies available to us, if an Event of Default occurs, we shall be entitled, without notice to you, to sell the Debt Securities held by us for you or any part thereof in your securities account and apply the proceeds in satisfaction of such sum so due and payable.

- 9.6 We shall use reasonable endeavors and exercise reasonable care to ensure the accuracy of the representations, warranties, statements or information in any document or instrument issued by us or on our behalf relating to any Debt Securities, provided always that we shall not be liable to you for any Loss suffered by you as a result of any such representation, warranty, statement or information being invalid, untrue, incomplete, inaccurate or not up-to-date, if such representation, warranty, statement or information is provided or made by a third party to us. For the avoidance of doubt, we shall have no responsibility or liability to check or verify the accuracy, correctness or adequacy of any representation, warranty, statement or information provided by any third party before conveying the same to you.

- 9.7 If we make any payment to you or credit your settlement account and/or other designated account on the assumption of receipt of any sum which is subsequently not received by us, we shall be entitled to debit that sum from your the settlement account or any of your accounts, and if conversion of currencies is required, we may make such conversion at the prevailing rate(s) of exchange as determined by us in our absolute discretion. If there are insufficient funds in the settlement account or any of your accounts for this purpose, you shall immediately pay the balance to us upon demand.

- 9.8 You hereby expressly agree that we or our Nominee or any relevant Custodian Authority may, if requested by any relevant Custodian Authority or (as the case may be) any regulatory or supervisory authority (in the case of us, whether such request is made directly to us or through our Nominee or any Custodian Authority), provide details of any Transaction effected and/or any other information, documents, transactions relating to any Debt Securities in your securities account, in order to assist the Custodian Authority or the relevant regulatory or supervisory authority with any investigation or enquiry being undertaken.

- 9.9 We shall be entitled to refuse the deposit of any Debt Securities by you into your securities account, unless such Debt Securities are acquired by you from or through us pursuant to the Service.

- 9.10 You acknowledge that the Services contemplated in this Annex F are not intended to be provided to any person who is located within the United States or Canada, a U.S. Person within the meaning of Regulation S under the U.S. Securities Act (which includes any person resident in the United States and any partnership or corporation organized or incorporated under the laws of the United States) or a resident of Canada (each, a "U.S./Canadian Person"). In the event that you become a U.S./Canadian Person, we shall be entitled to terminate such Services upon giving not less than 30 days prior notice to you, unless to do so would contravene applicable law.

## **10. DEFINITIONS**

- 10.1 "Accrued Interest" means, in respect of any Debt Securities to be purchased or sold under a Purchase Contract or (as the case may be) Sale Contract, the interest (if any) accrued on the Debt Securities from and including the Preceding Coupon Date or in the absence of which, from the First Interest Accrual Date up to but excluding the Value Date on which the purchase or sale of the Debt Securities is to be completed under the relevant Purchase Contract or (as the case may be) Sale Contract.

- 10.2 "Closing Time" of a Hong Kong Business Day means the time at which we will cease to make the Service available to you generally on such Hong Kong Business Day, such Closing Time to be determined by us in our absolute discretion from time to time.
- 10.3 "Coupon Date" means any day on which interest accrued under the relevant Debt Securities is due and payable by the relevant Issuer according to the terms of the Debt Securities.
- 10.4 "Custodian Authority" means (a) the Central Clearing and Settlement System operated by the Hong Kong Securities Clearing Company Limited or the Central Moneymarkets Unit Service operated by the Hong Kong Monetary Authority or any equivalent or similar system(s) operated in Hong Kong or in any other jurisdiction outside Hong Kong; or (b) any financial institutions located outside Hong Kong which we may from time to time appoint to act as our sub-custodians or agents in relation to any Debt Securities held by us for you, whether such financial institutions are related to us or otherwise.
- 10.5 "First Interest Accrual Date" of any Debt Securities means the date on which interest begins to accrue under the relevant Debt Securities.
- 10.6 "Issuer" means, in respect of any Debt Securities, any company or body, whether incorporated or unincorporated, or any government authority by whom the relevant Debt Securities are issued.
- 10.7 "Preceding Coupon Date" of any Debt Securities means, for the purpose of calculating the Accrued Interest payable by us or (as the case may be) you on a particular Value Date, the "Coupon Date" of the relevant Debt Securities immediately preceding the Value Date. .
- 10.8 "Purchase Price" means the price agreed to be paid by you or to be fixed by the relevant Issuer under a Purchase Contract for purchase of the relevant Debt Securities from us. For the avoidance of doubt, such Purchase Price is exclusive of (a) any Accrued Interest or commissions or charges payable by you to us under or in respect of the Purchase Contract and (b) any Transaction Duties.
- 10.9 "Sale Price" means the price agreed to be received by you under a Sale Contract for sale of the relevant Debt Securities to us. For the avoidance of doubt, such Sale Price is exclusive of (a) any Accrued Interest payable by us to you and any commissions or charges payable by you to us under or in respect of the Sale Contract and (b) any Transaction Duties.
- 10.10 "Transaction Duties" means any taxes, duties or levies payable to any tax or government authority in or outside Hong Kong with respect to the sale and purchase of Debt Securities under a Purchase Contract or a Sale Contract.
- 10.11 "Value Date" means, in respect of a Purchase Contract or Sale Contract, the date on which we and you will settle the relevant Purchase Contract or (as the case may be) Sale Contract in the manner set out in Clause 5 of this Annex F.



#### **Section 4: Facility terms and conditions ("Facility Terms and Conditions")**

This Section 4 applies to any or all Facilities granted or to be granted by us to you as borrower ("Borrower"). The provisions of this Section 4 are subject to other terms and/or rights available to us as specified in the relevant Facility Letter or the relevant Security Document.

Unless otherwise agreed or waived by the Bank, no Facility or other banking service will be made available by the Bank unless the Borrower satisfies all conditions precedent and/or pays all fees and charges required in respect of the relevant Facility or banking service pursuant to a Facility Letter or any other relevant document.

##### **1. Further representations, warranties and undertakings**

- 1.1 In addition to all the representations and warranties contained in the General Terms and Conditions which shall continue to be applicable to you as the Borrower and/or the Security Provider (as the case may be), you further represent and warrant to us that (which representations and warranties shall be deemed to be repeated on a continuous basis for as long as you utilize the Facility and/or any Facility is outstanding and/or any Total Liabilities and Obligations are not fully discharged):
- a. any Facility shall be utilized and that it shall at all times comply with the guidelines and regulations set by the Hong Kong Monetary Authority in force from time to time and such other restrictions that we may at our absolute discretion impose from time to time;
  - b. there has been no adverse change in your financial condition or operations nor in the consolidated financial condition or operations of you and your subsidiaries since the end of the financial year of the latest audited accounts and consolidated accounts (if any) delivered by you in compliance with your obligations under the Facility, Facility Letter and/or Security Documents;
  - c. there are no encumbrances (including but not limited to charges, mortgages, pledges or liens) in respect of any of your properties, assets or undertakings except those which have been previously disclosed to us in writing prior to the entry into the Facility Letter and/or the Security Documents or for which our prior written consent has been obtained.
- 1.2 In addition to all the undertakings contained in these General Terms and Conditions which shall continue to be applicable to you as the Borrower and/or the Security Provider (as the case may be), you further irrevocably and unconditionally covenant and undertake that, at all times during the availability of the Facilities and so long as any sums remain to be drawn down or otherwise released or remain payable under the Facilities, Facility Letter and/or Security Document or under any guarantee or any contingent liabilities and/or liabilities not yet matured but otherwise owing, sustained or incurred by us, you shall:
- a. forward to us such information or documents that we may require from time to time, including but not limited to (if applicable) a copy of the unaudited financial statements within 3 months of the end of each of your half-year and a copy of your audited financial statements immediately after they are issued but in any event within 3 months after the close of each financial year;
  - b. notify us immediately in the event that any order or warrant is issued against you or any of your assets under the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405 of the Laws of Hong Kong), Organized and Serious Crimes Ordinance (Cap. 455 of the Laws of Hong Kong) or any other ordinances;
  - c. not without our prior written consent create, or suffer or permit to be created, any encumbrance whatsoever (including any charge or any security) over any of your properties, assets, or undertakings, or dispose of all or any material part of your properties, assets or undertakings;
  - d. obtain the requisite regulatory and governmental approvals and deliver a copy of the same to us including, without limitation, requisite exchange control approvals to purchase foreign currency to make a payment in respect of the Facility (if such approvals are required); and
  - e. conduct your business in accordance with all applicable Laws binding upon you, your operations or assets and shall promptly pay all taxes assessed against you or any of your assets.

##### **2. Repayment on demand / uncommitted facility**

- 2.1 Notwithstanding any provision in the relevant documents in relation to the Facilities, all the Facilities made available to you are uncommitted and payable on demand and accordingly, the availability of the Facilities or any part thereof is subject entirely to our absolute discretion. In addition to the Facilities being uncommitted and payable on demand, we may, at our absolute discretion, review the Facilities from time to time, and accordingly, we may at any time at our absolute discretion, upon giving notice as required under applicable Law:
- a. suspend or vary the Facilities whereupon the Facilities shall be so suspended or varied; or
  - b. amend or extend the availability or repayment period; or
  - c. terminate the Facilities and demand immediate repayment of all your liabilities (whether due or not), whereupon the same shall become so due and payable; or
  - d. demand that adequate Collateral be made for all contingent liabilities and/or liabilities not yet matured but otherwise owing, sustained or incurred by us, including the amount under any guarantee.

##### **3. Utilization conditions**

- 3.1 Utilization of any of the Facilities shall be subject to our prior approval and subject to terms and conditions of the relevant Facility Letter. Each such utilization shall also be subject to the following additional conditions (and such other conditions as we may, at our absolute discretion, specify from time to time):
- a. the completion, execution and delivery of any such documents as we may require;
  - b. each request for utilization shall be made in such form and manner and must be received by us at such time before such utilization, as we may prescribe from time to time;

- c. the utilization request will not exceed the approved amount available under the Facility;
- d. the representations and warranties in each Facility Letter (including those specified in this General Terms and Conditions and the Facility Terms and Conditions) and Security Document shall be true and correct as if repeated on the date of such utilization;
- e. no breach of or default under any terms or conditions of any Facility Letter and/or Security Document shall have occurred and no breach or default will (or would be likely to) be caused by, or result from such utilization; and
- f. there shall be no material adverse change in the condition (financial or otherwise), prospects or assets of you or any Security Provider (if applicable).

#### **4. Collateral required for the facility**

- 4.1 Your Total Liabilities and Obligations owed to us shall be secured by the security over Collateral from time to time determined by, and acceptable to, us.
- 4.2 You shall ensure that the Aggregate Value of all Collateral shall at all times exceed the amount of the Total Liabilities and Obligations as conclusively determined by us. If at any time the Aggregate Value of all of the Collateral falls below the Total Liabilities and Obligations, we may (at our absolute discretion and without any obligation whatsoever to do so) notify you in writing of such determination and:
  - a. whereupon you shall, and procure that the Security Provider(s) shall, within the period of time specified by us in the notification (which period may, in certain circumstances be less than twenty four (24) hours) ("Ratification Period"), either (i) provide to or procure the provision to us additional Collateral of sufficient value and in a form and substance acceptable to us so that immediately after the provision of such additional Collateral the Aggregate Value of all Collateral shall exceed the Total Liabilities and Obligations; or (ii) reduce the amount of your Facility and/or Total Liabilities and Obligations to us. Should there be any shortfall between the Total Liabilities and Obligations and the sale proceeds of the Collateral, you undertake to make good of the shortfall immediately upon our demand; and
  - b. should you fail to comply with the aforesaid or an Event of Default occurs, then without prejudice to any other right that we may have, we shall be at liberty immediately or at any time afterwards (but shall not be obliged to do so) notwithstanding that the Ratification Period may not have expired, without notice to the Security Provider and/or you and without consent of the Security Provider and/or you to sell or dispose of the Collateral or any of them as we may in our absolute discretion select and in such manner at such price or prices and whether on tender of cash or credit, as we may deem expedient without being responsible for loss whether arising from our gross negligence or howsoever arising and to apply the net proceeds of such sale in and towards reducing the amount of Total Liabilities and Obligations so that immediately after such reduction the Aggregate Value of all Collateral exceed the Total Liabilities and Obligations.
- 4.3 Market value of the Collateral will be determined by us mark-to-market from time to time with reference to the rates or prices prevailing at the relevant time in the relevant market obtained from screen based sources, other market participants or sourced from internally or by employing commonly accepted valuation methods. The valuations may therefore not correspond with valuations given by another market participant and we shall have no liability in respect of any error or omission arising from the valuations given or from use made of the valuations or reliance placed on them.
- 4.4 The Borrower must, on demand by the Bank, furnish the Bank with such additional Collateral (whether in addition or in substitution for any existing Collateral or otherwise) to secure any Total Liabilities and Obligations in such form, of such value and on such terms as the Bank may from time to time require.

#### **5. Interest and default interest for facility**

- 5.1 Interest will accrue on the daily outstanding balance of the Facility at the rate specified in the Facility Letter.
- 5.2 If any Base Rate is below zero, such Base Rate shall be deemed to be zero when calculating the applicable interest rate chargeable on the Facility. In addition, if the applicable interest rate chargeable on the Facility is below zero (after any negative Base Rate has been deemed to be zero) then such applicable interest rate shall be deemed to be zero.
- 5.3 We may vary the interest rate by providing you notice in accordance with our applicable legal and regulatory obligations.
- 5.4 Notwithstanding any provision to the contrary, the interest rate will be determined by us on such basis as we may at our absolute discretion determine and may be varied from time to time. Such variation shall take effect and be binding on you from the date of such variation as notified to you in writing.
- 5.5 In the event of default by you in the payment of any sum due pursuant a Facility, you shall pay interest on that sum for the period from the due date for such payment until actual payment (as well as after any demand or judgment and notwithstanding that the banker and customer relationship may have ceased or have been terminated) at the rate of:
  - a. 3% per annum above the rate of interest provided for under the Facility Letter;
  - b. if there is no interest rate specified in the Facility Letter, 3% per annum above the cost of funds; or
  - c. at such other rate as we may determine from time to time, as notified to you in writing.
- 5.6 Interest (including default interest) is payable in arrears at the end of each interest period based on a 360-day year or 365-day year whichever is applicable to the relevant currency, as follows, and for the actual number of days elapsed:
  - a. for Hong Kong dollars, Pound Sterling and Singapore Dollar: 365-day year; and
  - b. for other currencies: 360-day year.
- 5.7 Upon any default in payment of interest or principal, or the amounts outstanding under these Facility Terms and Conditions or any Facility Letter, we reserve the right to automatically rollover such amounts for such periods as we may in our absolute discretion determine.

## **6. Events of Default**

- 6.1 Without prejudice to or in any way limiting our rights to terminate the Facility at any time, on the occurrence of an Event of Default under these Facility Terms and Conditions, the Facility Letter and/or Security Documents by you or any Security Provider, all monies thereunder shall be immediately due and payable without further notice.
- 6.2 If any indebtedness of you (the Borrower) or the holding companies, the subsidiaries, the related companies or the associated companies of the Borrower (collectively "the Group", each a "member of the Group") becomes due or capable of being due before its stated maturity or is not paid on maturity or on demand (if so payable), any guarantee or similar obligation of the Borrower or any member of the Group is not discharged at maturity or when called or the Borrower or any member of the Group goes into default under, or commits a breach of any installment or agreement relating to any such indebtedness or guarantee, the Borrower or any member of the Group is unable to pay its debts as they fall due, or commences negotiations with any one or more of its creditors with a view to the general readjustment or rescheduling of its indebtedness or makes a general assignment for the benefit of or a composition with its creditors then we shall have the right to immediately or at any time thereafter to terminate the Facility and all outstanding monies shall be immediately due and payable.

## **7. Taxes**

- 7.1 All payments made by you or the Security Provider under or pursuant to the relevant Facility, Facility Letter, and/or Security Document whether in respect of principal, interest or any other item, shall be made without set-off or counterclaim and shall be made free and clear of, and without deduction or withholding for, any present or future taxes, levies, impost, duties, withholdings or other charges (collectively "Taxes") imposed by any authority. Should you or the Security Provider be required to deduct or withhold any Taxes from or in respect of any sum payable under or pursuant to the Facility, the Facility Letter and/or the Security Document, (a) the sum payable shall be increased so that we would have received had no deduction or withholding been made and (b) you or the Security Provider shall pay the full amount deducted or withheld to the appropriate authority in accordance with applicable law and (c) you or the Security Provider shall deliver to us within thirty (30) days (or such period as we may notify in writing) after the due date of the payment hereunder in respect of which such deduction or withholding was made, the receipt or certificate of payment issued by such authority evidencing (to our satisfaction) the deduction, withholding or payment of all amounts so required to be deducted, withheld or paid.

If we are required to make any payment (other than tax on our overall net income), on or calculated by reference to any sum received or receivable by us under the Facility, the Facility Letter, the Security Document or any liability in respect of any such payment is imposed, asserted, levied or assessed against us, then you or the Security Provider shall on demand pay us an amount sufficient to indemnify us against such payment or liability including expenses incurred thereby if we are required to make payment.

## **8. Increased costs**

- 8.1 Notwithstanding anything to the contrary herein contained, in the event that the withholding tax rate shall change or if any change applicable Laws or the interpretation or application thereof shall make it unlawful or commercially impracticable for us to make or continue to make the Facility available to you or to give effect to our obligations under the Facility Letter, you shall upon demand by us forthwith repay the amounts drawn under the Facility together with interest accrued thereon and all other amounts due to us and our obligations thereunder shall cease accordingly.
- 8.2 Where the above changes directly imposes, alters or deems applicable any capital adequacy and/or reserve and/or cash ratio and/or balance sheet or other requirement on us and we determine that it has incurred or will incur costs in complying with such law or directive ("Additional Cost"), we shall notify you of the occurrence of such event and the effect thereof and shall certify to you the amount which will compensate us for such Additional Cost which are, in our absolute discretion, attributable to maintaining all or part of our commitment under the Facility, which certificate shall, save for manifest error, be conclusive and binding on you. You shall fully and completely indemnify us against the Additional Cost and, accordingly, shall from time to time on demand pay to us the amount certified by us to be necessary so as to indemnify us, provided always that we shall not be obliged to disclose any confidential information related thereto.

## **9. Further assurance**

- 9.1 You shall at your own expense, if and when required by us, provide such additional Collateral that is acceptable in form and substance to us and do all such assurances, acts or things and execute such documents, forms, deeds or instruments in favor of us or our Nominee as we may from time to time require over all or any of the existing/additional Collateral necessary to vest or enable us to vest title to the existing/additional Collateral in us or our Nominee or in such other person as we may direct or for perfecting, protecting or maintaining the existing/additional Collateral created or intended to be created hereunder or for facilitating the realization of such further Collateral and forms, deeds, instruments and documents to be prepared by and on behalf of us at your cost and containing such provisions as we may require. For the purposes of this Clause 9.1, a certificate in writing by us to the effect that any particular assurance, act or thing is required by you shall be conclusive evidence of such fact.

## **10. Costs and expenses**

- 10.1 You shall pay all charges, costs and expenses incurred by us (whether or not such Facility is not proceeded with or aborted or cancelled for any reason whatsoever prior to drawing or utilization thereof after the acceptance of the Facility Letter) in connection with the preparation, negotiation, preservation or protection, registration, execution, delivery performance, exercising or enforcement of the Facility, the Facility Letter and/or the Security Document or any right, power or remedy of us for the recovery of any sum due or owed by you or the Security Provider to us, including but not limited to insurance premium, inspection or valuation fees, legal fees (on a full indemnity basis and including abortive costs), stamp duty, traveling expenses and governmental and statutory levies and taxes and until payment, such amounts shall bear interest at such rate and on such basis as we may stipulate from time to time. Any monies payable herein shall be payable on demand or may be set-off.
- 10.2 We shall be entitled to debit at any time and from time to time all or any of the interests, fees, charges, commissions, costs, expenses and other sums due and payable by you in respect of the Facilities from any of your account(s) without prior notice to you. Such sums shall be deemed duly drawn or overdrawn from your account(s).

## **11. Special accountant**

- 11.1 If we are of the opinion that circumstances have arisen which give or may give cause of concern over your financial condition, you shall, notwithstanding that no Event of Default has occurred, forthwith upon our request appoint a special accountant or a professional firm or

advisor (the "Special Accountant") acceptable to us. We may in our absolute discretion immediately after such request make such an appointment on your behalf. The Special Accountant shall be your agent and you shall be solely responsible for his acts, defaults, remuneration and liabilities. The functions of the Special Accountant shall include (without limit to his powers): (a) to carry out an audit of the accounts of you and report the outcome of such an audit to us; (b) to verify and submit to us a list of your assets; (c) to verify and submit to us a list of your creditors; (d) to render such advisory services with respect to your business or financial affairs as we may from time to time specify; and (e) to undertake such investigation and provide such information as we may require.

## **12. Miscellaneous**

- 12.1 Certificate conclusive: (a) Any certificate of us as to your or the Security Provider's liabilities, interest, costs, expenses and/or other monies as may be payable or due under the Facility, Facility Letter and/or the Security Document shall, in the absence of manifest error, be conclusive and binding on you and the Security Provider, as the case may be; (b) any opinion, determination or decision by us as to any materiality effect or otherwise relating to anything herein mentioned or referred to shall be conclusive and binding on you and the other Obligor.
- 12.2 Suspense accounts: We shall have the right to credit any monies received into a suspense account (without any obligation on us to pay interest), or to apply the same toward settlement of the principal, interest, charges or other liabilities of you, and in such proportion or manner as we may deem fit.
- 12.3 Change in constitution, insolvency and force majeure: Your liability shall not be affected or discharged by the death, insanity, invalidity, bankruptcy, retirement, admission, dissolution, liquidation, receivership, insolvency, winding-up, amalgamation, restructuring, or any change of or affecting you (or any of the relevant partners, as the case may be) or us and notwithstanding any circumstances beyond the reasonable control of you and/or us including, but not limited to Force Majeure Events.
- 12.4 Insurance and valuation: The Borrower shall, if required by us, at its own expense, maintain and renew insurance coverage in respect of such of its assets and properties as we may require from time to time against such losses, damages and other types of risks and for such insurable value as we, acting reasonably and in good faith, may determine, with insurance companies acceptable to us. If the Borrower fails to maintain such insurance, the Bank may effect such insurance on the Borrower's behalf at the Borrower's expense and the Borrower shall reimburse us on demand for all costs and expenses so incurred.
- 12.5 Debt collection: If the Borrower or any other Obligor fails to pay any sum due to us, we may appoint any lawyer, accountant, debt collection agency or other agent or person to (a) demand, collect or sue to recover any sum payable by the Borrower or any other Obligor, and/or (b) assist in enforcing any rights of the Bank under these Facility Terms and Conditions, any Agreement or any Facility Letter or Security Document or any other document or agreement.

## **13. Additional terms and conditions governing utilization of overdraft / revolving loan**

- 13.1 Drawings may be made in any major currency acceptable to us on at least two (2) Business Days prior notice unless otherwise waived by us at our absolute discretion. Drawdown notices cannot be revoked. Drawings may take place only on a Business Day.

## **14. Additional terms and conditions governing issuance of guarantee**

- 14.1 These additional terms and conditions govern the issuance of guarantees, banker's guarantees, standby letters of credit, performance bonds, indemnities or such other documents by us from time to time ("Guarantees" and each a "Guarantee").
- 14.2 Request for the issuance of a Guarantees shall be made to us by executing and delivery to us, not later than three (3) Business Days before the proposed date of issue of Guarantee, such documents, including such application (and any related undertaking to indemnify and reimburse us) and any approval and consent which we may require in connection with such issue.
- 14.3 You confirm and agree that: (a) we shall be entitled to make any payment demanded by the beneficiary under the Guarantee without making any investigation as to the bona fide nature, validity or genuineness of such demand; (b) the liability and obligation of you to us shall be in no way diminished or prejudiced if it should appear that, as between the beneficiary and us, the beneficiary was not entitled for whatever reason to demand payment or that such demand was not valid or genuine; (c) irrespective of whether there is any claim on any of the Guarantees, we shall have the right to require you on demand of us prepay our maximum liability under any or all the Guarantees issued by us under the Facility notwithstanding that the Guarantees may not have matured; (d) you will pay us the commission amount as specified in the Facility Letter.
- 14.4 You and the Security Provider (as the case may be) undertake to fully indemnify us against any and all sums paid out by us under the Guarantee, and against all costs, liabilities, charges, fees, claims, suits or judgment or Loss whatsoever incurred or suffered by us arising out of or in connection with, or as a result of the Guarantee and authorize us to deduct the same from your Account (or the account of the Security Provider as the case may be) with us without any notice to you (and/or the Security Provider as the case may be).

## **15. Additional terms and conditions governing utilization of derivative facility**

- 15.1 These additional terms and conditions govern utilization of the Derivative Facility granted to you for the purpose entering into any derivative Transaction.
- 15.2 All payments to be made by you must be made in the currency in which you contracted to pay us (the "currency of the obligation"). Such a payment obligation shall not be satisfied by tender or recovery pursuant to judgment of any currency other than the currency of the obligation, except to the extent that the tender or recovery results in the actual receipt of the full amount in the currency of the obligation. We shall have a separate cause of action against you for any shortfall of actual receipt in the currency of the obligation.
- 15.3 We shall be entitled on a Business Day to calculate the US Dollar Equivalent in respect of all outstanding; such calculation shall be made at the market rates as determined by us at our absolute discretion on such Business Day.

Where "US Dollar Equivalent" of any amount shall, in the case of any amount denominated in United States dollars ("US dollars"), equal such amount and, in any other case, shall equal the amount of US dollars required to purchase such amount at our forward rate of exchange for the purchase of US dollars with the currency in which such amount is denominated quoted in the Hong Kong foreign exchange market ("FX market") at the time that such calculation is made for settlement at the time such amount would fall due under the transaction relating thereto; and if at any time we cannot for any reasons whatsoever obtain quoted rates for the currency that you wish to buy or sell in the FX market we

will not be obliged to contract with you for the sale or purchase of such currency.

- 15.4 We shall determine the extent of your utilization of the derivative Facility at the prevailing exchange rates and computation. Utilization shall be at our absolute discretion. Our determination shall be conclusive and final and binding on you.

**16. Additional terms and conditions governing utilization of covered short sell Facility**

- 16.1 The covered short sell Facility may only be utilized by you to conduct short selling of designated securities permitted by the Stock Exchange of Hong Kong Limited for short selling.
- 16.2 The purpose is to cover the market value of the relevant Hong Kong listed securities borrowed by you to cover short selling.
- 16.3 You shall provide us with Collateral with sufficient Aggregate Value as may be from time to time prescribed by us in our absolute discretion.

**17. Initial Public Offering ("IPO") subscription**

- 17.1 Use of the advance: The proceeds for each advance made available us to you for IPO subscription shall be used for the purpose of financing amounts payable by you on applications to be made by us on your behalf for the allotment of shares, warrants and/or other Securities ("New Securities") pursuant to forthcoming new issues or offers for sale to the public and for no other purpose. Advance for your application for New Securities shall be available up to an amount as determined by us in our absolute discretion.
- 17.2 Drawdown: Upon acceptance by us of your request for the IPO subscription and receipt of the Collateral (if required), the loan proceeds may be drawn upon receiving your requisite instructions provided always that we reserve the right in our absolute discretion not to disburse any advance because of adverse market conditions. All application and payment of subscription money (comprising the proceeds of any advance as granted by us together with your money given to us for such purpose) will be made by the Nominee on your behalf subject to allotment of the relevant New Securities in whole or in part by the issuer in accordance with the terms of the relevant prospectus or other offer document.
- 17.3 You are ultimately liable: You expressly acknowledge and agree that, notwithstanding that payment of the subscription money will be made in the name of the Nominee, you will remain exclusively liable and responsible for repayment of any advance together with all interest and other sums accrued or owing with respect thereto. You further acknowledge and agree that you shall bear the exclusive risk in connection with the proceeds of any advance at all times during the period in which the proceeds of any advance are deposited with the relevant receiving bank (as specified in any prospectus or other offering document of an issuer). Without limiting the generality of the foregoing, your liabilities under the IPO subscription service and your obligations to ensure repayment of any of our advance shall not be prejudiced, affected or discharged in any way whatsoever by the insolvency, liquidation, winding up, composition or arrangement or any death, incapacity, disability or change in the constitution of status of you, any receiving bank, any issuer (or any agent or authorized representative of any receiving bank or any issuer). Notwithstanding any discharge, release or settlement from time to time between us and you, if any payment made to us in respect of any money outstanding under the IPO subscription service is avoided, set aside, surrendered, paid away, refunded or reduced by virtue of the insolvency, liquidation, winding up, composition or any other arrangement for time being in force in connection with any receiving bank or any issuer, we shall be entitled to enforce our rights against you as if no such discharge, release or settlement had occurred.
- 17.4 Charge on the New Securities: In the event that an application (or a part thereof) is successful, all New Securities allotted pursuant to such application shall be registered in the name of the Nominee and charged to us as security for the Total Liabilities and Obligations (including without limitation, repayment of the relevant advance together with all interest thereon and all costs, charges and expense incurred in connection with the relevant advance and application).
- 17.5 Nature of unutilized advance: To the extent that an application is unsuccessful and the relevant advance or part thereof cannot be applied for the New Securities, the proceeds of the relevant advance or such part thereof ("Refund Amount") shall at all times be held subject to a trust in favor of us and shall be returned to us as beneficial owner when refunds of unsuccessful subscription monies are made by the receiving bank. You acknowledge that you shall have no right, title or interest of any nature to claim or demand payment from the Nominee of any part of such Refund Amount. You hereby expressly authorize and agree that the Nominee shall pay the Refund Amount to us as soon as practicable upon receipt to be applied firstly in satisfaction of any outstanding costs payable under the IPO subscription service or under any relevant Security Document; secondly in satisfaction of any fees owing to us or the Nominee in connection with any advance or an application; thirdly in satisfaction of any interest on any advance accrued up to the date of receipt of the Refund Amount and finally in satisfaction of the principal amount outstanding under any advance.
- 17.6 Your authorization: You hereby expressly authorize us to:
- accept and retain all documentation evidencing title to any New Securities that may be allotted by an issuer to the Nominee on your behalf;
  - register any New Securities in our name or the Nominee in accordance with the provisions of the relevant Security Document;
  - collect and receive all dividends and other income payment and distribution in respect of any New Securities;
  - retain any proceeds from the sale of the New Securities; and
  - take any action in respect of any New Securities as we in our absolute discretion deem appropriate.
- 17.7 Limit of our liability: You further acknowledge and agree that neither we nor the Nominee shall be responsible or liable in any way whatsoever for any loss, damage, cost or expense of any kind which you may suffer or incur by reason of any delay, mistake, misdescription, error, omission or default by us and/or the Nominee in the making or lodgment of an application or in the transmission or forwarding of instructions or particulars in connection with an application.
- 17.8 Interest: You shall pay interest on our advance provided by us from the relevant application date (the date upon which the application forms in connection with an application may be lodged) for each application up to and including the repayment date (the date specified by us as the date of repayment of an advance together with all other sums accrued or owing under the IPO subscription service, the date on which a demand notice is served by us or the date on which Refund Amount is received by us whichever is earlier) for each advance at such rate as may be agreed with us.

- 17.9 Payment due date: Without limiting the generality of the powers of us to demand immediate repayment pursuant to these Terms and Conditions, all advances (or that part of any advance which has not already been repaid) shall be repaid in full together with all interest accrued thereon and all other sums (if any) owing to us with respect to a particular advance on the repayment date (the date specified by us as the date of repayment of an advance together with all other sums accrued or owing under the IPO subscription service, the date on which a demand notice is served by us or the date on which Refund Amount is received by us whichever is earlier).

## Section 5: Renminbi accounts and services

This Section 5 (as amended and/or supplemented by us from time to time) apply to Renminbi ("RMB") accounts (including RMB savings account and multi-currency savings account (including RMB) and any other RMB accounts as determined by us from time to time) opened by you with us from time to time and other RMB Services.

For the purposes of this Section 5, RMB may refer to Renminbi or Chinese yuan (as appropriate).

### 1. Renminbi accounts and services

#### 2.1 General provisions

- a. RMB accounts and RMB deposits are maintained with us in Hong Kong.
- b. We may take all actions necessary to comply with the rules and regulations of the Hong Kong Monetary Authority, the RMB clearing bank and any other authorities (including the People's Bank of China in the People's Republic of China) (as amended from time to time). We may provide information about your accounts to the RMB clearing bank and authorities.
- c. We may refuse to open an account or provide a Service without giving a reason and without liability.
- d. Deposits in RMB banknotes are accepted at the discretion of the current conditions imposed by us and may be subject to payment of charges as determined by us from time to time. We may set a cut-off time for deposits and we may decline to accept deposits made after our cut-off time (if any) or, if we so inform you, we may treat them as made on the next Business Day. We may (but are not obliged to) refuse to accept any RMB deposits or part of it, and may also refuse to provide to you exchange or remittance service of RMB funds or part of it.
- e. Applicable exchange and interest rates regarding RMB will be determined by us and may differ from the official rates set by the People's Bank of China or rates determined by any other person.
- f. We may from time to time set restrictions that apply only to RMB accounts and Transactions.
- g. You acknowledge that the operation of the RMB clearing system is subject to the rules and regulations promulgated from time to time by the People's Bank of China in Mainland China (including the Renminbi Clearing House Rules), the agreements as you may enter from time to time with other institutions for RMB payment and settlement services and the internal policy determined by us from time to time.
- h. RMB accounts Transactions are governed by Hong Kong law and may subject to the related rules and regulations promulgated from time to time by the People's Bank of China in Mainland China or other relevant regulatory authorities, as amended from time to time. You agree to submit to the non-exclusive jurisdiction of the Hong Kong courts.

#### 2.2 Account opening

- a. We accept an individual holding a valid identity certificate as recognized by us to open RMB accounts (photocopies of relevant documents may be taken and kept by us for the record). Since our Services involve foreign exchange Transaction, we have the right to decline an application by a minor.
- b. We may set a minimum initial balance for account opening purpose. Please inquire with your relationship manager for details.
- c. We are entitled to decline the opening of an account or the provision of any or all RMB Services without giving you any reason.

#### 2.3 RMB savings accounts / multi-currency savings accounts (including RMB)

- a. Operation
  - i. Individual account holder may effect RMB withdrawal, deposit and transfer to other RMB accounts with us during business hours at our office.
  - ii. If no RMB funds transfer between Hong Kong and the Mainland China is involved, you are allowed to conduct fund transfer between the accounts under the same or different name in the same or different banks. Direct withdrawal and deposit of RMB bank notes is subject to our consent and a handling charge is payable according to the guidelines prescribed by us.
  - iii. Your request for withdrawal in RMB bank notes is subject to availability of notes in our office or prior appointment.
  - iv. You declare that you are the beneficial owner of the RMB banknotes which you deliver to us and you lawfully possess such RMB banknotes.
  - v. We may set a cut-off time for exchange transaction and may decline the exchange between Hong Kong dollars and/or other currencies and RMB after our designated time.
  - vi. Exchange between Hong Kong dollars and/or other currencies and RMB has no amount limit. However, we may but are not obliged to accept the exchange application.
  - vii. Where the balance of an account is zero, we may close the account without notifying you.
  - viii. Where you have not effected any deposit or withdrawal for a long period of time (to be determined at our sole discretion, currently two (2) years), we may regard the relevant account as inactive and carry out special administrative procedure (such as restricting transactions, stop computing interest, etc) or impose charges in relation to such an account before any activity is resumed by you.
  - ix. Any exchange loss or other charges or expenses incurred by us in making payment in RMB shall be borne by you.

- x We may (but are not obliged to) transfer all or any funds in your Renminbi savings account to your Renminbi current account to pay any or all Renminbi cheques presented to us without prior notice to you subject to a handling charge as determined by us from time to time.
- xi We are authorized to deduct the cheque returned fee, cheque handling fee or any other fees and charges payable to us from any of your account(s) maintained with us.
- xii If by operation of law, we are obliged to effect a cash payment in RMB, such obligation shall be conditional upon the availability of RMB and if we are unable to deliver RMB, our obligations shall be discharged by the tender of an equivalent amount (as conclusively determined by us) in Hong Kong dollars or in such currency as may then be in local circulation.

b. Guidelines relating to fees and computation of interest

- i Where an account is closed in less than three (3) months after its opening, we may impose a handling fee.
- ii We will not give prior notice of any change in RMB savings interest rates, which may vary according to the market conditions.
- iii Interest will accrue on account balance on a daily basis and be credited to the account at the end of each month.
- iv Computation of interest on account balance will be rounded to 2 decimal places.
- v Formula for interest computation for accounts:  $\text{Daily balance} \times \text{savings interest rate for RMB prescribed by us on that day} \div 360 \text{ days}$ .
- vi In the event of closure of your account, interest will accrue till the last day.
- vii No interest will accrue on the balance of RMB in your account which does not meet the minimum balance requirement.
- viii We are entitled to charge additional transactional fees for each transaction, withdrawal or deposit of RMB.
- ix We are entitled to charge an account management fee for your account. Please refer to our fee schedule for details of the fee.

## 2.4 Fixed Deposit

a. Deposit

- i You may apply for RMB fixed deposit service(s) with us.
- ii A minimum initial balance requirement is set for fixed deposit, as specified by us from time to time.
- iii On making a deposit, you may give instructions for the disposal of principal and interest at maturity (for example, automatic rollover, transfer to designated RMB savings accounts/multi-currency savings accounts (including RMB) etc). No reminder of the maturity date will be sent.
- iv A deposit may be funded by transfer of fund from your RMB savings account/multi-currency savings accounts (including RMB) maintained with us. Cash will not be accepted for placing a deposit directly.
- v A cap may be set for each transaction/account for a RMB deposit. Deposit exceeding the cap will not be accepted.

b. Guidelines relating to fees and computation of interest

- i Interest on deposit is rounded to 2 decimal places.
- ii If we permit early withdrawal, no interest will be paid, and compensation and charges will be deducted.
- iii We are entitled to charge a handling fee for RMB fixed deposit transaction. Please refer to our fee schedule for the rates.

## 2.5 Club Deposit

- a Club Deposit may be maintained in RMB and in designated deposit tenor in accordance with your needs and goals. You may also choose the deposit amount (subject to the prescribed minimum amount) and the date starting the installments. Please consult our staff for details.
- b We will issue a "Deposit Confirmation" setting out the information about the Club Deposit, including: the target amount at maturity, amount for each installment, installment date, the deposit tenor, the maturity date and the interest rate etc. after setting up a Club Deposit. Please check the details promptly and let us know if there is any error.
- c You may arrange an autopay instruction to debit the deposit amount from your designated account maintained with us when setting up a Club Deposit. Payment from other banks shall not be accepted. Upon maturity, all the deposits and interests will be paid to the same designated account. If the installment date is a non-Business Day in that month, you should make installment or have sufficient funds in your designated account on the preceding Business Day. If the installment date is scheduled on the last day of a month and falls on a Saturday, installment will be debited from the designated account on the preceding Business Day.
- d If any installment is not paid on time, we are entitled to deduct interest payable.

## 2.6 Remittance between Hong Kong and Mainland China

a. Authorization



- i. We accept telegraphic transfer only.
  - ii. The payer must be our customer, and hold a RMB account with us. The amount to be remitted must be debited from the payer's RMB account with us.
  - iii. We may have to require the payer to provide the information of the necessity.
- b. Telegraphic Transfer
- i. We shall act on the information provided by you and, through the computer network system of the Society of Worldwide Inter-bank Financial Telecommunication (SWIFT), facsimile or telegram, instruct the RMB clearing bank or our correspondent bank to pay the funds to the beneficiary's bank which would then make available such funds to the beneficiary.
  - ii. For the individual account holder, when making cross border RMB telegraphic transfer to the individual account in the Mainland China, the beneficiary and payer must be the same person.
  - iii. If there is an upper limit for RMB telegraphic transfer, remittance exceeding the upper limit will not be accepted.
- c. Cancelling or returning a remittance
- i. All funds returned from the related bank (including funds that are returned due to cancellation of remittance and funds that are returned from the outside of Hong Kong) will only be credited to the remitter's RMB account.
  - ii. We may otherwise deal with the returned funds to comply with the rules and regulations of the Hong Kong Monetary Authority, the RMB clearing bank and any other authorities.
  - iii. The remitted funds may be returned due to the foreign currency controls or other restrictions outside of Hong Kong and you shall be responsible for any resulting Loss.
  - iv. Please refer to our fee schedule for details of the standard fees and interest rates.
  - v. You acknowledge and agree that, in respect of any remittance service provided by us, we accept no responsibility for any Loss or delay which may occur in the transfer or transmission of funds or for any error, omission or mutilation which may occur in the transmission of any message or for any misinterpretation of any message received.
  - vi. Where you have requested the cancellation or return of the remittance, that request may be subject to satisfactory evidence, indemnity and, in the case of a draft issued by us, return of the original draft. We are not responsible for any resulting Loss you may incur if the remittance cannot be cancelled or returned and you may not be eligible for a refund of any fees.

## 2.7 RMB non-deliverable forward transactions

- a. By entering into RMB non-deliverable forward transactions ("RMB NDF") with us, you can buy or sell RMB at a rate pre-set with us to hedge against foreign exchange risks and to grasp market opportunities.
- b. How does a RMB NDF work?  
For each RMB NDF, we will determine on the valuation date the settlement currency amount in US dollars ("USD") by reference to the notional amount and by comparing the agreed forward rate and the settlement rate (being the central parity rate for RMB against USD as announced by the People's Bank of China on the valuation date), which will be settled in USD on the settlement date. There will be no delivery of RMB.
- c. With RMB NDF, you can:  
Lock the desired exchange rate: If you are holding RMB deposits, you can use RMB NDF to lock the RMB exchange rate and stabilize your return.

Hedge against exchange rate risk: If your cross-border business requires RMB settlement, or you foresee any other need of RMB in the future, you can enter into a RMB NDF according to your investment needs to hedge exchange rate risks due to exchange rate fluctuations.

- d. Special features of RMB NDF

Reference currency	RMB
Settlement currency	USD
Contract period	1 month, 2 months, 3 months, 6 months or 12 months
Minimum notional amount per transaction	USD10,000
Designated account	You are required to retain an amount equal to 100% of the notional amount of your RMB NDF in a designated account with the Bank throughout the contract period to cover settlement of your RMB NDF. You may choose to use your HKD, RMB or USD saving or current account, or multi-currency account or a fixed deposit, etc. as the designated account.
Number of transactions	No limit
Settlement rate	The central parity rate of RMB against USD as published by the People's Bank of China on the website <a href="http://www.pbc.gov.cn">http://www.pbc.gov.cn</a> on the valuation date.
Settlement currency #	USD (No delivery of RMB)

Settlement currency amount	An amount in USD calculated as follows: Notional amount $\times$ [1- (forward rate $\div$ settlement rate)]  If the settlement currency amount $> 0$ :  The seller of USD shall pay the settlement currency amount to the buyer of USD.  If settlement currency amount $< 0$ :  The buyer of USD shall pay the settlement currency amount to the seller of USD.
Service charge	None
Trading hours	Monday to Friday: 9am to 5pm excluding Saturday, Sunday and Hong Kong public holidays

# Your multi-currency account shall be used for settlement purpose. If you do not hold a multi-currency account, we will use your HKD savings or RMB deposit account as the settlement account, and will settle after the relevant currency conversion(s) at our prevailing exchange rate(s).

Example 1: If you sell USD and buy RMB

If you plan to invest in RMB with your fixed deposit of USD20,000 which will mature in 3 months, and want to lock current RMB forward rate for the investment, you may, by using the USD fixed deposit account as the designated account, enter into a 3-month RMB NDF with the Bank to sell USD20,000 at the current RMB forward rate of 6.6500 to hedge against any risk of appreciation of RMB during the 3-month period (see below).

Scenario	Settlement rate	Settlement currency amount (USD)	Remarks
Scenario 1 - RMB depreciation	6.7900	412.37 (Amount payable to the Bank by you on the settlement date)	As you are selling USD under your RMB NDF, you will suffer a loss from your RMB NDF. However, you can buy RMB at a lower spot rate which can compensate for your loss.
Scenario 2 - RMB unchanged	6.6500	0	There is no loss or gain under your RMB NDF. You may sell RMB at spot rate.
Scenario 3 - RMB appreciation	6.4700	556.41 (Amount payable to you by the Bank on the settlement date)	As you are selling USD under your RMB NDF, you will make a profit from your RMB NDF which can compensate for your loss for having to buy RMB at a higher spot rate.

Example 2: If you buy USD and sell RMB

You have entered into a RMB denominated contract for the sale of goods with a business partner in China, where it is agreed that you shall receive a payment of RMB500,000 after six months. Since the purchase cost of your goods will be settled in USD, you would like to lock the RMB exchange rate to secure that the sales proceeds is not affected by exchange rates. You may hedge against any risk of depreciation of RMB during the 6-month period by entering into a 6-month RMB NDF with the Bank to purchase USD74,626.87 at RMB forward rate of 6.7000 (see below).

On the valuation date, the cash settlement can be one of the following scenarios:

Scenario	Settlement rate	Settlement currency amount (USD)	Remarks
Scenario 1 - RMB depreciation	6.8400	1,527.45 (Amount payable to you by the Bank on the settlement date)	As you are buying USD under your RMB NDF, you will make a profit from your RMB NDF, which can compensate for your loss for having to sell RMB at a lower spot rate.
Scenario 2 - RMB unchanged	6.7000	0	There is no loss or gain under your RMB NDF. You may sell RMB at spot rate.
Scenario 3 - RMB appreciation	6.5200	2,060.25 (Amount payable by you to the Bank on the settlement date)	As you are buying USD under your RMB NDF, you will suffer a loss from your RMB NDF. However, you may sell RMB at a higher spot rate.

The above information and hypothetical examples are for reference only and are not a complete analysis of all the possible gain or loss scenarios in an actual investment. You must not make any investment decision based upon the above information.

Remark: All forward rates, settlement rates and exchange rates used in the above two examples are expressed as the number of units of the RMB required to purchase one unit of USD.

#### e. Risk Disclosure

The following risk disclosures do not purport to disclose all the risks involved. If in doubt, you should seek independent financial and professional advice before you make any investment decision.

- i RMB NDF is a non-deliverable forward in respect of RMB which will be settled in USD (or such other currency or currencies as may be specified in the confirmation relating to the RMB NDF transaction which you enter into).

- ii. Prior to investing in RMB NDF, you should read the general terms and conditions set out in the RMB NDF Terms and the product specific information contained in the confirmation that will be provided to you when you enter into a RMB NDF.
- iii. RMB NDF is not principal protected. You bear a foreign exchange risk should the exchange rate between RMB and USD (or other specified currencies) change between the time the RMB NDF transaction is entered into and the time it is settled.
- iv. RMB NDFs are illiquid instruments which are not transferable or tradeable. You should therefore be prepared to hold your RMB NDF until the settlement date.
- v. You assume the full credit risk of the Bank.
- vi. You must make your own independent decision as to whether and on what terms to enter into a RMB NDF transaction and should take independent professional advice as appropriate.
- vii. You acknowledge that the Bank or an affiliate may be requested to provide a quotation or quotation(s) from time to time for the purpose of determining the settlement rate used for the purposes of a RMB NDF transaction and such quotation(s) may affect, materially or otherwise, the settlement of that transaction.
- viii. Material in this Part 4 is provided to you for reference only. It is not, and does not constitute, any offer, solicitation or recommendation to buy or sell any investment product or service, or to effect any RMB NDF.

## Section 6: Terms and Conditions for Global Stock<sup>1</sup> Trading Services

This Section 6 (including the Annex) applies to the global stock trading services (the "GST Services") we provide to you.

### 1. GST Services

- 1.1 Unless otherwise specified, the Bank will act as the Client's agent in the purchase, sale and/or otherwise dealing in global stocks subject to the rules of the relevant stock exchange(s), clearing house(s) or depository(ies) or custom(s). Without limitation to any provisions in the Terms and Conditions, the Bank may engage overseas agents from time to time to perform any duties in connection with the GST Services.
- 1.2 The Bank may specify the specific markets, order placement channels, trading hours, types of orders that may be available under the GST Services from time to time by way of a leaflet. Such information in the leaflet may be revised by the Bank from time to time without prior notice.
- 1.3 The Client acknowledges that the Bank may not be able to process any global stock trading orders due to the limitation of the GST Services, fluctuation in stock price, insufficient market liquidity, system failure and any event beyond the control of the Bank. The Client understands and acknowledges that the Client's order may be fully executed, partially executed or unexecuted.

### 2. Eligibility criteria

- 2.1 The GST Services are only available to Clients who fulfill the eligibility requirements for utilizing the GST Services. The eligibility requirements for the GST Services (or part thereof) are as follows.
- 2.2 U.S. stock trading services are only available to Clients who are not any of the following persons:
  - a. A U.S. person, namely:
    - i. Any natural person resident in the U.S.;
    - ii. Any partnership or corporation organized or incorporated under the laws of the U.S.;
    - iii. Any estate of which any executor or administrator is a U.S. person;
    - iv. Any trust of which any trustee is a U.S. person;
    - v. Any agency or branch of a foreign entity located in the U.S.;
    - vi. Any non-discretionary account or similar account (other than an estate or trust) held by a dealer or other fiduciary for the benefit or account of a U.S. person;
    - vii. Any discretionary account or similar account (other than an estate or trust) held by a dealer or other fiduciary organized, incorporated, or (if an individual) resident in the U.S.;
    - viii. Any partnership or corporation if: (a) organized or incorporated under the laws of any foreign jurisdiction; and (b) formed by a U.S. person principally for the purpose of investing in securities not registered under the U.S. Securities Act, unless it is organized or incorporated, and owned, by Accredited Investors who are not natural persons, estates or trusts; and
    - ix. Any other persons as defined in §230.902 of Regulation S under the U.S. Securities Act;
  - b. A director or officer of a company listed on any stock exchange in the U.S., or a shareholder who holds 10% or more of the interests in the shares of such a company;
  - c. A person registered or qualified with the Securities and Exchange Commission of the United States of America, the Commodities Futures Trading Commission of the United States of America, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association;
  - d. A person engaged as an "investment advisor" as that term is defined in Section 202(11)(a) of the Investment Advisor's Act of 1940 (as may be amended from time to time), whether or not you are registered or qualified under that Act; or
  - e. A person employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require you to be so registered or qualified if you were to perform such functions for an organization not so exempt.
- 2.3 Singapore stock trading services and Japan stock trading services are only available to Clients who are not any of the following persons:
  - a. an individual who is a resident in, or staying or physically present in Japan for any reasons whatsoever;
  - b. an individual who is a citizen of Singapore or otherwise ordinarily residing in Singapore;
  - c. a corporation, an office of which will receive the Japan stock trading services is located in Japan;
  - d. an operating corporation which is incorporated in Singapore or otherwise carrying on business in Singapore; or
  - e. a personal investment holding corporation incorporated in or outside Singapore and beneficially owned by any individual who is a citizen of Singapore or otherwise ordinarily residing in Singapore.
- 2.4 Without limitation to any provisions in the Terms and Conditions, where the Client no longer fulfils any or all of the eligibility criteria above, the

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<sup>1</sup> The term "stocks" when used in these Global Stock Trading Terms and Conditions includes listed stocks, listed ETFs and listed warrants of U.S., Singapore and Japan markets, and other kinds of securities investment as specified by the Bank from time to time.

Bank has the right to suspend or terminate any or all GST Services. The Bank will not be liable for any Loss of any kind the Client may incur or suffer in connection with such suspension or termination.

### **3. W-8BEN Form or the Bank's Individual Customer Self-Certification**

- 3.1 In respect of U.S. stock trading services, the Client is required to fill in Form W-8BEN or the Bank's Individual Customer Self-Certification for tax reporting purpose. According to the U.S. Internal Revenue Service ("IRS"), a Form W-8BEN will remain in effect for the purposes of establishing foreign status for a period starting on the date the form is signed and ending on the last day of the third succeeding calendar year.
- 3.2 The Bank will notify the Client before the expiry of the W-8BEN Form. The Client agrees to complete a new Form W-8BEN before the expiry date. The Client acknowledges and agrees that any failure to sign a new Form W-8BEN beyond the expiry date would result in immediate suspension of the Services at the Bank's sole discretion. The Client is advised to seek its own independent professional advice for filling in the Form W-8BEN where necessary.
- 3.3 The Bank shall not be required to provide any U.S. stock trading services to the Client unless the Client's completed Form W-8BEN or the Bank's Individual Customer Self-Certification is in place and remains valid.

### **4. Fees**

The GST Services are subject to fees and charges. For details, please refer to the Bank's Fee Schedule (as revised from time to time).

### **5. Collection, use and sharing of Client's information**

In addition and without prejudice to the Bank's right to collect, use and share the Client's information as provided in Clause 8 of Section 2, the Client consents to and authorizes the Bank to, directly or indirectly, provide and disclose his/her personal data (including his/her name, identification document number and other particulars), and information relating to the Client's accounts, transactions and activities relating to the GST Services and other information to any applicable legal, regulatory, governmental, tax, law enforcement or other authorities, clearing houses, securities or futures exchange, central bank, custodian banks, central securities depositories or an issuer, or self-regulatory or industry bodies or associations of financial services providers (collectively, "Regulatory Authorities"), and the agents (including brokers acting as an intermediary involved in the execution of a transaction), contractors, service providers and other persons appointed, dedicated or authorized by such Regulatory Authorities or the Bank in or outside of Hong Kong to support their respective activities and operations in connection with the GST Services, and for other purposes relating to the GST Services including for compliance and audit purposes such as meeting any legal and regulatory requirements applicable to the GST Services, as well as to all such persons (whether in Hong Kong or elsewhere) and for all such purposes as set out in Clause 8.2 of Section 2. Such personal data and other information may include client identity information, for instance, the Client's identity (such as name, address, domicile, nationality, ID or passport number), details of the beneficial owner (any natural person(s) who beneficially owns or has control over the Client, the Client's account(s) or the assets thereunder, whether by virtue of ownership or other means and/or the natural person on whose behalf a transaction or activity is being conducted), the ultimate and intermediate originators and/or the persons that stand to gain the commercial or economic benefit of the Client's account(s) or the transaction and/or bear its commercial or economic risks, and details of the person responsible for originating the instruction, contact details, ISIN, ISIN description and quantity of financial instruments held in the Client's account(s).

The Client's information will not be disclosed to anyone, other than where we are legally required or permitted to disclose, we have a public duty to disclose, our legitimate business purposes require disclosure, the disclosure is made with your consent whether in writing or otherwise or it is disclosed as permitted or authorised in this Clause 5.

### **6. Risk Disclosure Statements**

The Client acknowledges and understands that trading in global stocks will be subject to additional risks. The risk disclosure statements below cannot disclose all the risks involved. The Client should undertake the Client's own research and study before the Client trades or invests. The Client should carefully consider whether trading or investment is suitable in light of the Client's own financial position and investment objectives. The Client is advised to seek independent financial and professional advice before the Client trades or invests. The Client should understand the risk associated with an investment in the relevant global stocks and should only reach an investment decision after careful consideration, with their legal, tax, accounting and other advisers, of

- a. the suitability of an investment in the relevant global stocks in the light of their own particular financial, tax and other circumstances; and
- b. the information set out in the offering document relating to the relevant global stocks, if applicable.

The prices of securities fluctuate, sometimes dramatically. The price of a security may move up or down, and may become valueless. It is as likely that Loss will be incurred rather than profit made as a result of buying and selling securities.

Foreign securities are traded exclusively or primarily outside Hong Kong and shall, as a general rule, be held in custody abroad. Client assets received or held by the Bank outside Hong Kong are subject to the applicable Laws of the relevant overseas jurisdiction which may be different from the SFO and the rules made thereunder. Consequently, such client assets received or held outside Hong Kong may not be subject to the same protection as that conferred on client assets received or held in Hong Kong.

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

The limited scope and trading hours of the GST Services might cause potential inconvenience, inflexibility or delay in carrying out the Client's instructions including but not limited to buy/sell order placement and choice of voluntary corporate action etc. The Bank will work on a best effort basis to deliver the GST Services, but is under no obligation for any deemed financial loss or loss of investment opportunity whatsoever.

The Client is advised to read this document carefully before accepting to use the GST Services provided by the Bank.

The Bank is acting as agent of the Client in the GST Services and may be subject to possible delay in settlement in terms of stock purchase, sale, dividend or interest receipt owing to unforeseen situations that might forbid the broker or custodian from making valid or timely delivery of stock or payment of any sort pertaining to the purchase, sale or holding of the stock under the GST Services.

There may be an exchange rate risk. Fluctuation in foreign exchange rates, foreign political and economic developments or so may affect the Client's investment return on global stocks, which is denominated in USD, JPY and SGD (as applicable).

## **7. Miscellaneous**

7.1 In respect of Singapore stock trading services, save where agreed otherwise, the Bank's right to set off, sell, realize or otherwise dispose of the Client's securities, assets and other property, or to exercise any control or discretion over such set off, sale, realization or disposal as set out in Clause 7.3 of Section 2 or in any other provisions in the Terms and Conditions do not apply to the following:

- a. voting shares (excluding treasury shares) of any Singapore incorporated company any or all of the shares in which are listed (primary or otherwise) for quotation on the official list of any approved exchange;
- b. voting shares (excluding treasury shares) of a foreign incorporated corporation any or all of the shares in which are listed for quotation on the official list of any approved exchange, such listing being a primary listing;
- c. voting units of a business trust constituted in Singapore and registered under the Business Trusts Act 2004 any or all of the units in which are listed (primary or otherwise) for quotation on the official list of any approved exchange;
- d. voting units of a business trust constituted outside Singapore and recognized under the Business Trusts Act 2004 any or all of the units in which are listed for quotation on the official list of any approved exchange, such listing being a primary listing; and
- e. voting units of a real estate investment trust any or all the units of which are listed for quotation on the official list of any approved exchange, such listing being a primary listing.

For the purpose of this Clause 7.1, approved exchange is as defined in the Securities and Futures Act 2001.

## Annex A: Agreement For Market Data Display Services

The terms of this Annex only applies where the Client trades any product traded in the U.S. under the GST Services.

The Bank agrees to make "Market Data" (as defined below) available to the Client pursuant to the terms and conditions set out in this Annex, and the Client agrees to comply with them.

### TERMS AND CONDITIONS OF GENERAL APPLICABILITY

- 1 MARKET DATA DEFINITION – For the purposes of this Annex, "Market Data" means:
  - 1.1 last sale information and quotation information relating to securities that are admitted to dealings on the New York Stock Exchange ("NYSE"), NASDAQ or other US-registered national securities exchanges and national securities associations (each, an "Authorizing SRO");
  - 1.2 such bond and other equity last sale and quotation information, and such index and other market information, as the NYSE, NASDAQ or any Authorizing SRO may make available and may from time to time designate as "Market Data"; and
  - 1.3 all information that derives from any such information.
2. PROPRIETARY NATURE OF DATA – The Client understands and acknowledges that each Authorizing SRO and Other Data Disseminator (as defined below) has a proprietary interest in the Market Data that originates on or derives from it or its market(s).
3. ENFORCEMENT – The Client understands and acknowledges that:
  - 3.1 the Authorizing SROs are third-party beneficiaries under this Annex; and
  - 3.2 the Authorizing SROs or their authorized representative(s) may enforce this Annex, by legal proceedings or otherwise, against the Client or any person that obtains Market Data that is made available pursuant to this Annex other than as this Annex contemplates. The Client shall pay the reasonable attorney's fees that any Authorizing SRO incurs in enforcing this Annex against the Client.
4. DATA NOT GUARANTEED – The Client understands that no Authorizing SRO, no other entity whose information is made available over the Authorizing SROs' facilities (an "Other Data Disseminator") and no information processor that assists any Authorizing SRO or Other Data Disseminator in making Market Data available (collectively, the "Disseminating Parties") guarantees the timeliness, sequence, accuracy or completeness of Market Data or of other market information or messages disseminated by any Disseminating Party. Neither the Client nor any other person shall hold any Disseminating Party liable in any way for:
  - 4.1 any inaccuracy, error or delay in, or omission of:
    - a. any such data, information or message or
    - b. the transmission or delivery of any such data, information or message, or
  - 4.2 any loss or damage arising from or occasioned by:
    - a. any such inaccuracy, error, delay or omission,
    - b. non-performance or
    - c. interruption in any such data, information or message,

due either to any negligent act or omission by any Disseminating Party, to any "force majeure" (e.g., flood, extraordinary weather conditions, earthquake or other act of God, fire, war, insurrection, riot, labor dispute, accident, action of government, communications or power failure, equipment or software malfunction) or to any other cause beyond the reasonable control of any Disseminating Party.
5. PERMITTED USE – The Client shall not furnish Market Data to any other person or entity and shall use Market Data only for the Client's individual use in the Client's business.
6. DISSEMINATION DISCONTINUANCE OR MODIFICATION – The Client understands and acknowledges that, at any time, the Authorizing SROs may discontinue disseminating any category of Market Data, may change or eliminate any transmission method and may change transmission speeds or other signal characteristics. The Authorizing SROs shall not be liable for any resulting Loss that may arise therefrom.
7. DURATION; SURVIVAL – This Annex remains in effect for so long as the Client has the ability to receive Market Data as contemplated by this Annex. In addition, the Bank may terminate this Annex at any time, whether at the direction of the Authorizing SROs or otherwise. Paragraphs 2, 3 and 4, and the first two sentences of Paragraph 8, survive any termination of this Annex.
8. MISCELLANEOUS – The laws of the State of New York shall govern this Annex and it shall be interpreted in accordance with those laws. This Annex is subject to the Securities Exchange Act of 1934, the rules promulgated under that act, and the joint-industry plans entered into pursuant to that act. This Annex contains the entire agreement between the parties in respect of the Bank's supply of Market Data to the Client. The Client may not assign all or any part of this Annex to any other person. The person manifesting assent to this Annex represents and warrants that it has legal capacity to contract and, if that person is manifesting assent on behalf of a proprietorship or a business, partnership or other organization, represents and warrants that he or she has actual authority to bind the organization.

## Section 7: Risk Disclosure Statement

THIS STATEMENT DOES NOT NECESSARILY DISCLOSE ALL THE RISKS AND SIGNIFICANT ASPECTS OF THE TRANSACTIONS. PLEASE STUDY CAREFULLY THE TERMS AND CONDITIONS OF THE RELEVANT TRANSACTION AND SEEK INDEPENDENT FINANCIAL, TAX, LEGAL OR OTHER ADVICE, AS APPROPRIATE, BEFORE ENTERING INTO ANY TRANSACTION.

You acknowledge and understand that:

### 1. General conditions

#### Risk of securities trading

The prices of securities fluctuate, sometimes dramatically. The price of a security may move up or down, and may become valueless. It is as likely that losses will be incurred rather than profit made as a result of buying and selling securities.

#### Risk of trading in leveraged foreign exchange contracts

The risk of loss in leveraged foreign exchange trading can be substantial. You may sustain losses in excess of your initial margin funds. Placing contingent orders, such as "stop-loss" or "stop-limit" orders, will not necessarily limit losses to the intended amounts. Market conditions may make it impossible to execute such orders. You may be called upon at short notice to deposit additional margin funds. If the required funds are not provided within the prescribed time, your position may be liquidated. You will remain liable for any resulting deficit in your account. You should therefore carefully consider whether such trading is suitable in light of your own financial position and investment objectives.

#### Risks of client assets received or held outside Hong Kong

Client assets received or held by the Bank outside Hong Kong are subject to the applicable Laws of the relevant overseas jurisdiction which may be different from the SFO and the rules made thereunder. Consequently, such client assets may not enjoy the same protection as that conferred on client assets received or held in Hong Kong.

#### Risk of providing an authority to repledge your securities collateral etc.

There is risk if you provide the Bank with an authority that allows it to apply your securities or securities collateral pursuant to a securities borrowing and lending agreement, repledge your securities collateral for financial accommodation or deposit your securities collateral as collateral for the discharge and satisfaction of its settlement obligations and liabilities.

If your securities or securities collateral are received or held by the Bank in Hong Kong, the above arrangement is allowed only if you consent in writing. Moreover, unless you are a professional investor, your authority must specify the period for which it is current and be limited to not more than 12 months. If you are a professional investor, these restrictions do not apply.

Additionally, your authority may be deemed to be renewed (i.e. without your written consent) if the Bank issues you a reminder at least 14 days prior to the expiry of the authority, and you do not object to such deemed renewal before the expiry date of your then existing authority.

You are not required by any law to sign these authorities. But an authority may be required by the Bank, for example, to facilitate margin lending to you or to allow your securities or securities collateral to be lent to or deposited as collateral with third parties. The Bank will explain to you the purposes for which one of these authorities is to be used.

If you sign one of these authorities and your securities or securities collateral are lent to or deposited with third parties, those third parties will have a lien or charge on your securities or securities collateral. Although the Bank is responsible to you for securities or securities collateral lent or deposited under your authority, a default by it could result in the loss of your securities or securities collateral.

A cash account not involving securities borrowing and lending is available from the Bank. If you do not require margin facilities or do not wish your securities or securities collateral to be lent or pledged, do not sign the above authorities and ask to open this type of cash account.

#### Risk of providing an authority to hold mail or to direct mail to third parties

If you provide the Bank with an authority to hold mail or to direct mail to third parties, it is important for you to promptly collect in person all contract notes and statements of your account and review them in detail to ensure that any anomalies or mistakes can be detected in a timely fashion.

- 1.1 The terms and conditions in this Section are applicable to Transactions involving shares, equities, foreign exchange, precious metals, bonds, commodities, interest rates, securities, market indices and any combination of these, and any spot, forward contracts, swaps, options and other derivatives transactions thereof including any structured products incorporating any or any combination of the preceding.
- 1.2 Due to the volatile nature of the Transactions and the underlying assets therein, participation in a Transaction involves a certain degree of risk. Your attention is hereby drawn to such risks (which can be substantial). You should consult your independent advisors on the nature, terms and risks of such Transactions and carefully consider whether the kind of Transaction is suitable for you in light of your risk appetite, financial situation, investment experience, investment objectives and investment horizon. You carry the burden of all risks involved in such Transactions.
- 1.3 You accept that, when we undertake a Transaction for you, the Bank or some other person connected with us may have an interest, relationship or arrangement that is material in relation to the Transaction concerned. You further acknowledge and agree that when the Bank undertakes a Transaction for you, the Bank or a person connected with the Bank, could be dealing as principal for its own account or as agent for the account of another client or customer of the Bank.
- 1.4 By entering into any Transaction with the Bank, you confirm that you have read and fully understood this Risk Disclosure Statement and all product term sheets, annexures and supplements pertaining to the Transaction, and that you fully understand the nature and risks of the Transaction and the terms and conditions governing the said Transaction, including the our margin requirements (if applicable).



- 1.5 The Bank is not obliged to give advice or make recommendations and, notwithstanding that we may do so on request by you or otherwise, you will nevertheless also make your own assessment based on your own judgment having regard to your own circumstances including but not limited to your financial situation, investment experience and investment objectives.

## **2. Margin requirements**

### **Risk of margin trading**

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

Where you transact with the Bank on a margin basis:

- 2.1 You must provide the Bank with an initial margin cover before entering into any of the Transactions. The required amount of initial margin varies with each type of Transaction and the amount is determined by the Bank, from time to time, in its absolute discretion. Notwithstanding the entry into the Transaction, the margin required may be changed at any time and from time to time by the Bank at its absolute discretion.
- 2.2 The margin cover shall be provided by pledging or assigning or charging assets acceptable to us. The valuation of all these collaterals is made according to our prevailing practices from time to time.
- 2.3 The margin cover provided by you may fall below the amount required by the Bank from time to time due to various reasons such as book losses arising from mark-to-market valuation of outstanding Transactions or losses arising from closed-out Transactions or a fall in the value of the collateral.
- 2.4 If the Bank, in its absolute discretion, determines that the margin cover is inadequate at any time, the Bank may take such action as it in its absolute discretion deems fit, including without limitation:
- a. calling upon you at short notice to provide such additional collateral as is determined by the Bank in its absolute discretion. This amount may be substantial and may exceed the amount originally committed as initial margin;
  - b. realizing such part or all of the collateral as the Bank deems necessary to satisfy your liabilities without notice to or consent from you or the party providing the collateral; and/or
  - c. closing out, liquidating, setting off (notwithstanding that any of the same has not yet matured), realizing or otherwise dealing with any or all outstanding Transactions (whether or not any additional loss may thereby arise) by such time and by such means or in such manner as the Bank in its absolute discretion thinks appropriate without notice to or consent from you. In the event the Transactions are liquidated at a loss and the loss exceeds the aggregate margin deposited, you will be liable for any shortfall.
- 2.5 The high degree of leverage resulting from a relatively small margin requirement can work against you as well as in your favor. The use of leverage may result in large losses as well as gains. You should therefore consider the suitability of transacting with us on a margin basis carefully in light of your financial situation, investment experience and investment objectives.

## **3. Value changes**

- 3.1 The prices of securities fluctuate, sometimes dramatically. The price of a security may move up or down, and may become valueless. It is as likely that losses will be incurred as profit made as a result of buying and selling securities or entering into other Transactions.
- 3.2 Specific market movements of the underlying instruments, e.g. fluctuations in foreign exchange rates or interest rates, movements in commodities prices, securities prices and indices etc, cannot be predicted accurately. You may sustain a total loss in excess of the committed amount and any margin or additional margin deposited with us.

## **4. "Stop-Loss" limits and orders**

- 4.1 You may place a "stop-loss" order with the Bank, whereby the Bank is instructed and authorized to close out the relevant open positions of you without further notice as and when the mark-to-market loss on such open positions exceeds the pre-agreed levels (the "stop-loss" limit). However, placing "stop-loss" orders will not necessarily limit your losses to the intended amounts as market conditions may make it difficult or even impossible to execute such order. Accordingly, you hereby release and discharge the Bank from all liability arising out of the non-execution of a "stop-loss" order and hereby authorize the Bank, in such circumstances, to execute such order at such rate and in such manner as it may deem appropriate.

## **5. Off-exchange transactions**

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

## **6. Risk of trading futures and options**

The risk of loss in trading futures contracts or options is substantial. In some circumstances, you may sustain losses in excess of your initial margin funds. Placing contingent orders, such as "stop-loss" or "stop-limit" orders, will not necessarily avoid loss. Market conditions may make it impossible to execute such orders. You may be called upon at short notice to deposit additional margin funds. If the required funds are not provided within the prescribed time, your position may be liquidated. You will remain liable for any resulting deficit in your account. You should therefore study and understand futures contracts and options before you trade and carefully consider whether such trading is

suitable in the light of your own financial position and investment objectives. If you trade options you should inform yourself of exercise and expiration procedures and your rights and obligations upon exercise or expiry.

This brief statement does not disclose all of the risks and other significant aspects of trading in futures and options. In light of the risks, you should undertake such transactions only if you understand the nature of the contracts (and contractual relationships) into which you are entering and the extent of your exposure to risk. Trading in futures and options is not suitable for many members of the public. You should carefully consider whether trading is appropriate for you in light of your experience, objectives, financial resources and other relevant circumstances.

## **7. Risks of futures**

### **7.1 Effect of "Leverage" or "Gearing"**

Transactions in futures carry a high degree of risk. The amount of initial margin is small relative to the value of the futures contract so that transactions are "leveraged" or "geared". A relatively small market movement will have a proportionately larger impact on the funds you have deposited or will have to deposit: this may work against you as well as for you. You may sustain a total loss of initial margin funds and any additional funds deposited with the Bank to maintain your position. If the market moves against your position or margin levels are increased, you may be called upon to pay substantial additional funds on short notice to maintain your position. If you fail to comply with a request for additional funds within the time prescribed, your position may be liquidated at a loss and you will be liable for any resulting deficit.

### **7.2 Risk-reducing orders or strategies**

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

## **8. Risks of options**

### **8.1 Variable degree of risk**

Transactions in options carry a high degree of risk. Purchasers and sellers of options should familiarize themselves with the type of option (i.e. put or call) which they contemplate trading and the associated risks. You should calculate the extent to which the value of the options must increase for your position to become profitable, taking into account the premium and all transaction costs.

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

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

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

### **8.2 Suspension or restriction of trading and pricing relationships**

Market conditions (e.g. illiquidity) and/or the operation of the rules of certain markets (e.g. the suspension of trading in any contract or contract month because of price limits or "circuit breakers") may increase the risk of loss by making it difficult or impossible to effect transactions or liquidate/offset positions. If you have sold options, this may increase the risk of loss.

Further, normal pricing relationships between the underlying interest and the futures, and the underlying interest and the option may not exist. This can occur when, for example, the futures contract underlying the option is subject to price limits while the option is not. The absence of an underlying reference price may make it difficult to judge "fair value".

### **8.3 Risk involved in buying options**

The buyer of any option risks losing some or all the amount paid or payable as premium for the option. This could occur due to unfavorable price performance of the underlying instrument, or due to expiry of the option without the buyer giving any instructions to the Bank in respect of the exercise of the option. As the value of an option is partly dependent on the remaining tenor of the option prior to expiry date (time value), an option may decline in value over time even if the value of the underlying instrument remains constant or performs favorably. The shorter the time remaining until the date of expiration, and the larger the unfavorable price difference between the exercise price and the market price, the greater is the option buyer's risk of losing the premium paid.

### **8.4 Risk of selling (writing) covered CALL options**

The writer of a covered CALL option sells (writes) the CALL option for an underlying instrument which he already has available. If the option is exercised by the buyer, the writer does not profit from the price growth of the underlying instrument in excess of the exercise price. Thus a profit is missed by the writer of a covered CALL option. The profit missed is reduced only by the premium received. If the CALL option is not exercised by the buyer, the writer bears the full risk of a decline in the price of the underlying instrument. The decline in the price of the underlying instrument is reduced only by the amount of the premium received.

## 8.5 Risk of selling (writing) uncovered CALL options

The writer of an uncovered CALL option sells (writes) the CALL option without already having the underlying instrument available in the event it has to be delivered. The writer of an uncovered CALL option is required to deposit a security margin. If the price of the underlying instrument rises the security margin increases. The writer firstly bears the risk of having to provide additional collateral to the Bank at any time in order to meet the higher margin demands. If the CALL option is exercised by the buyer, the writer bears the risk of having to buy the underlying instrument to be delivered at a market price which is higher than the exercise price. Since there is no limit to the amount by which the market price of the underlying instrument may exceed the exercise price, the writer of an uncovered CALL option runs the risk of incurring an unlimited loss. The loss thus arising is reduced only by the amount of the premium received.

A CALL option gives the buyer – against payment of the option price (premium) – the right to purchase, at any time during a specified period (in the case of an American option), or at the end of that period (in the case of a European option), and at a specified price (exercise price), the underlying instrument from the seller (writer) of the option in a quantity predetermined by the option transaction concerned. Should the buyer exercise its option, the seller (writer) of the option must deliver the underlying instrument to the option buyer at the exercise price.

## 8.6 Risk of selling (writing) PUT options

The writer of a PUT option is required to deposit a security margin. If the price of the underlying instrument falls, then the security margin to be provided will increase. The writer runs the risk of being called upon at any time by the Bank to furnish additional collateral to satisfy the increased margin requirements. If the buyer exercises the PUT option, the writer runs the risk of having to purchase the underlying instrument offered to him at an exercise price which is higher than the market price of the underlying instrument. The exercise price may be considerably higher than the market price of the underlying instrument. The risk to the writer of a PUT option lies in the difference between the exercise price of the PUT option and the market price of the underlying instrument and is therefore limited to the amount of the exercise price. Any loss thus arising is reduced only by the amount of the premium received.

If the buyer does not exercise the PUT option before its expiry, the security margin provided by the writer is released and the writer of the PUT option no longer faces the risk of having to purchase the underlying instrument at a price exceeding the market price. The writer of the PUT option retains the premium received.

A PUT option gives the buyer – against payment of the option price (premium) – the right to sell, at any time during a specified period (in the case of an American option), or at the end of that period (in the case of a European option) and at specified price (exercise price), the underlying instrument to the seller (writer) of the option in a quantity predetermined by the option transaction concerned. Should the buyer exercise its option, the seller (writer) of the option must purchase the underlying instrument from the option buyer at the exercise price.

## 9. Risks of forward contracts

- 9.1 The seller of forward foreign exchange or precious metals must deliver at the agreed price, which can be considerably below the then market price if market prices are rising. The purchaser of forward foreign exchange of precious metals, on the other hand, must accept delivery at the agreed price, which can be considerably higher than the then market price, if market prices are falling. In both cases, the risk lies in the difference between the agreed price and the market price. This risk is not determinable in advance and can exceed any collateral provided.

## 10. Risks of forward rate agreement contracts

- 10.1 You may enter into a forward rate agreement contract to pay or receive interest at an agreed rate over a period commencing at a future date regardless of the level of interest rates prevailing at that future date. For uncovered contracts, there is an unlimited interest rate risk, computed on the full amount(s) contracted.

## 11. Risks of interest rate swaps

- 11.1 An Interest Rate Swap is an agreement between two parties to make reciprocal payments over a specific period of time. The payments are determined by reference to a notional principal amount and fixed at floating rates of interest. Floating rates are typically based on some published index of market rates. You may be a receiver of a fixed rate and payer of a floating rate, or vice versa. In either case, movements in the referenced rates could have a significant impact on your cash flow as well as the cost of unwinding the swap position. For uncovered contracts, there is an unlimited interest rate risk, computed on the full amount(s) contracted.

## 12. Risks of swaps

- 12.1 Different instruments may be swapped, resulting in an exchange of the source of future payment streams, and occasionally also an exchange of principal on commencement and/or maturity date (more frequently if the Transaction is an amortizing swap). The risk that one of the parties to the swap will default or otherwise fail to perform its obligations is typically greater in swaps where both principal and income streams are exchanged. For uncovered contracts, there is risk which is directly related to the risks of the different instruments swapped. It is important to note that these risks may not be offsetting in effect, and should be viewed instead in aggregate.

## 13. Risks on Linked Deposit transactions

- 13.1 The risk of loss in a deposit may be substantial in certain circumstances. The interest which may become payable on a Linked Deposit Transaction is generally higher than the interest on an ordinary time deposit. However, this carries with it higher risks. The actual return on a deposit will depend on market conditions and the value at the fixing time or at maturity of the securities or thing to which the deposit is linked. The risks which you will assume depend on the structure and terms of the deposit.
- 13.2 If the deposit is linked to securities, you may accept a legal obligation to take the underlying securities at the pre-agreed strike price instead of receiving the principal (and interest) of the deposit, if the price of the underlying securities falls below the strike price. You will therefore receive securities that have fallen in value. You will lose the entire deposit if the underlying securities become worthless.
- 13.3 If the deposit is linked to a currency, you may receive an amount in a currency which has depreciated in value. You may suffer a loss instead of making a gain.
- 13.4 If the deposit is linked to an index, you should understand that the principal or interest amount is determined by a formula linked to the value of the index. Movements in the index may therefore adversely affect the principal or interest amount, and the principal amount to be repaid

on the maturity date may be less than the original amount or may even be zero.

13.5 Deposits are intended to be held to maturity. You may not transfer or terminate the deposit without prior written consent of the Bank, and could incur significant losses in closing a Transaction before maturity.

13.6 These products are not a protected deposit and is not protected by the Deposit Protection Scheme in Hong Kong.

**14. Risk of entering into over-the-counter derivative transactions with an unlicensed person**

14.1 If you enter into over-the-counter derivative transactions with a group affiliate of the Bank that is not licensed by the SFC ("Your Counterparty"), it is important for you to note that Your Counterparty is not licensed by the SFC and hence is not subject to the conduct and prudential supervision by the SFC.

14.2 Although Your Counterparty is regulated by another regulatory body, the regulation of such regulatory body may be different from the regulation of the SFC, and the protection that you may receive under the regulation of that regulatory body might not be the same as the protection that you would receive if Your Counterparty were licensed by the SFC.

14.3 You should also note that Your Counterparty is not regulated by any other financial regulator and as such, you may not receive any regulatory protection at all.

14.4 You should cautiously consider whether it would be in your best interest to enter into over-the-counter derivative transactions with Your Counterparty instead of a licensed corporation and seek independent professional advice when in doubt.]

**15. Other transactions and combinations**

15.1 Combinations are referred to when at least two different instruments – either in identical or different classes are bought and/or sold (written) at the same time. By closing or exercising individual parts of a combination Transaction, the risks involved can materially change. On account of the broad range of possible Transactions and combinations thereof, before executing such Transactions or putting combination strategies into operation, you should ensure that you have obtained and become thoroughly familiar with the product term sheets, annexures and supplements pertaining to such Transactions or combinations thereof and the specific risks involved.

**16. Pricing relationships**

16.1 For a financial derivative Transaction, e.g. futures and options, the normal pricing relationships between the underlying instruments and the financial derivatives may not exist in certain circumstances, in particular in "combined" or "structured" transactions. The absence of a "common" or "market" reference price may make it difficult, if not impossible, for the "fair" value of the Transaction to be assessed independently. Whilst we will provide periodic mark-to-market valuations to you, you acknowledge and agree that our determination of the value of the Transaction in accordance with its normal practices from time to time shall be conclusive and binding. You further acknowledge and agree that you shall not have any access to and shall not query or require further particulars of the mode of calculation adopted by us.

**17. Exchange traded instruments and the impact of electronic trading**

17.1. For Transactions involving underlying contracts or instruments which are traded on stock or futures exchanges (the exchanges), disruption of the normal market operation or conditions of such exchanges and/or the rules of operation of such exchanges (e.g. discretion on the part of the exchange to suspend or limit trading of certain contracts or instruments under certain market conditions) may increase the risk of loss by making it difficult or impossible to close out the Transactions or illiquid positions. You should inform yourself of exercise and expiration procedures and your rights and obligations upon exercise or expiry of Transactions.

17.2. Further, for Transactions in which the underlying contracts or instruments are supported by electronic trading facilities at the exchanges, e.g. computer based component systems for order-routing, execution, matching, registration, or clearing of trades, any temporary disruption or power/system failure of such electronic trading facilities could result in a disruption in the trading activities at the exchange and an unavailability of reference prices for the relevant Transaction. In such circumstances, your order may not be executed according to your instructions or at all, which may lead to losses. It is likely that such losses will not be recoverable from the relevant exchange as the rules thereof invariably exempt them from such liabilities.

**18. Risks of leveraging**

18.1 The degree of leverage and/or arbitrage which is obtained in connection with the Transactions can work against as well as for you. The use of leverage and/or arbitrage can lead to large losses as well as gains. Such leveraging may be by way of a loan, trading on a margin, or embedded within an instrument such as a structured note.

**19. Currency risks**

19.1 Where you engage in a Transaction involving one currency to hedge an original investment in another currency, or where the Transaction entered into by you references two different currencies, you should be aware that fluctuations of the currencies against each other or against the other underlying elements of the Transaction may affect your net profit on the Transaction or increase your loss. Exchange controls may be applicable to the currencies to which the investment is linked.

19.2 Renminbi ("RMB") is currently not freely convertible and conversion of RMB through banks in Hong Kong is subject to certain restrictions. For example, the conversion of RMB by some individuals is subject to a daily limit, so you may have to allow additional time for conversion of RMB from/to another currency of an amount exceeding the daily limit.

19.3 RMB is subject to foreign exchange control by the PRC central government. There is currently a limited pool of RMB outside mainland China and any tightening of foreign exchange control may adversely affect the liquidity of offshore RMB.

19.4 The requirements, controls or restrictions concerning RMB may be amended or subject to change from time to time, and may adversely affect an applicable exchange rate or make it impractical for you to convert RMB into other currency therefore resulting in significant loss on conversion.

- 19.5 For RMB products which are not denominated in RMB or with underlying investments which are not RMB-denominated, such products will be subject to multiple currency conversion costs involved in making investments and liquidating investments, as well as the RMB exchange rate fluctuations and bid/offer spreads when assets are sold to meet redemption requests and other capital requirements (e.g. settling operating expenses).

**20. Liquidity risks**

- 20.1 At certain times, or under certain market conditions, you may find it difficult or impossible to liquidate a position, to assess the value or to determine a fair price. Certain equity or debt securities and money market instruments and, in particular, structured notes or customized products may not be readily realizable. There can be no certainty that market traders will be prepared to deal in them, and proper information for determining their current value may not be available.

**21. Credit risk**

- 21.1 If the issuer of a particular security or instrument or the counterparty to the Transaction you are entering into is other than us, you should satisfy yourself that the credit risk of such issuer or counterparty is acceptable to you, since we will not be liable in the event of a default by such issuer or counterparty.

**22. Deposited cash and property**

- 22.1 You should also familiarize yourself with the protections accorded to money or other property you deposit for domestic and foreign Transactions, particularly in the event of an insolvency or bankruptcy of the issuer, custodian or intermediary. The extent to which you may recover your money or property may be governed by specific legislation or local rules. In some jurisdictions, property which had been specifically identifiable as your own will be pro-rated in the same manner as cash for purposes of distribution in the event of a shortfall.

**23. Transaction in other jurisdictions**

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

**24. Tax risks**

- 24.1 Before entering into any Transactions, you should understand the tax implications of doing so, for example, income tax. Different derivatives Transactions may have different tax implications. The tax implications of Transactions in derivatives are dependent on the nature of your business activities and the Transactions in question. You should therefore consult your tax adviser to understand the relevant tax considerations before entry into any Transaction.

**25. Emerging markets**

- 25.1 Emerging markets are markets in countries with moderate to low per capita national income, according to the World Bank's definition. This applies, for example, to some Asian countries.
- 25.2 Experience has shown that political changes in emerging markets countries affect the capital markets more profoundly than is the case in industrialized countries. Economic policy measures such as nationalization, government intervention in industry and trade, or limits on ownership rights may dramatically change corporate earnings outlook for foreign investors in emerging markets. The influences of higher interest rates or a high inflation rate can have much more serious consequences for economic development than would be the case in more mature markets. The dependence on price trends of commodities also represents an additional risk.
- 25.3 Natural disasters or armed conflicts can occur anywhere. Such incidents usually result in considerable market volatility. In mature markets, setbacks are digested relatively rapidly. In contrast, financial conditions in emerging markets are generally more profoundly affected and over a longer period of time.
- 25.4 Currency fluctuations may be sudden and extreme, producing a disproportionate impact on the value of investments, which are usually denominated in or linked to the movements of local currency.
- 25.5 Foreign exchange regulations in some countries may also impose restrictions on the exchange and transfer of invested funds. The settlement of stock market transactions in emerging markets may not meet the norms of the established financial centers. Due to the lack of clear, standardized regulations for settling or clearing, delays in booking or failed trades with corresponding losses may occur.
- 25.6 The reform of regulatory supervision and legislation in emerging markets may not always keep pace with developments in mature markets. Independent supervision of business practices, stock market dealings and issuers, may not be as developed as in more mature markets. Insufficient transparency means a greater likelihood of market-distorting influences. Moreover, not all countries have a mature legal system with transparent standards and precedents. Investors in such instances may have no guarantee that they will be able to assert their rights before local courts.
- 25.7 Where you request the Bank to purchase for you financial instruments which are available in various emerging markets, such as bank certificates of deposits, and debt or equity securities issued by public or private sector institutions (hereafter collectively referred to as "Emerging Markets Financial Instruments"), you represent that you have and will continue to make your own independent appraisal of, and investigations into the financial condition and creditworthiness of any issuer.
- 25.8 Moreover, the Bank shall not be deemed to have made any representation or warranty as to the financial condition of the issuer or the performance by the issuer of its obligations under such financial instruments, with respect to any Transactions in Emerging Markets Financial Instruments the Bank may execute at your request. You acknowledge you are aware of and are able to weigh the diverse risks, the most of which are identified above, before investing in Emerging Markets Financial Instruments.

## **26. Growth enterprise market of Hong Kong**

### **Risk of trading Growth Enterprise Market stocks**

Growth Enterprise Market (GEM) stocks involve a high investment risk. In particular, companies may list on GEM with neither a track record of profitability nor any obligation to forecast future profitability. GEM stocks may be very volatile and illiquid.

You should make the decision to invest only after due and careful consideration. The greater risk profile and other characteristics of GEM mean that it is a market more suited to professional and other sophisticated investors.

Current information on GEM stocks may only be found on the internet website operated by The Stock Exchange of Hong Kong Limited. GEM Companies are usually not required to issue paid announcements in gazetted newspapers.

You should seek independent professional advice if you are uncertain of or have not understood any aspect of this risk disclosure statement or the nature and risks involved in trading of GEM stocks.

- 26.1 The Growth Enterprise Market has been established in Hong Kong as a market designed to accommodate companies to which a high investment risk may be attached. In particular, companies may list on the Growth Enterprise Market with neither a track record of profitability nor any obligation to forecast future profitability. There may be risks arising out of the emerging nature of companies listed on the Growth Enterprise Market and the business sectors or countries in which the companies operate.
- 26.2 There are potential risks of investing in such companies and you should make the decision to invest only after due and careful consideration. The greater risk profile and other characteristics of the Growth Enterprise Market mean that it is a market more suited to professional and other sophisticated investors.
- 26.3 Given the emerging nature of companies listed on the Growth Enterprise Market, there is a risk that securities traded on the Growth Enterprise Market may be susceptible to higher market volatility than securities traded on the Main Board and no assurance is given that there will be a liquid market in securities traded on the Growth Enterprise Market.
- 26.4 The principal means of information dissemination on the Growth Enterprise Market is publication on the internet website operated by the Stock Exchange of Hong Kong Limited. Companies listed on the Growth Enterprise Market are not generally required to issue paid announcements in gazetted newspapers. Accordingly, you need to have access to up-to-date information on the Growth Enterprise Market-listed companies as published on the Growth Enterprise Market website.
- 26.5 You should seek independent professional advice if it is uncertain of or has not understood any aspect of this Risk Disclosure Statement or the nature and risks involved in trading in securities listed on the Growth Enterprise Market.

## **27. Risks of trading Nasdaq-Amex securities on the Hong Kong Stock Exchange**

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

## **28. Terms and conditions of contracts**

- 28.1. The Bank will, in appropriate cases, furnish you with term sheets setting out the material terms, associated obligations (e.g. the circumstances under which you may become obliged to make or take delivery of the underlying interest of a futures contract and, in respect of options, expiration dates and restrictions on the time for exercise), underlying assumptions, pricing basis and sensitivity analysis to illustrate the impact of market movements on the proposed financial Transaction (in particular, the profit and loss which you may be exposed to with fluctuations in market rates) and/or such other information regarding the said Transaction as we may think relevant. Any sensitivity analysis which may be provided are for the purposes of illustration only and are not to be treated as our view on how the market will move in the future. Please strongly consider to study and to fully understand the relevant term sheet before executing any specific Transaction. The provision of such term sheets shall not, however, detract from your duty to take all such steps and make all such enquiries as may be necessary or desirable to ensure that you fully understand the Transaction concerned.
- 28.2. The termsheets and all annexures and supplementals hereto or thereto from time to time shall together constitute the Risk Disclosure Statement. Please contact us if any part of the Risk Disclosure Statement is omitted or incomplete. You undertake, declare and acknowledge that:
  - a. prior to entering into any Transaction, you will have read and fully understood the term sheets and all annexures and supplements pertaining to the Transaction; the nature of the Transaction and the terms and conditions governing the said Transaction; and the margin requirements, if applicable; and
  - b. in entering into any Transaction, you have decided to do so based on your personal judgment. You will fully calculate and accepts the risk involved in his underlying obligations under the said Transaction.
- 28.3. Under certain circumstances the specifications of outstanding contracts (including the exercise price of an option) may be modified by the exchange or clearing house to reflect changes in the underlying interest.

## **29. Commission and other charges**

- 29.1. Before you enter into any Transactions, you should obtain a clear explanation of all commissions, fees and other charges for which you will be liable. These charges will affect your net profit (if any) or increase your loss. In some cases, managed accounts are subject to substantial charges for management and advisory fees. It may be necessary for those accounts that are subject to these charges to make substantial trading profits to avoid depletion or exhaustion of their assets.

## **30. Risks associated with unsecured e-mail communication**

- 30.1. The Bank emphasize and you acknowledge that e-mails are sent via open installations (such as public and private data transfer networks

and providers that are accessible worldwide) available to anyone. It is therefore impossible to control the transmission route of an e-mail, and e-mails are often routed through more than one country (even when the sender and recipient are located in the same country). You acknowledge and agree that a multitude of risks are therefore inherent in unsecured e-mail, including but not limited to:

- 30.2. Lack of confidentiality: e-mail and their attachments can be viewed without restriction and systematically monitored, unnoticed, by unauthorized third parties (and also by authorities) with relatively little effort;
- 30.3. Possible to manipulate content and/or fake sender: the content of an e-mail, any attachments and sender details (e-mail address) can be tampered with or falsified, unnoticed, by an unauthorized third party; likewise, the transmission of an e-mail can be delayed or prevented;
- 30.4. Transmission errors/failures: e-mails and their attachments may be altered, mutilated, misrouted, delayed, or deleted due to technical failures or malfunctions during transmission;
- 30.5. Lack of integrity: there is no way for a recipient to technically verify the integrity of an e-mail, the e-mail sender and content (manipulations and errors are not usually discovered in time);
- 30.6. Viruses, Trojan Horses, Worms, Spam, etc.: considerable damage can be done to the e-mail addresses and e-mail from us can be faked as a result of such e-mail or computer infections created or spread, unnoticed, by third parties;
- 30.7. The Bank accepts no responsibility for any losses arising from such risks.

**31. Risks associated with instructions via facsimile**

Non-original signatures on the facsimile may be forged and such instructions may be transmitted to, and received at, wrong numbers, and may never reach us and may be disclosed to third parties at the wrong number thereby losing their confidential nature.