



**Maybank**

*PW*  
PRIVATE WEALTH

TERMS AND CONDITIONS FOR  
PRIVATE WEALTH ACCOUNTS,  
INVESTMENTS AND SERVICES



**Malayan Banking Berhad (Incorporated in Malaysia with limited liability)**  
馬來亞銀行(於馬來西亞註冊成立的有限公司)

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**MALAYAN BANKING BERHAD**  
**(Incorporated in Malaysia with limited liability)**  
**TERMS AND CONDITIONS FOR PRIVATE WEALTH ACCOUNTS, INVESTMENTS AND SERVICES**

Your relationship with the Bank and all the Accounts, Investments and Services made available to you as the Bank's Private Wealth client is governed by these Terms and Conditions For Private Wealth Accounts, Investments and Services.

**SECTION A (GENERAL TERMS)**

**1. These Conditions**

- 1.1 In opening and/or maintaining any Account with the Bank and/or by dealing with the Bank in relation to any Investment and/or by utilising any Service provided by the Bank, you agree to abide by and be bound by these Conditions as well as any other terms and conditions relating to the relevant Account, Investment and/or Service provided by the Bank.
- 1.2 In the event of a conflict between this Section A (**GENERAL TERMS**) and the specific terms and conditions as set out in other Sections, the latter shall prevail.
- 1.3 Additional terms and conditions may be prescribed by the Bank from time to time in respect of any Account, Investment or Service and shall be read together with these General Terms and shall be considered an integral part of these Conditions.

**2. Provision of Information**

You agree to provide the Bank with all such information, documents and/or assistance as may be necessary to enable the Bank to comply with its obligations under all applicable laws, rules and regulations for any purpose including but not limited to anti-money laundering and countering of terrorism financing purposes.

**3. Mandate/Instructions**

- 3.1 The Bank is authorised to act on the Instructions given in accordance with the mandate in respect of the Account, Investment or Service. The Bank shall be entitled to refuse to accept or act on any Instruction, if:
- (a) the Bank is unable to verify your and/or an Authorised Person's identity to its satisfaction;
  - (b) the Bank has any doubt on the authenticity, clarity or completeness of the Instruction;
  - (c) the form or content of such Instruction is not in accordance with the requirements, policies or practices prescribed by the Bank from time to time;
  - (d) the Instruction involves a breach of any law or requirement of any authority; or
  - (e) the Instruction is not in accordance with the mandate(s) for the time being in effect in respect of the operation of such Account, Investment or Service, and the Bank shall not be liable for any Loss which you or any other person may suffer in connection thereto or arising as a result of such refusal.
- 3.2 Notwithstanding the above clause, the Bank may act upon any Instruction which the Bank believes in good faith to be given by you and/or an Authorised Person, with or without inquiry as to

the identity or authority of the person giving or purporting to give such Instruction or the authenticity of the Instruction and notwithstanding that such Instruction may conflict with other Instruction(s) given by you and/or an Authorised Person to the Bank, or any error, misunderstanding, or lack of clarity in the terms of such Instructions.

- 3.3 You acknowledge that the Bank may implement any security procedure and feature it deems appropriate and/or necessary from time to time to verify your identity and/or the identity of an Authorised Person and that the transaction has been authorised by you. Without prejudice to the foregoing, the Bank may require confirmation of any Instruction from you or an Authorised Person in any form or manner as it deems appropriate.
- 3.4 You shall notify the Bank in writing immediately of any variation of:
- (a) an Authorised Person;
  - (b) your signature/the signature of any Authorised Person;
  - (c) the authorised manner of signing;
  - (d) the signature requirement(s) in respect of the operation of any Account, Investment or Service;
  - (e) any change of the address or other relevant particulars of you and/or any Authorised Person; or
  - (f) the mandate in respect of the operation of any Account, Investment or Service.
- Such particulars referred to in Clause 3.4(e) include (but are not limited to) any change of:
- (i) partners (for partnership accounts);
  - (ii) directors and memorandum and articles of association (for company accounts); and
  - (iii) other Third Parties where applicable.

Such notification shall be accompanied by all necessary documents required by the Bank ("**Supporting Documents**").

- 3.5 The Bank shall be entitled to a period of seven (7) Business Days from date of receipt of such notice and the Supporting Documents ("**Processing Period**") to process such notification and update the change.

During the Processing Period, the Bank is entitled to:

- (a) continue to process your Instructions in accordance with the mandate given to the Bank prior to the said notification;
- (b) send notices and communications to you at the address as specified in the mandate or Instructions given to the Bank prior to the said notification; or

- (c) take such action as the Bank considers appropriate (including but not limited to suspending the operation of the Account).

In the event such notification and/or any of the Supporting Documents is ambiguous, incomplete or in such form and substance not satisfactory to the Bank, the Bank reserves the right not to process such notification or to take such action as the Bank deems fit and the Bank shall not be liable for any Loss that you may incur as a result thereof.

#### 4. **Oral Instructions**

4.1 The Bank may but is under no obligation to act in accordance with any Instruction which may be, or purport to be, given orally, whether by telephone or otherwise (each an "**oral instruction**") by you and/or an Authorised Person.

4.2 Without prejudice to the foregoing, you agree that to the maximum extent permitted by applicable laws and regulations, and not inconsistent with the obligations of the Bank under the Code, the Bank will not be liable for any Loss which you or any other person may suffer in connection with the Bank acting or not acting in accordance with the aforesaid oral instruction.

4.3 You hereby agree that a note made by any of the Bank's officers of any oral instruction shall be conclusive and binding evidence of such oral instruction provided always that the Bank shall not be obliged to make any note of any oral instruction and the failure to make any such note shall not in any way affect such authorisation or prejudice the rights of the Bank under these Conditions.

4.4 The Bank may as it deems fit record all Instructions received from you and/or Authorised Person and all other telephone conversations conducted with you and/or an Authorised Person and you agree to be bound by such recording. Instructions provided to the Bank over the telephone may be recorded for the purposes of processing your and/or Authorised Person's instructions, attending to your and/or Authorised Person's enquiries, quality coaching and recordkeeping purposes. For more information, please refer to the Bank's Personal Data (Privacy) Ordinance Notice ("**PDPO Notice**") (provided upon request).

#### 5. **Client's Duty**

5.1 You shall take all reasonable care and precaution to prevent the disclosure (whether voluntary or involuntary) to Third Parties of the PINs or passwords provided by the Bank (or substituted by you) to you for any purpose including for effecting or conducting internet banking transactions and to monitor your Account transactions including without limitation any suspicious or omitted transaction.

5.2 You shall notify the Bank immediately in writing of any unauthorised disclosure of the PINs or passwords provided by the Bank (or substituted by you) or of such suspicious or omitted transactions. Where you have given such notice verbally, the Bank may require you to confirm the same in writing.

5.3 To the maximum extent permitted by law, you shall indemnify the Bank for all Losses howsoever caused by any unauthorised disclosure of the PINs or passwords provided by the Bank (or substituted by you) and you shall be liable for all charges incurred by such unauthorised use of the PINs or passwords prior to the Bank's receipt of notification of such disclosure.

5.4 You are under a duty:

(a) to check all entries in the statement of account and any advice (including but not limited to confirmation advices, maturity advices and deposit advices);

(b) to report promptly to the Bank all irregularities, discrepancies, inaccurate/incorrect omission, inaccurate/incorrect entries, error, or unauthorised transactions or inaccuracies in the contents or entries therein;

(c) to sign and return any confirmation slip, including those for auditing purposes; and

(d) to promptly notify the Bank in writing if you do not receive any statement or advice (including but not limited to confirmation advice, maturity advice or deposit advice) that is due to you.

5.5 If the Bank does not receive from you a written objection within the time stipulated in such statement or advice or in the absence of such stipulated time, within ninety (90) days of the date of such statement or advice:-

(a) you shall be deemed conclusively:- (i) to have accepted, and shall be bound by, the validity, correctness and accuracy of the transaction(s)/ entries and the balance set out in the statement or advice; and (ii) to have ratified or confirmed each and every one of the transactions represented by the entries set out therein;

(b) the statement or advice, as the case may be, shall as against you be deemed conclusive evidence of your authorisation to the Bank to effect the transaction(s) set out therein; and

(c) you shall have no claim against the Bank howsoever arising from, in connection with or as a result of any transaction/entry referred to therein.

5.6 The Bank may at any time rectify errors or omissions in any statement or advice and any statement or advice so rectified shall be binding on you.

#### 6. **Opening of Account**

6.1 The Bank will determine the Account number to be allocated to each Account opened and may change it upon notification to you.

6.2 The Bank may decline to deal with you and/or any Authorised Person if you or he appear(s) to the Bank to be mentally unable to manage yourself or himself or your Account.

6.3 You shall, before entering into any Investment or utilising any Service, open and maintain such Account(s) as the Bank may require from time to time. Without prejudice to the foregoing, the Bank may from time to time if it deems necessary, with or without prior notice to you, open and maintain further Accounts with the same account holders and signature conditions as your existing Account(s).

#### 7. **Deposits**

7.1 Any deposit that you shall make shall be in the manner and in the currency permitted by the Bank and commission or other charges may be imposed.

7.2 The minimum initial deposit and the minimum balance for each type of Account shall be such amounts as the Bank may stipulate from time to time.

- 7.3 The Bank may refuse to accept any cheque, cash or financial instrument in any currency for deposit (including without limitation in cases where the payee's name is not identical to your name and in cases where a cheque made payable to a corporation, firm, partnership, society, association, trade union, institution or other business concern for credit to a personal account).
- 7.4 Deposit slips, whether used for cash deposits made at the Bank's branches or issued by the Bank's cash deposit machines for cash deposits placed with the Bank, are not valid receipts unless machine validated by the Bank or signed by an authorized officer of the Bank and its rubber stamp impressed thereon save that deposit slips are not evidence of receipt of cheques, drafts or postal money orders or of the amounts thereof, as stated in the deposit slips. You must examine the entries made on the deposit slip and shall immediately report to the Bank any error or discrepancy found therein. The Bank reserves the right to alter any incorrect item stated on the deposit slip. The Bank shall advise you of any such alteration and if you do not object to any such alteration within seven (7) days of the date of such advice, you shall be deemed conclusively to have accepted the altered deposit slip as true and accurate in all respects.
- 7.5 The proceeds of cheques (including marked cheques), drafts and all other instruments deposited into the Account will not be credited to your Account until the proceeds thereof have been received by the Bank. Without prejudice to the aforesaid, if the proceeds of cheques, drafts and other instruments are credited into the Account before the proceeds are received by the Bank, the Bank reserves the right to debit such credited amount from the Account if the cheques, drafts and such other instruments are dishonoured, or to revise the amount credited into the Account in the event that the payment received by the Bank on such cheques, drafts and such other instruments is less than the amount credited into the Account.
- 7.6 All cheques deposited are received by the Bank solely as agent for collection, and the Bank assumes no responsibility for any non-payment or Loss to you due to any reason or from any inability on the Bank's part to collect, whether resulting from any payment restriction or any law or regulation of any country in which the cheques are cleared/collected, or any strike, or any default, neglect or insolvency of any correspondent or paying bank or financial institution or any agent or sub-agent, or any cause beyond the Bank's control. Only an image return document of the dishonoured cheque will be returned by post to you at the address last registered with the Bank at your risk and expense.
- 7.7 The Bank reserves the right to debit any credited amount from the Account even after the Bank receives payment, if the correspondent paying bank, financial institution, any agent, sub-agent or any party should at any time claim refund or repayment of such amount on any ground(s) (whether or not disputed), including without limitation the ground that the cheque, draft, money order, telegraphic transfer or other payment Instruction or instrument was void, invalid or fraudulently issued, or in any other circumstances whatsoever resulting in the amount of such cheque, draft, money order, telegraphic transfer or other payment Instruction or instrument or any part thereof being subject to an actual or potential claim for repayment or refund by any party.
- 7.8 The Bank may accept foreign currency cheques for clearing in the manner prevailing for the acceptance of such cheques as the Bank may determine from time to time and shall only credit each Account with the proceeds of such cheques after adjustments have been made for the difference in exchange rates, bank commission, stamp duty and other charges upon clearance of the cheques and all risks connected with the clearing including but not limited to exchange rate movement for each Account.
- 7.9 The Bank may but is under no obligation to purchase your Renminbi dividend cheque in Hong Kong Dollars or vice versa at such rate of exchange as the Bank may determine and credit it into the Account. You shall indemnify the Bank for any Loss which the Bank may incur as a result of such purchases.
- 8. Withdrawals**
- 8.1 You shall maintain sufficient funds in your Account to meet all payments and withdrawals. Fees may be imposed for unsuccessful debit instructions.
- 8.2 Any withdrawal that you make shall be in the manner and on such terms and conditions as the Bank may impose from time to time.
- 8.3 Withdrawals from each Account may be made only upon receipt by the Bank of withdrawal Instructions satisfactory to it, and you shall be liable for all such Instructions irrespective of whether the relevant Account is in credit or otherwise, provided that in the absence of any express agreement to the contrary the Bank is not bound to honour any withdrawal Instruction if there are insufficient funds in the Account.
- 8.4 The Bank is not obliged to act on any Instruction relating to your payment or withdrawal request if:
- (a) the signature is different from the specimen signature furnished to the Bank or not signed in the authorised manner or not drawn in accordance with the signature requirements prevailing at the time of presentation;
  - (b) the Bank has received or is obliged to comply with any regulatory, judicial or statutory requirement or request not to proceed with the payment or withdrawal request or to effect a payment to any government body or agency or is served with a court order or other form of legal process requiring the Bank to freeze the Account or to disallow withdrawals; or
  - (c) funds in the Account have been earmarked for any reason.
- 8.5 The Bank also has the right to process payments and withdrawals in any order of priority determined by it.
- 8.6 No withdrawals in cash may be made by you of any or all monies standing to the credit of any Account (denominated in any currency) unless the Bank agrees and subject to availability of the relevant currency notes and to the payment of such fees or commission as the Bank may require and such prior notice (of such period as the Bank may require) being received by the Bank.
- 8.7 Once a transfer order has been delivered to the Bank, no subsequent request by you for cancellation, withdrawal or amendment of the order will be accepted unless the Bank agrees otherwise.
- 9. Cheque**
- 9.1 You agree that:
- (a) cheques drawn by you which have been paid may, after having been recorded in electronic or other form as determined by

- the Bank, be retained by the collecting bank or Hong Kong Interbank Clearing Limited ("**HKICL**") for such period as is stated in the rules relating to the operation of the Clearing House for the related currency and after this, they may be destroyed by the collecting bank or HKICL as the case may be; and
- (b) the Bank is authorized to contract inter alia with collecting banks and HKICL in accordance with the terms of paragraph (a).
- 10. Cheque Truncation**
- 10.1 Without prejudice to the generality of the foregoing provisions, the following shall apply to all articles, documents and items processed through the Cheque Imaging and Truncation System ("**CITS**") operated by the HKICL including but not limited to cheques, other instruments and image return documents ("**IRD**") subject to any regulation made thereunder and all non-clearing items captured or generated pursuant to CITS.
- 10.2 The Bank's rights, practices and/or liabilities are subject to the relevant bye-laws, rules and/or regulation of the Hong Kong Monetary Authority ("**HKMA**") and the Hong Kong Association of Banks and the Bank shall not be liable to you for any act done or omitted to be done pursuant to the aforesaid bye-laws, rules and/or regulations.
- 10.3 The Bank shall not be liable to you (or any Third Party claiming through you) for any Loss suffered, howsoever caused, arising from the CITS including but not limited to the acts or omissions of any person or entity and/or any error caused by machine or hardware malfunctions or manufacturer's operating software defects unless it is caused solely and exclusively by the gross negligence or fraudulent or dishonest act of the Bank or its officers or employees.
- 10.4 The Bank has absolute discretion (without incurring any liability to you), to determine whether to process through the CITS and/or any other clearing and/or settlement system as it thinks fit any article, document or item including but not limited to cheques and other instruments.
- 10.5 Any reference in these Conditions to cheques and/or other instruments shall, where the context requires, include a reference to an IRD.
- 11. Interest**
- 11.1 The Bank reserves the right to revise the rate(s) of interest at any time.
- 11.2 The Bank shall pay interest on credit balances on an Account only where the Bank has expressly agreed to do so, at such rate and calculated on such basis as the Bank may decide from time to time. Such interest may be credited to the Account on any day of a calendar month as the Bank may select.
- 12. Overdrafts**
- 12.1 In the absence of prior arrangement and approval, you shall not at any time cause the Account to be overdrawn. If the Account is overdrawn, you shall pay interest on the overdrawn amount at such rate as prescribed by the Bank from time to time. All amounts overdrawn, charges and interests payable shall be repaid on demand. The Bank may without prior notice close the Account if General Interbank Recurring Order ("**GIRO**")/ standing order payments continue to be returned/rejected due to insufficient funds.
- 12.2 Overdraft facilities may be permitted by the Bank at such rate(s) and on such terms as the Bank may from time to time determine.
- 12.3 The Bank shall notify you when your Account becomes overdrawn.
- 12.4 The Bank will impose a minimum monthly overdrawn charge as determined by it on your Account for the overdrawn amount.
- 12.5 You shall not use or attempt to use any Service for payments or transfers or withdrawals unless there are sufficient available funds in the Account.
- 13. Charges, Default Interest and Tax**
- 13.1 The Bank may impose such charge, fee, and/or commission in accordance with the prevailing rates as specified in any schedule of fees published by the Bank (for standard fees) or advised to you (for non-standard fees) from time to time, at the time the Services are offered and on request:
- (a) for any Service provided by the Bank;
- (b) for the operation or maintenance of any Account including dormant Accounts where the credit balance falls below the minimum balance stipulated from time to time by the Bank for such Accounts; and/or
- (c) on Accounts closed within six (6) months of opening or such other period as the Bank may determine.
- Copies of the Bank's schedule of standard fees and charges shall be displayed in banking halls and made available to you on demand, and details of the basis of charges for services not subject to standard fees and charges shall be advised or given to you at the time services are offered or on request.
- 13.2 The Bank shall be entitled to impose administrative charges and be reimbursed costs and expenses (including legal costs) for handling garnishee orders, injunctions or other court orders or proceedings relating to any Account or money therein.
- 13.3 In the event of any non-payment of sums owed to the Bank by you, the Bank shall have the right to impose overdue interest on any unsettled sum at such rate (before or after judgment) as determined by the Bank to the extent permitted by law, in addition to any late or administrative charges which may be applicable, as specified in any schedule of fees published by the Bank from time to time. The Bank will inform you of the nature and amount of charges debited to the accounts promptly after any such charges is debited (save for in circumstances whereby a prior notice has already been given by the Bank to you in relation to the charges to be debited for dormant accounts).
- 13.4 Any payment by you under these Conditions or any transaction shall be made free and clear of and without any deduction or withholding in respect of any tax or levy whatsoever in any jurisdiction. If you are required by any applicable law to effect such deductions or withholdings, then the amount due and payable to the Bank shall be increased by such amount as shall result in the Bank receiving an amount equal to the amount the Bank should have received in the absence of such deduction or withholding.
- 13.5 If:
- (a) the Bank is required by:
- (i) any government agency or revenue authority in any jurisdiction; or
- (ii) any applicable law (including without limitation FATCA or any comparable, equivalent or similar law imposed in any jurisdiction); or



- (iii) any contract with any government or tax authority in any jurisdiction, to deduct or withhold any amount, or otherwise make any payment, on account of any tax or levy whatsoever in any jurisdiction on or in relation to any amount paid, transferred or received (or payable, transferable or receivable) pursuant to these Conditions or in relation to any transaction, Account or Service; or
- (b) any liability on account of the same is asserted, imposed, levied or assessed against the Bank,
- then
- (i) the Bank shall be entitled to deduct or withhold the amount which it is required to deduct or withhold or make a payment on account of, or which is asserted, imposed, levied or assessed against it from any payment made by the Bank without any obligation to "gross up" or pay any additional amount on account of such deduction or withholding;
- (ii) you shall, promptly indemnify the Bank on demand against such deduction, withholding, payment or liability (together with any interest, penalty, cost or expense payable or incurred in connection therewith) if the Bank is required by any applicable law to collect and make payment in receipt of such tax or levy; and
- (iii) the Bank shall be entitled to apply all or any part of any balance standing to the credit of any of your account(s) with the Bank in or towards the discharge of any amount payable to the Bank pursuant to this Clause.
- 13.6 Without limiting the above, the Bank shall not be responsible for any tax, levy, deduction or withholding (or any increased tax, levy, deduction or withholding) suffered or incurred in respect of any payment received or receivable by the Bank or its agent, nominee or sub-custodian for your account or on your behalf in the event of the Bank not being a Qualified Intermediary, or a "participating foreign financial institution" for the purposes of FATCA or the Bank not having any similar status under the United States Internal Revenue Code of 1986 or any comparable, equivalent or similar law in any other jurisdiction. Any amount so deducted or withheld shall be for your account.
- 13.7 You hereby authorise the Bank (without prior notice or reference to you) to debit the Account at any time with interest for all amounts due and payable to the Bank or recoverable from you, default interest and for all fees, costs, commissions and charges charged by the Bank without prejudice to the rights and remedies of the Bank against you or any Third Party and notwithstanding that you may incur any loss in interest earnings or a reduction in the original principal amount due to bank charges and/or adverse exchange rate movements.
- 13.8 You shall pay to the Bank all payments due in the currency in which they are due to such Accounts as the Bank shall notify you.
14. **Linking of Accounts**
- If you have more than one Account with the Bank, the Bank may (but is not obliged to) upon such

terms and conditions link such Accounts for the purposes of utilisation of the full range of Services by you and/or the statement of account to be issued in a consolidated format reflecting transactions for such Accounts as the Bank may deem appropriate. The Bank shall be entitled to refuse to accept or act on any Instruction whatsoever in respect of linked joint accounts with joint signing authority (including but not limited to any Instruction to withdraw or transfer funds out of such Accounts) and shall not be under any liability whatsoever for so refusing.

15. **Account Statements**

Statements of account may be sent by the Bank to you by ordinary post at monthly intervals or such other periodic intervals as the Bank may from time to time deem fit.

16. **Joint Accounts**

16.1 The holders of any Account which is a joint account agree to be jointly and severally bound by these Conditions and to be jointly and severally liable for all Instructions given and all liabilities incurred on or debit balances in the Account, and all Instructions given and transactions effected by or through the use of any Service or otherwise.

16.2 In the case of joint accounts or two (2) or more Authorised Persons, where any one of the joint account holders or an Authorised Person elects to give Instructions to the Bank via telephone, the Bank shall be entitled, but shall not be obliged, to act on the Instructions of any one of the joint account holders or any Authorised Person, notwithstanding any written mandate to the contrary and all account holders shall be liable for any such Instructions as if they had given such Instructions jointly.

16.3 In the event of death of a joint account holder (except in the case of joint accounts designated as trust or executors' accounts), the Bank shall be entitled to hold the amount standing to the credit of the joint account for the benefit and to the order of the survivor(s) (regardless of the terms of the Account mandate) provided that this is subject to the rights of the Bank in respect of such funds arising out of any lien, charge, pledge, set-off or any other encumbrance or any claim or counterclaim, actual or contingent or otherwise, as well as to take such steps it deems desirable (including making payment(s) into a court of competent jurisdiction) in relation to the credit balance. Any payment made by the Bank to such survivor(s) or to a court of competent jurisdiction shall constitute a complete discharge of the Bank's obligations binding on all the account holders and their personal representatives and successors.

16.4 Where a cheque is payable to any one or more of the account holders of any joint account, the Bank may but is not obligated to, accept the cheque for deposit into the joint account without endorsement by any of the account holders. The account holders including the payee of the cheque shall not have any recourse to the Bank for the amount so credited to the joint account.

16.5 The holders of a joint account who give the Bank the mandate for any one party to operate the joint account should note that any one party may, without the other party's knowledge, apply for Internet Banking Service or other mode of operation of the account Services offered by the Bank that will enable transactions to be made on the account. The Bank is not under any duty to inform the other joint account holder(s) of such application.

17. **Operation of Corporate Accounts**

Upon any change of your constitution for any reason whatsoever (including without limitation by death, resignation, replacement, addition, bankruptcy or otherwise of a partner or sole proprietor), the Bank may, in the absence of written notice to the contrary, treat the remaining/new partner(s)/new sole proprietor as having full power to carry on your business and to deal with the Account as if there had been no change in your constitution.

18. **Trustee Accounts**

18.1 The Bank is not obliged to recognise any trust or any person other than you as having any interest in the Account unless the Bank otherwise expressly agrees in writing. If the Bank opens the Account in your name "as trustee" or "as nominee" or using some other similar designation, whether or not for a specified Third Party, the Bank may accept payment orders and other Instructions relating to the Account from you only and will not be required to obtain any consent from or see to the execution of any trust for any person.

18.2 If the Bank agrees to open an Account for you acting "as trustee", you undertake to operate such Account solely for the benefit of the beneficiaries of the trust, and the Bank have no obligation to monitor this. You agree to indemnify the Bank against any Loss in respect of your operation of the Account, including any closing of the Account, and any dispute between the beneficiaries and the Bank and/or any of your representatives.

18.3 If the Account is opened in the name of 2 persons acting as trustees, deposits shall be withdrawn and Instructions given only by the trustees acting jointly unless the Bank agrees otherwise.

18.4 Upon your death, the Bank may do any of the following:

- (a) if the Account has more than one trustee, the Bank is authorised to hold any credit balance in the Account to the order of the surviving trustee; or
- (b) if the Account has no surviving trustee:
  - (i) if the beneficiary is a company or a corporation, or if the beneficiary (being an individual) is 18 years old or older, the Bank will close the Account and release the money in such Account to the beneficiary; or
  - (ii) if the beneficiary (being an individual) is below 18 years old, the Bank will close the Account, release the money in such Account to your personal representatives by way of a cheque, cashier's order or telegraphic transfer issued in favour of your personal representatives to be held in trust for the beneficiary.

Before the Bank agrees to take any of the actions referred to in this Clause, the Bank may require your personal representatives to produce certain documents (including the death certificate) as stipulated by the Bank.

19. **Suspension of Account**

19.1 Notwithstanding any provision in these Conditions, in the event that:

- (a) the Bank receives ambiguous or conflicting Instructions, in whatever form, from any party in connection with the Account;

- (b) the Bank is in receipt of an order of court, in relation to or which directly or indirectly affects the Account;
- (c) the Bank becomes aware of any dispute, in relation to or which directly or indirectly affects the Account;
- (d) a force majeure, power failure, computer breakdown, industrial action and/or sabotage occurs or for any other reason, the Bank's clients' records, accounts or Services are not available or access to such records, accounts, Services is hindered;
- (e) you, an Authorised Person or in the case of a joint account, any one of the joint account holders becomes bankrupt, as evidenced by such documents satisfactory to the Bank, or you become insolvent or goes into liquidation; or
- (f) the Bank may reasonably deem appropriate in any other circumstances,

the Bank shall have the right, in its absolute discretion, to freeze or suspend operations of the Account and refuse access to the funds therein, decline to act on any Instruction or take such necessary action as the Bank may deem fit, and to the maximum extent permitted by applicable laws and regulations, and not inconsistent with the obligations of the Bank under the Code, without liability to you for any Loss suffered or incurred by you as a result of the Bank's action or inaction.

19.2 The Bank shall have the right to refund such amount or any balance thereof after application of Clause 19.1 by drawing a Bank cheque in favour of you or all the joint account holders (regardless of the identity of the person(s) who are entitled to the funds), as the case may be.

20. **Dormant Accounts**

If there have not been any transaction on the Account, other than transactions initiated by the Bank, for a period of 365 days, the Account will be treated by the Bank as dormant. The Bank will treat a dormant account differently and access to the Account may be restricted. Additional identification checks may also be required.

21. **Communications**

21.1 All notices, bank statements, advices, documents and any other communications (collectively called "Communications") from or issued by the Bank may be sent to you by hand, post, facsimile, other electronic transmission, or such other manner as the Bank deems fit. If any Communication is returned undelivered, the Bank will not send you any further Communication until you have updated your particulars.

21.2 Communications and correspondences shall be deemed to be received by you:

- (a) in the case of electronic mail or facsimile or other instantaneous electronic Communications, immediately upon transmission by the Bank; and
- (b) in the case of posted Communications, one (1) Business Day after the Communication was despatched by the Bank to your last known mailing address (in the case you have a Hong Kong address) or seven (7) days after the Communication was despatched by the Bank to you (in the case you have a non-Hong Kong address).

Communications served personally on or delivered personally to you shall be regarded as received upon service or delivery.

- 21.3 All Communications may also be made through the press, radio, television, the Bank's website or any other media as selected by the Bank. You shall be deemed to have notice on the date of delivery, publication, broadcast or communication.
- 21.4 To the maximum extent permitted by applicable laws and regulations, and not inconsistent with the obligations of the Bank under the Code, you shall not hold the Bank liable in the event any Communication is delayed, intercepted, lost and/or fails to reach you during delivery, transmission or dispatch or if the content of such Communication is disclosed to any Third Party during transit and you will bear all risks of such Communications.
22. **Collection, Use or Disclosure of Information**
- 22.1 You consent to, and shall procure that all relevant individuals whose information has been disclosed to the Bank by or through you (including account signatories and Authorised Persons) (collectively "**Relevant Individuals**") consent to, the Bank, its officers, employees, agents, contractors, sub-contractors, service providers and advisers collecting, using or disclosing to any of the persons stated below (whether in Hong Kong or elsewhere) any information relating to you (and the Relevant Individuals), including details of the Accounts and your Investments or transactions for any of the purposes stated below, and to the extent that the information is personal data in connection with the purposes set out in the Bank's PDPO Notice (provided upon request), or as is otherwise required or permitted in accordance with applicable law, or with any relevant codes of practice issued or approved by the Privacy Commissioner for Personal Data giving practical guidance on compliance with the Personal Data (Privacy) Ordinance (Cap. 486) ("**PDPO**"):-
- (a) any financial institution (whether acting as the Bank's correspondent banks, agent banks or otherwise) including but not limited to wire transfer service providers, exchanges, trading platforms, alternative trading systems, clearing houses, trade repositories and/or depositories;
  - (b) the Bank's head office and any of its branches, representative offices, subsidiaries, related corporations, affiliates, for the purpose of providing products and Services to you, marketing or promotion of products and Services to you, data processing, outsourcing, internal audit, risk management, obtaining of legal advice or to facilitate the Bank's own management of its business;
  - (c) the Bank's stationery printer or agent for the purpose of or in relation to the provision of the Bank's products or Services, for purposes related thereto;
  - (d) any court, government, regulatory, law enforcement, tax or fiscal agency or authority and/or any self-regulatory organisation in any jurisdiction for the purpose of enabling the Bank to comply with any legal, tax or regulatory obligation under any applicable law or with any request (whether or not legally binding) from such agency or authority or where the Bank considers that such disclosure is necessary or desirable to protect the interests of the Bank or its affiliate;
  - (e) any actual or potential assignee or transferee of, or participant or sub-participant in, any of the Bank's rights or obligations herein (or any of their agents or professional advisers);
  - (f) any credit bureau or credit reference or evaluation agency and any member or subscriber of such credit bureau or agency;
  - (g) any service provider, sales and telemarketing agency, business partners or any Third Party under conditions of confidentiality imposed on such party, for the purpose of data processing, marketing or promotion of products and services to you, providing any Service on the Bank's behalf to you or in connection with such outsourcing arrangements the Bank may have with any Third Party where the Bank has outsourced certain functions to the Third Party and the third party's service providers;
  - (h) any debt collection agency or person engaged by the Bank to collect any sum of money owing to the Bank from you;
  - (i) any nominee, custodian, broker or other Third Party which have agreed to perform works for or provide Services to you (or to the Bank through you);
  - (j) relevant exchange or market, depository or depository agent for the purpose of or in relation to any transaction or Investment;
  - (k) your agent, executor or administrator, receiver, receiver and manager, judicial manager and any person in connection with any compromise or arrangement or any insolvency proceeding relating to you;
  - (l) your auditors for any purpose relating to their function as your auditors;
  - (m) any person under a duty of confidentiality to the Bank, including a member of the Bank's associates, which has undertaken to keep such information confidential;
  - (n) the drawee bank providing a copy of a paid cheque (which may contain information about the payee) to the drawer;
  - (o) any persons acting on your behalf, payment recipients, beneficiaries, account nominees, intermediary, correspondent and agent banks, clearing houses, clearing or settlement systems, market counterparties, upstream withholding agents, swap or trade repositories, stock exchanges, companies in which you have an interest in securities (where such securities are held by the Maybank Group) or a person making any payment into your account;
  - (p) any of your directors (in the case of a company) or partner (in the case of a partnership, limited partnership or limited liability partnership) and account signatory for the purpose of response to any request from them or for any purpose relating to their function as your director or partner;
  - (q) to the extent that the information is personal data, to the persons identified in the Bank's PDPO Notice; and
  - (r) any person to whom disclosure is permitted or required by law or regulatory guidelines issued from time to time for any purpose for which the disclosure is permitted or required by the relevant law or regulatory guidelines.

This Clause is not and shall not be deemed to constitute, an express or implied agreement by the Bank with you for a higher degree of

- confidentiality than that prescribed under any applicable law. The consent and the Bank's right under this Clause are in addition to and are not affected by any other agreement with you and shall survive the termination of any or all of the transactions, Accounts and Services and the termination of any relationship between you and the Bank.
- 22.2 You acknowledge and agree that overseas service providers may be required by law to disclose information received from the Bank to Third Parties, such circumstances include the service provider being compelled to disclose information pursuant to a court order, police investigations and criminal prosecutions for tax evasion or other offences.
- 22.3 In the event that applicable law provides you or the Relevant Individuals (as the case may be) with a right to refuse or withdraw consent to the collection, use or disclosure of any personal data relating to you or the Relevant Individual and that right to withdraw is exercised, you acknowledge and agree that the Bank will have a reasonable period of time to process your withdrawal request. If you or the Relevant Individuals refuse or withdraw consent to the collection, use or disclosure of your or their personal data, the Bank and its affiliates may not be able to perform actions necessary to achieve the purposes set out in this Clause or continue providing you with the Bank's products or Services or to administer your Account and you may not be able to make use of the products and Services offered by the Bank and its affiliates. Such withdrawal may constitute a repudiatory breach of your obligations under these Conditions and the Bank may upon notice to you terminate these Conditions. In addition, the Bank may withhold certain amounts from payments the Bank makes to you, or close your Account. The exercise of such rights by the Bank shall be without prejudice to the Bank's other rights and remedies at law against you.
- 22.4 **YOU ACKNOWLEDGE, AGREE AND CONSENT**, without prejudice to the above sub-clauses, to the collection, use and disclosure of Client Data for the purpose of enabling the Bank and its affiliates to comply with any FATCA Compliance Obligations. You acknowledge and agree that:
- (a) disclosure may be made by or on behalf of the Bank and its affiliates:
    - (i) directly to Third Parties, including the IRS and other foreign tax authorities; and
    - (ii) to tax authorities located in Hong Kong (including for the purpose of onward disclosure to the IRS or other foreign tax authorities);
  - (b) Client Data may be held and used by any tax authority for as long as permitted under the laws of the jurisdiction of that tax authority and by the Bank and its affiliates for as long as permitted under laws applicable to the Bank and its affiliates, including FATCA Compliance Obligations; and
  - (c) Client Data disclosed may include (but is not limited to) your account number, name, address, country of residence, social security or taxpayer identification number, account balance or value, the gross receipts and gross withdrawals or payments from the account, and any amount of interest paid or credited to the account, as well as information, documents or certifications about your identity, tax residence, nationality and status.
- 22.5 **YOU FURTHER ACKNOWLEDGE, AGREE AND CONSENT** to the transfer (in any medium or format) of Client Data to the United States (or any other foreign jurisdiction) for the purposes set out in Clause 22.4.
- 22.6 **YOU FURTHER ACKNOWLEDGE, AGREE AND CONSENT** that you may incur certain tax liabilities as a result of the disclosure of Client Data by or on behalf of the Bank and its affiliates to tax authorities and you agree that, to the extent permitted by law, the Bank shall not be liable for that Loss.
- 22.7 For the purposes of Clauses 22.4 to 22.6:
- "Client" means an account holder of an Account with the Bank, and/or any person utilising any Service, and its personal representative(s) or successor(s), as the case may be; and
- "Client Data" means information which may be provided by a Client, or otherwise obtained or generated by or on behalf of the Bank and relating to the Client under these terms and conditions, which may include, but is not limited to, personal data (as that term is defined by applicable law).
23. **Payment screening**
- 23.1 The Bank is obliged to comply with laws, regulations and requests of public and regulatory authorities in various jurisdictions and is subject to Maybank Group policies in respect of money laundering and counter-terrorism financing. The Bank may take, and may instruct (or be instructed by) another member of the Maybank Group to take any action which it or such other member, in its discretion, considers appropriate to take in accordance with all such laws, regulations, requests and Maybank Group policies.
- 23.2 Such action may include but is not limited to the interception and investigation of payment messages, communications or other information sent to or by you and/or an Authorised Person via the Bank's systems or any other member of the Maybank Group ("**Payment Screening**"). Such a process may involve, amongst other things, the Bank making further enquiries as to whether a name which might refer to a named or sanctioned person or entity actually refers to that person or entity. You agree that the Bank shall not be liable for any Loss suffered by any party arising out of any delay or failure by the Bank or any member of the Maybank Group in processing any such payment messages, communications or information or performing any other obligations caused in whole or in part by any step taken by the Bank or any member of the Maybank Group, in its discretion, considers appropriate to take in accordance with all laws, regulations, requests, relevant Maybank Group policies or otherwise pursuant to the Payment Screening.
- 23.3 The Payment Screening may cause a delay in processing information or Instructions and therefore the Bank does not warrant that any information on the Bank relating to payment messages, communications or other information which are the subject of any action taken pursuant to Payment Screening is accurate, current and up-to-date at the time it is accessed whilst such action is being taken.
24. **Indemnity and Currency Conversion**
- 24.1 To the maximum extent permitted by applicable laws and regulations, and not inconsistent with the obligations of the Bank under the Code, you agree to indemnify the Bank and all of its officers, employees, nominees, directors and agents

("Indemnified Parties") for all Losses suffered or incurred by the Indemnified Parties as a result of, arising from or in connection with:-

- (a) the Bank acting or carrying out any Instruction purportedly given to the Bank pursuant to these Conditions whether or not such Instructions are unauthorised, inaccurate or incomplete;
- (b) the operation of the Account(s), the provision of any Investment or Service by the Bank to you and the performance of its functions as banker for you;
- (c) the Bank's preservation or enforcement of its rights under these Conditions and other applicable terms and conditions in connection with any Account, Investment or Service, or as a result of any non-compliance of these Conditions or of such other applicable terms and conditions by you;
- (d) any action taken by any party against you or the Bank for any reason whatsoever including but not limited to any breach of any term in these Conditions, unlawful, fraudulent, negligent or unauthorised use of the Account(s) and/or any Investment or Service through no fault of the Bank;
- (e) any involvement by the Bank in any proceeding of whatever nature for the protection of or in connection with the Account(s) and/or any Investment or Service; and
- (f) the compliance by the Bank with any existing or future law or regulation or official directive in respect of any of these Conditions.

24.2 You agree that any conversion from one currency into another for whatever reason, including without limitation the following:

- (a) conversion of any amount in any Account standing to your credit or any amount due from the Bank to you to any other currency for purposes of carrying out any Instruction or otherwise, assessing your liability to the Bank or enforcing the Bank's rights under these Conditions or in respect of any Service, Investment or Account (including to effect any set-off or consolidation by the Bank of Accounts); and
- (b) conversion of any sum received by the Bank (whether for credit into any Account or in payment of any sum due to the Bank) in any currency into the currency of the Account or the currency in which payment is to be made, as the case may be,

may be effected by the Bank in such manner as it may determine and at its own rate of exchange then prevailing. You agree that all Losses and risks resulting from such a conversion of one currency into another shall be borne by you.

24.3 The Bank reserves the right to reserve such sums in the Account(s) (including Accounts held jointly by you with other person(s)), as it may determine to be required to indemnify it for any Loss which it may suffer, incur or be liable to pay on your behalf and/or under or in connection with the Account.

## 25. General Limitations of Liability

25.1 Without prejudice to the generality of the other clauses herein, to the maximum extent permitted by applicable laws and regulations, and not inconsistent with the obligations of the Bank under the Code, the Bank shall not be liable for any Loss

suffered or incurred by you or any other person arising from the Bank acting on or failing to act on any Instruction given to the Bank, the operation of any Account or transaction entered into by you or through the Bank or utilisation of any Service by you or due to any cause whatsoever through no fault of the Bank, including without limitation the following:-

- (a) alteration of Instructions and/or forgery of your or any Authorised Person's signature;
- (b) any computer or system virus interference, sabotage or any other causes whatsoever which may interfere with any of the Bank's Services, or any breakdown or malfunction due to any cause whatsoever, of computer software or equipment whether belonging to the Bank or not, used in connection with any of the Bank's Services;
- (c) any government order, law, levy, tax or exchange restriction or any changes in the foregoing or any other cause of any kind whether similar to the foregoing or not which may be beyond the Bank's control, whether in Hong Kong or in a foreign jurisdiction;
- (d) any loss of, destruction to or error in the Bank's records, howsoever caused;
- (e) any diminution in the value of funds in the Account due to, inter alia, taxes, depreciation or fluctuation in exchange rates;
- (f) the unavailability of funds due to, inter alia, any of the following:-
  - (i) imposition or change in laws, rules or regulations, or any act of a government (whether recognised or unrecognised), central bank, monetary authority or other entity in any country relating to, without limitation, exchange controls, restrictions on convertibility, freezes, moratoria, expropriations, requisitions, changes in a country's currency for any reason whatsoever (including monetary union among countries), involuntary transfers or distraints of any kind;
  - (ii) force majeure, natural disaster, industrial action, acts of war, acts of terrorism, civil strife, riots, or a state of political or economic chaos in any country; or
  - (iii) any other circumstances beyond the Bank's control whether in Hong Kong or elsewhere.

25.2 If any such event mentioned in Clause 25.1(e) and (f) occurs, the Bank shall have the right in its absolute discretion and without notice to convert the currency of deposit into any other currency, and to recover the costs of replacing funds and/or any other costs and expenses incurred by the Bank.

## 26. Representations, Warranties and Undertakings

26.1 You hereby represent, warrant and undertake that:-

- (a) you have full capacity and authority to accept and agree to these Conditions, to open, maintain and/or continue to maintain all Account(s) or to enter into any transaction or utilise any Service from time to time, and to give the Bank any

- Instruction that may be given from time to time;
- (b) all authorisations, consents, licences or approvals (whether under any applicable law or otherwise) required to accept and agree to these Conditions, to open, maintain and/or continue to maintain all Account(s) from time to time, to enter into any transaction or utilise any Service provided by the Bank from time to time, and to give the Bank any Instruction from time to time have been obtained and would be maintained in full force and effect;
- (c) if you are a corporation, you are duly established, validly existing under the place of your incorporation and you are in good standing;
- (d) if you are a corporation, you shall immediately advise the Bank of any change (i) in the constitution or membership of the firm (whether by retirement, death, bankruptcy, mental disorder and/or other incapacity or admission of new parties); or (ii) in the name of the firm. Unless expressly released, you and all persons signing the Agreement shall continue to be liable under the Agreement irrespective of any such change;
- (e) if you are acting in your capacity as a partner of a partnership,
- (i) you will send to the Bank a copy of the partnership deed or partnership agreement and all amendments to such deed or agreement (if any) from time to time and in a timely manner;
- (ii) you are duly authorised under the relevant partnership agreement to accept and agree to these Conditions, to open, maintain and/or continue to maintain all Account(s) or to enter into any transaction or utilise any Service from time to time, to give the Bank any Instruction that may be given from time to time and to make the representations, warranties and undertakings contained in these Conditions; and
- (iii) no breach of the partnership agreement has occurred and is continuing and no such breach would occur as a result of your entry into or performance of your obligations under these Conditions;
- (f) if you are acting as a trustee for and on behalf of a trust created under a trust deed or other constituting instrument:
- (i) your appointment is valid and effective under the governing law of the trust deed and any other applicable law (and, if you are a corporate trustee, also under the laws of the jurisdiction of your incorporation) and you have the power to own assets in your capacity as trustee of the trust;
- (ii) you have power under the trust deed to (A) accept and agree to these Conditions, to open, maintain and/or continue to maintain all Account(s) or to enter into any transaction or utilise any
- Service from time to time, to give the Bank any Instruction that may be given from time to time and to make the representations, warranties and undertakings contained in these Conditions; and (B) to perform your obligations under these Conditions and that you have taken all necessary action to authorise such execution, delivery and performance;
- (iii) the acceptance and agreement to these Conditions does not violate or conflict with any law applicable to the trustee or to the trust, any provision of the trust deed, any order or judgment of any court or other agency of government applicable to the trustee, the trust or any asset of the trust, or any contractual restriction binding on or affecting the trustee, the trust or any asset of the trust;
- (iv) all governmental and other consents that are required to be obtained by the trustee with respect to these Conditions have been obtained and are in full force and effect, and all conditions of such consents have been complied with;
- (v) your obligations under these Conditions constitute legal, valid and binding obligations in your capacity as trustee of the trust, and are enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)), and no circumstances are known to you which would or might prevent the trustee from having recourse to the assets of the trust for the purposes of meeting such obligations;
- (vi) you will carry on the trust's activities in accordance with the trust deed and any applicable law affecting the trust;
- (vii) you will send to the Bank a copy of the trust deed, declaration of trust or any other documents constituting the trust ("**Trust Documents**") and all amendments (if any) to the Trust Documents from time to time and in a timely manner;
- (viii) you will not, without the prior consent of the Bank, amend the trust deed in a manner which could reasonably be expected to affect adversely your ability to perform your obligations under these Conditions;
- (ix) as trustee of the trust, you shall procure that any replacement, successor or additional trustee of the trust however appointed (a "**New Trustee**") shall, on appointment, assume and

- undertake to perform all of your obligations and liabilities under these Conditions as trustee, which will be evidenced by the New Trustee promptly signing and returning to the Bank such documents as the Bank may require;
- (x) you will not transfer any of the assets you hold as trustee of the trust to any New Trustee until the documents referred to in (ix) above has been signed by the New Trustee, and in the event any transfer takes place in breach of this sub-clause, any limitation of trustee liability shall cease to apply to the trustee;
- (xi) you shall procure that, before any New Trustee is appointed, the proposed replacement, successor or additional trustee (as the case may be) will provide to the Bank such confirmation (in a form satisfactory to the Bank) that each representation given by you will be satisfied immediately following the appointment of the New Trustee;
- (xii) subject to sub-paragraph (xi) above, any retiring trustee who has complied with all the provisions of this sub-clause 26.1 shall, subject to the prior consent of the Bank, be released from all liabilities in respect of these Conditions on retirement; and
- (xiii) in the event that a trustee retires and is not replaced by a New Trustee, such retiring trustee shall be released from all liabilities in respect of these Conditions provided that:
- (A) such retiring trustee confirms that all his rights and titles to the property and assets of the trust have been transferred to the remaining trustees in their capacity as trustees of the trust and waives all his rights and interests in the property of the trust by signing and returning to the Bank a letter stating the same (which shall be in a form satisfactory to the Bank);
- (B) a minimum number of appointed trustees is maintained under the terms of the trust deed;
- (g) except for any security or encumbrance created in favour of the Bank, no person other than you has or will have or acquire any beneficial or other interest in or security or other rights over any Account and/or over any cash or assets held by the Bank for you without the prior written consent of the Bank;
- (h) you are not a United States person for purposes of or in connection with the FATCA or any equivalent law or regulation of the United States and that you undertake to inform the Bank if at any time you are or become a United States person for purposes of or in connection with the FATCA or any equivalent law or regulation of the United States
- (i) if you are a U.S. tax subject, you have signed Form W9; and
- (j) you will complete and deliver to the Bank all relevant tax forms as may be necessary under these Conditions and/or as the Bank may from time to time request.
- 26.2 The representations, warranties and undertakings in this Clause shall be deemed repeated whenever any Instruction is given to the Bank, any Account is established or opened and any cash, asset or instrument is deposited or received by the Bank for you or any transaction is entered into or any Service is utilised.
- 27. Lack of Capacity**
- 27.1 In the event that the Bank receives written notice of your lack of capacity under the Mental Health Ordinance (Cap. 136) (or such other equivalent, amendment or replacement legislation), the Bank shall be entitled (but not obliged) to:
- (a) accept and execute Instructions of any nature believed by the Bank to be genuine and purporting to be signed, given or issued by an Authorised Person; and
- (b) without assigning any reason whatsoever, with or without prior notice to you, suspend, freeze, terminate or close the Account or transaction or the use or availability of any or all of the Services.
- 27.2 You agree to ratify everything that your Authorised Person does on your behalf arising from or in connection with any transaction, the Account and/or the Services.
- 28. Outsourcing**
- The Bank shall have the right to outsource or sub-contract any part of its banking operations to such Third Party (including but not limited to any party outside Hong Kong) on such terms as it deems fit in its sole discretion. Such operations shall include but not be limited to the creation, maintenance and archiving of documents and records, document production and mailing, and insertion and mailing of security and user identification codes.
- 29. Illegality**
- Notwithstanding any other provision in these Conditions, if by reason of any applicable law or regulation or regulatory requirement (whether or not having the force of law) or any change, judicial decision, the interpretation, administration, application of any applicable law or regulation or regulatory requirement, it shall become (or it shall appear to the Bank that it has or will become) unlawful or otherwise prohibited for the Bank to maintain any Account, provide any Investment or Service or give effect to any of its obligations in these Conditions, the Bank shall notify you to that effect, whereafter, you shall immediately upon receipt of such notification from the Bank pay the whole of all monies owing to the Bank by you.
- 30. Right of Set-Off and Combination of Accounts**
- Without prejudice to the rights of the Bank at common law, the Bank shall be entitled (but shall not be obliged) at any time without notice, to combine or consolidate all or any of your Account(s) and to set-off any credit balance, whether matured or not, in any one or more such Accounts, against all liabilities of you or of any one or more of account holders on any Account, whether such liabilities be present or future, actual or contingent, primary or collateral, several or joint. In this clause, references to an Account shall include an Account

- whether held singly by you or jointly with any other person(s), and under whatever style, name or form (which includes trade names of sole-proprietorships), and whether pursuant to these Conditions or otherwise, and whether made available by the Private Wealth Unit, Consumer Banking or Global Banking of the Bank or otherwise and wheresoever situate including those in overseas branches.
31. **Availability and Variation of Accounts and/or Services**
- 31.1 The Bank may without notice and without giving any reason and without incurring any liability, limit, cancel or suspend the operation or use of any Account and/or Service in whole or in part due to any cause beyond the Bank's control (including without limitation force majeure, industrial action, power failure, computer breakdown, or for updating/maintenance and upgrading purposes).
- 31.2 Unless otherwise provided herein, the Bank may from time to time with or without prior notice set or vary the frequency or manner of use of any Account and/or Service including without limitation the transaction types, withdrawal or transaction limits, services, features, products and facilities available through or under the Account and/or Service.
- 31.3 The Bank may make available new, additional or enhanced transaction type(s), service(s) and/or product(s) through or under any of the existing Account and/or Services at any time. By utilising such new, additional or enhanced transaction type(s), service(s) and/or product(s) as and when such transaction type(s), service(s) and/or product(s) become available, you shall be bound by the terms and conditions in force governing such new transaction type(s), service(s) and/or product(s).
- 31.4 The Bank may as part of the Services provided to you, from time to time and at the Bank's discretion, provide you information, updates, marketing and/or promotional materials on products, services or investment opportunities which you are as part of the Services entitled to receive, via telephone, facsimile, email, post and other modes of communication as the Bank may determine. In this connection, you request, authorise and consent to the Bank, its employees and representatives contacting you via the aforesaid modes of communication to provide such information, updates, marketing and/or promotional materials from time to time. Unless otherwise stated by the Bank, these Conditions shall apply to such products, services and investment opportunities.
32. **Variation of Fees and Charges**
- The Bank may vary the amount of fees or the basis of calculation in any schedule of fees published by the Bank (for standard fees) or advised to you (for non-standard fees) from time to time, at the time the Services are offered and on request upon at least thirty (30) days' prior written notice to you. However, in the event that such variation in fees and/or charges are imposed as a result of events beyond the control of the Bank, you agree that notice of less than thirty (30) days can be given and shall be accepted by you.
33. **Closure of Account and Termination of Transaction and/or Service**
- 33.1 The Bank may terminate the Account / Service with or without cause, and with or without prejudice to the continuance of the other Account / Service which shall continue to be governed by the Agreement, provided that not less than thirty (30) days' prior notice has been given to you.
- 33.2 Without prejudice to the generality of Clause 33.1, the Bank may at any time close the Account and/or terminate, withdraw or revoke any transaction or Service, in whole or in part immediately by giving notice if:
- there is any change of law or regulation which prohibits or renders illegal the maintenance or operations of such Accounts or any part thereof;
  - the Account is being used for criminal activities;
  - where the Account has been used improperly or in breach of the Conditions herein or is being used for criminal activity or for illegal purposes; and
  - when all deposits in the Account have been withdrawn or when a service charge debited to the Account results in or will result in a nil or negative balance,
- and to the maximum extent permitted by applicable laws and regulations, and not inconsistent with the obligations of the Bank under the Code, you shall not hold the Bank responsible for any Loss suffered thereby.
- 33.3 The Bank may discharge its liability to you for any money or credit balance in the closed Account by returning the monies to you in such mode and manner as the Bank deems fit, which includes sending a cheque or draft by ordinary post to your last known address in the Bank's record.
- 33.4 Your obligation to pay all fees, costs, charges, expenses and amounts accrued and due to the Bank shall survive the termination of the transaction, Account or Service.
- 33.5 Upon closure of the Account or termination or revocation of the transaction or Service, you shall immediately return to the Bank all property belonging to the Bank.
- 33.6 If for any reason payments are effected after closure of the Account or termination of the Service, all sums so paid shall be a debt due from you to the Bank and repayable forthwith.
- 33.7 You may at any time, close the Account or terminate the Services upon giving notice in writing to the Bank of not less than thirty (30) days.
- 33.8 To the maximum extent permitted by applicable laws and regulations, and not inconsistent with the obligations of the Bank under the Code, in no circumstances shall the Bank be liable for any consequential or special damage to, loss (direct or indirect) suffered by you (including without limitation to the unauthorized access to any messages sent by the Bank to you).
34. **Bank's Security Rights**
- 34.1 In the event of any breach by you of these Conditions or any default or non-payment of any other debt, obligation or liability of you to the Bank, the Bank shall also be entitled to, without notice to you, sell any Collateral (as defined in the following Clause) by way of public or private sale without any judicial proceeding whatsoever, and retain from proceeds derived therefrom the total amount remaining unpaid, including all costs, legal fees and costs (on an indemnity basis), charges and other expenses incidental to such sale. You shall immediately upon demand pay to the Bank the amount of any deficiency.
- 34.2 You agree that when the Bank accepts or incurs any liability at your request, or when the Account is overdrawn, or when any interest, service charge, tax or other sum ("**charge**") is due and payable



- to the Bank, any deposit, fund, document, instrument, chattel, bond, debenture, share or other securities, and any other valuables held by the Bank in the name of, or on behalf of, you ("**Collateral**") including Collateral in safe custody, shall automatically be pledged and/or charged to and constitute continuing security to the Bank for discharge of such liability and repayment of such overdraft. The Bank shall have the right to retain such Collateral, or any part thereof until the liability, overdraft and/or charge is discharged and/ or repaid.
35. **Succession/Assignment/Transfer**
- 35.1 These Conditions are binding and enure to the benefit of the Bank and its successors in title and shall continue to be binding on you notwithstanding:
- (a) any change in the name or constitution of the Bank; or
- (b) the consolidation or amalgamation of the Bank into or with any other entity, and in such event such entity shall substitute for the Bank in relation to these Conditions, all Accounts and all Investments and Services, made available at that time by the Bank to you and these Conditions shall continue in force as between you and such entity.
- 35.2 The Bank may assign and/or transfer or novate any or all of its rights and obligations in relation to any Account, Investment or Service to any other person by notifying you.
- 35.3 You shall not, without the written approval of the Bank, in any way assign, transfer or charge to any Third Party whether by security or otherwise your rights and obligations under these Conditions or in relation to any Account, Investment or Service.
36. **Bank's Agents**
- The Bank may use any agent or Third Party as the Bank may reasonably select for the purpose of providing any product and Service to you or otherwise. All charges incurred by the Bank in connection with the engagement of such agents and Third Parties will be for your account. The Bank is not liable for any Loss incurred by you or any other person as a result of the acts or omissions of such agents or Third Parties provided that the Bank has exercised reasonable care in the selection of such agents or Third Parties.
37. **Severability**
- If at any time any one or more of the provisions in these Conditions is or becomes invalid, unlawful or unenforceable in any respect under the law of any jurisdiction, neither the validity, legality and enforceability of the remaining provisions of these Conditions nor the validity, legality or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired.
38. **Amendments, Waiver and English Version to Prevail**
- 38.1 The Bank reserves the right to add to or vary any of these Conditions at any time by giving you prior notice of the same.
- 38.2 All amendments will take effect and bind you from the effective date mentioned in the Bank's notice or with at least thirty (30) days' prior written notice, whichever date is later. The advance notice may be given to you by exhibiting notice of the amendments or making available a set of the revised Conditions at the Bank's branches, on the Bank's website or via publication through any media. Upon such exhibition or publication, you shall be considered to have been notified of such amended Conditions.
- 38.3 Notwithstanding the above, the Bank shall not be required to give you any advance notice if such changes are required in an emergency including where such changes need to be effected in order to meet a regulatory or legal requirement or where it is not practicable or reasonable to give such advance notice.
- 38.4 If you do not accept any addition, alteration, variation or modification to these Conditions, you shall discontinue utilizing the Service and/or operating the Account and you shall promptly close the Account before the effective date of such addition, alteration, variation or modification to these Conditions as specified by the Bank in such notice. If you continue to operate the Account and/or utilize the Service after the date as aforementioned, you shall be deemed to have agreed to the addition, alteration, variation or modification without reservation.
- 38.5 No failure to exercise or enforce and no delay in exercising or enforcing on the part of the Bank its rights under any of the provisions in these Conditions or any other applicable terms and conditions shall operate as a waiver thereof nor shall it in any way prejudice or affect the right of the Bank afterwards to act strictly in accordance with the powers conferred on the Bank under these Conditions or such terms and conditions.
- 38.6 Any reference in these Conditions to the provisions herein shall, where the context permits, include any amendment thereof and any revised Conditions.
- 38.7 If there is a discrepancy between the English version and a version which is in any other language, the English version shall prevail. For the avoidance of doubt, the Bank is under no obligation to provide any document in any language other than English.
39. **Entire Agreement**
- These Conditions, together with:
- (a) any other terms, conditions, rules or regulations contained in any other documents or forms supplied by the Bank; and
- (b) any term, condition, rule, regulation or agreement contained in any website relating to an Account, Investment or Service which is accessed by you,
- comprise the entire agreement between the Bank and you. You further agree that any representation, agreement, statement or understanding whether oral or in writing made prior to the date of this contract is not binding on the Bank or you except to the extent that the Bank has given you a written confirmation specifically overriding this clause. You confirm that you have read and/or understood the conditions and all such terms, conditions, rules, regulations or agreements and will be bound by them accordingly.
40. **Governing Law and Jurisdiction**
- 40.1 These Conditions and any non-contractual obligation relating thereto shall be governed by the laws of Hong Kong.
- 40.2 You irrevocably submit to the jurisdiction of the courts of Hong Kong. Any proceeding instituted by you against the Bank shall be solely and exclusively in the courts of the country where such branch is situated unless the Bank otherwise agrees in writing, and any judgment or order of court made against the Bank shall not be

- enforceable or executed against any other branch of the Bank.
- 40.3 The Bank shall have the right to commence and maintain proceedings against you in the courts of any other jurisdiction or to enforce in any jurisdiction whatsoever any security furnished by you to the Bank or its rights under these Conditions (including without limitation any debt due to the Bank by you under any Account).
- 40.4 Any monies payable and/or due from the Bank under any Account whatsoever and/or any documentary credit, guarantee, indemnity, time deposit or under any other facility agreement whatsoever is payable by the Bank solely and exclusively at the branch of the Bank from which payment of the monies is due.
- 40.5 Service of legal process may be effected by post to your mailing address but this does not preclude the Bank from effecting service of process in any other manner permitted by law. If required by the Bank, you agree to appoint and maintain at all times an agent in Hong Kong authorised to receive service of process on your behalf and to provide the Bank with written acknowledgement by such person of its agreement to act as your agent for the purposes of service of process.
41. **Definitions**
- "Account"** means any account held by you with the Bank, including but not limited to current accounts, savings account, time deposit accounts, investment accounts or any other types of accounts which may be made available by the Bank from time to time.
- "Authorised Person"** means a person authorised by you (whether alone or jointly with any other person or persons) to give any Instruction and/or execute or sign any instrument and/or to operate the Account and/or to effect any transaction or Investment or utilise any Service for and on your behalf and includes without limitation, a donee of a lasting power of attorney granted by you.
- "Bank"** means Malayan Banking Berhad, incorporated in Malaysia with limited liability and acting through its Hong Kong branch ("Maybank") and includes any successor or assign of the Bank.
- "Business Day"** for Hong Kong dollar deposits means a day when the Bank is open for business, in Hong Kong and for foreign currency deposits means a day when both the Bank and any relevant business centre as determined by the Bank for the relevant foreign currency transaction are open for business.
- "Code"** means the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission as it may be amended or varied from time to time.
- "Conditions"** means these terms and conditions for the Accounts, Investments and Services (including Section A (General Terms) and the specific terms and conditions relating to any Account, Investment and/or Service as set out in any other Section of these terms and conditions and any Annexure, as may be varied, amended or supplemented from time to time).
- "FATCA"** means sections 1471 through 1474 of the United States Internal Revenue Code of 1986 (also known as the United States Foreign Account Tax Compliance Act), any equivalent law or regulation of the United States or any other jurisdiction, and any intergovernmental agreement between the United States and another jurisdiction relating to the foregoing, as such may be in effect from time to time).

**"FATCA Compliance Obligations"** means any obligation of the Bank or any of its affiliates under or pursuant to (i) FATCA, any associated regulations, official guidance and any agreement with the US Internal Revenue Service relating to FATCA; or (ii) any agreement entered into by the Bank or any of its affiliates pursuant to FATCA.

**"Instructions"** means any request, application for the opening of any Account or the provision of any Investment or Service, authorisation or instruction, in whatever form, substance and manner as may be required by or otherwise acceptable to the Bank and howsoever sent, given or transmitted (whether by mail or through the Internet Banking Service, telecommunications, computer or other electronic terminal, equipment or system or otherwise) at any time whatsoever whether before or after these conditions are applicable, made to the Bank by you or an Authorised Person.

**"Internet Banking Service"** means the Bank's internet banking Services.

**"Investments"** includes shares, stocks, bonds, notes, debentures, commercial paper, certificates of deposit, loan stock, structured products, futures, warrants, partnership interests, interests in any unit trust or collective investment schemes, currency linked deposit, currencies, precious metals, commodities (tangible or intangible), other securities or financial instruments commonly regarded as investments and any forwards, swaps, options or other derivatives on any securities, currencies, commodities, interests rates or any index, indicator or benchmark.

**"IRS"** means the United States Internal Revenue Service.

**"Losses"** means all losses, costs, damages, claims and expenses, including legal fees and costs (on a full indemnity basis), of any nature whatsoever, and howsoever suffered or incurred (and whether direct or indirect, consequential or special and including any loss of profit or interest).

**"Maybank Group"** means the Bank and any of its branches, representative offices, subsidiaries, related corporations, affiliates, associated entities and any of their branches and offices.

**"PIN"** means personal identification number issued to you.

**"Qualified Intermediary"** means a person described in Treasury Regulations §1.1441-1(e)(5)(ii) made under the United States Internal Revenue Code of 1986 (or any substitute or equivalent provision) which has entered into a withholding agreement with the United States Internal Revenue Service.

**"Services"** means any service provided by the Bank (including but not limited to services relating to deposits, Investments and custody of your Investments) and "Service" means any one of them.

**"Third Parties"** means persons or corporations other than you.

#### 42. **Interpretation**

42.1 The expressions "you", "your", "yourself" and "account holder" means the person(s) in whose name(s) the Account is maintained, and includes the personal representatives and successors in title of such person(s).

42.2 Unless the context otherwise requires, references in these Conditions to statutes and other legislation include re-enactments and amendments thereof and include any subsidiary legislation made under any such statute or other legislation.

- 42.3 Unless the context otherwise requires, references in these Conditions to documents (howsoever called) include variations and replacements thereof and supplements thereto.
- 42.4 Unless the context otherwise requires, references in these Conditions to a person include any corporation, firm, partnership, society, association, trade union, institution, other business concern, statutory body, agency and/or other governmental authority (whether local or foreign).
- 42.5 Unless the context otherwise requires, in these Conditions, words importing the singular number shall also include the plural number and vice versa and words importing the masculine gender shall include the feminine and neutral genders.
- 42.6 In these Conditions, clauses and other headings (if any) are inserted solely for ease of reference and shall not affect the interpretation of any provision herein.
- 42.7 References to "Annexure" and "Section" are to be construed as references to the annexure to and section of these Conditions.

## SECTION B (DEPOSIT PRODUCTS)

### General

The terms and conditions set out in this Section supplement and are additional to Section A (**GENERAL TERMS**). Unless the context otherwise requires or this Section expressly provides otherwise, all words and expressions as defined in Section A (**GENERAL TERMS**) shall have the same meanings when used or referred to in this Section.

### B1. TIME DEPOSITS

1. A time deposit ("**Time Deposit**") is a deposit placed with the Bank for a fixed or minimum period of time, where premature withdrawal is not permitted except with the Bank's consent, and if permitted by the Bank may result in costs and losses suffered by you.
  2. The Bank may, in its discretion, determine the acceptable currencies, minimum deposit amount (if any), minimum maturity period, interest rates and manner of computation of interest applicable to Time Deposits from time to time.
  3. Time Deposit may be placed in a currency acceptable to the Bank on a Business Day, in accordance with the requirements prescribed by the Bank from time to time and value-dated on such date as the Bank may determine.
  4. If the maturity date of a Time Deposit is due on a non-Business Day, the maturity date shall either be on the previous Business Day or the following Business Day, as the Bank may determine in its discretion.
  5. Upon the maturity of the Time Deposit, the Bank may at its discretion, renew the amount of deposit and any interest accrued for a like term and in like currency, at the Bank's rate of interest prevailing at the time of renewal, unless the Bank receives prior instructions to the contrary provided that in the case of Foreign Currency Time Deposit Accounts, instructions to the contrary are received by the Bank at least 2 Business Days prior to the maturity of the Time Deposit.
  6. Premature withdrawal of a Time Deposit (whether partially or in full) is not allowed. However, the Bank may at its absolute discretion allow a premature withdrawal subject to early withdrawal charges on such terms as the Bank may determine and the Bank being fully indemnified for any Loss suffered by it as a result of allowing a premature withdrawal.
7. The Bank shall have no obligation to (but may, at its discretion) pay interest on time deposits prematurely withdrawn for such time periods and at such rates as the Bank may determine in its discretion, less such charges as it may impose. In the case of Hong Kong Dollar Time Deposit Accounts, no interest shall be payable for Time Deposits prematurely withdrawn within 3 months from the date of the initial deposit of funds with the Bank or such other period as the Bank may determine.
  8. Interest on a Time Deposit shall be payable:
    - (i) on maturity; or
    - (ii) if agreed between you and the Bank, on the Business Day following the placement of the Time Deposit or clearance of the cheque(s) deposited with the Bank (as the case may be) ("**Upfront Interest**").
  9. Where Upfront Interest has been paid and premature withdrawal of the Time Deposit is allowed, the Bank is entitled to claw back the Upfront Interest paid (in full or in part) as the Bank may determine and such amount as determined by the Bank is binding on you.
  10. The Bank may repay a Time Deposit by crediting such current or other account which you may have with the Bank.

### B2. NON-CONVERTIBLE CURRENCIES

1. The Bank may (but shall not be obliged to) permit deposits to be made in the Account in currencies which are not freely convertible or are otherwise subject to certain restrictions ("**Non-Convertible Currency Deposit Account**").
2. You may make deposits into the Non-Convertible Currency Deposit Account subject to such conditions as the Bank may impose from time to time, including but not limited to the following :
  - (a) by way of foreign exchange conversion from a freely convertible denominated currency(ies), at the Bank's prevailing foreign exchange rate; or
  - (b) transfer between Non-Convertible Currency Deposit Accounts denominated in the same currency.
3. The Bank may refuse to accept physical currency notes for deposit placement.
4. You may withdraw deposits held in a Non-Convertible Currency Deposit Account in such manner as the Bank may permit, and subject to such conditions as the Bank may impose, from time to time. The permitted methods of withdrawal may include the following:
  - (a) by way of foreign exchange conversion to a freely convertible currency(ies), at the Bank's prevailing foreign exchange rate; or
  - (b) transfer between Non-Convertible Currency Deposit Accounts denominated in the same currency.
5. The Bank may refuse to allow withdrawal in physical currency notes.
6. Remittance in the non-convertible currency (inward or outward) will not be allowed unless the Bank agrees otherwise.

7. All deposits, withdrawals and any other related transactions in a non-convertible currency are subject to, and you agree to comply at all times with, all the applicable laws, regulations, guidelines, restrictions, administrative rules, decisions, orders or directions and any amendment thereto issued by the relevant authority.
8. You agree to bear the exchange control and foreign exchange risks involved in such foreign exchange conversion.
9. The Bank shall not be liable for any loss, cost and expense and charge incurred or suffered by you arising from any change to those laws, regulations, guidelines, restrictions, administrative rules or directions, the diminution in the value of a non-convertible currency, the unavailability of funds in a non-convertible currency, the unavailability of the exchange rate for a non-convertible currency or any other causes beyond the Bank's control after your placement of funds into the Non-Convertible Currency Deposit Account.

### **B3. STRUCTURED DEPOSITS**

#### **1. General**

- 1.1 Without prejudice to the application of Section A (**GENERAL TERMS**) and D1 (**GENERAL TERMS AND CONDITIONS FOR INVESTMENT PRODUCTS**) of these Conditions, this Section B3 (**STRUCTURED DEPOSITS**) of these Conditions contains specific terms applying to your investment-linked deposits ("Structured Deposit") placed and/or maintained with the Bank ("Principal Amount") for a minimum period of time where the amount of yield or interest ("Interest") on the deposit is to be calculated in whole or in part by reference to changes in any underlying instrument (including, without limitation, any equity or debt security, loans, futures, commodities, currencies, indexes or any derivatives relating thereto).
- 1.2 Unless the context otherwise requires or this Section B3 (**STRUCTURED DEPOSITS**) expressly provides otherwise, all words and expressions as defined in Section A (**GENERAL TERMS**) and Section D1 (**GENERAL TERMS AND CONDITIONS FOR INVESTMENT PRODUCTS**) shall have the same meanings when used or referred to in this Section B3 (**STRUCTURED DEPOSITS**).
- 1.3 The Bank may, in its discretion, determine the acceptable currencies, minimum Principal Amount, minimum maturity period, Interest and manner of computation of Interest applicable to Structured Deposits from time to time.
- 1.4 Any additional terms and conditions applicable to a specific Structured Deposit(s) placed with the Bank will be set out in (i) the applicable term sheet ("Term Sheet") and (ii) a confirmation relating to such Structured Deposit ("Confirmation") issued by the Bank to you.
- 1.5 In the event of any inconsistency or conflict between the terms and conditions of a given Term Sheet or Confirmation in respect of a specific Structured Deposit and these Conditions, the terms and conditions of the Term Sheet and Confirmation shall prevail in respect of that relevant Structured Deposit to the extent of such inconsistency or conflict.
- 1.6 In the event of any inconsistency or conflict between the terms and conditions of the Term Sheet in respect of a specific Structured Deposit and the terms and conditions of the Confirmation in respect of that specific Structured Deposit, the

terms and conditions of the Confirmation shall prevail in respect of that specific Structured Deposit to the extent of such inconsistency or conflict.

#### **2. Payments to be made by the Bank**

Unless otherwise provided in the relevant term sheet and/or confirmation, the Bank shall pay you the Principal Amount and Interest (if any) on maturity.

#### **3. Premature Withdrawal or Termination**

- 3.1 Premature withdrawal or termination of a Structured Deposit is not allowed. However, the Bank may at its absolute discretion allow a premature withdrawal or termination of the Structured Deposit subject to early withdrawal charges (including any deficit incurred where the premature withdrawal charges due to the Bank exceed the Principal Amount) on such terms as the Bank may determine and the Bank shall be fully indemnified for any Loss suffered by it as a result of allowing a premature withdrawal or termination.

- 3.2 Upon the Bank's consent to the premature withdrawal or termination, you shall not be entitled to withdraw your request for premature withdrawal or termination or to receive any Interest or payment after the date of the Bank's consent.

- 3.3 Partial withdrawal or partial early termination of a Structured Deposit is not allowed. Any such attempt will be treated by the Bank as a request for premature withdrawal or termination.

#### **4. Early Redemption by the Bank**

The Bank shall be entitled to redeem the Structured Deposit prior to its maturity in accordance with the terms of the relevant Term Sheet and/or Confirmation.

#### **5. Extraordinary Event**

If there occurs in relation to any of your Accounts or any Transaction any event which the Bank in good faith believes to have a material adverse effect on any Structured Deposit or Account and shall include without limitation any form of exchange control restriction or requirement of whatsoever nature affecting availability, convertibility, credit or transfers of currencies, commodities, securities, financial instruments or funds, any form of debt or other moratorium on jurisdictions, individuals or entities, any devaluation, redenomination or demonetisation of the underlying currencies, commodities, securities or instruments of any transaction and/or any form of restriction or requirement which in the Bank's good faith opinion adversely alters or changes the rights or obligations which the Bank in good faith accepted the placement of such Structured Deposit or the establishment of the Account ("**Extraordinary Event**"), the Bank shall have the sole and absolute discretion to determine any adjustment or action necessary in relation to such Account, such Transaction or any or all transactions between you and the Bank in view of the Extraordinary Event. Such adjustments or actions may include altering or varying any Interest payable under the Structured Deposit, the underlying investment products, or formula or method of computation of any Interest on the Structured Deposit, the specified currency, tenor of the Structured Deposit, or other specifications of one or more Structured Deposits, or terminating the relevant Transaction or some or all Transactions, or the suspension or closure of the Account or otherwise. Provided the Bank undertakes such action in good faith, any such adjustment or action shall be binding on you and you shall be liable for all Losses incurred by the

Bank on your account or which you are consequently liable for as a result of such adjustment or action.

## SECTION C (CURRENCY LINKED DEPOSIT)

### 1. General

1.1 The terms and conditions set out in this Section shall apply in respect of each Currency Linked Deposit placed and/or maintained with the Bank.

1.2 The terms and conditions set out in this Section supplement and are additional to Section A (**GENERAL TERMS**) and Section D1 (**GENERAL TERMS AND CONDITIONS FOR INVESTMENT PRODUCTS**). Unless the context otherwise requires or this Section expressly provides otherwise, all words and expressions as defined in Section A (**GENERAL TERMS**) and Section D1 (**GENERAL TERMS AND CONDITIONS FOR INVESTMENT PRODUCTS**) shall have the same meanings when used or referred to in this Section.

### 2. Risk Acknowledgment

2.1 Currency Linked Deposit carry risks not normally associated with ordinary bank deposits and are generally not a suitable substitute for ordinary savings or time deposits. It involves a currency option and part or all of the interests earned on the Currency Linked Deposit represents the premium on this option. Currency Linked Deposit is speculative and is not appropriate if you are not willing or able to accept the risk of adverse fluctuations in the reference rate. In placing a Currency Linked Deposit, you should generally select a currency pair which you are either comfortable with and/or indifferent to holding.

2.2 By investing in a Currency Linked Deposit, you confirm that you have read and you agree, accept and acknowledge the Risk Disclosure Statement set out in Annexure 1 herein and such other relevant disclosure statements furnished to you by the Bank from time to time in respect of the relevant Currency Linked Deposit.

### 3. Terms applicable to Currency Linked Deposit

3.1 A Currency Linked Deposit is a currency linked investment where the amount of yield payable or the amount of base principal repayable or the total return (or any combination) is to be calculated in whole or in part by reference to changes in some specified rate or price or where your right to principal or yield (or both) may be satisfied by payment in a different currency.

3.2 The Bank has the right to determine the currency reference rates available for Currency Linked Deposit and the terms to be quoted for a Currency Linked Deposit, including the acceptable currencies, minimum deposit amount, minimum maturity period (if any), interest rates and manner of computation of interest.

3.3 If the Bank quotes terms for a Currency Linked Deposit (whether orally or in writing) and you accept such terms (whether orally or in writing) such acceptance shall constitute a binding transaction. You shall be bound to invest and place the base principal amount of the Currency Linked Deposit (the "**Base Principal Amount**") on the terms agreed and the Bank is authorized to deduct the Base Principal Amount from your Account. If you fail to place the Base Principal Amount following your agreement with the Bank, you will remain liable for any Loss incurred by the Bank, including the cost of unwinding any hedging

position taken by the Bank to cover the Currency Linked Deposit.

3.4 The additional and/or supplemental terms pertaining to each Currency Linked Deposit shall be set out in a written confirmation ("**Confirmation Note**"). However any failure or delay by the Bank to deliver the Confirmation Note to you shall not prejudice the validity of the transaction.

3.5 In the event of any inconsistency between these Conditions and the Confirmation Note of a particular Currency Linked Deposit, the latter shall prevail.

3.6 The Confirmation Note of each Currency Linked Deposit shall, *inter alia*, specify a Start Date or Trade Date, a Fixing Date and a Maturity Date. The Start Date or Trade Date is the date on which the Base Principal Amount of the Currency Linked Deposit is to be placed with the Bank. The Fixing Date is the date on which the reference rate is fixed for the purposes of calculating the amount to be paid in respect of yield or to be repaid in respect of Base Principal Amount or of determining whether the Base Principal Amount or the yield (or both) will be paid in base currency or the alternate currency. On the Maturity Date, the proceeds arising from the Currency Linked Deposit will be credited to your Account, unless otherwise instructed by you.

3.7 The Fixing Date of a Currency Linked Deposit may be adjusted to another day that the Bank reasonably considers to be appropriate including but not limited in the following circumstances:

(a) where the date originally specified is not a Business Day for the relevant currencies; or

(b) where there is market disruption on the Fixing Date that, in opinion of the Bank, makes it impractical to fix the reference rate for the purposes of the Currency Linked Deposit on that date.

3.8 The Maturity Date of a Currency Linked Deposit may be adjusted to another day that the Bank reasonably considers it to be appropriate including but not limited in the following manner:

(a) where the Fixing Date is postponed for any reason, the Maturity Date will be postponed to a date as determined by the Bank or

(b) where the date originally specified as the Maturity Date is not a Business Day, in which case the Maturity Date will be the following Business Day.

3.9 In the case of a Currency Linked Deposit for which the confirmation specifies a yield rate and/or a yield amount, such yield rate applies only to the period from the Start Date to the Maturity Date and the yield amount is for that period only.

3.10 In all cases, if the Maturity Date is postponed for any reason, the yield amount due to you will not be adjusted.

3.11 Where a rate, price, yield or amount in relation to a Currency Linked Deposit is to be determined by the Bank at or during a particular time or period, such determination shall be made by the Bank in good faith and in accordance with generally accepted practices in the relevant market. Such determination shall be conclusive and binding on you in the absence of manifest error. Where the Bank exercises discretion in making any other determination in relation to a Currency Linked Deposit, it shall exercise such discretion in good faith and in a commercially reasonable manner.

- 3.12 A Currency Linked Deposit may not be withdrawn or repaid prior to the specified Maturity Date except with prior written consent of the Bank, which may be subject to such conditions as the Bank may determine in its discretion. In determining the repayment amount in the case of any early withdrawal, the Bank may recover from you any Loss that it may incur in relation to the early withdrawal, including without limitation, break costs, administrative costs, costs of unwinding any hedge put in place, any cost of funding or any loss of bargain. You acknowledge that this may result in a lower rate of return, or even a negative rate of return including the loss of Base Principal Amount invested.
- 3.13 If there occurs, in relation to any Currency Linked Deposit placed by you with the Bank, an event which the Bank determines in good faith to have a material adverse effect on the transaction (including without limitation any form of exchange control restriction or requirement whatsoever affecting the availability, convertibility, credit or transfers of currencies and funds or if the Bank determines at any time that, by reason of any event or circumstance it is, or may be, impossible to make a commercially reasonable and reliable determination of any rate with respect of the Currency Linked Deposit or to repay the Currency Linked Deposit in either or both the base currency or the alternate currency), the Bank may at its discretion, by notice to you, terminate the relevant Currency Linked Deposit or determine any adjustment or action in relation to any transaction between you and the Bank and, you shall be liable for any Loss incurred by the Bank on your account as a result thereof and you acknowledge and agree that it may have the effect of reducing the expected return or reducing the Base Principal Amount payable to you.

Transaction, the confirmation prevails in relation to that Investment or Transaction.

- 1.3 Without prejudice to Clause 1.2, any specific term or confirmation relevant to a particular Investment or Transaction or category thereof shall be supplemental to, and form part of, these Conditions and shall constitute a single agreement between you and the Bank.

- 1.4 Unless the context otherwise requires or this Section expressly provides otherwise, all words and expressions as defined in Section A shall have the same meanings when used or referred to in this Section.

2. **Your relationship with the Bank in relation to Investments and Transactions**

- 2.1 **THE FOLLOWING PROVISIONS ARE IMPORTANT AND YOU ARE REQUESTED TO READ THEM CAREFULLY AND UNDERSTAND THEIR IMPLICATIONS FOR YOU BEFORE DEALING WITH THE BANK IN RELATION TO ANY INVESTMENT OR TRANSACTION.** You represent, warrant and agree that:

- (a) where the Bank has specifically agreed in writing to provide you with "execution-only" service in relation to Investments and Transactions:

- (i) the Bank's Services will be limited to the execution of your specific Instructions for such Investments and Transactions specified by you in accordance with your Instructions;

- (ii) the Bank and its Personnel are not obliged to, and do not, provide any recommendation, advice or solicitation in relation to such Investments and Transactions, and neither the Bank nor its Personnel will act as your fiduciary or financial adviser or legal or tax adviser, or shall owe any duty of care and skill in relation to any decision on the acquisition, holding or disposal of an Investment or Transaction; and

- (iii) since the Bank will not solicit or provide any investment advice or recommendation to you in relation to such Investments or Transactions, you may not benefit from the protection offered by applicable laws on suitability assessment of an Investment or Transaction as may otherwise be applicable in a solicited or advisory Investment or Transaction;

- (b) save where sub-clause 2.1 (a) applies, the Bank may provide you with dealing and advisory services from time to time in relation to Investments and Transactions but neither the Bank nor its Personnel will act as your fiduciary or financial or legal or tax adviser;

- (c) you will be responsible to make your investigation and appraisal assessment of each and every Investment or Transaction, and all decisions with respect to investing in, holding or disposing of any Investment or entering or determination not to enter into or unwinding or maintaining any Transaction are yours;

- (d) you are responsible to familiarise yourself with all the terms and conditions of each of the Investments and the risks involved;

## SECTION D (INVESTMENT PRODUCTS)

### D1. GENERAL TERMS AND CONDITIONS FOR INVESTMENT PRODUCTS

#### 1. General

- 1.1 Without prejudice to the application of Section A **GENERAL TERMS** of these Conditions, this Section D1 (**GENERAL TERMS AND CONDITIONS FOR INVESTMENT PRODUCTS**) of the Conditions contains general terms and conditions relevant to dealings between you and the Bank in relation to Investments and Transactions.
- 1.2 In the event of any conflict or inconsistency between:
- (a) the provisions of Section A and this Section D1, this Section D1 prevails;
- (b) this Section D1 and the specific terms relevant to any particular category of Investment or Transaction, the specific terms prevail in relation to that category of Investment or Transaction;
- (c) the terms and conditions of a given term sheet or confirmation in relation to any particular Investment or Transaction and these Conditions, the terms and conditions of the term sheet and confirmation shall prevail in relation to that Investment or Transaction; and
- (d) the term sheet and the confirmation in relation to any particular Investment or

- (e) prior to giving the Bank any Instruction to acquire an Investment or enter into a Transaction, you have, where applicable, received the prospectus, offering document or product documentation, have read and understood the material terms and conditions, have sufficiently informed yourself and know the risks inherent in the Investments you are acquiring or Transaction you are entering into (which may result in a partial or total loss of your investment) and that your application for any Investment or entering into any Transaction is not in breach of such terms and conditions;
- (f) by entering into any Investment or Transaction, you shall be bound by all relevant terms and conditions set out in the relevant prospectus, offering document or product documentation;
- (g) where the Bank is not the Issuer, to the maximum extent permitted by applicable laws and regulations, and not inconsistent with the obligations of the Bank under the Code, the Bank accepts no responsibility with respect to any published statement and information contained in any prospectus, offering document or product documentation concerning any Investment and that the Bank makes no representations or warranties as to and accepts no responsibility for the performance or future performance of any Investment or Transaction;
- (h) the Bank may from time to time provide you directly or indirectly with reports, analyses, other materials and/or information ("**Materials**") in relation to an Investment or Transaction (or proposed Investment or Transaction) in which case you acknowledge and agree that:
- (i) all Materials are provided to you strictly for your own use and will not be passed on to any other persons;
- (ii) (unless otherwise specifically indicated) the Materials and the provision thereof shall not constitute an offer or invitation to you to acquire any Investment or enter into a Transaction;
- (iii) save as required under the Code, the Bank is not obliged to provide you with any Material; and
- (iv) (unless otherwise specifically indicated or the context indicates otherwise) if the Bank does provide Materials, such Materials are not provided with any specific clients or classes of clients in mind, and they are to be treated as general views and opinions, not suitable for use by you without independent verification;
- (i) (unless the Bank otherwise agrees in writing) all Transactions and Investments are made by you as principal for your own personal account and not on behalf of any other third parties;
- (j) you will only acquire an Investment or enter into a Transaction on the basis of your review and determination that the Investment or Transaction is consistent with your objectives and are appropriate and suitable investments for you in light of your financial positions, investment objectives, investment experience and knowledge;
- (k) you have sufficient knowledge and sophistication to appraise and understand, and before acquiring an Investment or entering to a Transaction, you will have fully understood the economic, legal, accounting and tax, merits, risks, characteristics, terms and conditions and consequences of the Investment or Transaction;
- (l) all Investments and Transactions will be made or entered into in reliance on your judgment and discretion; and
- (m) to the maximum extent permitted by applicable laws and regulations, and not inconsistent with the obligations of the Bank under the Code, and subject to Clause 2.4 below the Bank and its Personnel shall be under no liability for the performance or outcome of any Investment or Transaction made by you. Accordingly any and all risks associated with, and any Loss suffered as a result of, your entering into any Investment or Transaction are for your account to the maximum extent permitted by applicable laws and regulations, and not inconsistent with the obligations of the Bank under the Code, and subject to Clause 2.4 below.
- 2.2 References to "you" in Clause 2.1 above shall where the context permits include references to your professional advisers.
- 2.3 You acknowledge and agree that in, providing Services to you in respect of Investments and Transactions, the Bank assumes the correctness of, and materially relies on, your representations and agreements in Clause 2.1 above.
- 2.4 If the Bank solicits the sale of or recommends 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 Conditions or any other document the Bank may ask you to sign and no statement the Bank may ask you to make derogates from this Clause. The term "financial product" means any securities, futures contracts, leveraged foreign exchange contracts as defined under the Securities and Futures Ordinance (Cap. 571) ("**SFO**") as well as any additional products as defined by the Bank from time to time.
- 3. Transaction Services**
- 3.1 You may instruct the Bank to and the Bank may, as your agent, enter into Transactions and/or acquire, dispose of or redeem Investments.
- 3.2 Instructions will be accepted by the Bank on such days and during such times as the Bank may determine from time to time.
- 3.3 The Bank may also, in its discretion, opt to transact with you as your counterparty on a principal-to-principal basis in relation to any Investment or Transaction **PROVIDED THAT** where required to do so by Applicable Laws, the Bank will notify you in advance where this is the case. Unless required by Applicable Laws, the Bank shall not be required to inform you of whether it transacts as agent or principal.
- 3.4 Where the Bank is acting as your agent in relation to an Investment or Transaction, you acknowledge and accept that the Bank may have responsibility as principal and/or liability to another broker or other third party, you acknowledge that this may

- in some instances result in prejudice to you provided that the Bank acts in good faith and in your best interest. You acknowledge and accept that this is a necessary risk of transacting with or through the Bank.
- 3.5 The Bank may cancel, terminate, reverse or close out any open Transaction, in whole or in part, if:
- (a) you fail to provide any information requested by the Bank pursuant to these Conditions;
  - (b) the Bank determines that the Transaction would not be fully compliant with all Applicable Laws; or
  - (c) the Bank decides that this is necessary or desirable to avoid injury to the commercial reputation of the Bank.
- 3.6 The rights of the Bank in Clause 3.5 above shall be in addition to and not in lieu of any other right of cancellation, termination, reversal or close-out of any Transaction that the Bank may otherwise have.
- 3.7 Nothing in these Conditions obliges the Bank to act for you or enter into any Transaction and the Bank may, in its sole and absolute discretion, refuse to act for you or enter into any Transaction.
- 3.8 If the Bank declines to carry out your order or proceed with any Investment or Transaction, the Bank will endeavour to notify you as soon as reasonably practicable, but shall not be required to provide any reason. If any order is not carried out or any Investment or Transaction is not proceeded with for any reason, the Bank is entitled to refund to you all subscriptions, purchases or other monies paid to, or received by, the Bank in connection with your order (after deducting any cost and expense incurred by the Bank in processing your order) in such manner as the Bank may deem fit, and you shall not be entitled to any interest or other returns on such monies.
- 3.9 If the Bank agrees to act on any Instruction, the Bank shall use its reasonable efforts to carry out such Instruction within a reasonable time, having regard to the nature of the Investment or Transaction in question, the systems and operations of the Bank, and other relevant circumstances and the Bank shall not be liable for any Loss arising thereof. The Bank does not guarantee that an Instruction to enter into or unwind a Transaction or to acquire, dispose of or redeem an Investment will necessarily be carried out.
- 4. Aggregation and Splitting of Orders**
- 4.1 To the extent permitted by Applicable Laws, the Bank may for the purposes of execution:
- (a) split your order into smaller orders; or
  - (b) aggregate your order with any order from another client or the Bank itself or any affiliate of the Bank.
- 4.2 You acknowledge that such actions may operate on some occasions to your advantage and on other occasions to your disadvantage and that orders may be partially executed only. Hence, you may not be allocated the full quantum which you had requested for. The Bank will not accept requests to alter or waive any allocation.
- 4.3 Although the Bank will endeavour to make any allocation required in relation to Investments amongst its relevant clients pro-rata so far as possible, the Bank reserves the right to make allocations in such manner as it determines to be appropriate in its reasonable discretion.
- 4.4 Instructions to the Bank to acquire or dispose of any Investment or enter into or unwind any Transaction are irrevocable, and any allocation given to you shall be binding on you, notwithstanding any change in market conditions between the time of the instructions and the allocation.
- 5. Execution Venues**
- Transactions may be executed on any market that the Bank considers appropriate. Subject to Applicable Laws, the Bank may execute Transactions outside of a regulated market or make use of any internal crossing facility if it considers that this will be a more appropriate execution option.
- 6. Conditions Precedent to the Bank entering into a Transaction or executing an Order**
- 6.1 Without prejudice to Clause 3.7 herein, the Bank may decline to carry out an order or proceed with any Investment or Transaction:
- (a) where the aggregate of all orders received by the Bank and/or any other person fails to exceed any minimum subscription amount or other threshold as the Bank (or the issuer of or counterparty for such Investment or Transaction) may determine;
  - (b) if your Instructions do not comply with any term or condition of the Investments or Transaction; or
  - (c) for any other reason the Bank deems fit, and the Bank shall not incur any liability to you for such refusal to act and/or proceed with any Investment or Transaction.
- 6.2 You agree that the issuer or distributor of any Investment may have reserved the right to cancel a proposed issue of any Investment or to adjust the duration of any initial offer of such Investment. In the event of a cancellation of the proposed issue of an Investment or adjustment of the duration of an offer of the Investment, you agree that the Bank shall have no liability to you if any order placed by you cannot be fulfilled as a result thereof.
- 6.3 The agreement of the Bank to execute any Transaction is subject to your giving any warranty and indemnity requested by the Bank in relation to such Transaction.
- 6.4 Prior to your entering into, or seeking to enter into, any Transaction with the Bank:
- (a) you must provide to the Bank on demand such information as the Bank may consider necessary or appropriate in connection with the proposed Transaction (including for the purpose of determining whether the Transaction is compliant with all Applicable Laws); and
  - (b) you confirm that you have received, read and understood the contents of the risk disclosure statements set out in the Annexures herein and the special risks mentioned therein as well as such other relevant disclosure statements furnished to you by the Bank from time to time in respect of the relevant Investment.
- 7. Provisions relating to Execution and Settlement of Orders**
- 7.1 Unless the Bank agrees otherwise, orders given are good only for the day.
- 7.2 Where you instruct the Bank to acquire Investments, you agree to pay the full amount of any Transaction, including any commission, charge



- or fee payable to the Bank or its agents. The Bank may earmark and/or debit your Account with the full or estimated amount of any Transaction contemplated herein (including any commission, charge or fee payable to the Bank and any tax or levy) before executing such Transaction and the Bank shall have no duty to carry out any Instruction or Transaction until the Bank has been put in sufficient funds, **PROVIDED THAT** the Bank may in its absolute discretion (but need not) advance the amount of any payment to you in which case interest will be charged on any advance provided.
- 7.3 If at any time there are insufficient funds in any Account from which funds are to be earmarked and/or debited for the purposes of any Investment or Transaction, the Bank may in its absolute discretion:
- (a) decline to carry out the Investment or Transaction;
  - (b) (without any obligation to do so and without any further instruction from or notice from you) transfer funds as necessary from any other bank accounts that you maintain with the Bank;
  - (c) (but is not obliged to) sell or liquidate the investments which you had contracted to acquire at such price and in such quantities as the Bank may think fit and recover from you any Loss suffered or incurred by the Bank without any prejudice to any other right which the Bank may have against you; or
  - (d) take such necessary action as the Bank may deem fit.
- 7.4 Unless the Bank otherwise agrees, all financial settlements resulting from dealings and custody of Investments and, if applicable, documents of title thereto shall be settled in freely available cleared funds, and unless otherwise instructed by you, payments, proceeds and distributions arising in respect of the Investments shall be paid into, or (as the case maybe) out of, your Account.
- 7.5 If by the settlement date of a Transaction the Bank has not received unconditional payment of the relevant settlement amount, you agree:
- (a) to pay the Bank interest on any amount incurred by the Bank as a result, at such rate specified by the Bank, for each day until the Bank actually receives such outstanding amount in full;
  - (b) to pay the Bank such amount as may be determined by the Bank from time to time to cover Losses, costs and expenses incurred or suffered by the Bank arising from such non-receipt; and
  - (c) that the Bank may sell any Investment acquired on your behalf or held as custodian (except shares in the Bank itself) and may apply the proceeds of that sale (after deducting all costs and expenses incurred by the Bank) towards reducing your liability to the Bank.
- 7.6 The Bank will only effect orders for the disposal of Investments if such Investments are held in your Account free of all liens and encumbrances whatsoever or you deliver such Investments to the Bank. In the event that you do not own sufficient Investments which you have contract to sell, the Bank reserves the right (but is not obliged) to buy-in the Investments and/or to recover the losses, if any, from you.
8. **Transaction Confirmations and Account Statements**
- 8.1 After a Transaction has been executed and in accordance with the requirements of the Applicable Law or as otherwise agreed with you, the Bank may issue you a confirmation, which may be in physical or electronic form.
- 8.2 The Bank shall provide you with periodic Account statements in accordance with the Applicable Laws, or as otherwise agreed with you. You acknowledge and agree that any valuation included in such statements represent an estimate, non-actionable, indicative valuation provided to you for general reference and information purposes only and such valuations do not necessarily represent the actual prices at which Investments or Transactions have been or may be entered into or unwound. In addition, markets for structured products and derivatives may not exist or may be illiquid, and therefore prices may not be representative or may not exist at all. As such, no warranty or representation is made as to the accuracy or completeness of any valuation in any Account statement, and to the maximum extent permitted by applicable laws and regulations, and not inconsistent with the obligations of the Bank under the Code, the Bank shall not be liable for any Loss which may arise from any valuation provided.
9. **Resale/Transfer Restrictions**
- You acknowledge and agree that an Investment may be offered or made available to you pursuant to an applicable exemption. In such case, you agree:
- (a) not to circulate or distribute any offering document, product documentation or other document or information received in relation to such Investment to any person; and
  - (b) not to sell, or offer to sell, any such Investment or make such Investment subject of any invitation for subscription or purchase to or by any person,
  - (c) other than in circumstances in which such circulation, distribution, offer, sale or invitation does not contravene any Applicable Laws. You further agree to observe all other relevant transfer or resale restrictions (if any) which may be applicable to any Investment.
10. **Investments Subject to Restrictions**
- You acknowledge that certain jurisdictions may restrict foreign ownership of certain Investments but the Bank shall have no duty to ascertain whether any Investment acquired (or held as custodian) are approved for foreign ownership or whether your acquisition thereof complies with such foreign ownership rules.
11. **Powers and Authorities of the Bank in relation to Transactions and Investments**
- The Bank is authorised (but not obliged) to exercise the following powers either by itself (or through its custodian or sub-custodian or any other agent) in its discretion without prior reference or notice to you:
- (a) to do anything necessary or desirable to comply with any Applicable Laws;
  - (b) to use the services of any agent of the Bank's choice (including the appointment of a custodian or sub-custodian on such terms as the Bank considers appropriate, including terms which allow the appointed custodian or sub-custodian to further sub-

- delegate the performance of some or all of its duties);
- (c) to request payment of, collect and receive all interests, dividends, payments or other distributions in respect of Investments;
  - (d) to surrender any Investment against receipt of monies payable at maturity or on redemption if called prior to maturity or against other Investments delivered upon any exchange of Investments;
  - (e) where monies are payable in respect of any of the Investments in more than one currency, to collect them in such currency as the Bank may in its reasonable discretion determine;
  - (f) to provide any relevant governmental or regulatory authority or any person acting as a depository for Investments or share registrar located in any jurisdiction any information in connection with the Investments (including the name of the beneficial owner(s)) and any particular and documentation relating to the Investments as may, in the opinion of the Bank or its professional advisers, be necessary or desirable;
  - (g) to sell, execute, exchange or exercise any right, benefit or option whatsoever relating to or accruing in respect of any Investment on your behalf in any way or manner and on such terms as the Bank shall in its reasonable discretion think fit;
  - (h) to consolidate any Investment held by you with Investments of other clients in order to qualify for any rights offered in respect of a specified block of Investments and at the Bank's reasonable discretion to take up, call for, receive, hold and sell any share or rights accruing by reason of such consolidation, and to acquire additional Investments or sell Investments in order to qualify for or maximise the benefit of any rights, option or distribution offered or made in connection with the Investments;
  - (i) to exchange any of the Investments in interim or temporary form for Investments in definitive form and (where applicable) to deliver physical scrips to any central depository or other similar system set up for the purpose of scripless trading;
  - (j) to acquire Investments in your name or in the name of the Bank or any sub-custodian employed by the Bank or their nominees but for your account and at your sole risk.
  - (k) in the case of scripless Investments, to effect the acquisition or disposal of such Investments through your account or sub-account maintained with any central depository or other similar system set up for the purpose of scripless trading;
  - (l) to take any action as the Bank shall think fit including execution of any declaration or certificate of ownership or other documents, splitting of the shares into marketable lots to enable delivery of shares and share certificates; and
  - (m) to set different Transaction limits for different types of Investments as the Bank deems appropriate.

## 12. **General Lien**

Without prejudice to the rights of the Bank at common law, the Bank shall have a first and general lien on all Investments held as your nominee, custodian, agent or otherwise on your behalf for any amount properly due from you to the Bank, and the Bank shall have the right, and is authorised, to the maximum extent permitted by applicable laws and regulations, and not inconsistent with the obligations of the Bank under the Code, and without prior notice to you, to appropriate any Investment so held, or to dispose of any Investment so held and apply the proceeds, against any amount due from you to the Bank.

## 13. **Consequences of Termination on Investments held by the Bank**

13.1 In the event of termination of any Account, Transaction or the termination of any relationship between you and the Bank, it is your responsibility to undertake (at your cost) to make, effect and complete alternative arrangements for all Investments held by the bank as your nominee, custodian or otherwise on your behalf.

13.2 If you fail to complete the necessary arrangements within 30 days of such termination (or such other period as the Bank may notify you) in a manner reasonably acceptable to the Bank, to the maximum extent permitted by applicable laws and regulations, and not inconsistent with the obligations of the Bank under the Code, the Bank shall be deemed to have been authorised by you (at your cost) to dispose or redeem of any Investment and you hereby authorise the Bank to give necessary instructions to third parties on your behalf and execute such documents and do all such other things as the Bank shall deem appropriate, and so long as the Bank acts in good faith, the Bank shall be under no liability for any Loss incurred or suffered by you as a result.

## 14. **Fees, Charges and Costs**

14.1 You hereby agree to pay to the Bank, and the Bank shall be authorised to debit from your Account without further notice or reference to you, all reasonable commissions, fees and charges (at such rate as the Bank may prescribe from time to time) and all costs and expenses of any nature whatsoever (including all taxes, stamp duties and levies) levied, suffered or incurred by the Bank in connection with providing services (including transactional services and custodial services) in relation to any Investment or Transaction.

14.2 A certificate signed by a duly authorised officer or employee of the Bank shall be conclusive evidence of the amount of any cost and expense referred to in Clause 14.1, in the absence of manifest error.

## 15. **Soft Commissions, Rebates and Trading Profits**

To the maximum extent permitted by Applicable Laws (including codes and/or guidelines issued by the Hong Kong Monetary Authority, the Hong Kong Association of Banks and the Securities and Futures Commission), the Bank and its agents are authorised, without having to make prior or any disclosure to you, to retain all gains, profits and benefits derived from its role as your counterparty and to accept for their sole benefit from any person any soft commission, cash or money rebate, allowance, profit or benefit as part of the Bank's or the agents' own compensation in connection with an Investment or Transaction.

## 16. **Representations and Warranties**

You represent and warrant to the Bank that:

(a) Your acquisition, holding and disposal of all Investments and your entry into and performance of all Transactions are within your powers and capacity and have been duly authorised by all necessary action and do not:

- (i) require any consent or approval of any person which has not already been obtained;
- (ii) violate any provision of any Applicable Law;
- (iii) (if you are a company or corporation) violate any provision of your constitutional documents; or
- (iv) result in the breach of, or constitute a default under, the terms of any mortgage, bond, deed, loan agreement or any other agreement or instrument to which you are a party or by which you or any of your properties may be bound or affected, or any other obligations or duty binding on you or to which you are subject.

(b) All information supplied by you in connection with the acquisition, holding or disposal of any Investment or the entry into or performance of any Transaction is true, complete and accurate in all material respects and you agree that the Bank shall be entitled to rely and act on such information without verifying such information, and without any further inquiry or investigation. You agree and acknowledge that you shall, at all times, be responsible and liable for the accuracy, correctness and completeness of such information and shall promptly update and inform the Bank of any change in such information.

(c) There are no proceedings (if any) pending or threatened against you at law or in equity or under statute, or before any governmental authority, if adversely determined against you, which will, in the aggregate, materially impair your ability to perform your obligations under any Transaction, and there is no such proceeding which purports to affect the legality, validity or enforceability of the acquisition or holding of any Investment or your performance of any Transaction.

#### 17. **Client Money Rules**

You hereby agree and direct the Bank that all monies arising from your Investments (including without limitation money proceeds arising from disposal of an Investment and any interest, dividend, bonus and all other distributions, income and payments arising from or in connection with an Investment) which are received by the Bank (whether directly or from any nominee, sub-custodian or third party custodian) will be paid to you immediately by way of deposit to your Account and thereupon such monies will not be held by the Bank subject to the client money rules in the Securities and Futures (Client Money) Rules (Cap. 571I).

#### 18. **Statutory Cancellation Rights may apply to certain Investments**

In certain instances, you may have the right to cancel a purchase of your Investments pursuant to any Applicable Law.

Where such a right applies, the Bank will provide you with a notice ("**Notice of Cancellation Rights**") regarding your right of cancellation and you will be able to cancel your purchase in accordance with the terms of the Notice of Cancellation Rights.

#### 19. **Short Sales**

Without limiting the generality of any other provision of these Conditions, the Bank has the discretion not to accept or act on any short sale instruction or your positions may be closed without your consent. If the Bank gives you notice that it will accept short sale instructions, you must comply with all Applicable Laws in respect of the short selling of Investments. In particular, the Bank may require you to disclose and/or mark your short sale instructions in accordance with Applicable Laws and/or comply with such procedures and systems as the Bank may prescribe from time to time in its sole discretion.

#### 20. **Survivorship Clause**

If you consist of more than one party, in the event of death of any of the parties, any interest in any Investment held by the Bank, nominee depository or clearing agency on your behalf will accrue to the survivor without prejudice to any right that the Bank may have arising out of any lien, charge, pledge, setoff, counterclaim or otherwise whatsoever.

#### 21. **Definitions**

"**Applicable Laws**" shall include all applicable laws, rules, regulations, customs, requirements, guidelines, constitutions and bye-laws of Hong Kong and any other applicable jurisdiction and/or the Hong Kong Monetary Authority, the Securities and Futures Commission and any other applicable governmental or regulatory body and/or any exchange and/or market and/ or central depository system and/or clearing house through which Transactions are executed and/or through which any Investment is acquired, held or disposed of and/or all orders, judgments, injunctions, decrees, determinations or awards of any court or any judicial, administrative or governmental body.

"**Personnel**" means any officer, employee, agent or representative of the Bank engaged or involved in the provision of services to you in respect of any investment covered under this Section of these Conditions.

"**Transaction**" means any transaction relating to an Investment.

## **D2. COLLECTIVE INVESTMENT SCHEMES**

### 1. **General**

1.1 Without prejudice to the application of Section A (**GENERAL TERMS**) and D1 (**GENERAL TERMS AND CONDITIONS FOR INVESTMENT PRODUCTS**) of these Conditions, this Section D2 of these Conditions contains specific terms applying to your subscriptions, switching, redemptions and transfers for units or shares ("**Interests**") in respect of collective investment schemes ("**Schemes**" and each a "**Scheme**").

1.2 Unless the context otherwise requires or this Section expressly provides otherwise, all words and expressions as defined in Section A (**GENERAL TERMS**) and Section D1 (**GENERAL TERMS AND CONDITIONS FOR INVESTMENT PRODUCTS**) shall have the same meanings when used or referred to in this Section.

## 2. **Information**

- 2.1 Apart from the prospectus, the Bank may, either at your request or on the Bank's initiative, provide to you further information or materials relating to the Scheme issued by the relevant responsible person or fund manager ("**Manager**") of the Scheme.
- 2.2 At your request, the Bank will use its reasonable endeavours to obtain a copy of the constitutive documents of the relevant Scheme from the relevant Manager. All associated costs shall be borne by you.

## 3. **Subscriptions or Purchases**

- 3.1 You may instruct the Bank, as your nominee, to place a subscription for or purchase ("**Purchase Order**") any Interest in a Scheme.
- 3.2 You agree that in participating in any Scheme, you are subject to and be bound by such terms (including the minimum initial subscription amount and minimum holding requirements) as set forth in the respective prospectus and constitutive documents of the Scheme and such other terms as the Bank may determine from time to time.
- 3.3 The Bank may consolidate your Purchase Order with subscription for Interests in the same Scheme from its other clients and may place a consolidated order with the Manager.
- 3.4 In the case of an offshore Scheme, the Hong Kong representative or its appointed nominee may consolidate your Purchase Order with subscription for Interests in the same Scheme from the other authorized distributors of the Scheme in Hong Kong and place a consolidated order with the Manager.
- 3.5 In subscribing for any Interest in a Scheme, you authorise the Bank to debit the Account with an amount equal to the monies required for the subscription and any other charges, costs and expenses required on such date as the Bank may determine.

## 4. **Switching**

- 4.1 Where switching is permitted by a Scheme, you may from time to time instruct the Bank, as your nominee, to place a switching order ("**Switching Order**") and switch Interests in a Scheme to Interests in another Scheme.
- 4.2 The Bank may consolidate your Switching Order with switching orders for Interests in the same Scheme from its other clients and place a consolidated switching order with the Manager.
- 4.3 You agree to pay any applicable switching fee, any cost or expense as provided in the prospectus for the Scheme and you authorise the Bank to deduct such amount from the Account or from any amount available for the purchase of Interests in the switched-in Scheme.
- 4.4 Subject to the terms of the Scheme, the Bank will carry out the Switching Order based on the price of existing Interests to be switched and the price of Interests prevailing on the date of the Bank's receipt of the Switching Order after deducting all fees, charges, costs or expenses that you are liable, PROVIDED THAT if the date of receipt of the Switching Order is not a Business Day, the prevailing prices of the aforesaid Interests on the next Business Day following the date of receipt of the Switching Order will be applied.

## 5. **No Certificates Issued**

No certificate will be issued in respect of any Interest but you will receive Transaction confirmations and periodic Account statements.

## 6. **Dividends/Distributions**

Any dividend or distribution paid by any Manager or Scheme will be credited into your Account unless otherwise instructed by you and provided that if you have given a "reinvestment" dividend instruction, dividends will be automatically reinvested in the Scheme through the subscription of additional Interests and the Bank will hold the same for the Account for you as your nominee.

## 7. **Redemption**

- 7.1 You may redeem all or any of the Interests acquired hereunder at any time by instructing the Bank, as your nominee, to redeem any Interest in a Scheme.
- 7.2 Upon any redemption of Interests, the Bank will credit the redemption proceeds to the Account unless otherwise instructed by you.

## 8. **Transfer**

- 8.1 If, at any time, you instruct the Bank to transfer your Interests in a Scheme to be held by another bank or financial institution, or to the agent of such other bank or financial institution, the Bank will do so PROVIDED THAT the Bank has received all documents required by the Bank including the transfer instrument(s) duly executed and where relevant duly stamped, and you have paid to the Bank all costs and expenses payable in respect of the Interests to be transferred.
- 8.2 After the Bank receives a transfer instruction from you, it shall not be obliged to act upon any further instruction from you relating to the Interests except that the Bank may, at any time before the transfer is completed, and at its absolute discretion, accept your instruction to cancel the transfer.
- 8.3 Any instruction given by you to the Bank to transfer Interests in a Scheme shall be deemed to be an instruction to transfer all your Interests in that Scheme unless otherwise agreed to by the Bank at its absolute discretion.

## 9. **Appointment of Agents/Delegate**

- 9.1 You agree that the Bank may use or appoint any agent, bank, trust company, institution or other third parties ("**Agent**") as it may reasonably select to assist it in the performance of any of its obligations, including but not limited to:
- (a) the processing of any Purchase Order or Switching Order;
  - (b) liaising with the Manager and you in connection with the services hereunder; and/or
  - (c) any other administrative duties.

- 9.2 The Bank shall not be liable for any loss, damage, cost or expense incurred by you as a result of the acts and omissions of any Agent, PROVIDED THAT the Bank has exercised reasonable care in the selection of such Agent.

- 9.3 To the maximum extent permitted by applicable laws and regulations, you agree to indemnify and hold the Agents harmless against any cost, expense, loss or demand in which the Agents may incur arising from the Agents or the Bank acting on your instructions.

## 10. **Powers of the Bank**

You hereby appoint the Bank as your agent and expressly authorise the Bank:

- (a) in its absolute discretion, to comply with the provisions of any law, regulation or order now or hereafter in force which

purports to impose on the Bank or a custodian or nominee holding any Interest a duty to take or refrain from taking any action in connection with any of the Interests or any payment, distribution or money payable in respect of any of the Interests; and

- (b) to co-mingle any Interest held by the Bank with other units, securities and properties owned by the Bank, its other clients or other parties.

#### 11. Registration of Interests

11.1 The Bank may acquire or register any of the Interests in:

- (a) its name; or
- (b) the name of its nominees; or
- (c) the name of any depository in which such Interests may be held; or
- (d) in the case of an offshore Scheme, the name of the appointed nominee of the Hong Kong representative.

11.2 The Bank or its nominees (or any depository, or nominee of a Hong Kong representative) may enter into sub-custodial agreements in accordance with the Applicable Laws with any sub-custodian, nominee company or other depository institution. The Bank shall not be liable for any Loss suffered or incurred by you as a result of the acts and omissions of any Hong Kong representative, or any nominee, sub-custodian, depository institution PROVIDED THAT where the Bank is the person engaging a nominee or entering into a sub-custodial agreement with a sub-custodian, it will exercise reasonable care in the selection of its nominee or sub-custodian.

#### 12. Rejection of Purchase Order or Switching Order

12.1 Without limiting the generality of Clauses 3.7 and 3.8 of Section D1, you acknowledge, agree and understand that the Bank may in its absolute discretion reject, in whole or in part, a Purchase Order or Switching Order which the Bank reasonably suspects to be associated with, amongst others, short term trading and/or market timing practices, without disclosing the reason for the rejection.

### D3. EQUITIES

#### 1. General

1.1 Without prejudice to the application of Section A (**GENERAL TERMS**) and D1 (**GENERAL TERMS AND CONDITIONS FOR INVESTMENT PRODUCTS**) of these Conditions, this Section D3 (**EQUITIES**) of these Conditions contains specific terms applying to your purchases, sales or other dealings through or with the Bank in respect of all shares, units in business trusts and real estate investment trusts which is listed for quotation or quoted on the SEHK or all other securities exchange or market ("**Equity Securities**").

2. Unless the context otherwise requires or this Section expressly provides otherwise, all words and expressions as defined in Section A (**GENERAL TERMS**) and Section D1 (**GENERAL TERMS AND CONDITIONS FOR INVESTMENT**) shall have the same meanings when used or referred to in this Section.

#### 2.1 Representations and Warranties

You hereby represent, warrant, acknowledge and agree, in connection with any Transaction in Equity Securities that:

- (a) you have not acquired (or sought to acquire) and will not acquire or seek to acquire, in each case directly or indirectly, the Equity Securities:
  - (i) under both a public offer and a private placement or other tranche; or
  - (ii) pursuant to multiple applications within or under any public offer, private placement or other tranche, where this is not permitted under, or is restricted by, Applicable Laws; and
- (b) unless the Bank agrees otherwise, you or (if you are acquiring Equity Securities as a nominee or trustee for, or are exercising your investment discretion for, or with funds or backing provided by, or upon the instructions of, other persons (each an "**Underlying Persons**")) those other persons is or are not, and will not immediately after completion of the acquisition of the relevant Equity Securities be:
  - (i) a Related Party (or its nominee)
  - (ii) acting in concert (within the meaning of that term as from time to time used in any applicable takeover code or rules in any applicable jurisdiction) with a Related Party in connection with the relevant Equity Securities;
  - (iii) accustomed to taking instructions from any Related Party in relation to the acquisition, disposal, voting or any other disposition of the relevant Equity Securities;
  - (iv) directly or indirectly, offering or selling, or a person who has, directly or indirectly, offered or sold, any of the relevant Equity Securities to a Related Party;
  - (v) in possession of any non-public information concerning the relevant Equity Securities; and
- (c) you have received all necessary permissions or exemptions from the relevant securities exchange or regulatory authorities to transact in the relevant Equity Securities; and you will comply with all conditions in such permission or exemption and/or have made or will make (or procure the making of) all necessary reporting or disclosure, as the case may be.

2.2 You will provide to the Bank such other representations, warranties and indemnities in relation to initial public offerings and placements as the Bank may require in connection with determining whether you are eligible to participate in a Transaction in respect of Equity Securities or are a member of any special, preferential or restricted class in relation to such Transaction. The Bank is not obliged to undertake any Transaction or proceed with your instruction if you do not provide such representations, warranties and indemnities to the Bank.

2.3 The expression "**Related Party**" shall have the meaning given to such term under the Applicable

Laws (including but not limited to Hong Kong, Malaysia and Singapore), and shall include a "connected person" as defined in the Rules Governing the Listing of Securities on the SEHK.

2.4 You hereby represent, warrant, acknowledge and agree that, in connection with a placing of Equity Securities (other than in respect of Equity Securities registered for offering to the public in the United States):

- (a) You are neither in the United States nor a U.S. Person as defined in Regulation S ("Regulation S") under the United States Securities Act of 1933, as amended (the "Securities Act"), or acting for the account or benefit of a person within the United States or a U.S. Person, and is purchasing the Equity Securities outside the United States in an "offshore transaction" as defined in Regulation S; and
- (b) You understand that the Equity Securities have not been and will not be registered under the Securities Act or any state or other jurisdiction in the United States and, until 40 days after the latest of the commencement of the placing of Equity Securities and the latest closing date of such placing, may not be offered, resold, pledged or transferred within the United States or to, or for the account or benefit of, U.S. Persons except pursuant to an effective registration statement or in accordance with an applicable exemption from, or in a transaction not subject to, the registration requirements of the Securities Act.

2.5 All representations made by you in this Section D3 shall be repeated on each and every day between the date of your order or Instruction and the closing date of the relevant Transaction.

2.6 The representations, warranties and indemnities made by you in this or pursuant to this Section D3 shall survive any delivery of or any payment for the Equity Securities in question.

2.7 You must promptly inform the Bank and disclose full particulars to the Bank if you become aware of any fact that would constitute a breach of representation given by you in this Section D3.

#### 3. Trading Limit

3.1 The Bank may set, for its own internal purpose, a trading limit in respect of your Transactions in Equity Securities ("Trading Limit"). The Bank may revise the Trading Limit at any time without notice to you.

3.2 The Bank is not obliged to undertake any Transaction or proceed with any Instruction if the Trading Limit is exceeded, without assigning any reason and without liability on the part of the Bank.

3.3 The Bank shall only be required to act on or effect any Instruction given within a reasonable time. To the maximum extent permitted by applicable laws and regulations, and not inconsistent with the obligations of the Bank under the Code, the Bank shall not be liable for any delay in communicating any Transaction or Instruction to any broker.

#### 4. Indemnity (specific provisions)

You acknowledge and consent to the Bank delegating to and/ or using brokers in any jurisdiction for the execution of your orders with respect to the Equity Securities listed and traded in those jurisdictions. As long as the Bank uses reasonable care in the selection of such brokers, the Bank shall have no liability or responsibility

referable to any default or negligence of such brokers. Notwithstanding that as between you and the Bank, the Bank is in fact your agent in using the broker to carry out your orders, the Bank may have to accept sole and principal responsibility to the broker for the executed order. You shall indemnify the Bank against any Loss suffered or incurred by the Bank arising from or in connection with:

- (a) carrying out your orders, and actions which the Bank deems in good faith necessary to ensure that the Bank will not be in default of its principal obligation or responsibility or to contain or minimize its loss;
- (b) using any broker in relation to your orders, any and all defaults, failures, negligence, fraud, acts or omissions of such broker or its agents or representatives including any failure, delay, negligence or error in executing any Transaction, delivery of any Equity Securities or payment of any sum due or owing to the Bank or in respect of performance of any of its obligation to the Bank, except to the extent that the expense or Loss is due to the Bank's gross negligence, wilful default or fraud.

## D4. DEBT SECURITIES AND STRUCTURED NOTES

### 1. General

1.1 Without prejudice to the application of Section A (**GENERAL TERMS**) and D1 (**GENERAL TERMS AND CONDITIONS FOR INVESTMENT PRODUCTS**) of these Conditions, this Section D4 (**SPECIFIC TERMS FOR DEBT SECURITIES AND STRUCTURED NOTES**) of these Conditions contains specific terms applying to your purchases, sales or other dealings with the Bank in respect of any debenture, note, bond, certificate or any other debt securities or any other product which is designated by the Bank to be governed by this Section of the Conditions ("**Debt Securities**") including securities under which the amount of coupon or principal or total return (or any combination) is to be calculated in whole or in part by reference to changes in any underlying security (including, without limitation, any equity or debt security, loans, futures, commodities, currencies, indexes or any derivatives relating thereto) ("**Structured Notes**") for which the Bank transacts as your agent.

1.2 Unless the context otherwise requires or this Section expressly provides otherwise, all words and expressions as defined in Section A (**GENERAL TERMS**) and Section D1 (**GENERAL TERMS AND CONDITIONS FOR INVESTMENT PRODUCTS**) shall have the same meanings when used or referred to in this Section.

### 2. Term Sheets

2.1 In the case of an Investment comprising any Debt Security or Structured Note, the Bank may provide you with a term sheet containing the principal commercial terms of the proposed Debt Security or Structured Note.

2.2 You acknowledge and agree that where a term sheet for a Debt Security or Structured Note is provided to you, the term sheet:

- (a) contains a summary of the principal commercial terms of the proposed Debt Security or Structured Note and is not intended to be a comprehensive description of all the terms and conditions or risks involved in investing in the Debt Security or Structured Note;

- (b) is indicative and for discussion purposes only and is not intended to constitute any offer or invitation in respect of the Debt Security or Structured Note described therein;
- (c) is subject to change at any time before the relevant Investment or Transaction has been consummated; and
- (d) must be read, where applicable, in conjunction with the relevant prospectus, offering circular, information memorandum, pricing supplement, final terms and all other offering documentation and product documentation.

3. **Discounts from issue price in respect of certain Debt Securities or Structured Notes**

You agree that the issue price of the Debt Security or Structured Note stated in the term sheet may be stated as the amount before the discount payable to the Bank. To the maximum extent permitted by Applicable Laws, and not inconsistent with the obligations of the Bank under the Code, you agree that the Bank shall be entitled to retain such discount for its own benefit and shall have no obligation to account to you for all or any part of the same and subject to any requirements in any Applicable Laws, the Bank shall not be obliged to disclose to you the amount of any discount so received.

4. **Physical delivery of Debt Securities or Structured Notes**

Where the redemption (in whole or part), maturity, sale or disposal of any Debt Security or Structured Note involves the physical delivery of any securities, other instruments or assets, you hereby agree to undertake all such actions and execute all such documents, and hereby irrevocably authorise the Bank to undertake all such actions and execute all such documents for and on your behalf or as your attorney in your name(s), at your own sole cost and expense, as the Bank may deem necessary, desirable or expedient for the purposes of taking delivery of or receiving such securities, instruments or assets.

5. **The Bank does not make or guarantee a market in any Debt Security or Structured Note**

You acknowledge that the Bank does not make or guarantee a market for any Debt Security and Structured Note and you agree that any request placed by you to the Bank for any redemption or cancellation in respect of any Debt Security and Structured Note is subject to the Bank's consent, as well as the terms and conditions of the Debt Security and/or Structured Note in question.

**D5. CUSTODIAL SERVICES (IF APPLICABLE)**

1. **General**

1.1 Without prejudice to the application of Section A (**GENERAL TERMS**) and D1 (**GENERAL TERMS AND CONDITIONS FOR INVESTMENT PRODUCTS**) of these Conditions, this Section D5 (**CUSTODIAL SERVICES**) of these Conditions contains specific terms relating to the custody of your Investments.

1.2 Unless the context otherwise requires or this Section expressly provides otherwise, all words and expressions as defined in Section A (**GENERAL TERMS**) and Section D1 (**GENERAL TERMS AND CONDITIONS FOR INVESTMENT PRODUCTS**) shall have the same meanings when used or referred to in this Section.

2. **Provision of Custodial Services**

2.1 Unless other arrangements for the custody of your Investments have been agreed between you and the Bank, where an Investment is acquired by you which in the Bank's judgment is capable of being held in custody, the Bank will act as your custodian for such Investment in accordance with these Conditions. The Bank may also, in its discretion, agree to accept custody of Investments acquired by you otherwise than from or through the Bank upon the transfer of such Investments to the Bank.

2.2 Notwithstanding Clause 2.1, the Bank may in its sole discretion refuse acceptance of any of your Investments for custody and may return any of your Investments to you at any time without giving any reason or being liable for any Loss thereby occasioned to you and you shall accept and arrange to accept delivery of the same forthwith.

2.3 Notwithstanding Clause 2.1, the Bank may in its discretion arrange for a third party ("**Third Party Custodian**") to provide custodial services for your Investments, in which case the provisions of Section D5 below shall apply.

2.4 You hereby agree that the Bank, as your custodian, shall be entitled to appoint or make use of:

- (a) one or more nominees or sub-custodians (or tiers of nominees or custodians) for the purposes of holding any or all your Investments;
- (b) the services and facilities of any person operating a depository or clearing system or any central depository or clearing house; or
- (c) administrators or agents to assist in the performance of its custodial services, ("**Custodial Agent**") on such terms as the Bank may, in its discretion, consider appropriate (including terms which allow for Custodial Agents to further sub-delegate and to limit their liability) and where the Bank has exercised reasonable care and skill in the selection of any Custodial Agent, the Bank shall not be responsible to supervise any Custodial Agent or be liable or responsible for any act, omission, default, neglect, fraud, recklessness, breach or insolvency of any Custodial Agent in connection with the Investments in its custody.

2.5 By the Bank agreeing to act as your custodian or appointing a Third Party Custodian to provide custodial services for your Investments, you authorise the Bank to register and hold your Investments on your behalf in the Bank's name or in the name of any nominee, sub-custodian or Third Party Custodian on such terms as the Bank may determine. You hereby agree to pay all applicable fees and charges for the custodian services and authorise the bank to debit such fees and charges from the Account.

3. **The Bank's Powers as Custodian**

3.1 You hereby appoint and authorise the Bank as custodian (but the Bank is not obliged) to perform (whether directly or indirectly or through any of the Custodial Agent) all or any of the following functions:

- (a) to arrange for all documents of title of Investments issued in bearer form to be deposited with the Bank's vault (in any country as the Bank thinks fit) or deposited for safekeeping with any Custodial Agent as the Bank may think fit;

- (b) to keep, or procure that its nominee or sub-custodian keep, a record in its books of all Investments held from time to time as your custodian;
  - (c) to do all acts as may be necessary or desirable in order to collect payment of all interests, dividends, bonuses and all other distributions, income and payments, whether paid in cash or in kind, on the Investments;
  - (d) to exchange documents of title (including, without limitation, the exchange of temporary documents of title for those in definitive form);
  - (e) at the Bank's discretion, to pay or cause to be paid, any and all taxes or levies in the nature of taxes imposed on any of your Investments by any tax or governmental authority anywhere in the world (and whether or not such taxes or levies can be enforced against you, the Bank or any other person) PROVIDED THAT neither the Bank nor any Custodial Agent shall be liable for any tax or duty payable on or in respect of the Investments all of which shall be borne and promptly discharged by you;
  - (f) at your request and upon the Bank's receipt of all necessary certificates and documents, to claim any withholding tax relating to the payment of any amount in relation to your Investments PROVIDED THAT the costs and expenses of the Bank or any Custodial Agent in attempting to recover such withholding tax shall be borne by you;
  - (g) to exercise any right or discharge any obligation conferred or imposed by reason of the Bank's direct or indirect holding of your Investments and to investigate, participate or take any affirmative action in connection therewith or otherwise; and
  - (h) to do all such other things necessary in connection with the custodian services as provided under these Conditions as the Bank may deem fit including executing any document or doing all such acts as may be necessary or desirable in connection thereof.
- 3.2 To the extent that copies of notices, reports or other documents arising from the Investments are received by the Bank (directly or through its nominee or a Custodial Agent), the Bank may, where required by applicable laws or regulation and where it determines in its discretion that you should be notified of the same, as soon as reasonably practicable transmit to you the notice, report or other document. However, to the maximum extent permitted by applicable laws and regulations, and not inconsistent with the obligations of the Bank under the Code, the Bank is under no duty or responsibility to send any such notices, reports or other documents or to notify you of the receipt of such notices, reports or other documents if it determines, in its sole discretion, that it is not necessary or is commercially impracticable. In the case of notices, reports or other documents which require your action in relation to the Investments, the Bank will act upon your instructions provided that the Bank receives such instructions from you within a reasonable time. If the Bank does not receive an instruction at all or within a reasonable time, the Bank is entitled to act or to refrain from acting in accordance with the default option specified in such notices, reports or documents.
- 3.3 The Bank's duty in respect of the custody of Investments shall be limited to acting as bare trustee and to exercising good faith and (subject always to the express provisions of these Conditions) the reasonable care and skill expected of a professional custodian in the position of the Bank in respect of any action taken (or not taken) in relation to its provision of custodial services. To the maximum extent permitted by applicable laws and regulations, and not inconsistent with the obligations of the Bank under the Code, the Bank shall have no other fiduciary obligation or duty of care or skill to you in respect of Investments except those expressly set out in these Conditions.
- 3.4 You shall only be entitled to the return (subject to these Conditions) and shall accept delivery or transfer of Investments of the same issuer, nominal amount, class and denomination as those of the Investment originally transferred to you and/or the Custodial Agent (or in the event of any change in the class and/or denomination of Investment, an Investment of equivalent class and/or denomination to that arising from the change). The Bank shall not in any case be liable and/or responsible to return to you specific Investments traceable to those Investments originally transferred to the Bank or otherwise acquired by the Bank as your custodian.
- 3.5 You hereby acknowledge that prior to the Bank becoming the registered owner of any of the Investments, it may not be in a position to carry out all of the obligations that would otherwise be imposed upon it as custodian.
- 3.6 Although the Bank (and any Custodial Agent) act as custodians in respect of your Investments, you acknowledge that the name in which Investments are held need not disclose the custodial relationship where this is not the normal practice in particular markets.
- 3.7 As solely determined by the Bank or a Custodial Agent, Investments may be held on the basis that they are not capable of being separately identified as belonging to or being attributed to you. If an Investment is held on the basis that it is not capable of being separately identified, the Investment will be pooled so that those Investments which in the Bank's opinion are of the same nature or category are held together on a commingled basis. In this situation, your interest in the Investments may not be identifiable by separate certificates or other physical documents or equivalent electronic records, but the Bank will maintain a record of your interest in the Investments.
- 3.8 The Bank and Custodial Agents are not obliged to (and generally will not) attend any meeting or exercise any of the powers or rights incidental to the ownership of the Investments (including any voting right in respect of the Investments held for you), save where the Bank may at its discretion act, at your expense, in accordance with your express instructions upon such terms and conditions imposed by the Bank. PROVIDED THAT if the Bank has not received such instructions from you at all or within a reasonable time, the Bank shall be entitled to deal with the above matters in such manner as the Bank may deem fit including acting or refraining from acting in accordance with the default option specified in any notice or request for instruction.
- 3.9 Neither the Bank nor the Custodial Agent is under a duty to examine or verify the validity of the ownership of or title to any of your Investments and except in the case of their gross negligence or wilful misconduct, the Bank and the Custodial Agent shall not be liable in respect of any defect in ownership or title or for the diminution in the value of any of your Investments.



- 3.10 Neither the Bank nor any Custodial Agent shall be required to take any legal or other action which may expose it to any liability or expense unless it is fully indemnified or covered to its reasonable satisfaction (as a pre-requisite to taking such action).
- 3.11 The Bank (itself or through any of the Custodial Agent) is not obliged but may, at its discretion and subject to any condition it may require, agree to provide custodial services for Investments which are not fully paid up. In such case, you shall indemnify the Bank and any Custodial Agent against all Losses which may be incurred by it as a result.
- 3.12 In providing its custodial services, the Bank and the Custodial Agent shall be entitled to:
- (a) observe and comply with all Applicable Laws (so that the Bank and the Custodial Agent shall be under no obligation to act in any manner which is in breach of Applicable Laws); and
  - (b) participate in and to comply with rules and regulations of any system which provides central clearing and settlement facilities in respect of Investments, and neither the Bank nor the Custodial Agent shall be liable for any Loss that may be incurred by you as a result thereof.
- 3.13 Without prejudice to the generality of the other clauses in these Conditions, to the maximum extent permitted by applicable laws and regulations, and not inconsistent with the obligations of the Bank under the Code, the Bank shall not be liable for Losses of any kind which may be incurred by you as a result of the provision of the custodian services by the Bank unless due to the negligence or wilful default of the Bank or any of its officers or employees. You acknowledge and agree that, to the maximum extent permitted by applicable laws and regulations, and not inconsistent with the obligations of the Bank under the Code, the Bank: (i) is not responsible for the accuracy, reliability or timeliness of any company announcements, notices, reports or other documents referred to in this Clause 3, (ii) is not responsible (whether in tort or contract or in any other manner) for any loss, damage, cost or expense arising from or in connection with any errors, inaccuracies, delays or omissions in such announcements or any actions taken by you or any other person in reliance on such announcements, (iii) expressly disclaims all warranties, express or implied, as to the accuracy of any company announcements, notices, reports or other documents referred to in this Clause 3, or as to the fitness of the information for any purpose.
- 4. Obligations and Undertakings of the Client**
- 4.1 You shall from time to time furnish the Bank and/or any Custodial Agent with appropriate instruments and execute all such documents and do all such acts as may be necessary or desirable to enable the Bank to provide any custodial service to you.
- 4.2 You acknowledge and agree that the Bank's agreements with a Custodial Agent or with any Third Party Custodian may be governed by laws other than Hong Kong law, and the provision of services by the Bank, any Custodial Agent and any Third Party Custodian may be subject to or affected by the provisions of laws other than Hong Kong law.
- 5. Third Party Custodial Arrangements**
- 5.1 You acknowledge that a Third Party Custodian may refuse to provide custodial services for your Investments (for example, where your

Investments do not meet the criteria specified by the Third Party Custodian). To the maximum extent permitted by applicable laws and regulations, and not inconsistent with the obligations of the Bank under the Code, the Bank shall not be responsible for any Loss you may incur where the Bank is unable to arrange for such third party custodial arrangements, or where the Third Party Custodian terminates or suspends the third party custodial arrangements, for any reason.

- 5.2 You agree to the following in connection with the provision of custodial services by a Third Party Custodian:
- (a) the Bank has merely arranged for such services to be provided by the Third Party Custodian and **PROVIDED THAT** the Bank has exercised reasonable care and skill in the selection of the Third Party Custodian, the Bank is not bound to supervise the actions of the Third Party Custodian and the Bank shall not be liable for any Loss incurred by you arising in connection with or as a result of any act, omission, default, neglect, fraud, recklessness, breach or insolvency by the Third Party Custodian and/or any of its agents in providing custodial services;
  - (b) as part of a third party custodial arrangement, the Bank may arrange for the Investments to be held by the Third Party Custodian in an account in the Bank's name or the name of its nominee, but this in itself shall not be construed as the provision of custodial services by either the Bank or the nominee;
  - (c) all Instructions and queries relating to the holdings in the Investments should be addressed through the Bank. The Bank will pass on these Instructions and queries to the Third Party Custodian to process, in its capacity as custodian;
  - (d) you agree and acknowledge that the Third Party Custodian will provide custodial services in respect of the Investments based on the terms set out in the relevant custody agreement signed between the Third Party Custodian on one part and the Bank on the other part, and/or the general terms and conditions of the Third Party Custodian (each, a "**Custody Agreement**");
  - (e) you acknowledge that the execution of your Instructions may be subject to terms and conditions imposed by the Third Party Custodian;
  - (f) the Bank shall have the right to change the Third Party Custodian from time to time, and amend the Custody Agreement(s) from time to time; and
  - (g) where required under any Applicable Laws, the Bank shall disclose the terms of the Custody Agreements that the Bank has entered into (as may be amended from time to time) in such manner as the Bank may at its discretion deem appropriate, (including but not limited to setting out on the Bank's website).

## SECTION E (DERIVATIVE TRANSACTIONS)

### E1. GENERAL TERMS AND CONDITIONS FOR DERIVATIVE TRANSACTIONS

#### 1. General

1.1 Without prejudice to the application of Section A (**GENERAL TERMS**) and Section D1 (**GENERAL TERMS AND CONDITIONS FOR INVESTMENT PRODUCTS**) of these Conditions, this Section E (**DERIVATIVE TRANSACTIONS**) of these Conditions contains specific terms applying to your entry into one or more over-the-counter derivatives transactions with the Bank and any other transactions which the Bank may determine to be governed by this Section E (**DERIVATIVE TRANSACTIONS**).

1.2 Unless the context otherwise requires or this Section expressly provides otherwise, all words and expressions as defined in Section A (**GENERAL TERMS**) and Section D1 (**GENERAL TERMS AND CONDITIONS FOR INVESTMENT PRODUCTS**) shall have the same meanings where used or referred to in this Section E (**DERIVATIVE TRANSACTIONS**).

#### 2. Structure of Section E

2.1 The Bank may agree to enter into one or more derivatives transactions with you including interest rate swaps, foreign exchange swaps, foreign exchange forwards (whether deliverable or non-deliverable) and any other transaction which the Bank may determine to be governed by this Section E.

2.2 All Transactions are entered into in reliance on the fact that this Section E, including the Risk Disclosure Statement, each Product Specific Annex and all Confirmations will together form a single agreement between the Bank and you (collectively referred to as this "**Section E Agreement**"), and this is the basis on which you and the Bank agree to enter into any Transaction.

2.3 The terms of each Transaction shall be evidenced by a Confirmation, which shall be governed by this Section E and any applicable Product Specific Annex to this Section E.

2.4 In the event of any conflict or inconsistency between:

- (a) the provisions of Section A and this Section E Agreement, this Section E Agreement prevails;
- (b) this Section E1 and the specific terms relevant to any particular category of Transaction, as specified in an applicable Product Specific Annex, the specific terms prevail in relation to that category of Transaction; and
- (c) this Section E1, the specific terms relevant to any category of Transaction as specified in an applicable Product Specific Annex and the specific terms evidenced in a Confirmation, the specific terms evidenced in a Confirmation prevail in relation to that Transaction.

#### 3. Confirmations

3.1 Where applicable, the Bank will send you a Confirmation within a reasonable time of entering into a Transaction (but failure to send a Confirmation will not constitute an event of default on the Bank's part).

3.2 You undertake to check the correctness of each Confirmation. If you do not inform the Bank of any

discrepancy, omission or inaccuracy or incorrect entry in, the account or in the particulars of the Confirmation within the period stated in such Confirmation (or in the absence of such stipulated time, within ninety (90) days of the date of such Confirmation), the details contained in the Confirmation will be deemed to be conclusive evidence against you without any further proof that the details contained in the Confirmation are correct except as to any error which you have already brought to the attention of the Bank subject to the Bank's right to adjust (which may be exercised by the Bank at any time at its discretion) any detail contained in the Confirmation where they have been wrongly or mistakenly made by the Bank.

3.3 Except as provided above, to the maximum extent permitted by applicable laws and regulations, and not inconsistent with the obligations of the Bank under the Code, the Bank shall be free from all claims in relation to the terms of the Transaction contained in the Confirmation, notwithstanding any discrepancy, omission or inaccuracy in the Confirmation as so stated, whether made as a result of forgery, fraud, lack of authority, negligence or otherwise by any person whatsoever.

3.4 Any Confirmation or other document to be given to you shall be validly given if despatched to you in accordance with your contact details last registered with the Bank, and shall be deemed to have been received by you within a generally acceptable time for that means of communication.

#### 4. Fees, Charges and Costs

4.1 You acknowledge that the Clauses of Section A in relation to fees, charges and costs apply in relation to the Transactions.

4.2 Charges, commissions or fees may be included in the price or rate for the Transactions quoted to you or which are concluded with you. You understand that the Bank may also receive remuneration from any other party on a portion of such charges, commissions or fees and that the Bank will retain any such amounts.

4.3 To the maximum extent permitted by applicable laws and regulations, and not inconsistent with the obligations of the Bank under the Code, all costs and expenses (including legal costs and costs arising from the Bank hedging its exposure to you or the Transactions or other similar contracts) incurred by the Bank in connection with the preservation, protection or enforcement of the rights of the Bank in connection with this Section E Agreement shall be reimbursed by you upon the Bank's demand.

#### 5. Payments

5.1 Each party will make payment or deliver the assets (according to the terms of each Transaction) on the relevant Settlement Date, subject to the other provisions of this Section E Agreement.

5.2 The Bank's obligations under Clause 5.1 is subject to (a) the condition precedent that no Event of Default or Potential Event of Default with respect to you has occurred and is continuing, (b) the condition precedent that no Early Termination Date has been effectively designated by the Bank in respect of the relevant Transaction and (c) any other condition as may be imposed by the Bank or specified in this Section E Agreement to be a condition precedent for the purposes of this Clause 5.2.

5.3 All amounts payable by you shall be paid in full without setoff or counterclaim or any restriction or condition.

- 5.4 All payments to be made to each party under any Transaction shall be made in the Transaction Currency in immediately available funds, (in the case of payments to the Bank) to the Bank at the account the Bank may specify, and (in the case of payments to you) to you at your account with the Bank or to such other account as agreed by the Bank.
- 5.5 You irrevocably authorise the Bank to apply amounts in your name in whatever currency on deposit or account with the Bank in reduction of amounts due by you under this Section E Agreement.
- 5.6 Without prejudice to the survival of any other provision of this Section E Agreement, your obligations in respect of payment under this Section E Agreement shall, to the extent that any payment made by you is avoided or reduced by virtue of any provision or enactment relating to insolvency, continue such that the Bank is nevertheless entitled to recover the value or amount thereof from you as if such payment and subsequent reduction, avoidance or discharge had not been effected.
- 5.7 If in the opinion of the Bank, it would be contrary to any governmental restriction or regulatory obligation for the Bank or for you to perform any payment obligation in respect of any Transaction, the Bank may (if and to the extent that the Bank is of the opinion that it would not be contrary to any governmental restriction to do so and if permissible by law) (a) pay to you the equivalent amount in any other currency selected by the Bank acting in good faith and in a commercially reasonable manner (converted by the Bank at what it reasonably considers to be the best available spot rate) or (b) instruct you to pay to the Bank the equivalent amount in any other currency selected by the Bank acting in good faith and in a commercially reasonable manner (converted by the Bank at what it considers to be the best available spot rate).
- 6. Payment Netting**
- If, on any date, amounts are due by each party to the other in the same currency in respect of any Transaction entered into under this Section E Agreement, such amounts owing, may, at the Bank's sole discretion, be automatically satisfied and discharged and only the net amount owing on that day shall be paid by the party owing the larger amount to the other party.
- 7. Interest on Overdue Payments**
- 7.1 In the event that you fail to make any payment under this Section E Agreement, you shall, to the maximum extent permitted by applicable laws and regulations, and not inconsistent with the obligations of the Bank under the Code, pay interest on such unpaid amount from the due date to the date that payment is made in full at the rate per annum determined by the Bank from time to time with respect to such overdue amount. Such interest shall be calculated by the Bank on the normal basis for the currency concerned on a daily basis and shall be payable on demand.
- 8. Undertakings**
- You undertake to the Bank as follows:
- 8.1 you will comply in all material respects with all applicable laws, rules, regulations and orders and you will obtain and make all statutory, corporate and governmental authorisations, approvals and filings which may be required from time to time in order for you to perform your obligations under this Section E Agreement and under each Transaction;
- 8.2 you will complete and deliver to the Bank all relevant tax forms as may be necessary under the terms of this Section E Agreement and/or as the Bank may from time to time request;
- 8.3 you will make available to the Bank at the Bank's request, within such period as the Bank may require, financial information satisfactory to the Bank, which fairly represents your financial condition on the dates and for the periods covered by such information;
- 8.4 if you are a private individual or individuals: you will furnish to the Bank such consents that the Bank may require in such form as the Bank may require including but not limited to any spouse's consent;
- 8.5 you will immediately notify the Bank of the occurrence of any Event of Default or Potential Event of Default in respect of you and of any step being taken by you to remedy any such event;
- 8.6 you will execute in favour of the Bank from time to time any document as may reasonably be required by the Bank in connection with this Section E Agreement or any Transaction, in form and substance acceptable to the Bank;
- 8.7 If you are a Trustee: you will send to the Bank a copy of the trust deed, declaration of trust or any other document constituting the trust ("**Trust Documents**") and all amendments (if any) to the Trust Documents during the term of this Section E Agreement in a timely manner; and
- 8.8 If you are acting in your capacity as a partner of a partnership: you will send to the Bank a copy of the partnership deed or partnership agreement and all amendments to such deed or agreement (if any) during the term of this Section E Agreement in a timely manner.
- 9. Representations and Warranties**
- You hereby represent and warrant (each of which will be deemed to be repeated by you each time you enter into a Transaction):
- 9.1 **Understanding of Risk.** You have read and understood the Risk Disclosure Statement set out in the Annexures herein and such other relevant disclosure statements furnished to you by the Bank from time to time in respect of the Transactions, and you understand and are prepared to accept the degree of risk involved in entering into the Transactions; in particular, you understand the nature of the Transactions contemplated under this Section E Agreement and that such Transactions are subject to complex risks which may arise without warning and may result in substantial losses.
- 9.2 **Corporate Status.** If you are a company or organisation: you are duly organised and validly existing under the laws of the jurisdiction of your organisation or incorporation and, if relevant under such laws, you are in good standing.
- 9.3 **Private Individual.** If you are a private individual: you are of sound mind and have full capacity to enter into this Section E Agreement and (if this representation is being repeated in relation to the entry into a Transaction) such Transaction.
- 9.4 **Partnerships.** If you are acting in your capacity as a partner of a partnership: (a) you are duly authorised under the relevant partnership agreement to enter into this Section E Agreement and to make the representations contained in this Section E Agreement; and (b) no breach of the partnership agreement has occurred and is continuing and no such breach would occur as a result of your entry into or performance of your obligations under this Section E Agreement.

- 9.5 **Trustee Representations.** If you are acting as a trustee (the "**Trustee**") for and on behalf of a trust (the "**Trust**") created under a trust deed or other constituting instrument (the "**Trust Deed**"):
- (a) your appointment is valid and effective under the governing law of the Trust Deed and any other applicable law (and, if you are a corporate trustee, also under the laws of the jurisdiction of your incorporation) and you have the power to own assets in your capacity as trustee of the Trust;
  - (b) you have power under the Trust Deed to (i) enter into this Section E Agreement and any other documentation relating to this Section E Agreement to which the Trustee is a party and (ii) to perform your obligations under this Section E Agreement; and that you have taken all necessary action to authorise such execution, delivery and performance;
  - (c) the entry into, and performance of, this Section E Agreement does not violate or conflict with any law applicable to the Trustee or to the Trust, any provision of the Trust Deed, any order or judgment of any court or other agency of government applicable to the Trustee, the Trust or any asset of the Trust, or any contractual restriction binding on or affecting the Trustee, the Trust or any asset of the Trust;
  - (d) all governmental and other consents that are required to be obtained by the Trustee with respect to this Section E Agreement have been obtained and are in full force and effect, and all conditions of such consents have been complied with;
  - (e) your obligations under this Section E Agreement constitute legal, valid and binding obligations in your capacity as Trustee of the Trust, and are enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)), and no circumstances are known to you which would or might prevent the Trustee from having recourse to the assets of the Trust for the purposes of meeting such obligations;
  - (f) you will carry on the Trust's activities in accordance with the Trust Deed and any applicable law affecting the Trust;
  - (g) you will not, without the prior consent of the Bank, amend the Trust Deed in a manner which could reasonably be expected to affect adversely your ability to perform your obligations under this Section E Agreement;
  - (h) as Trustee of the Trust, you shall procure that any replacement, successor or additional trustee of the Trust however appointed (a "**New Trustee**") shall, on appointment, assume and undertake to perform all of your obligations and liabilities under this Section E Agreement
- as Trustee, which will be evidenced by the New Trustee promptly signing and returning to the Bank such documents as the Bank may require;
- (i) you will not transfer any of the assets you hold as Trustee of the Trust to any New Trustee until the documents referred to in (h) above has been signed by the New Trustee, and in the event any transfer takes place in breach of this sub-clause, any limitation of trustee liability shall cease to apply to the Trustee;
  - (j) you shall procure that, before any New Trustee is appointed, the proposed replacement, successor or additional trustee (as the case may be) will provide to the Bank such confirmation (in a form satisfactory to the Bank) that each representation given by you will be satisfied immediately following the appointment of the New Trustee;
  - (k) subject to sub-paragraph (j) above, any retiring trustee who has complied with all the provisions of this sub-clause 9.5 shall, subject to the prior consent of the Bank, be released from all liabilities in respect of this Section E Agreement on retirement; and (l) in the event that a trustee retires and is not replaced by a New Trustee, such retiring trustee shall be released from all liabilities in respect of this Section E Agreement provided that:
    - (l) such retiring trustee confirms that all his rights and titles to the property and assets of the Trust have been transferred to the remaining trustees in their capacity as trustees of the Trust and waives all his rights and interests in the property of the Trust by signing and returning to the Bank a letter stating the same (which shall be in a form satisfactory to the Bank); and
    - (m) a minimum number of appointed trustees is maintained under the terms of the Trust Deed.
- 9.6 **Assessment.** Except where expressly agreed otherwise you are acting for your own account, and have made your decisions to enter into this Section E Agreement and as to whether this Section E Agreement is appropriate or proper for you based upon your judgment and upon advice from such advisers as you have deemed necessary. No communication (written or oral) received from or produced by the Bank will be deemed to be an assurance or guarantee as to the expected results of any Transaction.
- 9.7 **Understanding.** You understand and accept, the terms, conditions and risks of this Section E Agreement. You are also capable of assuming, and assume, the risks of this Section E Agreement.
- 9.8 **Status of Parties.** Except where expressly agreed otherwise, you are entering into this Section E Agreement and any Transaction as principal and not as agent, and you understand that the Bank is not acting as a fiduciary for you in respect of this Section E Agreement.
- 9.9 **No Breach.** The performance of any of your obligations under this Section E Agreement will not violate (a) any law, regulation, decree or legal restriction or any order or judgment of any court or other agency of government applicable to you or any of your assets; (b) (if you are a company or

- corporation) any provision of your constitutional documents or (c) the terms of any material agreement to which you or any of your assets is subject.
- 9.10 **Binding Obligations.** This Section E Agreement and each Transaction constitute your legal, valid and binding obligations enforceable in accordance with their terms (subject to applicable bankruptcy, reorganisation, insolvency or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application).
- 9.11 **Status of Information.** All information supplied by you in connection with this Section E Agreement and each Transaction is true, complete and accurate in all material respects.
- 9.12 **Power and Capacity.** The transactions contemplated by this Section E Agreement and each Transaction are within your powers and capacity.
- 9.13 **Event of Default.** No Event of Default or Potential Event of Default with respect to you has occurred and is continuing or would occur by reason of your entry into, or performance of, your obligations under this Section E Agreement or under any Transaction.
- 9.14 **Litigation.** Any proceeding pending or threatened against you at law or in equity, or before any governmental authority, if adversely determined against you, will not, in the aggregate, materially impair your ability to perform your obligations under this Section E Agreement or under any Transaction, and there is no such proceeding which purports to affect the legality, validity or enforceability of this Section E Agreement or any Transaction.
- 9.15 **Taxes.** You have filed all tax returns which are required to be filed by you and have paid all taxes and assessments which have become due and payable by you, other than those not yet delinquent and except for those contested in good faith. If you are a Trustee, to your knowledge, there are no existing and unpaid liabilities in respect of the payment of tax which would affect your ability to comply with any of your obligations under this Section E Agreement.
- 9.16 **Agreements and Acknowledgements Regarding Hedging Activities.** You agree and acknowledge that (a) when entering into, and throughout the duration of, any Transaction, you are not relying on (i) the manner or method in which the Bank, any of its branches, or any of its Affiliates, may establish, maintain, adjust or unwind the Bank's Hedge Positions, (ii) any communication, whether written or oral, from the Bank or any of the Bank's Affiliates, with respect to any of the Bank's Hedging Activities as to whether, when, how or in what manner or method the Bank, any of its branches or any of its Affiliates may, but are not obliged to, hedge any Transaction by holding a corresponding position in the securities, assets, contracts or indices referenced by or underlying the Transaction or in any other securities, assets, contracts or indices or by entering into any Hedge Position; (b) any Hedge Position established by the Bank or any of the Bank's Affiliates, is a proprietary trading position and activity of the Bank or of such party; (c) neither the Bank nor any of the Bank's Affiliates are holding the Hedge Positions or engaging in the Hedging Activities on your behalf or for your account, or as agent or fiduciary for you, and you will not have any direct economic or other interest in, or beneficial ownership of, the Hedge Positions or Hedging Activities; and (d) the decision to engage in Hedging Activities is in the Bank's sole discretion, and the Bank may commence or, once commenced, suspend or cease the Hedging Activities at any time as the Bank may solely determine.
10. **Security and Margin Calls**
- 10.1 The due performance of all obligations and the payment of all liabilities under this Section E Agreement and any Transaction may be secured under any Security Document over all rights, titles and interests in all monies, securities, assets, claims and other property covered by the Security Document in accordance with the latter's terms.
- 10.2 You shall, at the request of the Bank, deposit and maintain with the Bank (or as the Bank shall direct) sufficient assets as Margin in a form acceptable to the Bank under the Security Document. The minimum Margin to be deposited and maintained with the Bank shall be determined by the Bank in its own discretion and may be changed at any time without prior notice. If, at any date, the Margin deposited with the Bank falls below the minimum Margin required, you will immediately, or within such period as the Bank may specify, deposit or transfer Margin for credit with the Bank or arrange the issue of any other guarantee or security interest for the benefit of the Bank in a form agreeable to the Bank. Margin call notifications shall be validly given to you if despatched to your address last registered with the Bank.
- 10.3 Should you not comply with your obligation to provide Margin under this Section E Agreement immediately or within the time specified by the Bank (as applicable), without prejudice to the rights and remedies available to the Bank under this Section E Agreement or otherwise by law, to the maximum extent permitted by applicable laws and regulations, and not inconsistent with the obligations of the Bank under the Code, the Bank will be entitled without notice to (a) close out all or part of the Transactions in order to reduce the exposure and/or (b) sell sufficient assets which are pledged under the Security Document without further notice and/or (c) take such other actions as the Bank may deem fit.
11. **Termination**
- 11.1 Each of the following circumstances shall be an Event of Default with respect to you:
- (a)
- (i) If you become insolvent or become unable to pay your debts as they fall due; or make a general assignment, arrangement or composition with or for the benefits of your creditors;
- (ii) if you institute or have instituted against you 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
- (iii) (if you are a company or corporation) if a petition is presented for your winding-up or liquidation, or (if you are a private individual) if a petition is presented for a declaration of bankruptcy to be made against you;
- (iv) (if you are a company or corporation) if you have a resolution passed for your winding-up or liquidation or (if you are a private individual) if you declare yourself bankrupt;

- (v) if you seek or become subject to the appointment of an administrator, receiver, trustee, custodian or other similar official in respect of any of your assets;
  - (vi) if an encumbrancer takes possession of all or substantially all your assets or if a distress, execution, attachment, sequestration or other process is levied, enforced, sued on, or put into force against any of your assets;
- (b) if any event occurs which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in paragraphs (i) to (vi) above or (viii) if you take any action in furtherance of, or which indicates your consent to, approval of, or acquiescence in, any of the foregoing acts or circumstances;
  - (c) If you fail to make any payment required to be made by you under this Section E Agreement when it falls due, and such failure is not remedied on or before the third day after notice of such failure to pay or deliver is given by the Bank;
  - (d) If any representation, statement and warranty made or repeated by you under this Section E Agreement proves to have been incorrect or misleading in any material respect at the time when it was made;
  - (e) If you fail to comply with, perform or observe any term or condition contained in this Section E Agreement (other than a failure referred to in paragraph (b) above) and such failure is not remedied on or before the 14th day after notice of such failure is given by the Bank;
  - (f) If there occurs with respect to you any event of default (howsoever described) under any agreement, mortgage, indenture or instrument entered into by you with any party, which results in any of your indebtedness or any liability of yours becoming, or becoming capable of being, declared due and payable before the date on which it would otherwise have become due and payable;
  - (g) If there is any material adverse change in your financial position which the Bank, in its sole and absolute discretion, determines may affect your ability to comply with your obligations under this Section E Agreement or any Transaction;
  - (h) If you are an individual: in the event of your death or if, in the Bank's reasonable judgment, you become incapable of managing your affairs by reason of mental incapacity or for any other reason whatsoever;
  - (i) If you are a company or corporation: if you consolidate or amalgamate with, or merge into or with, or transfer all or substantially all of your assets to, another entity and at the time of such consolidation, amalgamation, merger or transfer the resulting, surviving or transferee entity fails to assume all your obligations under this Section E Agreement or under any Security Document to which you or your predecessor were a party (whether by operation of law or in accordance with an agreement in a form reasonably satisfactory to the Bank); (ii) the benefits of this Section E Agreement or any Security Document fail to extend (without the consent of the Bank) to the performance by such resulting, surviving or transferee entity of its obligations under this Section E Agreement; or (iii) the creditworthiness of the resulting, surviving or transferee entity is, in the Bank's opinion, materially weaker than immediately before such action;
- (j) If you are an individual: if your Net Worth declines after the date of this Section E Agreement by more than a percentage determined by the Bank and specified to you (as such percentage may be amended and re-notified from time to time by the Bank acting in good faith and in a commercially reasonable manner), as determined by the Bank in its sole and absolute discretion. For the purposes of this paragraph (j), "Net Worth" means total assets minus total liabilities (contingent or otherwise);
  - (k) If you are a company or corporation: if your Net Asset Value declines after the date of this Section E Agreement by more than a percentage determined by the Bank and specified to you (as such percentage may be amended and re-notified from time to time by the Bank acting in good faith and in a commercially reasonable manner), as determined by the Bank in its sole and absolute discretion. For the purposes of this paragraph (k), "Net Asset Value" means the total assets of the company or corporation minus the total liabilities of the company or corporation as stated in its latest audited accounts;
  - (l) If you are a partnership whose partner is a natural person: on the (i) death of the partner or (ii) the adjudication of the partner as incompetent, or (iii) the appointment of a guardian in a timely manner for the partner by a court of appropriate jurisdiction;
  - (m) If you are a Trustee: if (i) the Trust terminates or (ii) any Trustee dies, becomes incapacitated, or is no longer a Trustee, and the Bank does not receive adequate assurances (including legal opinions and documentation signed by the New Trustee) that (A) obligations under this Section E Agreement continue to be legal, valid and binding and (B) the Bank continues to have a perfected first-ranking security interest in any Collateral/Margin posted with the Bank or (iii) if the Trust Documents are amended in a manner which the Bank conclude will have a material adverse effect on the Bank or the Bank's rights under this Section E Agreement or any Transaction;
  - (n) If either party is prevented from or hindered or delayed by reason of any force majeure or act of State in the delivery or payment of any currency in respect of any Transaction; and
  - (o) If an event or circumstance occurs in relation to either party where it becomes, or with the lapse of time will become, unlawful, for any reason whatsoever, for a party to perform any absolute or contingent obligation to make a payment or delivery under this Section E Agreement or to comply with any other material provision of this Section E Agreement.

- 11.2 Upon the occurrence of an Event of Default, the Bank may by notice to you specify the relevant Event of Default or Events of Default and declare all Transactions and the obligations of the parties in connection with any Transaction terminated as of the date specified in such notice (the "**Early Termination Date**"), and the Transactions and such obligations shall terminate as of such Early Termination Date (whether or not such Event of Default or Events of Default are continuing on that date).
- 11.3 Upon the occurrence or effective designation of an Early Termination Date, no further payments or deliveries under Clause 5.1 in respect of Transactions will be required to be made, but without prejudice to the other provisions of this Section E Agreement. The amount, if any, payable in respect of an Early Termination Date will be determined in accordance with this Clause 11.3 and Clause 12.
- 11.4 On or as soon as reasonably practicable following the occurrence or designation of an Early Termination Date, the Bank will make the calculations contemplated by Clause 12 and will provide to you a statement (a) showing, in such detail as the Bank in its sole and absolute discretion deem appropriate, such calculations (including any quotation, market data or information from internal sources used in making such calculations), (b) specifying any Early Termination Amount (as defined below) payable and (c) giving details of the relevant account to which any amount payable to the Bank is to be paid.
- 11.5 An Early Termination Amount (as defined below) due in respect of any designated Early Termination Date will be payable on the day on which the Bank shall by notice specify such amount is to be payable (which shall be as soon as reasonably practicable following the determination of such Early Termination Amount).
12. **Determination of Early Termination Amount**
- 12.1 If an Early Termination Date has been designated, the amount, if any, payable in respect of that Early Termination Date (the "**Early Termination Amount**") will be determined by the Bank in accordance with this Clause 12 and will be subject to Clause 5.5.
- (a) With respect to each Transaction, the Bank will calculate, in its sole and absolute discretion, the amount of losses or costs that are or would be incurred by the Bank under then prevailing circumstances (expressed as a positive number) or the amount of gains by the Bank that are or would be realised by the Bank under then prevailing circumstances (expressed as a negative number) in replacing, or in providing for the Bank the economic equivalent of the material terms of that Transaction, including the payments and deliveries (whether the underlying obligation was absolute or contingent and assuming the satisfaction of each applicable condition precedent) by the parties under Clause 5.1 in respect of that Transaction that would, but for the occurrence of the relevant Early Termination Date, have been required after that date (the "**Close-out Amount**").
- (b) Any Close-out Amount will be determined by the Bank in good faith and the Bank will use commercially reasonable procedures in order to make such a determination.
- (c) The Bank will determine each Close-out Amount as of the Early Termination Date

or, if this would not be commercially reasonable, as of the date or dates following the Early Termination Date as would, in the sole opinion of the Bank be commercially reasonable.

- (d) With respect to each Transaction, the Bank will calculate in its sole and absolute discretion, the amounts owing to each party with respect to an Early Termination Date, being the aggregate of (i) in respect of each such Transaction, the amounts that became payable (or would have become payable but for Clause 5.2) to such party under Clause 5.1 on or before such Early Termination Date and which remain unpaid as at such Early Termination Date, and (ii) in respect of each Transaction, for each obligation under Clause 5.1 which was (or would have been) required to be settled by delivery to such party on or before such Early Termination Date and which has not been so settled as at such Early Termination Date, an amount equal to the fair market value of that which was (or would have been) required to be delivered in respect of the relevant Transaction (each, an "**Unpaid Amount**").
- (e) The Early Termination Amount will be an amount equal to (i) the sum of (A) the Close-out Amount or Closeout Amounts (whether positive or negative and where necessary converted by the Bank into the Termination Currency in its sole and absolute discretion) determined by the Bank for each Transaction and (B) the unpaid Amounts (where necessary converted by the Bank into the Termination Currency in its sole and absolute discretion) owing to the Bank less (ii) the Unpaid Amounts (where necessary converted by the Bank into the Termination Currency in its sole and absolute discretion) owing to you. If the Early Termination Amount is a positive number, you will pay it to the Bank; if it is a negative number, the Bank will pay the absolute value of the Early Termination Amount to you. The parties agree that the amounts recoverable under this Clause are a reasonable pre-estimate of loss and not a penalty. Such amounts are payable for the loss of bargain and the loss of protection against future risks and, except as otherwise provided in this Section E Agreement, neither party will be entitled to recover any additional damages as a consequence of such losses.
- 12.2 At the option of the Bank, the Bank may set off any Collateral it holds (including the liquidated value of any non-cash Collateral) as Margin or security for your obligations hereunder against the net payment calculated in accordance with Clause 12.
- 12.3 For any of the above purposes, the Bank may, to the maximum extent permitted by applicable laws and regulations, and not inconsistent with the obligations of the Bank under the Code, without any liability to you, realise or sell so much of the Collateral, or take all such action, as the Bank deems fit (including but not limited to liquidation of the Collateral before its maturity, conversion of the same into other currencies or conclusion of any spot or forward contract), and accordingly you irrevocably authorise the Bank to act on your behalf. The Bank is entitled to use its discretion in all aspects of any sale or liquidation of the Collateral.

- (a) Any proceeds remaining after deducting all costs, expenses and payments of all amounts due under this Section E Agreement, shall be paid to you. In the event such proceeds are insufficient to cover such payments, you shall pay to the Bank immediately upon demand the amount of any deficiency.
- (b) You authorise the Bank to place the proceeds of any Collateral to the credit of any suspense account with a view to preserving the Bank's rights to prove the whole of the claims of the Bank against you and the Bank may apply any or all of such proceeds to such account, your obligation or liability which the Bank may, at its discretion, from time to time conclusively determine.
- 12.4 The acceptance of any request by you to terminate a Transaction before its termination date shall be solely at the discretion of the Bank and in making such decision, the Bank may take into account the effect of such termination on any other outstanding Transaction under this Section E Agreement and may calculate an Early Termination Amount in respect of such Transaction in accordance with this Clause 12 as if such Transaction were the only Transaction existing under this Section E Agreement, or in any other way the Bank, in its sole and absolute discretion, may deem appropriate.
13. **Set-Off**
- 13.1 In addition to any right of set-off the Bank may have as a matter of law or pursuant to this Section E Agreement or otherwise, upon the occurrence of an Event of Default, the Bank will have the right (but shall not be obliged) to set off or apply any obligation of yours owed to the Bank (whether or not matured or contingent and whether or not arising under this Section E Agreement, and regardless of the currency, place of payment or booking office of the obligation) against any of the Bank's obligations owed to you (whether or not matured or contingent and whether or not arising under this Section E Agreement, and regardless of the currency, place of payment or booking office of the obligation).
- 13.2 For the purpose of cross-currency set-off, the Bank may convert any obligation at the applicable market exchange rate determined by the Bank on the relevant date (acting in good faith and in a commercially reasonable manner).
- 13.3 If an obligation is unascertained, the Bank may estimate that obligation and set off in respect of the estimate, subject to the relevant party accounting to the other when the obligation is ascertained.
- 13.4 This Clause 13 shall not constitute a mortgage, charge, lien or other security interest upon any of your property or asset.
- 13.5 The Bank shall, as soon as practicable thereafter, give notice to you of any exercise of its rights under this Clause 13.
14. **Taxation**
- This Section E Agreement and the payments and deliveries made under this Section E Agreement are subject to the tax provisions set out in Section A as if they were replicated here in full.
15. **Currency Indemnity**
- The receipt or recovery by the Bank of any amount in respect of your obligation to pay (under this Section E Agreement or any Confirmation) in a currency other than the relevant Transaction

Currency as any payment to the Bank under any relevant Transaction, whether in accordance with a judgment of any court or under this Section E Agreement, shall discharge such obligation only to the extent that, on the Business Day immediately following such receipt, the Bank shall be able, in accordance with normal banking procedures, as determined by the Bank in its sole discretion, to purchase the Transaction Currency with the currency received. If the amount of the Transaction Currency so purchasable shall be less than the original Transaction Currency amount calculated by the Bank in accordance with the provisions of this Section E Agreement, or directed in accordance with the judgment of any court, you shall, as a separate obligation and notwithstanding any judgment of any court, indemnify the Bank against any loss sustained by the Bank. You shall in any event indemnify the Bank against any cost incurred by the Bank in making any such purchase of the Transaction Currency.

16. **Instructions and Correspondence**

16.1 Any oral or written instruction received by the Bank in relation to any Transaction and identified as proper authority to the Bank's satisfaction shall be deemed to be your proper and duly authorised instructions and shall be binding on you, and the Bank shall not be liable for acting upon such instructions even if such instructions contain an error or are not authentic or duly authorised.

16.2 The Bank may record all telephone calls relating to this Section E Agreement and any Transaction entered into under this Section E Agreement. You agree to the use of such recordings and transcripts of such recordings by the Bank as evidence in any action, proceeding or dispute between you and the Bank. The Bank shall not be required to maintain copies of such recordings and transcripts.

17. **Conflicts**

You understand the Bank may enter into Transactions with one of its Affiliates as the Bank's counterparty or with a person otherwise associated with the Bank, even if a conflict of interest may arise. You also understand the Bank may enter into Transactions in which the Bank have a direct or indirect material interest.

18. **Definitions**

**Affiliate** means (i) any entity controlled, directly or indirectly, by the Bank, (ii) any entity that controls the Bank, whether directly or indirectly, or (iii) any entity, directly or indirectly, under common control with the Bank, where "**control**" of any entity means ownership of a majority of the voting power of such entity;

**Business Day** refers to a day (other than a **Saturday** or a Sunday) on which commercial banks and foreign exchange markets are open for business in the place(s) specified in the Confirmation or if not specified, in the place or places designated by the Bank in good faith in a commercially reasonable manner;

**Collateral** refers to any and all of the investments and other assets whether held subject to the Security Documents or otherwise which is granted to the Bank as collateral or security for your obligations to the Bank under this Section E Agreement or generally;

**Confirmation** refers to any and all of the advice or confirmations which may be issued by the Bank to you as a record of the terms of any Transaction;

**Early Termination Date** means a date on which all Transactions are terminated in accordance with Clause 11;



**Event of Default** has the meaning given to that term in Clause 11;

**Hedge Positions** means any purchase, sale, entry into or maintenance of one or more (a) positions or contracts in securities, options, futures, derivatives or foreign exchange or (b) other instruments or arrangements (however described) by a party in order to hedge, a Transaction;

**Hedging Activities** means any activity or transaction undertaken in connection with the establishment, maintenance, adjustment or termination of a Hedge Position;

**Margin** means any of the initial and additional margin asset or deposit as stipulated by the Bank as acceptable margin from time to time and as placed with the Bank in accordance with Clause 10;

**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;

**Risk Disclosure Statements** means the risk disclosure statements set out in these Conditions or as otherwise furnished to you from time to time by the Bank, in each case in respect of the Transactions and/or this Section E;

**Product Specific Annex** means, where applicable, each annex to this Section E that sets out specific terms applicable to a specific type of Transaction and that specifies that such annex is a "Product Specific Annex" for purposes of this Section E;

**Security Document** means: (a) the charge in accordance with which you have pledged in the Bank's favour all your rights, titles and interests in respect of any amount standing to the credit of your account with the Bank, and any other assets specified in such security document; (b) any real property mortgage under which you have granted security to the Bank over all your rights, titles and interests in and to any real property specified in such real property mortgage; and (c) any other security document under which you or any other party have granted a security interest to the Bank in respect of any asset, in each case as security for your obligations to the Bank under this Section E Agreement or generally;

**Settlement Date** refers to, in relation to a Transaction, each day specified in the relevant Confirmation or otherwise for payment of any amount under that Transaction. If any such date is not a Business Day, it shall be adjusted to be the next following Business Day or such other Business Day as the Bank may determine;

**Termination Currency** means, in relation to any calculation of the Unpaid Amounts or Close-Out Amount upon any close out and termination of an outstanding Transaction in accordance with Clause 12.1, the currency into which such Close-Out Amount shall be converted and which shall be such currency as the Bank may determine;

**Transaction** means any derivative transaction including interest rate swaps, foreign exchange swaps, foreign exchange forwards (whether deliverables or non-deliverables) concluded by the Bank with you, whether orally or otherwise, in accordance with the terms of this Section E Agreement and as may be confirmed by the Bank to you in writing in any Confirmation of the Transaction and any other transaction which the Bank may determine to be governed by this Section E;

**Transaction Currency** means, in relation to a payment under any Transaction, the currency in which such payment should be made;

**Unpaid Amount** has the meaning given to it in Clause 12.1(d); and

**you, your and yours** refer to you, the clients (which include a corporate body, partnership or association), who enter into this Section E Agreement with the Bank. Where the expressions you, your and yours consist of two or more persons, all agreements, obligations, powers, authorities and liabilities on your part in connection with this Section E Agreement shall be joint and several. An obligation to notify you arising in accordance with the terms of this Section E Agreement (if any) shall be discharged and satisfied by notification to any one of you.

18.1 As used here, the singular or plural number shall each be deemed to include the other unless the context otherwise indicates.

## **SECTION F (SECURITIES TRADING VIA SHANGHAI-HONG KONG STOCK CONNECT (NORTHBOUND) AND SHENZHEN-HONG KONG STOCK CONNECT (NORTHBOUND))**

### **F1. GENERAL TERMS AND CONDITIONS**

#### **1. General**

1.1 Without prejudice to the application of Section A (**GENERAL TERMS**) and D (**INVESTMENT PRODUCTS**) of these Conditions, this Section F (**SECURITIES TRADING VIA SHANGHAI-HONG KONG STOCK CONNECT (NORTHBOUND) AND SHENZHEN-HONG KONG STOCK CONNECT (NORTHBOUND)**) of these Conditions contains specific terms applying to services provided to you by the Bank in respect of Northbound trading of China Connect Securities through China Connect.

1.2 In the event of any conflict or inconsistency between the provisions in other parts of these Conditions and this Section, this Section prevails.

1.3 Unless the context otherwise requires or this Section expressly provides otherwise, all words and expressions as defined in other sections in these Conditions shall have the same meanings when used or referred to in this Section.

#### **2. Compliance with Trading Restrictions, China Connect Market Rules and China Connect Laws**

2.1 Any trading in China Connect Securities will be subject to all China Connect Laws and China Connect Market Rules, and the applicable terms of business or agreement entered into between the Bank and its agent (such as any executing or settlement brokers, custodians or other service providers used by the Bank (whether within or outside Hong Kong), and/or as stipulated by the Bank in its sole discretion from time to time.

2.2 This Section does not purport to cover all the rules, requirements and features relating to China Connect and all China Connect Market Rules and China Connect Laws. You shall be fully responsible for understanding and at all times complying with all China Connect Market Rules and China Connect Laws and all such trading restrictions applicable to China Connect as amended from time to time and for any consequences, risks, losses or costs of Northbound trading. Please refer to the web pages on the HKEX website and the SFC website relating to China Connect from time to time and other relevant sources.

2.3 The Bank shall have the right to apply any procedures or requirements in respect of any trading of China Connect Securities through China Connect which the Bank determines in its absolute discretion to be necessary or desirable for the purpose of any China Connect Laws, China Connect Market Rules or market practice. To the maximum extent permitted by applicable laws and regulations, and not inconsistent with the Bank's obligations under the Code, neither the Bank nor any Related Party shall be liable for any losses or risks which may result directly or indirectly from such procedures or requirements.

2.4 The Bank may, in its absolute discretion, refuse to execute any instruction given by you, if (for example, and without limitation):

- (a) such instruction is not compliant with any China Connect Laws or China Connect Market Rules or if the Bank reasonably believes that such instruction may not be compliant with any China Connect Laws or China Connect Market Rules or if the Bank is required by the SEHK not to accept such instruction;
- (b) in respect of any instruction to make a Northbound sell order, the Bank determines in its absolute discretion that you do not have sufficient securities at the time of such order instruction to settle the delivery obligation or if submission of the order would cause the Bank to be in breach of the Pre-Trade Checking requirements or related requirements under the China Connect Market Rules or China Connect Laws; or
- (c) in respect of any instruction to make a Northbound buy order, the Bank determines in its absolute discretion that you do not have sufficient funds to settle the payment obligation in respect of such order on the settlement day.

Without prejudice to the foregoing, the Bank may in its absolute discretion refuse to receive and/or accept for deposit from you or your custodian any China Connect Securities without giving any reason.

2.5 Without limitation to the foregoing, the Bank may in its absolute discretion suspend, terminate or limit your ability to access the China Connect through the Bank without advance notice to you, including but not limited to where requested or directed by a China Connect Authority. You acknowledge and accept that any Northbound order placed by you may also be rejected by any China Connect Authority if such order is not compliant with any China Connect Market Rules or China Connect Laws or if the relevant China Connect Authority believes that such order may not be compliant with any China Connect Market Rules or China Connect Laws. To the maximum extent permitted by applicable laws and regulations, and not inconsistent with the Bank's obligations under the Code, neither the Bank nor any Related Party shall have any liability for any losses or risks incurred or suffered, directly or indirectly, by you arising out of or resulting from such refusal by the Bank, or rejection by any China Connect Authority.

2.6 In the event that the SEHK, the SEHK Subsidiary or HKSCC is notified by the relevant China Connect Entities and/or China Connect Authorities or any governmental or regulatory body that there is reasonable cause to believe that you have failed to comply with or have breached any China Connect Laws or China Connect Market Rules, you shall, upon the request of the Bank provide such information (including translations into Chinese if

requested by the Bank) as the Bank may reasonably request to enable the Bank to assist the relevant China Connect Entities and/or China Connect Authorities or any governmental or regulatory body to assess whether there is any non-compliance or breach of the China Connect Laws or China Connect Market Rules and/or the extent of any non-compliance or breach, and by providing such information, you are deemed to waive the benefit of any bank or other secrecy laws and data protection laws which may be applicable.

### 3. Risk Disclosures and Acknowledgement

By instructing the Bank in respect of any transaction relating to China Connect Securities, you acknowledge, represent, warrant and confirm that:-

3.1 You have read and understood the risk disclosures and other information set out in Section F2 and that you understand and accept the risks concerned in trading China Connect Securities on China Connect including being liable or responsible for and consequences of breaching the China Connect Laws or China Connect Market Rules, or any applicable laws and regulations.

3.2 You accept that there is a risk of prohibition and suspension from trading China Connect Securities and that your instructions to trade China Connect Securities may not be accepted.

3.3 To the maximum extent permitted by applicable laws and regulations, and not inconsistent with the obligations of the Bank under the Code, neither the Bank nor any Related Party shall be liable for any loss, liability or third party claim or demand that you may suffer directly or indirectly as a result of any action or inaction by the Bank or any Related Party in connection with the provision of trading services in respect of China Connect Securities to you by the Bank including, without limitation, the materialisation of any of the risks described in Section F2.

3.4 SEHK has the power not to extend the China Connect Service to you, and the power to require the Bank not to accept instructions from you, if it is found that you, the Bank, or any of the Bank's clients have or may have committed any abnormal trading conduct set out in the relevant China Connect Market Rules or failed to comply with any China Connect Market Rules.

3.5 If the relevant China Connect Market Rules are breached, or the disclosure and other obligations referred to in any China Connect Laws or China Connect Market Rules are breached, (a) the relevant China Connect Entity and/or the relevant China Connect Authority has the power to carry out investigations, and may, through SEHK (or through the SEHK Subsidiary, or any other governmental or regulatory body), require the Bank or a Related Party to (i) provide relevant information and materials relating to you including, without limitation, in relation to your identity, personal data and trading activity; and (ii) assist in the relevant China Connect Entity and/or the relevant China Connect Authority's investigation in relation to you and/or your trading activity; (b) you may be subject to regulatory investigations and legal and regulatory consequences if you are in breach of, or fail to comply with, such laws, rules or regulations; and (c) you acknowledge and consent to the Bank or a Related Party providing, disclosing or transferring such information and personal data to the SEHK or SEHK Subsidiary for disclosure to the Relevant China Connect Entity and/or the relevant China Connect Authority.

3.6 The SEHK may (for the purpose of assisting relevant China Connect Entity and/or the relevant

- China Connect Authority in its regulatory surveillance of SSE or SZSE and investigation in connection with and enforcement of the relevant China Connect Market Rules and as part of the regulatory cooperation arrangement between the SEHK, the SEHK Subsidiary and SSE or SZSE) require the Bank to provide information (including, without limitation, in relation to your identity, personal data and trading activity) in relation to you and any other persons referred to in the China Connect Market Rules with respect to any China Connect orders placed or China Connect transactions made or entered into by the Bank on your or their behalf; you acknowledge and consent to the Bank providing, disclosing or transferring such information and personal data to the SEHK for disclosure to the relevant China Connect Entity and/or the relevant China Connect Authority.
- 3.7 Where a China Connect Entity and/or China Connect Authority considers that there is a serious breach of the relevant China Connect Market Rules, the Bank may be required by SEHK, upon the request of the China Connect Entity and/or China Connect Authority to (a) issue warning statements (verbally or in writing) to you; and (b) not to extend or cease to extend to you any service relating to trading China Connect Securities through China Connect.
- 3.8 Prior to the Bank informing you that a Northbound buy order instructed by you has been settled, you shall not instruct a Northbound sell order in respect of the China Connect Securities which are the subject of such Northbound buy order.
- 3.9 You consent to the Bank or any Related Party providing information relating to you and your profile, including the type and value of Northbound buy and sell orders and transactions executed on your behalf to a China Connect Entity and/or a China Connect Authority at such intervals and in such form as such China Connect Entity and/or China Connect Authority may specify from time to time including in relation to an investigation or surveillance by a China Connect Entity and/or China Connect Authority.
- 3.10 You accept that the Bank will be subject to recordkeeping requirements under the China Connect Market Rules and may therefore retain records (including telephone and electronic communications and account information) in relation to your Northbound orders and trading for 20 years or as otherwise required under the China Connect Market Rules or the China Connect Laws.
- 3.11 You accept that the SEHK may upon the request of SSE or SZSE require the Bank to cancel or reject any of your orders or any order made on your behalf.
- 3.12 You accept that none of the China Connect Authorities, China Connect Entities or their respective directors, employees and agents shall be responsible or held liable for any loss or damage directly or indirectly suffered by the Bank or any Related Party, you or any other third party arising from or in connection with (a) the trading of China Connect Securities or the operation of the CSC in respect of China Connect Securities, or (b) any amendments, making or enforcement of the China Connect Market Rules; or (c) any action taken by a China Connect Authority and/or China Connect Entity in discharge of its supervisory or regulatory obligations or functions (including any action taken in respect of abnormal trading activities).
4. **Representations**
- 4.1 You make the representations set out in this Clause to the Bank on a continuing basis that:
- (a) you are not a Mainland China Resident or an entity incorporated or registered under the laws of Mainland China;
  - (b) if you are a Mainland China Resident, you are using funds lawfully owned by you and located outside Mainland China to make investments in China Connect Securities or if you are an entity incorporated or registered under the laws of Mainland China, your investment in China Connect Securities has been conducted pursuant to any program (including the Qualified Domestic Institutional Investor Program, if applicable) approved by, or any other approval of, any competent Mainland China regulator;
  - (c) you are aware of and shall comply with all China Connect Laws, China Connect Market Rules and any other applicable laws and regulations of Mainland China (including those in relation to foreign exchange control and reporting), as may be amended from time to time, to which you may be subject;
  - (d) the execution of any instruction you give to the Bank shall not result in any breach of any China Connect Laws or China Connect Market Rules; and
  - (e) you understand and have assessed the risks relating to China Connect and you are willing to undertake the risks relating to China Connect.
- 4.2 You make the following representations to the Bank on each date you instruct an order to sell China Connect Securities:
- (a) that you do not know of any fact that might impair the validity of such China Connect Securities, and that you have full authority to receive, deal with and give instructions, authorisations or declarations in respect of the same;
  - (b) that there is no adverse claim to such China Connect Securities;
  - (c) that there is no restriction on the transfer of such China Connect Securities other than those expressly provided for under the SEHK rules or CCASS rules; and
  - (d) that, where the order is for a sale of one or more odd lots in respect of a China Connect Security, such order relates to all, and not some only, of the odd lots held by you in respect of that China Connect Security.
5. **Handling of Client Orders**
- 5.1 The Bank will handle client orders fairly. The Bank may aggregate your Northbound orders with the Northbound orders of any other client or of its Affiliates when the Bank processes such orders. This may sometimes operate to your disadvantage and, because of the quota restriction described in Section F2, may result in your order only being partially executed or not at all.
- 5.2 All client orders and transactions to be undertaken for clients ("**Client Orders**") which are for submission to the applicable open auction or start of continuous trading session (the "**Opening**") shall be handled by the Bank in a way that seeks to ensure that all such Client Orders have a fair

and equal opportunity to participate in the Opening. The Bank will regard all such Client Orders as having been received by the Bank only at the point at which the Bank's system submits Client Orders into the applicable opening auction or the Opening.

## 6. **Compliance with Pre-trade Checking Requirements**

6.1 You undertake that you will comply with any requirements relating to Pre-Trade Checking mandated by the China Connect Authorities, the China Connect Entities or as notified to you by the Bank.

6.2 In addition, you undertake to ensure there are sufficient and available China Connect Securities in your account by the applicable cut-off time (as notified to you by the Bank from time to time) to cover any proposed sell order given on the relevant Trading Day.

6.3 If the Bank considers that you do not for whatever reason have sufficient and available China Connect Securities in your account to settle a sell order by the applicable cut-off time (as notified to you by the Bank from time to time) the Bank may in its absolute discretion:

- (a) reject your sell order (in whole or in part);
- (b) use any China Connect Securities in the designated CCASS stock account(s) which the Bank holds for itself or on behalf of its other clients to fulfil the Pre-Trade Checking requirement in respect of your sell order, in which case you shall reimburse the Bank for any costs, losses or expenses which the Bank incurs as a result of buying in or otherwise sourcing the amount of China Connect Securities which you have failed to deliver in respect of your sell order on such terms and at such price (including any associated fees and expenses) and at such time as the Bank shall determine in its absolute discretion); or
- (c) perform any other act which the Bank considers necessary or desirable to comply with Pre-Trade Checking and/or relevant China Connect Laws or China Connect Market Rules and to cover your shortfall (including but not limited to applying any other China Connect Securities available to the Bank from other sources).

6.4 In addition, the Bank may in its absolute discretion reject your sell order (in whole or in part) if for any other reason the Bank considers that there is or may be non-compliance with any China Connect Laws or China Connect Market Rules. Any risk, loss or cost resulting from non-compliance or potential non-compliance with Pre-Trade Checking and/or the relevant China Connect Laws or China Connect Market Rules shall be borne by you.

6.5 If you give any sell order in respect of any China Connect Securities allocated to any fund managed by you, you undertake to ensure that there are sufficient and available China Connect Securities in your account allocated to such fund by the applicable cut-off time (as notified to you by the Bank from time to time) to cover any such proposed sell order on the relevant Trading Day. In all cases, it is your responsibility to ensure that each of the funds managed by you complies with all China Connect Laws and China Connect Market Rules to which the relevant fund may be subject.

## 7. **Settlement, Renminbi Payments and Currency Conversion**

7.1 As all Northbound trading is effected and settled in Renminbi, if the Bank does not receive sufficient Renminbi before settlement of a Northbound buy order to settle such purchase of China Connect Securities, settlement may be delayed and/or fail and you may not acquire title to, or become entitled to sell or transfer the relevant China Connect Securities. Where the Bank holds any funds on your behalf, if there is insufficient Renminbi fund to settle any Northbound buy order or other payment obligation in connection with China Connect, you authorise the Bank to convert any funds in any other currency which the Bank holds on your behalf into Renminbi for the purposes of settlement thereof.

7.2 Notwithstanding any provisions in these Conditions, where it is necessary to convert one currency to another pursuant to this Section F, such conversion may be carried out automatically by the Bank in a commercially reasonable manner without prior notice to you. Any risk, loss or cost (including fees, charges and/or commissions) in connection with or resulting from any conversion of one currency into another currency pursuant to this Section F shall be borne by you.

7.3 You agree that in the event that you fail to settle in a timely manner any payment obligation in relation to an instruction to purchase China Connect Securities, the Bank has the right to immediately and without prior notice to you take such action as the Bank considers appropriate to reduce or eliminate any loss or liability that the Bank suffers or may suffer (including but not limited to taking any steps to sell, realize, dispose of or otherwise deal with the relevant China Connect Securities) and that to the maximum extent permitted by applicable laws and regulations, and not inconsistent with the obligations of the Bank under the Code, you shall fully indemnify and hold the Bank harmless for any liabilities, expenses or other losses the Bank may incur in exercising the foregoing right. You further agree that to the maximum extent permitted by applicable laws and regulations, and not inconsistent with the obligations of the Bank under the Code, the Bank shall have no liability to you for any loss, diminution in value or other damages whatsoever for any action or inaction of the Bank or its agents pursuant to this Clause.

7.4 Notwithstanding any provisions in these Conditions, where the Bank determines that there is insufficient liquidity in Renminbi to settle any buy orders, the Bank may, in its sole and absolute discretion, reject your instructions to place such buy order.

## 8. **Sale, Transfer and Disgorgement**

8.1 Where, under the terms of the China Connect Market Rules, the Bank receives notice (a "**Forced-sale Notice**") from a China Connect Authority requiring the Bank to sell and liquidate a specified number of China Connect Securities, the Bank shall be entitled to issue a corresponding notice (a "**Client Forced-sale Notice**") to you requesting you to sell and liquidate any number of such China Connect Securities that you hold in your account with the Bank (as determined by the Bank in its sole discretion) within the period specified by the relevant China Connect Authority, and you undertake to comply with any such Client Forced-sale Notice.

8.2 In relation to any Forced-sale Notice, you authorise the Bank to sell or arrange for the sale of such China Connect Securities on your behalf at such price and on such terms as the Bank may determine in its absolute discretion, to the extent

- necessary to comply with all China Connect Laws and China Connect Market Rules, if you fail to comply in a timely manner with a Client Forced-sale Notice.
- 8.3 Where China Connect Securities owned by you that are the subject of a Client Forced-sale Notice have been transferred from the holding of the Clearing Participant that settled the relevant Northbound buy order (the "**Original CP**") to another Clearing Participant or custodian (the "**Recipient Agent**"), you authorise the Bank to provide instructions to the Recipient Agent on your behalf to return the relevant China Connect Securities to the Original CP for sale and liquidation in accordance with all China Connect Laws and China Connect Market Rules. You also undertake to inform the Recipient Agent of such authorisation and, where required, you undertake to instruct the Recipient Agent to act accordingly.
- 8.4 You authorise the Bank to sell or arrange for the sale of any amount of China Connect Securities owned by you if the Bank receives notice from any China Connect Authority requiring you to disgorge any profits as a result of the "short swing profit rule", as described in Clause 15 (*Short Swing Profit Rule*) of Section F2.
- 8.5 In addition to the above, you authorise the Bank to sell, transfer or carry out any other action in relation to China Connect Securities owned by you if the Bank is instructed to do so by any China Connect Authority or if the Bank otherwise determines in its absolute discretion that it is necessary or desirable to do so in order to comply with any China Connect Laws or China Connect Market Rules.
- 8.6 To the maximum extent permitted by applicable laws and regulations, and not inconsistent with the obligations of the Bank under the Code, neither the Bank nor any Related Party shall have any liability for any losses or risks which may result directly or indirectly from any actions taken by the Bank or any Related Party in respect of this Clause 8.
9. **Custody**
- 9.1 Applicability - This Clause is only applicable when you have delivered to the Bank the China Connect Securities in relation to Pre-Trade Checking under the China Connect Market Rules and China Connect Laws.
- 9.2 Nature of custodial services
- (a) The provisions in this Clause 9 are without prejudice to any agreements you may have with the Bank and/or its Affiliates providing you with custodial services.
- (b) You acknowledge that the Bank conducts business in China Connect Securities for other clients and for its own account.
- (c) You shall be solely responsible for all filings, tax returns and reports of any transaction in respect of or relating to China Connect Securities held under this Clause 9, as may be required by any relevant authority, whether government or otherwise.
- 9.3 Establishment of custody account
- (a) You authorise the Bank to establish on its books a custody account or accounts (the "**Custody Account**") for the receipt, safekeeping and maintenance of China Connect Securities.
- (b) The Bank will determine in its reasonable discretion whether to accept in the Custody Account any proposed delivery of China Connect Securities.
- 9.4 Custodial procedures
- (a) The Bank will be under no obligation to credit China Connect Securities to the Custody Account before its receipt of such China Connect Securities by final settlement.
- (b) If the Bank receives one or more instructions to deliver from the Custody Account an amount of China Connect Securities exceeding those credited to the Custody Account, it may reject any such instruction or elect to perform any instruction in whole or in part, and in any order.
- (c) You acknowledge that deliveries of China Connect Securities and payments therefor may not be simultaneous. Accordingly, if the Bank receives an instruction to deliver China Connect Securities against payment or to pay for China Connect Securities against delivery, it may make or accept payment for or delivery of China Connect Securities in accordance with relevant market practices and/or rules and/or applicable law or regulation.
- (d) The Bank shall make payment for and/or receive or deliver China Connect Securities only upon receipt of and in accordance with specific instructions (except as otherwise specifically provided in these Conditions).
- (e) Unless the Bank has received and accepted a contrary instruction, it may carry out the following without any instruction:
- (i) in your name or on your behalf, sign any document relating to China Connect Securities which may be required (i) to obtain receipt of any China Connect Securities or funds or (ii) by any tax or regulatory authority; and
- (ii) collect and/or receive and/or take other necessary or appropriate action in relation to any payment or distribution in respect of China Connect Securities (whether pursuant to a stock dividend, bonus issue, share sub-division or reorganisation, capitalisation of reserves or otherwise).
- (f) You acknowledge that the Bank may re-deliver to you or to your usual custodian, at such time as it may determine in its absolute discretion, any China Connect Securities which have not been utilised by the Bank in the settlement of any transaction on your behalf. You acknowledge that the Bank may, within one trading day of receipt, deliver or pay to you or your usual custodian or bank (net of any fees or other expenses payable by you to the Bank) any distribution or payment received by it in respect of China Connect Securities for your account. You will, promptly on its request, give such instructions (to the Bank and/or your usual custodian and/or any other person) as it may require to pre-authorise any such re-delivery or payment.
- (g) In circumstances where the Bank has not, after using reasonable endeavours, been able to (i) re-deliver to you or to your usual custodian any such China Connect Securities, or (ii) deliver or pay to you or your usual custodian or bank any such distribution or payment, including, for

example, and without limitation, where you fail to provide such instructions upon the Bank's reasonable request and/or your usual custodian refuses to accept any such delivery of China Connect Securities or payment, you authorise the Bank in its absolute discretion to sell, liquidate or otherwise dispose of the relevant China Connect Securities and to transfer the sale, liquidation and / or disposal proceeds and/or any distribution or payment to your usual bank account or, if there is no bank account, to an account established for you by the Bank with a third party bank selected by the Bank in its absolute discretion pending instructions for payment to your preferred account.

- (h) The Bank shall have no obligation whatsoever to collect or receive or take any other action (including attending any general meeting and/or exercising any voting rights) in relation to any payment or distribution in respect of China Connect Securities for your account or to notify you of the existence of or the terms of any notice, circular, report, announcement or similar corporate action in respect of China Connect Securities. The Bank is not obliged to (and generally will not) attend any meeting or exercise any of the powers or rights incidental to the ownership of the China Connect Securities (including any voting right in respect of the China Connect Securities held for you), save where the Bank may at its discretion act, at your expense, in accordance with your express instructions upon such terms and conditions imposed by the Bank. PROVIDED THAT if the Bank has not received such instructions from you at all or within a reasonable time, the Bank shall be entitled to deal with the above matters in such manner as the Bank may deem fit including acting or refraining from acting in accordance with the default option specified in any notice or request for instruction.
- (i) You acknowledge that in certain circumstances, including, without limitation, as a result of any China Connect Laws or China Connect Market Rules, it may be difficult, impracticable or impermissible for HKSCC or its nominee (and for the Bank, or you) to exercise any rights or entitlements or to participate in any actions, transactions or other matters in respect of China Connect Securities. If the Bank makes any such collection or receipt, take any such action or give you any such notification or take any action pursuant to any such notification, to the maximum extent permitted by applicable laws and regulations, and not inconsistent with the obligations of the Bank under the Code, the Bank shall not have:
- (i) any liability in respect of any inaccuracies or delays; and
  - (ii) any obligation to continue or repeat any such action.

#### 9.5 Pooling/sub-custodians/clearance systems

- (a) The Bank may pool China Connect Securities and treat them as fungible with the same China Connect Securities of other clients. The Bank may at any time allocate equivalent China Connect Securities to you and shall not be bound to return to you the original China Connect Securities delivered to the Bank.

- (b) The Bank may deposit China Connect Securities with any sub-custodian or with any clearance system as required by law, regulation or market practice, and are not responsible for performance by or monitoring of any sub-custodian or by any clearance system or its practices. In addition, provided that the Bank has exercised reasonable care and skill in the selection of the sub-custodian or clearance system, the Bank is not bound to supervise the actions of the sub-custodian or clearance system and the Bank shall not be liable for any act or omission by, or the insolvency of, the sub-custodian or clearance system. In the event you incur a loss due to the negligence, wilful default, or insolvency of the sub-custodian or clearance system, the Bank will make reasonable endeavours, in its discretion, to seek recovery from the relevant clearance system, but the Bank will not be under any obligation to institute legal proceedings, file any proof of debt in any insolvency proceeding, or take any similar action unless otherwise required by applicable laws or regulations and subject to such requirements as may be imposed by the Bank.

#### 9.6 Confirmations by you

- (a) You confirm that during the subsistence of services provided under this Section F:
- (i) you have authority to deposit and hold China Connect Securities in the Custody Account and there is no claim or encumbrance that will or may adversely affect any delivery of China Connect Securities; and
  - (ii) if you act as an agent for any of your own customers, whether or not expressly identified to the Bank at any time, no such customer shall be or be considered a client or indirect client of the Bank, and your obligations under this Section F are as principal.
- (b) You will, promptly on the Bank's request, execute such documents and do such acts and things as the Bank may require in order to perform the Bank's obligations under this Section F or otherwise to comply with the China Connect Market Rules or China Connect Laws.

#### 9.7 Custodial duties and liabilities

- (a) The Bank shall have only those custodial duties expressly provided in this Section F. To the maximum extent permitted by applicable laws and regulations, and not inconsistent with the obligations of the Bank under the Code, the Bank shall have no other implied duties or obligations whatsoever.
- (b) The performance by the Bank of its duties is subject to:
- (i) all relevant local laws, regulations, decrees, orders and government acts;
  - (ii) the rules, operating procedures and practices of any relevant stock exchange, clearance system or market; and
  - (iii) any event or circumstance beyond

- its reasonable control.
- (c) to the maximum extent permitted by applicable laws and regulations, and not inconsistent with the obligations of the Bank under the Code, in respect of any custodial services described in this Clause 9:
- (i) the Bank will not be liable for any loss or damage suffered by you unless such loss or damage results from the Bank's negligence, wilful misconduct or fraud;
- (ii) the Bank shall not be liable for consequential loss or damage (including, without limitation, lost profits) in any circumstances, whether or not foreseeable and regardless of the type of action in which such a claim may be brought, with respect to the Custody Account or services hereunder; and
- (iii) in the case of negligence or wilful misconduct the Bank's liability shall not exceed the replacement cost or the market value of the relevant China Connect Securities at the relevant time (whichever is lower).
- (d) The Bank may establish cut-off times for receipt of instructions. If the Bank receives an instruction after an established cut-off time, the Bank may regard the instruction as having been received on the following Trading Day and act on it accordingly.
- 9.8 Interest
- No interest will be payable on your Custody Account.
- 9.9 Lien
- In addition to any other remedy the Bank may have, the Bank shall have a continuing general lien on all China Connect Securities held for you or your account, for all amounts due or owing by you to the Bank.
10. **Client Information**
- 10.1 If you instruct the Bank to effect a Northbound transaction in China Connect Securities on behalf of your client (a "**Client Transaction**"), you shall retain for a period of not less than 20 years (or such other period as the Bank may instruct you in accordance with China Connect Laws or China Connect Market Rules) records of any client instructions and account information in relation to the Client Transaction (such records the "**Client Information**").
- 10.2 If you instruct the Bank to effect a Client Transaction and you are aware that your client is acting as an intermediary (either directly or indirectly through other intermediaries) for another person who is the beneficial owner of the Client Transaction, you undertake and confirm that you have arrangements in place:
- (a) requiring your client to retain or procure the retention of the Client Information in relation to the beneficial owner of the Client Transaction for the period specified in Clause 10.1; and
- (b) which entitle you to obtain and disclose the Client Information in relation to the beneficial owner upon request and within the required time limit specified by the Bank, or procure that it be so obtained and disclosed.
- 10.3 If the Bank receives an enquiry from any China Connect Authority in relation to a Client Transaction, you shall, upon request and within the time limit specified by the Bank, disclose to it or to the relevant China Connect Authority the Client Information, in relation to the beneficial owner of the Client Transaction, or procure such disclosure.
11. **Indemnity**
- 11.1 In addition and without prejudice to any of the Bank's rights under these Conditions, to the maximum extent permitted by applicable laws and regulations, and not inconsistent with the obligations of the Bank under the Code, you will indemnify the Bank and any Related Parties (together, the "**Indemnified Parties**") on a full indemnity basis against any claims, demands, actions, proceedings, damages, costs, expenses, losses and all other liabilities whatsoever arising directly or indirectly from the Bank or any Related Parties providing any services to you in respect of your trading or investment in China Connect Securities, including, without limitation, to (a) any Taxes resulting from any trading or holding of China Connect Securities in relation to China Connect, (b) the materialisation of any risk referred to in Section F2, (c) any legal costs which any of the Indemnified Parties may incur in connection with any instruction given by you, (d) any fees or expenses payable to any clearance systems arising from the holding of China Connect Securities or (e) any costs incurred in connection with Clause 9 above.
- 11.2 In addition and without prejudice to any other right or remedy which the Bank may have, the Bank shall be entitled in its absolute discretion, to the maximum extent permitted by applicable laws and regulations, and not inconsistent with the obligations of the Bank under the Code, without further notice or demand, forthwith to satisfy any claims, demands, actions, proceedings, damages, costs, expenses, losses and all other liabilities whatsoever referred to in Clause 11.1 above, and any of the Bank or Related Party's obligation for you to pay or account for any amounts in respect of any Taxes, by selling, realising or otherwise dealing with, in such manner as the Bank in its absolute discretion may determine, all or part of any property held by the Bank or any Related Party for any purpose in any of your accounts with the Bank or any Related Party, and to apply the proceeds in reduction of all or part of your liability to any tax authority or the Bank or any Related Party.
- 11.3 Neither the Bank nor any of its Related Party shall have any liability for any losses or risks which may result directly or indirectly from any actions taken by the Bank or any Related Parties in connection with the foregoing.
12. **Fees and Taxation**
- 12.1 You shall be responsible for paying all fees, charges, levies and Taxes, and you shall be required to comply with any filing or registration obligations, in each case as may be required under any China Connect Laws or China Connect Market Rules relating to any trading or investment or holding by you of or in China Connect Securities and any dividends or entitlements in respect of such China Connect Securities. The Bank shall not be liable for any taxes or duties payable on or in respect of the China Connect Securities.
- 12.2 In the event the Bank is required under China Connect Laws or China Connect Market Rules to pay any Taxes, the Bank may notify you whenever necessary and request that you

- provide the Bank with relevant information as it may deem necessary to fulfill its obligations. You must provide to the Bank, promptly on such request, such information and documents such as but not limited to costs of your purchase of the China Connect Securities, your and/or any underlying beneficial owner's tax status or residence. The Bank may withhold or deduct relevant Taxes from any amount due to you and you will remain liable for any shortfall.
- 12.3 In the event the Bank does not receive any requested information from you within a reasonable period of time to fulfill its obligations, the Bank shall be forthwith entitled in its absolute discretion, without further notice or demand to you, to satisfy any of its or your obligation to pay or account for any amounts in respect of any Taxes by selling, realizing or otherwise dealing with, in such manner as the Bank in its absolute discretion may determine, all or part of any property held by the Bank for any purpose in any of your accounts held with the Bank, and to apply the proceeds in reduction of all or part of its liability to any tax authority or to the Bank.
- 12.4 The Bank shall have no responsibility to verify the accuracy of the information provided by you and is entitled to rely on such information to fulfil its obligations.
- 12.5 The Bank shall have no liability whatsoever for the lack of any tax relief, or any failure to obtain the benefit of any tax credit.
- 12.6 The Bank shall have no obligation to gross-up, true-up, or make whole any tax, duty, imposition, charge, or other liability, payment or deduction made to you or your account in connection with the China Connect Securities or any transactions relating to the China Connect Securities, the account, or the Bank's compliance with applicable laws.
13. **Liability**
- To the maximum extent permitted by applicable laws and regulations, and not inconsistent with the obligations of the Bank under the Code, notwithstanding any other provision in this Section F, neither the Bank nor any Related Party shall be responsible for or have any liability to you for any damage, liability or loss (including loss of profit) unless such damage, liability or loss is a direct result of the Bank or a Related Party's fraud, wilful default or gross negligence.
14. **Termination**
- The services provide under this Section F may be terminated by either party upon not less than thirty (30) days' written notice to the other or automatically upon termination of these Conditions. Clauses 2 (Compliance with Trading Restrictions, China Connect Market Rules and China Connect Laws), 3 (Risk Disclosures and Acknowledgement), 8 (Sale, Transfer and Disgorgement), 11 (Indemnity), 13 (Liability) and 15.3 shall survive termination of the services provided under this Section F. On the termination of the services provided under this Section F, the Bank shall deliver China Connect Securities and cash in accordance with your instructions. If you fail to give instructions, the Bank shall continue to hold China Connect Securities and/or cash for such fee(s) as the Bank may in its sole discretion determine. The Bank shall in any event be entitled to retain such China Connect Securities and/or cash as it may in its sole discretion determine in order to complete any transaction required to be settled on your behalf.
15. **Miscellaneous**
- 15.1 You will pay fees, charges and expenses in respect of this Section F in accordance with the Bank's fee scale from time to time in force.
- 15.2 You will execute any further documents and provide any materials and/or information as the Bank may reasonably request to enable the Bank to perform its duties and obligations under this Section F which it deems necessary as and when the China Connect Market Rules are amended or supplemented from time to time.
- 15.3 You will provide all information (including translations into Chinese, if required) to the Bank which it requests if such information is requested by any China Connect Authority or any exchange, regulatory authority or any organisation (whether within or outside Hong Kong) with which HKEX or the SEHK has entered into an information sharing arrangement or agreement. You acknowledge that, your failure to comply with this provision may, amongst other things, result in a suspension of China Connect services to you.
16. **Disclosure of Information**
- 16.1 You agree that your data may be transferred to any place outside Hong Kong, whether for the processing, holding or use of such data outside Hong Kong.
- 16.2 You authorize the Bank to disclose any information that it has concerning you, your account and any China Connect Securities, monies or other assets held in the account: (a) to any broker, custodian, clearing house or other service provider(s) (whether within or outside Hong Kong) appointed by the Bank in connection with the services provided under this Section F; (b) upon request, to any China Connect Entities or China Connect Authorities (whether within or outside Hong Kong); or (c) to such other persons (whether within or outside Hong Kong) in compliance with applicable laws.
- 16.3 You undertake to provide such information as the Bank may request from time to time in order for the Bank and/or its brokers, custodians or service provider(s) to provide the services in this Section F, or for the Bank and/or such brokers, custodians or service provider(s) to comply with applicable laws or to respond to requests from any China Connect Entities or China Connect Authorities.
17. **Definitions**
- "A Shares"** means any securities issued by companies incorporated in Mainland China which are listed and traded on the SSE or SZSE and not on the SEHK.
- "Affiliate"** has the meaning given in Clause 18 of Section E1.
- "Average Pricing"** means the allocation or application of an average price per China Connect Security to each individual fund managed by the same fund manager in respect of trades in such China Connect Security on the same Trading Day.
- "Cash"** means all cash or cash equivalents in Renminbi received and held by the Bank on the terms in this Section F.
- "CCASS"** means the Central Clearing and Settlement System operated by HKSCC for the clearing of securities listed or traded on the SEHK and/ or any system established for the purpose of China Connect.
- "China Connect"** means a securities trading and clearing links programme developed or to be developed by the SEHK, SSE or SZSE, HKSCC and ChinaClear for the establishment of mutual market access between SEHK and SSE or SZSE.



**"China Connect Authorities"** means the regulators which regulate China Connect and activities relating to China Connect, including without limitation, the CSRC, PBOC, SAFE, SFC and any other regulator, agency or authority with jurisdiction, authority or responsibility in respect of China Connect.

**"China Connect Entities"** means the exchanges, clearing systems and other entities which provide services relating to China Connect, including without limitation, the SEHK, HKSCC, SEHK Subsidiary, SSE, SZSE and ChinaClear.

**"China Connect Laws"** means the laws and regulations of Hong Kong and Mainland China from time to time in respect of China Connect or any activities arising from China Connect.

**"China Connect Market System"** means the system used for the trading of China Connect Securities on SSE or SZSE, as operated by the relevant exchange that operates SSE or SZSE.

**"China Connect Market Rules"** means any rules, policies or guidelines published or applied by any China Connect Authority or China Connect Entity from time to time in respect of China Connect or any activities arising from China Connect including the CSRC China Connect Market Rules.

**"China Connect Securities"** means any securities listed on SSE or SZSE which may be from time to time approved by the China Connect Authorities as eligible for trading by Hong Kong and international investors on China Connect.

**"China Connect Service"** means the order-routing service through which Northbound orders placed by an Exchange Participant may be transmitted by the SEHK Subsidiary to SSE or SZSE for the buying and selling of China Connect Securities and any related supporting services.

**"ChinaClear"** means China Securities Depository and Clearing Corporation Limited.

**"Clearing Participant"** has the meaning given to such term in the rules of the Central Clearing and Settlement System.

**"Client Information"** has the meaning given in Clause 10.1 of this Section F1.

**"Client Securities Rules"** means the Securities and Futures (Client Securities) Rules (Cap 571H of the Laws of Hong Kong).

**"CSC"** means the China Stock Connect System for receiving and routing orders under China Connect to the trading system on SSE or SZSE for automatic matching and execution.

**"Client Transaction"** has the meaning given in Clause 10.1 of this Section F1.

**"CSRC"** means the China Securities Regulatory Commission.

**"CSRC China Connect Rules"** means the rules published by CSRC for the operation of the China Connect.

**"Exchange Participant"** has the meaning given by the rules of the SEHK.

**"Forced-sale Notice"** has the meaning given in Clause 8.1 of this Section F1.

**"H Shares"** means any securities issued by companies incorporated in Mainland China and listed on the SEHK.

**"HKEX"** means the Hong Kong Exchanges and Clearing Limited.

**"HKSCC"** means the Hong Kong Securities Clearing Company Limited, a wholly-owned subsidiary of HKEX.

**"Mainland China"** means the People's Republic of China (excluding Hong Kong, Macau and Taiwan).

**"Mainland China Listco"** has the meaning given in Clause 14.1 of Section F2.

**"Mainland China Resident"** means a person who is a citizen of Mainland China and does not have permanent right of abode in a jurisdiction outside Mainland China.

**"Non-trade Transfer"** means a transfer of China Connect Securities which involves a change in the beneficial ownership of the China Connect Securities and which is not conducted through the China Connect Service and executed on SSE or SZSE.

**"Northbound"** denotes the trading of China Connect Securities by Hong Kong and international investors through China Connect.

**"PBOC"** means the People's Bank of China.

**"Pre-Trade Checking"** means the requirement under the China Connect Laws pursuant to which SSE or SZSE may reject a sell order if an investor does not have sufficient and available China Connect Securities in its account.

**"Related Party"** has the meaning given in Clause 2.3 of Section D3.

**"Renminbi"** or **"RMB"** means the lawful currency of Mainland China, deliverable in Hong Kong.

**"SAFE"** means the State Administration of Foreign Exchange.

**"SEHK"** means The Stock Exchange of Hong Kong Limited.

**"SEHK Subsidiary"** means a wholly-owned subsidiary of SEHK duly authorised as an automated trading service provider under the SFO and licensed under applicable laws in Mainland China to provide the order-routing service under China Connect.

**"Special China Connect Securities"** means any securities listed on SSE or SZSE which the SEHK (after consulting with SSE or SZSE) from time to time accepts or designates as eligible only for China Connect sell orders and not China Connect buy orders.

**"SSE"** means the Shanghai Stock Exchange.

**"SZSE"** means the Shenzhen Stock Exchange.

**"Taxes"** means all retrospective, present or future taxes, duties, levies, imposts, charges, assessments, deductions, withholdings and related liabilities, including additions to tax, penalties and interest imposed on or in respect of (i) China Connect Securities or Cash, (ii) any transaction effected under these China Connect Terms or (iii) you.

**"Trading Day"** means a day on which SEHK is open for Northbound trading, where "T day" denotes the Trading Day on which a transaction is executed and "T+1 day" denotes the day which is one Trading Day, or in the context of the settlement of funds, one business day (on which banks in Hong Kong and SSE or SZSE are generally open for business) after T day.

## **F2. RISK DISCLOSURES AND OTHER INFORMATION**

This Section F2 describes some of the key risk factors and other information concerning China Connect. This Section F2 does not disclose all the risks and other significant aspects of Northbound Trading through China Connect. You should ensure that you understand the nature and risks of China Connect and Northbound trading and you should consider carefully (and consult your own advisers where necessary) whether trading in China Connect Securities is suitable for you in light of your circumstances. The decision to trade in China Connect Securities is yours, but you should not trade in China Connect Securities unless you fully understand and are willing to assume the risks associated with China Connect and are able to comply with all relevant China Connect Laws and China Connect Market Rules. You acknowledge the risks and agree to the terms set out in this Section F2. You are responsible for monitoring changes in the China Connect Laws and China Connect Market Rules and complying with any new requirements.

No information is to be construed as legal, financial or tax advice of any kind by the Bank.

### **Home Market Rules**

#### **1. Home Market Rules**

- 1.1 A fundamental principle of China Connect is that the laws and rules of the home market of the applicable securities shall apply to you in respect of such securities. In respect of China Connect Securities, Mainland China is the home market and thus the general principle is that investors in China Connect Securities should observe the relevant China Connect Market Rules and other Mainland China securities laws and regulations. If such rules and regulations are breached, the relevant China Connect Entities and/or China Connect Authorities has the power to carry out an investigation.
- 1.2 Nevertheless, certain Hong Kong legal and regulatory requirements will also continue to apply to Northbound trading.

### **Trading and Settlement Restrictions**

#### **2. Pre-Trade Checking**

- 2.1 SEHK is required to check that in respect of any Northbound sell orders given by an Exchange Participant, the relevant Exchange Participant holds sufficient and available China Connect Securities to be able to fill such Northbound sell orders. Pre-Trade Checking will be carried out prior to the start of each Trading Day.
- 2.2 Accordingly, you may be unable to execute Northbound sell orders due to Pre-Trade Checking related requirements. Your attention is drawn to the provisions set out in Clause 6 of Section F1. (Compliance with Pre-Trade Checking Requirements). Note in particular that you may be unable to execute a sell order of China Connect Securities if there has been a delay or failure for whatever reason in the transfer of the relevant China Connect Securities to any clearing account of the Bank or if for any other reason the Bank considers that there is or may be non-compliance with any China Connect Laws or China Connect Market Rules.
- 2.3 Any risk, loss or cost resulting from non-compliance or potential non-compliance with Pre Trade Checking and/or the relevant China Connect Laws or China Connect Market Rules shall be borne by you.

#### **3. Settlement**

- 3.1 Northbound trades will follow the A Share settlement cycle. For settlement of China Connect Securities trades, ChinaClear will debit

or credit the securities accounts of its participants (including HKSCC as Clearing Participant) on T day free of payment. The Bank may have settlement arrangements in place different from the ChinaClear settlement arrangements. Unless the Bank agrees to prefund settlement, settlement of funds relating to such trading will be effected on T+1 day. The Bank may, in the Bank's absolute discretion, decide to prefund settlement. In the event the Bank agrees to prefund the settlement of China Connect Securities trades, (a) the Bank shall retain the funds received from the HKSCC on T+1 day; and (b) you shall reimburse the Bank with respect to any 'excess' pre-funding provided by the Bank.

- 3.2 Although the transfer of the China Connect Securities precedes the transfer of cash, under the China Connect Service, the title to China Connect Securities will not be released until the receipt of confirmation of payment. Accordingly, for purposes of contract notes, the settlement date would be T+1 day when both the securities and the cash are settled or, where the purchase is pre-funded, the settlement date would be the date on which the securities are released.

- 3.3 You acknowledge that there is no guarantee that the Bank will offer prefunding settlement and that if the Bank decides to offer prefunding settlement, the Bank may decide to terminate such service at any time.

#### **4. Quota Restriction**

- 4.1 Purchases of China Connect Securities through China Connect are subject to certain quota control as described below, or as may be imposed by the China Connect Entities or China Connect Authorities or other governmental or regulatory bodies from time to time. As a result, there is no assurance that a buy order can be successfully placed through China Connect.

- 4.2 There is a daily quota that limits the maximum value of all Northbound buy trades that can be executed by Exchange Participants on each Trading Day ("**Daily Quota**"). The Daily Quota may change from time to time without prior notice and you are advised to refer to the HKEX website and other information published by the HKEX for up-to-date information.

- 4.3 The SEHK and SSE or SZSE may also set pricing and other restrictions on buy orders in order to prevent the artificial use or filling of the Daily Quota.

- 4.4 If there is a restriction, rejection or suspension of Northbound buying (which would include any order that has been accepted but not yet executed) as a result of a breach of the Daily Quota or the relevant pricing and other restrictions, the Bank will be unable to carry out any buy orders and any instruction to buy submitted but not yet executed will be restricted or rejected. The Bank shall not be liable for your inability, or delay or restriction in your ability, to buy any China Connect Securities.

- 4.5 Conversely, under the SEHK rules, you may sell your China Connect Securities regardless of whether there is a breach of the Daily Quota.

#### **5. Restriction on Day Trading**

- 5.1 Day (turnaround) trading is not permitted on the Mainland China A Share market. If you buy China Connect Securities on T day, you may be able to sell the shares only on or after T+1 day. Due to Pre-Trade Checking related requirements, the Bank may accept an instruction to sell China Connect Securities that were bought on T day only on or after the applicable cut-off time (as notified to you by the Bank from time to time) on

T+1 day.

## **6. No off-exchange trading and transfers**

- 6.1 You, the Bank or any Related Party shall not trade or provide services to facilitate trading of any China Connect Securities otherwise than through the China Connect Market System, and the Bank shall not match, execute or arrange the execution of any sale and purchase instructions or any transfer instructions from you or effect any Non-trade Transfer or settlement of instructions in respect of any China Connect Securities in any manner otherwise than through China Connect in accordance with the China Connect Market Rules, except in the following circumstances or as otherwise provided by a relevant China Connect Authority:
- (a) stock borrowing and lending of China Connect Securities which are eligible for covered short selling and with a tenor of no more than one month;
  - (b) stock borrowing and lending of China Connect Securities which are eligible for satisfying the Pre-trade Checking requirement, with a tenor of one day (and which is not renewable);
  - (c) post-trade allocation of China Connect Securities by a fund manager across the funds and/or sub-funds it manages; and
  - (d) any other situations specified by SSE or SZSE and ChinaClear, including but not limited to any Non-trade Transfer as a result or for the purpose of (a) succession, (b) divorce, (c) dissolution, liquidation or winding up of any company or corporation, (d) donation to a charitable foundation; and (e) assisting in any enforcement action or proceedings of any court, prosecutor or law enforcement agency.

## **7. Placing Orders**

- 7.1 Only limit orders with a specified price are allowed pursuant to China Connect Laws and China Connect Market Rules, whereby buy orders must not be lower than at the current best price and sell orders may be executed at or higher than the specified price. Market orders will not be accepted.

## **8. Price Limits**

- 8.1 China Connect Securities are subject to a general price limit of a  $\pm 10\%$  based on the previous Trading Day's closing price. In addition, China Connect Securities which are on the risk alert board are subject to a  $\pm 5\%$  price limit based on the previous trading day's closing price. The price limit may be changed from time to time. All orders in respect of China Connect Securities must be within the price limit. Any orders with a price beyond the price limit will be rejected by SSE or SZSE.

## **9. Delisting of companies listed on SSE or SZSE**

- 9.1 According to the relevant China Connect Market Rules, if any company listed on SSE or SZSE is in the delisting process, or its operation is unstable due to financial or other reasons such that there is a risk of being delisted or exposing your interest to undue damage, the company listed on SSE or SZSE will be earmarked and traded on the risk alert board. Any change to the risk alert board may occur without prior notice. If a China Connect Security which is eligible for China Connect trading at launch of the programme is subsequently moved to the risk alert board,

investors under China Connect will be allowed only to sell the relevant China Connect Security and will be prohibited from further buying. For details concerning the risk alert board, please refer to the relevant China Connect Market Rules and any other relevant sources from time to time.

## **10. Account Information of Beneficial Owner**

- 10.1 The identity of the beneficial owner of China Connect Securities which are the subject of a sell order may need to be disclosed to HKSCC and/or relevant Mainland China authorities.

## **11. No Manual Trade or Block Trade**

- 11.1 There will be no manual trade facility or block trade facility for Northbound trading under China Connect.

## **12. Amendment of Orders and Loss of Priority**

- 12.1 Consistent with the current practice in Mainland China, if you have engaged in Northbound trading and you wish to amend an order, you must first cancel the original order and then input a new one. Accordingly, order priority will be lost and, subject to the Daily Quota restrictions, the subsequent order may not be filled on the same Trading Day.

## **13. Special China Connect Securities**

- 13.1 SEHK will accept or designate securities which cease to meet the eligibility criteria for China Connect Securities as Special China Connect Securities (provided that they remain listed on SSE or SZSE). In addition, any securities or options (which are not "eligible for China Connect trading") received by you as a result of any distribution of rights or entitlements, conversion, takeover, other corporate actions or abnormal trading activities will be accepted or designated by SEHK as Special China Connect Securities. You will only be able to sell, but not buy, any Special China Connect Securities.

## **Mainland China and Hong Kong Legal Issues**

### **14. Disclosure of Interests**

- 14.1 Under Mainland China laws, rules and regulations, if you hold or control shares (on an aggregate basis, i.e., including both domestically and overseas issued shares of the same Mainland China Listco (as defined below), whether the relevant holdings are through Northbound trading, QFII/RQFII regime or other investment channels) in a Mainland China incorporated company which is listed on a Mainland China stock exchange (a "**Mainland China Listco**") above a certain threshold as may be specified from time to time by the relevant China Connect Authorities, you must disclose such interest within the period specified by the relevant China Connect Authority, and you must not buy or sell any such shares within the period specified by the relevant China Connect Authority. You must also disclose any substantial change in your holding as required by the relevant China Connect Authority.

- 14.2 Where a Mainland China incorporated company has both H Shares listed on the SEHK and A Shares listed on SSE or SZSE, if you are interested in more than a certain threshold (as may be specified from time to time) of *any* class of voting shares (including A Shares purchased through China Connect) in such Mainland China incorporated company, you are under a duty of disclosure pursuant to Part XV of the SFO. Part XV of the SFO does not apply where the Mainland China incorporated company has not listed any shares on the SEHK.

- 14.3 You should understand fully the Mainland China rules and regulations in relation to disclosure obligations. It shall be your responsibility to comply with any disclosure of interest rules from time to time imposed by the relevant China Connect Authorities and arrange for any relevant filings.
- 15. Short Swing Profit Rule**
- 15.1 Under Mainland China laws, rules and regulations, the "short swing profit rule" requires you to give up/return any profits made from purchases and sales in respect of China Connect Securities of a particular Mainland China Listco if (a) your shareholding in that Mainland China Listco exceeds the threshold prescribed by the relevant China Connect Authority from time to time and (b) the corresponding sale transaction occurs within the six months after a purchase transaction, or vice versa. You (and you alone) must comply with the "short swing profit rule". You should understand fully the "short swing profit rule" and follow such rule accordingly.
- 16. Foreign Ownership Limits**
- 16.1 Under Mainland China laws, rules and regulations, there is a limit to how many shares a single foreign investor is permitted to hold in a single Mainland China Listco, and also a limit to the maximum combined holdings of all foreign investors in a single Mainland China Listco. Such foreign ownership limits may be applied on an aggregate basis (i.e. across both domestically and overseas issued shares of the same issuer, whether the relevant holdings are through Northbound Trading, QFII/RQFII regime or other investment channels). It shall be your responsibility to comply with all foreign ownership limits from time to time imposed by China Connect Laws and China Connect Market Rules. Such legal and regulatory restrictions or limitations may have an adverse effect on the liquidity and performance of an investment in China Connect Securities due to factors such as limitations on fund repatriation, dealing restrictions, adverse tax treatments, higher commission costs, regulatory reporting requirements and reliance on services of local custodians and service providers. As a result, you may suffer losses through your trading or investment in China Connect Securities.
- 16.2 If the Bank becomes aware that you have breached (or reasonably believes that you may breach upon execution of further Northbound buy orders) any foreign ownership limits, or if the Bank is so required by any China Connect Authority, including, without limitation, as a result of any Forced-sale Notice issued by SSE or SZSE, the Bank will sell any China Connect Securities pursuant to Clause 8 of Section F1 above if you fail to comply with the corresponding Client Forced-sale Notice in order to ensure compliance with all China Connect Laws and China Connect Market Rules. In such case, no buy orders for the relevant China Connect Securities will be accepted until SSE or SZSE informs the SEHK Subsidiary or SEHK that the aggregate foreign shareholding has fallen below a certain percentage. SEHK may determine in its absolute discretion which Exchange Participants and what quantity of China Connect Securities should be subject to a Forced-sale Notice (this is likely to be on a "last-in, first-out" basis), and SEHK's (or SEHK Subsidiary's) own records shall be final and conclusive.
- 16.3 Moreover, under Mainland China laws, where the aggregate holdings of foreign investors exceed a specified percentage (the "Cautionary Level") of the issued shares of a single Mainland China Listco, upon notification by SSE or SZSE to the SEHK Subsidiary, SEHK and the SEHK Subsidiary are required as soon as practicable thereafter to suspend accepting China Connect Securities buy orders in respect of the relevant China Connect Securities. In such circumstances, the Bank may reject your buy orders until the aggregate shareholding of foreign investors has fallen below the specified percentage (the "Permitted Level") as advised by SSE or SZSE.
- 16.4 As of the date of these Conditions, the single foreign investor limit is set at 10% of the shares of a Mainland China Listco and the aggregate foreign investor limit is set at 30% of the shares of a Mainland China Listco (while the Cautionary Level and the Permitted Level are set at 28% and 26% respectively of the shares of a Mainland China Listco). Such limits are subject to change from time to time and the Bank shall not be under any obligation to inform you of any such changes to foreign ownership limits.
- 17. Taxation**
- 17.1 Prior to investing in China Connect Securities, you are strongly urged to consult your own tax advisers and counsel with respect to the possible Hong Kong and/or Mainland China tax consequences to you of such investment since such tax consequences may differ in respect of different investors.
- 17.2 You will be fully responsible for any Taxes in respect of China Connect Securities including, without limitation, any capital gains tax or other Mainland China taxes, and will indemnify the Bank and any Related Party from and against all Hong Kong and/or Mainland China Taxes which the Bank or Related Party may incur arising in connection with any China Connect Securities which you hold, trade or otherwise deal in.
- 17.3 The Bank assumes no responsibility for advising on or handling any tax issues, liabilities and/or obligations in connection with China Connect, nor will the Bank provide any service or assistance in this regard. Please refer to Clause 12 (Fees and Taxation) of Section F1 for details of the applicable legal terms.
- 18. Insider Dealing, Market Manipulation and Other Market Conduct Rule**
- 18.1 Northbound trading through the China Connect will be subject to Mainland China laws and regulations prohibiting activities that constitute market manipulation, insider dealing and related offences. The scope of these restrictions may not be the same as equivalent requirements under Hong Kong law. In particular, defences applicable under Hong Kong market misconduct rules may not be applicable under Mainland China laws and regulations. If you are unfamiliar with Mainland China market conduct requirements and restrictions, you should seek specialist advice before engaging in trading through the China Connect. You confirm that you are not in possession of inside information when trading China Connect Securities or procuring others to do so.
- 19. Client Securities Rules**
- 19.1 By way of brief background, the Client Securities Rules prescribe how client assets are to be dealt with by all intermediaries and their associated entities. However, as the China Connect Securities traded through China Connect are not listed or traded on the SEHK, the Client Securities Rules will not apply unless otherwise specified by the SFC or any other relevant China Connect Authority.

**20. Not protected by the Investor Compensation Fund or the China Securities Investor Protection Fund (中國證券投資者保護基金) ("CSIPF")**

- 20.1 Trading in China Connect Securities does not enjoy the protection afforded by the Investor Compensation Fund established under the SFO. Accordingly, when you trade in China Connect Securities, unlike the trading of SEHK-listed securities, you will not be covered by the Investor Compensation Fund in respect of any loss you may sustain by reason of a default by SFC licensed or registered persons.
- 20.2 Northbound trading under the China Connect will not be protected by the CSIPF. According to the Measures for the Administration of Securities Investor Protection Fund 《證券投資者保護基金管理辦法》, the functions of CSIPF include "indemnifying creditors as required by Mainland China's relevant policies in case a securities company is subjected to compulsory regulatory measures including dissolution, closure, bankruptcy and administrative takeover by CSRC and custodian operation" or "other functions approved by the State Council". As far as Hong Kong investors participating in Northbound trading are concerned, since they are carrying out Northbound trading through securities brokers in Hong Kong and these brokers are not Mainland China brokers, they are not protected by CSIPF.

**21. Ownership of China Connect Securities**

- 21.1 Hong Kong law recognises the proprietary interest of investors in shares held for them by their broker or custodian in CCASS. Such recognition should apply equally to China Connect Securities held for Hong Kong and overseas investors by the Clearing Participant through HKSCC. In addition, in Mainland China (where China Connect Securities are registered in a securities account opened with ChinaClear in the name of HKSCC), it is expressly stipulated in the CSRC China Connect Rules that HKSCC acts as the nominee holder and the Hong Kong and overseas investors are the beneficial owners of the China Connect Securities. Accordingly, the regulatory intention appears to be that Hong Kong and overseas investors should also have proprietary rights over China Connect Securities under Mainland China laws.
- 21.2 You should conduct your own review of the materials published by HKEX on China Connect in relation to the ownership of China Connect Securities and the applicable China Connect Market Rules as they may be amended and supplemented from time to time. You should also consult your own legal advisers to make your own assessment of your rights as a Northbound investor in China Connect Securities.
- 21.3 In addition, while Hong Kong and overseas investors may have proprietary rights over China Connect Securities, HKSCC as nominee is not obliged to enforce such rights in Mainland China on behalf of such investors.

**Clearinghouse Risk**

**22. Risk of ChinaClear Default**

- 22.1 ChinaClear has established a risk management framework and measures that are approved and supervised by the CSRC. If ChinaClear (as the host central counterparty) defaults, HKSCC has stated that it may (but shall have no obligation to) take any legal action or court proceeding to seek recovery of the outstanding China Connect Securities and monies from ChinaClear through available legal channels and through ChinaClear's

liquidation process, if applicable. As ChinaClear does not contribute to the HKSCC guarantee fund, HKSCC will not use the HKSCC guarantee fund to cover any residual loss as a result of closing out any of ChinaClear's positions. HKSCC will in turn distribute the China Connect Securities and/or monies recovered to Clearing Participants on a pro-rata basis as prescribed by the relevant China Connect Authorities. The Bank in turn will be distributing China Connect Securities and/or monies to the extent recovered directly or indirectly from HKSCC. Although the likelihood of a default by ChinaClear is considered to be remote, investors should be aware of this arrangement and of this potential exposure before engaging in Northbound trading.

**23. Risk of HKSCC Default**

- 23.1 The Bank's provision of services pursuant to this Section F also depends upon the performance by HKSCC of its obligations. Any action or inaction of the HKSCC or a failure or delay by the HKSCC in the performance of its obligations may result in a failure of settlement of China Connect Securities and/or monies in connection with them and you may suffer losses as a result. Neither the Bank nor any Related Parties shall have any responsibility or liability for any such losses.

**Other Operational Issues**

**24. Scripless Securities**

- 24.1 China Connect Securities are traded in scripless form and accordingly, China Connect Securities may not be physically deposited into and/or withdrawn from CCASS.

**25. Company Announcements on Corporate Actions**

- 25.1 Any corporate action in respect of China Connect Securities will be announced by the relevant issuer through the website of SSE or SZSE and certain appointed newspapers. HKSCC will also record all corporate actions relating to China Connect Securities in CCASS and inform its Clearing Participants of the details via the CCASS terminals as soon as practicable on the announcement date. Investors engaged in Northbound trading may refer to the website of SSE or SZSE and the relevant newspapers for the latest listed company announcements or, alternatively, the HKEX website's China Stock Markets Web (or such other replacement or successor web page from time to time) for corporate actions in respect of China Connect Securities issued on the previous trading day. Investors should note that listed issuers of SSE or SZSE publish corporate documents in Chinese only, and English translations will not be available.
- 25.2 In addition, HKSCC will endeavour to collect and distribute cash dividends relating to China Connect Securities to Clearing Participants in a timely manner. Upon receipt of the dividend amount, HKSCC will to the extent practicable arrange to distribute to relevant Clearing Participants on the same day.
- 25.3 Following existing market practice in Mainland China, investors engaged in Northbound trading will not be able to attend shareholder meetings by proxy or in person, unlike the current practice in Hong Kong in respect of SEHK-listed shares.
- 25.4 To the maximum extent permitted by applicable laws and regulations, and not inconsistent with the obligations of the Bank under the Code, neither the Bank nor any Related Party accepts any liability (whether in tort or contract or otherwise) for any loss or damage arising from any errors, inaccuracies, delays or omissions or

any actions taken in reliance thereon, and the Bank and any Related Party expressly disclaims all warranties, expressed or implied, as to the accuracy of any company announcement or as to the fitness of the information for any purpose.

## **26. Average Pricing across Funds for Fund Managers**

26.1 If you act as a fund manager for more than one fund or an asset manager on behalf of more than one client and you pre-allocate China Connect orders across such funds or clients which you manage, the Bank may offer Average Pricing for such orders notwithstanding such orders may be executed at different times during the same Trading Day. Where Average Pricing applies, each fund or client will be allocated China Connect Securities (or their proceeds) at the same averaged price, which may be higher or lower than the price which such fund or client would have paid or received had the orders been processed individually and in the order submitted directly or indirectly to the Bank. Neither the Bank nor any Related Party will be responsible for any such differences in pricing or any loss or risk arising from the application of Average Pricing.

## **27. Disclosure of Information and Publication of Trade Information**

27.1 SEHK may require the Bank to provide information on your profile, and the type and value of your orders in relation to Northbound trading of China Connect Securities and the trades which the Bank executed for you at such intervals and in such form as SEHK may specify from time to time for purposes of the publication, dissemination or public distribution of aggregated information in respect of China Connect Securities trades under China Connect, trading volumes, investor profiles and other related data. SEHK may forward such information to SSE or SZSE for surveillance and investigation purposes.

## **28. Client Error**

28.1 Neither the Bank nor any Related Party shall be liable for any loss, damage or expense or consequential loss, damage or expense suffered by an investor as a result of any trading based on the investor's instructions. The Bank will not be able to unwind any trade, and investors should also take note of the settlement arrangements in respect of China Connect Securities under China Connect, including but not limited to quota restrictions.

28.2 The China Connect Market Rules generally prohibit any off-exchange trading or transfers. However transfers may be permitted between you and the Bank to rectify a trade in limited circumstances, although there is a lack of clarity as to the circumstances in which such transfers may be permitted. The Bank shall have absolute discretion to determine whether to conduct any transfer to rectify any error trade and shall have no obligation to do so. Neither the Bank nor any Related Party shall have any liability for any losses which may result directly or indirectly from such errors or any refusal to conduct a transfer to correct an error trade.

## **29. Retention of Information**

29.1 You acknowledge and accept that the Bank will be required under the China Connect Market Rules to keep records for a period of not less than 20 years of (a) all orders and trades executed on your behalf, (b) any instructions received from you; (c) your account information in relation to Northbound trading; and (d) all relevant information concerning margin trading and stock borrowing and lending of any China

Connect Securities (including, without limitation, in respect of any such margin trading, the relevant securities margin trading arrangement and the funds provided.)

## **30. China Connect Market System**

30.1 SEHK or the SEHK Subsidiary (after consulting with SEHK) may, under certain circumstances as specified in the SEHK rules and/or whenever the SEHK determines that it is appropriate and in the interest of a fair and orderly market to protect investors, temporarily suspend or restrict all or part of the order-routing and related supporting services with regard to all or any Northbound trading of China Connect Securities, and for such duration and frequency as SEHK may consider appropriate. You will not be able to buy or sell China Connect Securities on SEHK through China Connect during any period in which trading of China Connect Securities is suspended. In particular, you should note that while trading of China Connect Securities is suspended by the SEHK, trading of such China Connect Securities may continue on SSE or SZSE. You may remain exposed to fluctuations in the price of China Connect Securities caused by trading on SSE or SZSE during the period when trading of such China Connect Securities is suspended by SEHK.

30.2 SEHK has absolute discretion to change the operational hours and arrangements of the China Connect Service at any time and without advance notice, whether on a temporary basis, due to operational needs, inclement weather, under emergency situations or otherwise. Moreover, SEHK or the SEHK Subsidiary (with the agreement of SEHK) may cease the provision of the China Connect Northbound trading service permanently.

30.3 Such suspension, restriction or cessation will affect *the Bank's* ability to accept and process your orders and you are advised to refer to the HKEX website and other information published by the HKEX for up-to-date information. There can be no assurance that your orders will be accepted or processed, notwithstanding that China Connect Securities may be traded through other channels including, without limitation, by Mainland China investors on SSE or SZSE.

30.4 Further, the SEHK rules state that where any H Shares with corresponding A Shares eligible as China Connect Securities are suspended from trading on SEHK, but the corresponding A Shares are not suspended from trading on SSE or SZSE, the service for routing the China Connect sell orders and China Connect buy orders for such A Shares to SSE or SZSE for execution will normally remain available. However, SEHK may, in its discretion, restrict or suspend such service without prior notice and your ability to place sell orders and buy orders may be affected.

30.5 The China Connect Market System is a platform for trading of China Connect Securities under China Connect. The Bank provides trading services based on the China Connect Market System which is operated by SSE or SZSE. To the maximum extent permitted by applicable laws and regulations, and not inconsistent with the obligations of the Bank under the Code, the Bank is not responsible for any delay or failure caused by the China Connect Market System and investors accept all risks arising from trading China Connect Securities through the China Connect Market System. To the maximum extent permitted by applicable laws and regulations, and not inconsistent with the obligations of the Bank under the Code, neither the Bank nor any Related Party shall be responsible or held liable for any loss or damage directly or indirectly suffered by you arising from or in connection with

the China Connect Service or the CSC through Northbound trading including, without limitation, the following:

- (a) a suspension, restriction or cessation of the China Connect Service or the CSC, or any inability to access or use the CSC or the China Connect Service;
  - (b) any special arrangement put in place or any action, step or measure taken or not taken to deal with an emergency or contingencies, including but not limited to the cancellation of any or all China Connect orders input by Exchange Participants;
  - (c) any suspension, delay, interruption or cessation of trading of any China Connect Securities on SSE or SZSE;
  - (d) any delay, suspension, interruption or order cancellation of any China Connect Securities as a result of the hoisting of a Typhoon Signal No. 8 or above or the issuance of the Black Rainstorm Warning in Hong Kong;
  - (e) any delay or failure to route any China Connect orders or any delay or failure to send any order cancellation requests or to provide the China Connect Service due to any system, communication or connection failure, power outage, software or hardware malfunction or other events beyond the Bank's control or the control of SEHK, the Bank or a Related Party;
  - (f) any China Connect order which the Bank has requested to be cancelled not being cancelled for any reason whatsoever;
  - (g) in the event that SEHK or SSE or SZSE requires that the Bank rejects any order for China Connect Services;
  - (h) any delay, failure or error of any China Connect Market System or any system upon which the Bank, the SEHK Subsidiary or a Related Party is reliant in providing the China Connect Service; and
  - (i) any delay or failure to execute, or any error in matching or executing, any China Connect order due to reasons beyond the control of SEHK, HKEX, the SEHK Subsidiary, the Bank or any Related Party, including but not limited to any action or decision taken or made, or not taken or made, by any China Connect Authority or any other relevant governmental or regulatory body.
- 30.6 The Bank has the right to cancel your order in any circumstances described in paragraph 30.5(d) above. If there is any delay or failure to send any order cancellation requests in any circumstance described in paragraph 30.5(e) above, you shall, in the event such order is matched and executed, remain responsible for fulfilling any settlement obligations in respect of such transaction.
- 30.7 You acknowledge that HKEX, SEHK, SEHK Subsidiary, SSE, SZSE, the subsidiary of SSE, the subsidiary of SZSE and their respective directors, employees and agents shall not be responsible or held liable for any loss or damage directly or indirectly suffered by the Bank, you or any other third party arising from or in connection with (a) the trading of China Connect Securities or the operation of the CSC in respect of China Connect Securities, or (b) any amendments, making or enforcement of the China Connect Market Rules by SEHK, SSE or SZSE; or (c) any action taken by the SEHK, SSE or SZSE in discharge of its

supervisory or regulatory obligations or functions (including any action taken in respect of abnormal trading activities).

### **31. Operational Hours**

- 31.1 SEHK has absolute discretion to determine from time to time the operational hours of the China Connect service, and will have absolute discretion to change the operational hours and arrangements of the China Connect service at any time and without advance notice whether on a temporary basis or otherwise. The Bank shall not be under any obligation to inform you of any such determinations by the SEHK as to the operational hours of the China Connect service.
- 31.2 Where, for example, there is any price sensitive information relating to a Mainland China Listco during a time when China Connect Service is not in operation, the A Shares of the Mainland China Listco may continue to trade on SSE or SZSE and the price of such A Shares may move significantly. In such case, Northbound investors will not be able to trade in such shares until the next available Trading Day under China Connect.

### **32. Margin Trading**

- 32.1 Subject to certain conditions prescribed by the China Connect Authorities, Hong Kong and overseas investors may conduct margin trading in China Connect Securities determined by the relevant China Connect Authorities to be eligible for margin trading ("Eligible Margin Trading Securities"). The HKEX will from time to time publish a list of Eligible Margin Trading Securities. SSE or SZSE may suspend margin trading activities in any specific A Share if the volume of margin trading activities in such A Share exceeds a threshold determined by SSE or SZSE and resume margin trading activities when the volume of margin trading activities drops below a prescribed threshold. Where the SEHK is notified by SSE or SZSE that a suspension or resumption involves a security on the list of Eligible Margin Trading Securities, the HKEX will disclose such information on its website. In such circumstances, any margin trading (except for margin trading in respect of China Connect Securities buy orders) in the relevant China Connect Security shall be suspended and/or resumed accordingly. SSE or SZSE reserves the right to require at some future date for margin trading orders to be flagged when routed to China Connect. Neither the Bank nor any Related Party shall have any obligation to update you in respect of the list of Eligible Margin Trading Securities or any restrictions or suspensions in respect of margin trading from time to time.

### **33. Rights Issuances**

- 33.1 Where you receive any form of entitlement security from the issuer of a China Connect Security, if such entitlement security:
- (a) is a China Connect Security, you will be permitted to buy and sell the entitlement security through China Connect;
  - (b) is not a China Connect Security but is a RMB denominated security listed on SSE or SZSE, you may be allowed to sell the entitlement security through China Connect but will not be permitted to buy such entitlement security;
  - (c) is a security listed on SSE or SZSE but is not traded in RMB, you will not be allowed to buy or sell the entitlement security through China Connect; and
  - (d) is not listed on SSE or SZSE, you will not be allowed to buy or sell the entitlement

security on China Connect unless and until appropriate arrangements (if any) have been provided by HKSCC. It is possible that no such alternative arrangements will be provided.

#### **34. Odd Lot Trading**

34.1 Odd lot trading in China Connect Securities is available only for sell orders and all odd lots must be sold in one single order. A board lot order may be matched with different odd lot sell orders, resulting in odd lot trades. Board lot and odd lot orders are matched on the same platform on China Connect and subject to the same share price. The maximum order size is 1 million shares and the tick size is uniformly set at RMB0.01.

#### **35. Short Selling**

35.1 Covered short selling of China Connect Securities is permitted provided such covered short selling satisfies the requirements specified by the relevant China Connect Authorities, including that short selling orders are only in respect of China Connect Securities designated as eligible for short selling, are appropriately flagged as such and that they are subject to an uptick rule. Naked short selling of China Connect Securities is prohibited. The China Connect Authorities may also suspend the ability to engage in short selling of any China Connect Security if the volume of short selling activity exceeds thresholds prescribed by the relevant China Connect Market. You will be fully responsible for understanding and complying with short selling requirements in effect from time to time and for any consequences of non-compliance.

#### **36. Stock Borrowing and Lending**

36.1 The SEHK has announced that stock borrowing and lending will be permitted for eligible China Connect Securities as specified by SSE or SZSE for the purpose of (a) covered short selling and (b) satisfying the Pre-Trade Checking requirement. Stock borrowing and lending of eligible China Connect Securities will be subject to restrictions set by SEHK and SSE or SZSE, including but not limited to the following:

- (a) stock borrowing and lending agreements for the purpose of covered short selling shall have a duration of not more than one month;
- (b) stock borrowing and lending agreements for the purpose of satisfying the Pre-Trade Checking requirement shall have a duration of not more than one day (and roll-over is not permitted);
- (c) stock lending will be restricted to certain types of persons to be determined by SSE or SZSE; and
- (d) stock borrowing and lending activities will be required to be reported to SEHK.

36.2 SSE or SZSE will determine a list of China Connect Securities eligible for stock borrowing and lending. Special China Connect Securities are not eligible for stock borrowing and lending for the purpose of covered short selling (but are eligible for the purpose of satisfying the Pre-Trade Checking requirement). The Bank will be required to file a monthly report to the SEHK providing details of its stock borrowing and lending activities with respect to China Connect Securities. This may include (amongst others) details of the borrower, lender, amount of shares borrowed/lent, amount of shares outstanding and date of borrowing/returning.

36.3 You are advised to refer to the relevant provisions from time to time applicable in the China Connect Market Rules (as and when these are published) and in the China Connect Laws and China Connect Market Rules.

36.4 You acknowledge and accept that upon failure to comply with the China Connect Market Rules, the SEHK may take any of the following actions:

- (a) require the Bank to terminate or unwind any stock borrowing and lending arrangement;
- (b) require the Bank to stop borrowing China Connect Securities from or lending China Connect Securities to any person; and/or
- (c) restrict or suspend the Bank from carrying out any stock borrowing or lending activities concerning any China Connect Securities.

#### **37. RMB Conversion**

37.1 Any conversion of any currency into RMB pursuant to Clause 7 of Section F1 may be subject to conversion limits. Settlement of a Northbound buy order may be delayed and/or fail if there is a delay in converting the relevant currency into RMB. Any risk, loss or cost resulting from any such delay or failure of settlement shall be borne by you.

#### **Risks associated with investing in China Connect Securities**

##### **38. Other risks associated with investing in China Connect Securities**

###### *38.1 General Mainland China related risk*

Mainland China is an emerging market that possesses one or more of the following characteristics: a certain degree of political instability, relatively unpredictable financial markets and economic growth patterns, a financial market that is still at the development stage or a weak economy. Emerging markets investments usually result in higher risks such as event risk, political risk, economic risk, credit risk, currency rate risk, market risk, liquidity/gapping risk, regulatory/legal risk, trade settlement, processing and clearing risks and bondholder/shareholder risk.

###### *38.2 Equity risk*

Investing in China Connect Securities may offer a higher rate of return than investing in short term and longer term debt securities. However, the risks associated with investments in China Connect Securities may also be higher, because the investment performance of China Connect Securities depends upon factors which are difficult to predict. Such factors include the possibility of sudden or prolonged market declines and risks associated with individual companies. The fundamental risk associated with any equity portfolio is the risk that the value of the investments it holds might suddenly and substantially decrease in value.

###### *38.3 General legal and regulatory risk*

You must comply with all China Connect Laws and China Connect Market Rules and other applicable laws of Mainland China relating to Northbound trading. Furthermore, any change in any China Connect Laws or China Connect Market Rules may have an impact on the market sentiment which may in turn affect the performance of China Connect Securities. It is impossible to predict whether such an impact caused by any such change will be positive or negative for China Connect Securities. In the



worst case scenario, you may lose a material part of your investments in China Connect Securities. In addition, any litigation or other legal actions brought before the courts in Mainland China will be subject to Mainland China laws, rules and procedures, which are not the same as those which apply to the courts in Hong Kong.

#### 38.4 *Currency risk*

RMB is not yet freely convertible in Hong Kong, and is subject to foreign exchange controls and restrictions. Particularly, conversion of RMB through banks in Hong Kong is subject to certain restrictions. It may be difficult for you to convert RMB into Hong Kong dollars or other currencies or vice versa at any specific time, and conversion will be subject to conversion costs and such costs and timings for conversion may not be of your preference.

38.5 In addition, the value of RMB against Hong Kong dollars or other foreign currencies may be affected by a wide range of factors. There is no guarantee that RMB will not depreciate. A depreciation of RMB may result in a decrease in the market value of RMB securities and the realisation price of RMB securities. Non- RMB based investors who are trading in RMB securities, may also sustain loss in the event that they subsequently convert any RMB proceeds back to Hong Kong dollars or other base currencies.

38.6 There are also significant restrictions on the remittance of RMB into and out of Mainland China . If the issuer of RMB securities is not able to remit RMB to Hong Kong or make distributions in RMB due to exchange controls or other restrictions, the issuer may make distributions (including dividends and other payments) in other currencies. You may therefore be exposed to additional foreign exchange risk and liquidity exposures.

38.7 The liquidity and trading price of China Connect Securities may be adversely affected by the limited availability of RMB outside Mainland China and restrictions on the conversion of RMB. These factors may affect the liquidity of RMB for investors and accordingly adversely affect the market demand for China Connect Securities.

### **39. Country Risk**

39.1 If an investment is made in any asset or issued by a party subject to foreign laws or if transactions are made on markets in other jurisdictions, including markets formally linked to a domestic market, recovery of the sums invested and any profits or gains may be reduced, delayed or prevented by exchange controls, debt moratorium or other actions imposed by the government or other official bodies. Before you trade, you should enquire about any rules relevant to your particular transactions. Your local regulatory authority will be unable to compel the enforcement of the rules of regulatory authorities or markets in other jurisdictions where the transactions have been effected. You should obtain details about the different types of redress available in both your home jurisdiction and other relevant jurisdiction before starting to trade. The money received or held by the Bank for you in respect of China Connect Securities may not be protected deposit under the Deposit Protection Scheme in Hong Kong.

### **40. Taxation**

40.1 Income or profit from trading in any investments may be subject to withholding tax or capital gains tax or other tax of the country of the issuer or the country in which such investments are traded. In particular, in the case of cash dividend and bonus

issues, you may be subject to dividend withholding tax imposed by the State Administration of Taxation of Mainland China or other relevant regulators. In such event, unless the issuer agrees to gross-up the income or profit received by you, you may only receive any payment or proceeds of sale or redemption of the investment less the withholding tax or capital gains tax or other tax, as required by applicable laws. You may not be able to claim the benefits of a double income tax treaty or otherwise qualify for a reduction of withholding tax in respect of investments made through the Bank. The inability to claim the benefits of a double income tax treaty or otherwise qualify for reductions of withholding tax will increase the tax paid in respect of the investment compared to if such treaty qualification or withholding deduction were available.

### **41. Overseas fees and levies**

41.1 Trading in China Connect Securities may be subject to additional fees and levies under applicable laws and from overseas regulators. The amounts of such fees and levies may change from time to time. You may only receive any payment or proceeds of sale or redemption of the investment less such fees and levies.

## **ANNEX 1**

### **RISK DISCLOSURE STATEMENT**

#### **1. OVERVIEW**

- 1.1 This Statement seeks to provide you with an overview of some of the major risks associated with your Investments and Transactions. It does not purport to be a comprehensive description of all the significant risks or other aspects of your Investments and Transactions.
- 1.2 This Statement shall be considered as an integral part of the Conditions. Unless the context otherwise requires or this Statement expressly provides otherwise, all words and expressions as defined in the Conditions shall have the same meanings when used or referenced to in this Statement.
- 1.3 The risks of an Investment or Transaction can be substantial. Before making an Investment or entering into a Transaction, you should be satisfied that you fully understand the nature (including contractual relationships involved) of the Investment or Transaction, how it works, the extent of your exposure to risks and the potential losses that you could incur. You should also read the relevant product specific literature and carefully consider whether any proposed Investment or Transaction is suitable for you in the light of your financial resources, experience, objectives for engaging in the Investment or Transaction, ability to bear risks and other relevant circumstances. You should also consult such professional advisers (including legal, tax, financial and accounting) as may be appropriate.
- 1.4 Except where the Bank has expressly undertaken to the contrary, the Bank assumes no fiduciary responsibility towards you. If the Bank provides advice, recommendations and suggestions on your request or otherwise, you must remain ultimately responsible to conduct your investigation into, and make your appraisal of, any proposed Investment or Transaction, and you should rely on your judgment in entering into any Investment or Transaction. Any sensitivity analysis which may be provided by the Bank are for the purpose of general illustration only and (except where indicated otherwise) are not to be treated as the Bank's view on how the market will move in the future.
- 1.5 As such, the burden of all risks involved in any Investment or Transaction will be borne by you, and to the maximum extent permitted by applicable laws and regulations, and not inconsistent with the obligations of the Bank under the Code, the Bank is not responsible for any Loss which you incur, of whatever nature and howsoever arising.
- 1.6 The Bank acts simultaneously for a large number of clients, as well as for its own account. As such, conflicts of interest cannot be completely avoided.

#### **2. GENERAL INVESTMENT RISKS**

##### **Market and pricing risks**

- 2.1 The prices of Investments and the value of Transactions are subject to the risks of market fluctuations.
- 2.2 Because prices and characteristics of over-the-counter transactions are often individually negotiated, there is often no central source for obtaining prices and there can be inefficiencies in the pricing of such Transactions. The Bank makes no representation or warranty that its prices will always be the best prices available to you.

2.3 Under certain circumstances, the specifications of outstanding contracts (including the exercise price of an option) may be modified by an exchange or clearing house to reflect changes in the underlying interest.

2.4 Trading on one electronic trading system may differ not only from trading in an open outcry market but also from trading on other electronic trading systems. If you undertake Transactions on an electronic trading system, you will be exposed to risks associated with the system including the failure of hardware and software. The result of any system failure may be that your order is either not executed according to your instructions or not executed at all.

##### **Off-exchange transaction risks**

- 2.5 In effecting an off-exchange Transaction, the Bank may be acting as your counterparty. Off-exchange Transactions may involve increased risks. 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. Off-exchange Transactions may be less regulated or subject to a separate regulatory regime, compared to on-exchange Transactions. In particular, but without limitation, funds placed with a broker for the purpose of off-exchange Transactions may not enjoy the same level of protection as funds placed for the purposes of margining a contract on an organised exchange. You should therefore ensure that you are familiar with the protections accorded to monies (including margin funds) or assets, particularly in the event of the insolvency or bankruptcy of a custodian or holder of margin. Where the Bank is your counterparty, the Bank may make a profit from a Transaction which results in a loss to you.
- 2.6 An off-exchange Transaction generally cannot be assigned or transferred without the consent of the counterparty.
- 2.7 The Bank is generally under no obligation to repurchase an Investment or close-out or repurchase a Transaction or enter into an offsetting Transaction with you. As off-exchange Transactions are not fungible, entering into an offsetting Transaction may not entirely negate your exposure.
- 2.8 Before you undertake such Transactions, you should familiarise yourself with the applicable rules and attendant risks.

##### **Foreign exchange risks**

- 2.9 Fluctuations in foreign currency rates will have an impact on your profit and loss where an Investment or Transaction involves a foreign currency element. For foreign currency Investments or deposits, fluctuations in the exchange rates could adversely impact the amount of interest (if any) earned. You may experience Losses when you convert your foreign currency proceeds back to your home currency.
- 2.10 A wide range of factors can affect foreign currency rates. They include general movements in local and international capital and stock, prevailing and anticipated economic conditions (e.g. interest rates, investor sentiment), political and natural events and any other events and factors outside the control of the Bank.

##### **Credit risks**

- 2.11 Your Investments (and Transactions with counterparties other than the Bank) are generally not the obligations of or guaranteed by the Bank and are subject to the risks of the issuer or counterparty, including but not limited to failure by such issuer or counterparty to make good, valid

or timely delivery or payment to you. The obligations of the issuer or counterparty will often be unsecured.

#### **Emerging markets risks**

- 2.12 Investments in emerging countries (including those located in Asia, Africa, Latin America and Eastern Europe) may yield high returns but may also carry high investment risks. Such risks include political risks (including increased risk of armed-conflict, terrorism or civil wars, nationalization or confiscation of assets, restriction of your rights of ownership or rights of disposal, or decline in the value of assets as a result of state intervention in industry or trade or the introduction of state monitoring and control mechanisms), risks of economic instability, heightened levels of the general risks described above (e.g. credit risk, exchange rate risk, liquidity risk, inflation risk etc.), greater prevalence of unsavoury market practices (e.g. insider trading) and poor regulation and supervision and laws and regulations which afford inadequate protection and safeguards to investors. Certain emerging markets may also have a high level of dependency on the price trends of commodities.

#### **Country risks**

- 2.13 Client assets received or held by the licensed or registered person outside Hong Kong are subject to the applicable laws and regulations of the relevant overseas jurisdiction which may be different from the Securities and Futures Ordinance (Cap.571) 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.
- 2.14 Making an Investment or entering into a Transaction in a jurisdiction where you are not a resident may expose you to additional risk. Such jurisdiction may be subject to rules which may offer different or diminished investor protection. Your local regulatory authority will be unable to compel the enforcement of local rules in other jurisdictions where Investments are made or your Transactions have been effected. Before you acquire an Investment or enter into a Transaction in another jurisdiction, you should familiarise yourself with any applicable rule in that particular jurisdiction, consulting your own professional advisers as may be necessary, notably for details about any type of redress available to you.
- 2.15 Some jurisdictions may impose exchange controls or other limitations or restrictions and Investments or Transactions may be made in currencies which are not fully convertible. In certain cases, this may cause payments to be made to you in the local currency instead of the original invested, transacted or deposited currency. This may also result in the inability to perform outward remittances of funds from such a jurisdiction, which can affect the value of your Investment, Transaction or deposit or your ability to enjoy its benefit.

#### **Risk of securities trading**

- 2.16 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 Growth Enterprise Market stocks**

- 2.17 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.

- 2.18 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.
- 2.19 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.
- 2.20 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.

#### **Risk of trading Nasdaq-Amex securities at The Stock Exchange of Hong Kong Limited**

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

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

- 2.22 There is risk if you provide the licensed or registered person 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.
- 2.23 If your securities or securities collateral are received or held by the licensed or registered person 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.
- 2.24 Additionally, your authority may be deemed to be renewed (i.e. without your written consent) if the licensed or registered person 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.
- 2.25 You are not required by any law to sign these authorities. But an authority may be required by licensed or registered persons, 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 licensed or registered person should explain to you the purposes for which one of these authorities is to be used.
- 2.26 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 licensed or registered person 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.

- 2.27 A cash account not involving securities borrowing and lending is available from most licensed or registered persons. 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**

- 2.28 If you provide the licensed or registered person 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.

- 2.29 Notes for licensed or registered persons

The licensed or registered person should confirm with the client at least on an annual basis whether that client wishes to revoke the authority. For the avoidance of doubt, it will be acceptable for the licensed or registered person to send a notification to the client before the expiry date of the authority and inform the client that it is automatically renewed unless the client specifically revokes it in writing before the expiry date.

**Liquidity and market disruption risks**

- 2.30 Adverse market conditions (including suspension of trading, extreme market conditions, failure of telecommunications or electronic systems, and events commonly known as "force majeure") may result in your not being able to effect Investments or Transactions, liquidate all or part of your Investments or Transactions, assess a value or your exposure or determine a fair price, as and when you require. This may also arise from the rules in certain markets (for example, the rules of a particular exchange may provide for "circuit breakers" where trading is suspended or restricted at times of rapid price movements). Transactions on an organised exchange are therefore not risk-free. If you have sold options, this may increase the risk of loss.

- 2.31 Most open-outcry and electronic trading facilities are supported by computer-based component systems for the order-routing, execution, matching, registration or clearing of trades. As with all facilities and systems, they are vulnerable to temporary disruption or failure. The result of any system failure may be that your order is either not executed according to your Instructions or not executed at all. Your ability to recover certain losses may be subject to limits on liability imposed by the system provider, the market, the clearing house and/or member firms. Such limits may vary.

- 2.32 On many exchanges, the performance of a Transaction by your broker (or any Third Party with whom he is dealing on your behalf) may be supported or guaranteed by an exchange or its clearing house. However, this support or guarantee is unlikely in most circumstances to provide full cover and may not protect you completely if your broker or another party defaults on its obligations to you.

**Risk that limitation orders may not limit loss**

- 2.33 Placing contingent orders, such as "stop-loss" or "stop-limit" orders, will not necessarily limit your losses to the intended amounts, as it may be impossible to execute such orders under adverse market conditions.

- 2.34 Strategies using combinations of positions, such as "spread" and "straddle" positions may be as risky as taking simple "long" or "short" positions.

**Margin and leveraged transactions risks**

- 2.35 Investments or Transactions may sometimes involve a high degree of leverage. This can work against you as well as for you. A small market movement can produce large losses as well as gains.

- 2.36 You may be required to furnish margin when entering into an Investment or Transaction, in particular leveraged transactions (and for the avoidance of doubt, such margin may equal or exceed the full amount of your actual or potential exposure to the Bank). "Margin" refers to an amount of money, securities, property or other collateral, or representing a part of the value of the contract or agreement to be entered into, which is deposited by a party to an Investment or Transaction to ensure performance of the terms of the Investment or Transaction. Even if the amount of the initial margin deposit may be small relative to the value of the Investment or Transaction, if the market moves against you, you may not only sustain a total loss of the initial margin deposit and any additional fund deposited to maintain your position, you may also incur further liability to the Bank or other counterparty or sustain further losses. You may also be called upon to provide additional margin or "top-up" your margin by substantial amounts at short notice to maintain your position, failing which your position may be liquidated at a loss, and you will be liable for any resulting deficit in your account.

- 2.37 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 licensed or registered person. 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.

**Tax and legal affairs**

- 2.38 Before acquiring an Investment or entering into a Transaction, you should understand the tax implications of doing so. In particular, income from an Investment or Transaction may be subject to withholding, income, capital gains or other taxes in the country of the issuer or counterparty of such Investment or Transaction. Unless the issuer or counterparty agrees to "gross-up", investors may only receive payments less the applicable withholding tax or investors after-tax returns may be adversely affected.

- 2.39 You have sole responsibility for the management of your tax and legal affairs including making any applicable filing and payment and complying with any applicable law and regulation. The Bank has not and will not provide you with tax or legal advice and it is recommended that you obtain your own independent tax and legal advice tailored to your individual circumstances. The tax treatment of Investments or Transactions may be complex, and the level and basis of taxation may alter during the term of any product.

**Impact of fees and charges**

- 2.40 Before you begin to trade, 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.

### 3. **STRUCTURED DEPOSITS RISKS**

- 3.1 Structured deposits are non-traditional deposits that may offer returns, among other things, by reference to underlying financial or investment products or other reference instruments, assets, rates, prices or events (such as a single equity or debenture, a basket of equities or debentures, foreign exchange or interest rates, or the occurrence of an underlying credit event). The returns on such structured deposits are variable and are not guaranteed, and are usually contingent on the performance of one or more relevant underlying financial or investment products or other reference instruments, assets, rates, prices or events. To the extent that any principal amount or any interest on a structured deposit is stated to be guaranteed, such guarantee will be subject to the relevant terms and conditions governing that particular structured deposit. You should read and understand all the relevant terms and conditions of such structured deposit to determine your eligibility for such guarantee and the terms under which such guarantee is granted.
- 3.2 A structured deposit should generally be held for its full tenor and not be prematurely withdrawn or terminated by you. In addition to the risks disclosed in the paragraph below, and depending on the specific terms of the relevant structured deposit, your premature withdrawal or termination of a structured deposit may also adversely affect your returns (if any) thereon. You should therefore ensure that you have sufficient funds and/or the necessary liquidity to enable you to hold each structured deposits with the Bank until maturity.
- 3.3 You should be aware of the tenor of each structured deposit and subject to the terms and conditions of such structured deposits the fact that the principal amount of a structured deposit may only be guaranteed if held to maturity. Unless the Bank otherwise agrees, the principal amount of a structured deposit cannot be withdrawn, whether partially or in whole, prior to its maturity. If the Bank allows early withdrawal, the Bank shall be entitled to deduct from the principal amount, any loss, cost, charge and/or expense referable to such early termination as incurred by the Bank (including those in relation to the Bank's unwinding or termination of its hedging and/or funding position) and such other administrative and other charges as the Bank may impose. In such instances, you may receive less than the principal amount.
- 3.4 You should be aware that certain structured deposits may be subject to early redemption before maturity by the Bank in accordance with the applicable terms and conditions of such structured deposits. You should read and understand all the relevant terms and conditions of such structured deposits to determine the circumstances under which the Bank is entitled to effect such early redemption and the consequences thereof.
- 3.5 Any forecast on the economy, stock market, bond market and economic trends of the markets provided to you is not necessarily indicative of the future or likely performance of any structured deposit. Where any past performance of a structured deposit, or that of its underlying financial instruments or assets, is provided to you to illustrate possible returns of such structured deposit, such past performance is also not necessarily indicative of future performance of such structured deposit.

- 3.6 A structured deposit is not an insured deposit for the purposes of the Deposit Protection Scheme Ordinance (Cap. 581).

### 4. **CURRENCY LINKED DEPOSIT RISKS**

- 4.1 Currency Linked Deposits (or "**CLD**") are foreign exchange rate-related instruments that have the potential to enable the buyer to obtain a higher return than on a money market instrument.
- 4.2 CLDs involve a currency option which confers on the seller (i.e. the Bank) the right to repay the investment amount at maturity in either the base currency or the alternative currency and part or all of the interests earned on the CLD represents the premium on this option. In other words, by purchasing the CLD, the buyer is (i.e. you are) giving the Bank the right to repay you at a future date in an alternative currency that is different from the currency in which your initial investment was made, regardless of whether you wish to be repaid in this currency at that time. When a CLD matures, you will therefore receive payment of principal and interest either in the base or the alternative currency, depending on the strike rate. If payment is in the alternative currency, the strike rate will be used for conversion. The amount of foreign currency agreed upon at the point of investment for payment at maturity date for the investment may be less than the principal amount of the investment if converted at the rate of exchange prevailing on the maturity date.
- 4.3 CLDs are suitable for buyers who wish to derive an increased return on their investments and accept the risk of repayment in the alternative currency at the strike rate. Accordingly, you should make placement of any CLD only if you have a use for and/or are indifferent to holding each of the currencies in which the CLD may be repaid on maturity. The higher the potential earnings, the greater the risk that payment will be made in the alternative currency at the strike price.
- 4.4 CLDs are not principal protected, and are described as "principal-at-risk". The total return on a principal-at-risk CLDs may be negative, and, depending on the terms of the CLDs, the combined value of the base principal amount repayable on maturity and yield may be completely lost or may be significantly less than the value of the base principal amount invested.
- 4.5 The return on the CLD will be dependent, to at least some extent, on movements in the reference rate. Past performance of a reference rate is not necessarily a guide to its future performance. Before deciding to invest in a CLD, you should make sure that you are familiar with the relevant reference rate and understand the effect that movements in that reference rate will have on the return on the base principal amount invested.
- 4.6 If the currency you have entered into is a foreign currency, you run the foreign exchange rate risk, that the value of the currency weakening over the term of the CLD. In addition, if the alternate currency weakens over the term of the CLD so that the prevailing spot exchange rate is beyond the agreed target conversion rate, the Bank will choose to repay in the alternate currency amount. This means that the value of the alternate currency, measured in terms of the base principal amount, may be reduced. Such reduction could be significant.
- 4.7 It is possible that, after converting the alternate currency back into the base currency, the return, both principal and yield, is less than the base principal amount. If you need or intend to convert the proceeds after maturity into a third currency, you will be running additional foreign exchange risk.

- 4.8 The effect of normal market forces may at times be countered by intervention by central banks and other bodies. At times, foreign currency rates, prices linked to such rates, may rise or fall rapidly thus affecting the value of your CLD.
- 4.9 CLD buyers do not enjoy downside protection, and thus investing in CLDs involve substantial risks. You may wish to seek advice from a financial adviser before making a commitment to purchase a CLD. In the event that you choose not to seek advice from a financial adviser, you should carefully consider whether a CLD is suitable for you.
- 4.10 Exchange controls may also be applicable to none, either or both of the currencies your CLD is linked to. This may adversely affect the Bank's ability to pay you in either the base currency or the alternate currency and/or your ability to transfer or make use of amounts paid to you in either of these currencies. More information on the foreign exchange control restrictions, if any, in respect of the foreign currency offered in relation to the CLD may be obtained from the relevant monetary, regulatory or government authorities for that currency.
- 4.11 A CLD is not an insured deposit for the purposes of the Deposit Protection Scheme Ordinance (Cap. 581).

## 5. COLLECTIVE INVESTMENT SCHEMES RISKS

- 5.1 You should be aware that an investment in a Collective Investment Scheme ("**Scheme**") is subject to various risks and there can be no assurance that a Scheme's investment objectives will be realised. In particular, the price of units or shares in a Scheme is subject to both upwards and downwards movements. In this respect, the past performance of a Scheme should not be taken as an indication of its future performance. You should also understand that the issue, subscription and redemption price of units or shares in respect of any Scheme is usually only indicative and not final and binding.

## 6. EQUITY SECURITIES RISKS

- 6.1 Ownership of an equity security generally represents a direct stake in the company concerned. Such an investment will participate fully in the economic risk of the company and its value can therefore fall as well as rise. The price volatility of equity markets can change quickly, and cannot be assumed to follow historic trends. In adverse market conditions, irrecoverable capital losses could be incurred. In the worst case, a company could fail and, if this happens, its equity can become worthless. Equity securities are commonly used by investors seeking longer term capital growth. Examples of typical company characteristics which could heighten equity investment risks are:
- (a) a low market capitalisation;
  - (b) a product set that is undiversified or reliance on single markets as a major source of income;
  - (c) a significant reliance on borrowing as a source of finance;
  - (d) a significant level of fixed costs to pay, irrespective of output, production or turnover levels;
  - (e) major income sources which are seasonal or "cyclical" in nature; and
  - (f) companies trading primarily in emerging markets, particularly during poor market conditions, or in countries where legal property rights may be difficult to enforce.

- 6.2 The equity of some smaller companies may trade in very small sums per share, and an investment into this kind of equity will usually involve a proportionately large difference between the market buying and selling price. The effect of this difference means that an immediate sale may realise significant losses. Other smaller companies may not be subject to the rules of a listing authority. Such companies are likely to be high risk ventures and may have an unproven trading history or management team. These equity shares may not be readily sold, and it could be difficult to realise or to value them independently due to the lack of a secondary trading market.

- 6.3 The risks involved in equity investment can often be managed through investment via diversified investment vehicles, or by investing directly in a wide range of different companies, industries, countries and currencies.

## 7. DEBT SECURITIES RISKS

- 7.1 The value of debt investments (or "bonds") can generally be expected to be more stable than that of equity investments. However, in some circumstances, particularly when interest rate expectations are changing, the value of bonds may also be volatile. The value of a bond can be adversely affected by a number of factors, such as:
- (a) the issuer's credit rating, which reflects their ability to repay the amounts payable when they fall due;
  - (b) the market expectations about future interest and inflation rates;
  - (c) amount of interest payable (the coupon);
  - (d) the length of time until the debt falls due for repayment; or
  - (e) the seniority of a bond within the capital structure of a company, and the quality of any security available.
- 7.2 The factors which are likely to have a major impact on the value of a bond are the perceived financial position of the issuer and changes to market interest rate expectations. Bonds issued by major governments or supranational bodies tend to be lower risk investments, while the risks of other debt securities (such as those with emerging market or corporate issuers) can vary greatly. For example, if an issuer is in financial difficulty, there is an increased risk that they may default on their repayment obligations. In this event, little or no capital may be recovered and any amount repaid may take a significant amount of time to obtain.

## 8. STRUCTURED PRODUCTS RISKS

- 8.1 Structured products are synthetic investment instruments formed by combining two or more financial instruments, including one or more derivatives that may offer returns by reference to, and which are dependent on the performance of, among other things, underlying financial or investment products or other reference instruments, assets, rates, prices or events (such as a single equity or debenture, a basket of equities or debentures, foreign exchange or interest rates, or the occurrence of an underlying credit event).
- 8.2 Structured products are sophisticated instruments and carry a high degree of risk and may not be suitable for many members of the public, as the risks associated with the financial instruments may be interconnected. As such, the extent of loss due to market movements can be substantial.
- 8.3 Each structured product has its own risk profile and given the unlimited number of possible combinations, it is not possible to detail in this

Statement all the risks which may arise in any particular case. Prior to engaging in structured product Investments or Transactions, you should understand the inherent risks involved. In particular, the various risks associated with each financial instrument should be evaluated separately as well as taking the structured product as a whole.

- 8.4 Structured products may be traded either over-the-counter or on-exchange.
- 8.5 With structured products, buyers can only assert their rights against the issuer. Hence, particular attention needs to be paid to issuer risk. You need therefore be aware that a total loss of your Investment is possible if the issuer should default.

## 9. ALTERNATIVE INVESTMENTS RISKS

- 9.1 Non-traditional fund investments involve a high degree of risk and may not be suitable for many members of the public. Before making any investment, you should seek independent advice about the particular risks involved and carefully study the offering documents and subscription agreements and other information on the relevant investments. You should fully understand and be willing to assume the risks involved and the exposure to potential Losses (which could involve the complete loss of your investment) before you participate.
- 9.2 Alternative funds (which may take a variety of legal forms such as investment companies, trusts, or partnerships) differ from traditional investment funds such as equity or fixed income funds in respect of their investment style. A common type of a non-traditional fund is the hedge fund, which, notwithstanding its name, does not necessarily have anything to do with hedging.
- 9.3 Some of the common features of, and risks of investing in, a non-traditional fund include the following:
- (a) some funds aim to make an absolute return, under varying market conditions;
  - (b) the fund may take on very high levels of risk and may have significant leverage from the investment of borrowed capital;
  - (c) the fund often uses derivatives, whether for hedging or for investment or speculation rather than hedging purposes;
  - (d) the fund may be able to carry out short sales;
  - (e) there may be limited information available about the fund, its investment strategies or investment situation. Even if information is available, the information (for example about the fund's investment strategy) may be very complex and difficult to understand;
  - (f) the fund may not be subject to any restriction on investment categories, markets or trading methods;
  - (g) a high minimum sum may be needed for investment in the fund;
  - (h) alternative funds have variable liquidity and tradability, and may have limited subscription and redemption rights with lengthy notice periods (e.g. fund issues and redemptions are often allowed only on a monthly, quarterly or annual basis). Fixed holding periods are common, and liquidations may stretch out over a period of years;

- (i) a fund's portfolio managers often receive performance-linked bonuses and have a personal stake in the fund; and
- (j) many alternative funds are located in "offshore" jurisdictions, and are subject to less stringent laws and supervision, which in turn provides weaker investor protection. There is no assurance that an investor's legal rights will be enforceable.

## ANNEX 2

### AUTHORITY AND INDEMNITY IN RESPECT OF TELEPHONE, FACSIMILE OR ELECTRONIC COMMUNICATIONS ("Authority and Indemnity")

1. The terms and conditions set out in this Authority and Indemnity shall be considered as an integral part of the Conditions. Unless the context otherwise requires or this Authority and Indemnity expressly provides otherwise, all words and expressions as defined in the Conditions shall have the same meanings when used or referred to in this Authority and Indemnity.
2. Without prejudice to the generality of the provisions in Clauses 3 and 4 of Section A of the Conditions, this Authority and Indemnity shall apply in respect of each instruction you or any Authorised Person give to the Bank by way of telephone, facsimile or electronic communication (the "**Specified Communication Means**") and in respect of each Communication communicated by the Bank to you or any Authorised Person by the Specified Communication Means.
3. You hereby request and authorise (i) the Bank (but the Bank is not obliged) to act on any Instructions, orders and/or communication ("**Communications**") given for any purpose (including but not limited to the operation of all your current and future accounts and in respect of any facilities or banking arrangements with the Bank) by the Specified Communication Means given or purport to be given by you or any Authorised Person from time to time; and (ii) the Bank and any of its officers to communicate to you or any Authorised Person by the Specified Communication Means.
4. You understand and acknowledge that there are risks of misunderstandings, unauthorized alterations or instructions errors and risk of operational failure involved in sending and receiving Communications to and from the Bank via the Specified Communication Means. Furthermore, you understand and acknowledge that there are risks involved in sending and receiving Communications to and from the Bank via the Specified Communication Means and that these are not secure means of sending Communications. You hereby agree that all such risks shall be fully borne by you and you shall, to the maximum extent permitted by applicable laws and regulations, and not inconsistent with the obligations of the Bank under the Code, at all times hereafter unconditionally indemnify the Bank fully and keep the Bank fully indemnified from and against any liability, loss, cost, damage, claim, fee and expense, including legal fees and costs of any nature whatsoever, and howsoever suffered, sustained or incurred (and whether direct or indirect, consequential or special and including any loss of profit or interest) as a result of sending and/or receiving Communications via such means provided the Bank has acted in good faith.
5. In consideration of the aforesaid and the Bank agreeing to act on any Communications given by the Specified Communication Means by you or any Authorised Person, you agree and undertake:-
  - (a) that the Bank is authorised (but not obliged) to record any telephone conversations between you or any other person and the Bank, in writing or by tape or other means as the Bank may determine, and the Bank's records shall be conclusive and binding on you. The Bank may dispose of such written records and erase such tapes after the expiration of such period in accordance with applicable law;
  - (b) that the Bank may (but shall not be obliged to) require any Communications to contain an identification code or test specified by the Bank from time to time and you shall ensure the secrecy and security of such code or test and shall be responsible for any improper use of such code or test;
  - (c) that the Bank may, under circumstances determined by the Bank, require from you or the Authorised Person such original documents or confirmation of any Communication in such form as the Bank may specify before acting on the same;
  - (d) that the Bank may, at its absolute discretion and without notice to you or the Authorised Person, refuse to act or delay in acting on the whole or any part of the Communication in any circumstances as the Bank may deem appropriate, including without limitation, in the absence or delay of any code, test or confirmation specified by the Bank pursuant to paragraph (b) or (c) above or where any Communication is, in the Bank's opinion, unclear, ambiguous, suspicious or which may cause it to contravene any law, regulation or directive under any applicable laws for the time being in force, without any responsibility or liability to you or any other party whatsoever for any such refusal or delay in acting as a result;
  - (e) that to the maximum extent permitted by applicable laws and regulations, and not inconsistent with the obligations of the Bank under the Code, the Bank will not be liable for any failure or delay in acting on any Communication by reason of any breakdown or failure of computer, transmission or communication equipment or facilities for whatsoever reason, or any other breakdown of or delay or error in transmission or communication for any reason or cause beyond the reasonable control of the Bank;
  - (f) that provided that the Bank officer concerned believed in good faith the Communication to be genuine at the time it was given, the Bank may (but shall not be obliged to) act as aforesaid without inquiry, check or verification as to the identity or authority of the person giving or purporting to give any Communication, or the accuracy, correctness, validity, proprietary, authenticity or sources of any Communication and may treat the same as fully authorised by and binding on you, regardless of the circumstances prevailing at the time of the Communication or amount of the transaction and notwithstanding any error, misunderstanding, lack of clarity, fraud, forgery or lack of authority in relation thereto, the fact that the identity of the person giving the Communication and or the sources of such Communication have not been verified or authenticated by you and without requiring further confirmation or authentication or separate independent verification in any form;
  - (g) (if there are two or more of you, jointly and severally) to fully and completely indemnify the Bank unconditionally on demand against all claims, actions, proceedings, costs and expenses (including legal costs on an indemnity



basis), damages, losses, and all other liabilities of whatsoever nature or description which may be brought against or made or taken or incurred or suffered by the Bank in connection with (whether directly or indirectly) or from the Bank (i) acting or delay in acting on any of the Communications given or purport to be given by the Specified Communication Means; and/or (ii) not acting on any Communications in any circumstances as the Bank may deem appropriate;

- (h) that the Bank's authority to accept any Communication is continuing and shall remain in force until a written termination notice from you varying or terminating such authority and all Supporting Documents have been received by the Bank and confirmed by the Bank to be in order. The Bank shall be entitled to a period of seven (7) Business Days from the date of receipt of such notice and the Supporting Documents (if any) to process such notification and update the change. In the event that such notification and/or any of the Supporting documents is ambiguous, incomplete or in such form and substance not satisfactory to the Bank, the Bank reserves the right not to process such notification or to take such action as the Bank deems fit and the Bank shall not be liable for any Loss that you may incur as a result thereof; and
- (i) that this Authority and Indemnity shall be governed by and construed in accordance with the laws of Hong Kong and you hereby irrevocably submit to the non-exclusive jurisdiction of the Hong Kong courts.

- 6. The rights and remedies of the Bank under this Authority and Indemnity shall be in addition to and shall not in any way prejudice or affect the rights and/or remedies of the Bank in law or in any other agreement, deed or document or to which the Bank may be otherwise entitled.

1.

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