



**EFG Bank AG  
Hong Kong Branch**

**General Conditions  
and  
Risk Disclosure Statement**



# GENERAL CONDITIONS

***PLEASE READ THESE GENERAL CONDITIONS CAREFULLY AND ENSURE THAT YOU UNDERSTAND THEM. IF YOU DO NOT UNDERSTAND ANY PROVISION, WE RECOMMEND THAT YOU ASK QUESTIONS AND TAKE INDEPENDENT ADVICE. BY SIGNING YOUR ACCOUNT OPENING BOOKLET (AS DEFINED BELOW), YOU AGREE THAT YOU HAVE READ, UNDERSTOOD AND ACCEPTED THESE GENERAL CONDITIONS, AND THESE GENERAL CONDITIONS SHALL BE BINDING ON YOU.***

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## PART A: DEFINITIONS AND INTERPRETATION

### 1. Definitions

In the Agreement, unless otherwise defined or the context otherwise requires, the following words shall have the meanings given below:

<b>Acceptable Currency</b>	Subject to availability, a Currency listed as acceptable Currency in the relevant Facility Letter.
<b>Access Procedures</b>	All Security Mechanisms, Security Codes, user IDs, passwords, secure IDs, log on codes or other identifiers, personal identification numbers, access codes, smartcards, digital certificates, digital signatures, electronic key's, passbooks, access or security tokens, electronic devices, one time keys or tokens, two factor authentication and other forms of access procedures issued by or on behalf of the Bank from time to time in order to enable the Client to access or use any eBanking Service.
<b>Account</b>	An account (including any sub-account under that account) from time to time opened and held in the name or on behalf of the Client with the Bank which is subject to the Agreement.
<b>Account Entity</b>	Has the meaning given to it in Clause 17.1 in Section 1 of Part B of the General Conditions.
<b>Account Mandate</b>	An account mandate for operating one or more Accounts set out in the Account Opening Booklet or in such other form as may be required by the Bank from time to time, and signed by or on behalf of the Client.
<b>Account Opening Booklet</b>	The Bank's Account Opening Booklet for the opening of an Account signed by or on behalf of the Client.
<b>Adjustment Event</b>	Any of the following events: <ul style="list-style-type: none"><li>(a) in relation to Securities or equities that are listed on an Exchange and which are the subject of a Transaction:<ul style="list-style-type: none"><li>(i) the actual or proposed adoption of any procedure, event or action which is or which is likely to result in any cash return of capital, pro-rata cash distribution, capital reduction, capital raising, liquidator's distributions, share buy-back, bonus issue, discount issue, rights issue, arrangement, scheme of arrangement, compromise, merger, demerger, reconstruction, compulsory acquisition, redemption, cancellation, replacement, modification, subdivision or consolidation, takeover bid, special dividend, non cash dividend, share split or any other similar or like event, which will result in the replacement of the Securities or equities with some other property or asset;</li><li>(ii) any event which is or which results in the actual or proposed administration, liquidation, winding up or termination of the issuer of the Securities or equities or other similar or like event (however described); or</li><li>(iii) any event which is or which results in the actual or proposed de-listing of the Securities or equities or the actual or proposed removal from quotation of the Securities or equities or the actual or proposed suspension from trading of the Securities or equities;</li></ul></li><li>(b) in relation to an index which is the subject of a Transaction:<ul style="list-style-type: none"><li>(i) the index is suspended or ceases to be published for a period of twenty-four (24) hours or more;</li><li>(ii) the index is not calculated and announced by the index provider, but is calculated and announced by a successor sponsor or provider;</li><li>(iii) the index is replaced by a successor index using the same or a substantially similar formula for and method of calculation;</li><li>(iv) the index provider or any successor makes a material change in the formula for or the method of calculating the index or the basket of constituents of the index or in any way materially modifies that index; or</li></ul></li></ul>

- (v) there is a suspension or material limitation on trading of Securities or other components of the index generally on a relevant Exchange trading of those Securities or components for a period of twenty-four (24) hours or more;
- (c) in relation to an interest in a Fund which is the subject of a Transaction:
- (i) a violation or change of any material terms of the Fund's offer documents or other constitutional documents;
  - (ii) the main investment objective of the Fund changes to a material extent;
  - (iii) any restriction or limitation or suspension or deferral of, redemptions of or subscription for shares or units in the Fund (including the introduction or increase of any associated fee, cost or expense), or any mandatory redemption of shares or units in the Fund;
  - (iv) a material change in the tax or regulatory environment of the Fund, or of the Manager;
  - (v) a change in asset allocation by the Fund;
  - (vi) any review or investigation of the activities of the Fund or any of its Managers, by a relevant regulator, in connection with suspected or alleged wrongdoing or breach of any Applicable Laws, or other similar reason, or any disciplinary action taken by such regulator in consequence thereof;
  - (vii) any winding-up, liquidation of, or any termination or any loss of regulatory approval, license or registration of, the Manager, or any merger, de-merger, winding-up or liquidation of or affecting the Fund;
  - (viii) any change in the Currency or denomination of the net asset value of the relevant interest in the Fund;
  - (ix) the net asset value of a relevant interest in the Fund not being calculated or announced within the period of time normally and reasonably expected, or the methodology used changes;
  - (x) the sponsor of the Fund or the Manager is or becomes the owner of twenty-five percent (25%) or more of the interests (or a class of interests) in the Fund; or
  - (xi) any arrangement between the sponsor and one or more Managers including arrangements relating to subscriptions and redemptions being changed or terminated;
- (d) any form of exchange control restriction or requirement of any nature whatsoever affecting availability, convertibility, credit or transfers of Currencies;
- (e) where any event or circumstance occurs beyond the reasonable control of a party that prevents one or more parties from performing their obligations to the other party, or any other event occurs which the Bank determines in good faith results in the performance of its obligations having become or becoming, in circumstances beyond its reasonable control, impossible, unlawful, illegal or otherwise prohibited;
- (f) the Bank or one or more of its Associates is unable, after using commercially reasonable efforts to acquire, establish, re-establish, substitute, maintain, unwind or dispose of any trade or asset it considers necessary to hedge the risk of entering into and performing its obligations in relation to any Transaction, Account or Service or to realise, recover or remit the proceeds of any such trade or asset;
- (g) the Bank or one or more of its Associates would incur a materially increased amount of tax, duty, expense or fee (other than brokerage commissions) to (i) acquire, establish, re-establish, substitute, maintain, unwind or dispose of any trade or asset it deems necessary to hedge the risk of entering into and performing its obligations with respect to any Transaction, Account or Service, or (ii) realise, recover or remit the proceeds of any such trade or asset, but excluding any such increased amount that is incurred solely due to the deterioration of the creditworthiness of the Bank or its Associates;
- (h) the enactment, promulgation, execution or ratification of, or any change in or amendment to, any Applicable Laws (or the application or official interpretation of any such Applicable Laws) that occurs after the parties enter into the relevant Transaction, any Account is opened or any Service is provided;
- (i) any termination, suspension, adjustment, change or delay of the Bank's or its

Associate's hedging arrangements, or any suspension, termination, adjustment, change, delay, postponement or close-out of Securities, equity, index or other Traded Asset relevant to the hedging arrangements or any suspension, termination, adjustment, change, delay, postponement or close-out of a calculation under the hedging arrangements (or the calculation is brought forward or calculated on a different day) occurs in such a manner that is reasonably impracticable for the Bank to adjust or change the terms to reflect the adjustment or change in the hedging arrangements;

- (j) there is a failure of a party to deliver, when due, any Traded Asset where such failure is due to illiquidity in the market for such Traded Asset;
- (k) the Bank is unable to borrow or lend (or maintain a borrowing or lending of) the relevant Traded Asset at a rate equal to or less than a reasonable rate (as determined by the Bank in its sole discretion);
- (l) any devaluation, redenomination or demonetisation of the underlying Currencies, commodities, Securities, instruments or Traded Asset;
- (m) any splitting of Currency exchange rates into dual or multiple Currency exchange rates, unavailability of Currency exchange rates or any other form of price disruption which, in the Bank's reasonable opinion, adversely changes the rights or obligations of the Bank in relation to any Transaction, Account or Service;
- (n) any form of debt or other moratorium on jurisdictions, individuals or entities;
- (o) any actual or proposed event that is similar or analogous to, or may reasonably (in the Bank's opinion) be expected to lead to any of the events referred to in paragraph (a) or (g) above occurring; or
- (p) any other event which the Bank reasonably declares to be an Adjustment Event.

**Adjustment Event  
Action**

Any of the following:

- (a) substituting part or all of the affected Traded Asset with any other asset;
- (b) varying, resetting, reversing, delaying, adjusting, amending or otherwise changing any variable, date, rate, term, formula, amount or calculation as set out or used in the Agreement, the Transaction Confirmation or any other relevant documentation between the Bank and the Client;
- (c) adjusting, amending or substituting the definition of the relevant Traded Asset and/or adjusting, varying, amending or substituting any term of a loan and/or the terms referred to in the Agreement, the Transaction Confirmation or any other relevant documentation between the Bank and the Client;
- (d) determining, altering or varying the quantities of Currencies, Securities, commodities, instruments or any other Traded Asset or the exchange rates or specifications (including price, expiry date and any other terms and conditions) of such Currencies, Securities, commodities, instruments or other Traded Asset;
- (e) determining to suspend, deter, delay or bring forward any of the necessary calculations referred to in the Agreement, the Transaction Confirmation or any other relevant documentation between the Bank and the Client as appropriate until reliable values can be obtained;
- (f) directing the Client, any Collateral Provider or the nominee or custodian holding margin or Collateral to deal with the margin or Collateral or respond to the Adjustment Event in a particular way, including:
  - (i) directing the Client (or a nominee or custodian or Collateral Provider) to sell, dispose, redeem, exchange or otherwise deal with any Traded Asset (whether or not they are affected by the Adjustment Event), including by transferring them to the Bank or its nominee and direct the Client to use the proceeds of any such dealing in any manner the Bank determines;
  - (ii) directing the Client to use the proceeds of any special return of capital, share buy-back, or other distribution in any manner the Bank determines;
- (g) if the Adjustment Event affects or may affect the Currency in which the Account is denominated, the Bank may, at the Bank's absolute discretion, convert the Currency of the Account to another Currency, which is a freely transferable Currency at the time, selected by the Bank in its absolute discretion and every payment for the

Account shall be in that new Currency;

- (h) taking any other action, making any other amendment, change, or variation the Bank reasonably considers necessary;

provided that the Bank is acting in a manner consistent with any adjustment or change made to the Bank or its Associates hedging arrangement (if any) or in a manner consistent with the Agreement, the Transaction Confirmation or any other relevant documentation between the Bank and the Client and provided that in the reasonable opinion of the Bank the adjustment in accordance with the above paragraphs is appropriate to put both the Bank and the Client in a substantially similar economic position as reasonably possible as the Bank and the Client would otherwise have been in had the Adjustment Event not occurred. Where relevant, the Bank may (but is not obliged) determine the adjustment(s) in paragraphs (b) and (c) of this definition by reference to the adjustment(s) in respect of the Adjustment Event made by an options Exchange to exchange traded options over the relevant Securities traded on that options Exchange.

<b>Advices &amp; Statements</b>	Has the meaning given to it in Clause 6.2 of Part D of the General Conditions.
<b>AEOI</b>	Has the meaning given to it in Clause 16.3(n)(i) in Section 1 of Part B of the General Conditions.
<b>Affiliate</b>	See definition of " <b>EFG Bank Group</b> ".
<b>Agent</b>	Has the meaning given to it in Clause 12 in Section 1 of Part B of the General Conditions.
<b>Aggregation</b>	Has the meaning given to it in Clause 2.2 of Part D of the General Conditions.
<b>Agreement</b>	The Account Opening Booklet, these General Conditions, each Transaction Confirmation and such other additional terms and conditions, as may be required by the Bank from time to time.
<b>Applicable Laws</b>	All relevant or applicable present and future statutes, laws, regulations, agreements, directives, notices, practice notes, information papers, bye-laws and practices of any governmental, intergovernmental or supranational body, agency, department or legal, law enforcement, tax, regulatory or self-regulatory or other authority or organisation, relevant Exchange, market, clearing house, trading registration or depository, and court orders (whether in Hong Kong or elsewhere and whether or not having the force of law).
<b>Applicable RMB Regulations</b>	The laws, regulations, restrictions or the like (whether or not having the force of law) governing the transaction of business in RMB which are issued by any governmental, intergovernmental or supranational bodies, agencies, departments or regulatory, self-regulatory or other authorities or organisations, clearing or settlement banks or bodies, exchanges or professional bodies in Hong Kong, the PRC or elsewhere.
<b>Applicable RMB Operational Arrangements</b>	The operational arrangements in place from time to time in relation to RMB business in Hong Kong between the Bank, other EFG Bank Group Members and other participating institutions, clearing or settlement banks or bodies or systems whether in Hong Kong, the PRC or elsewhere.
<b>Associates</b>	Subsidiaries, Affiliates, associates, nominees or agents or any director, officer, employee, agent or servant of any of the foregoing.
<b>Authorised Person</b>	Any one or more person(s) authorised in writing from time to time by the Client under the Account Opening Booklet, any power of attorney or any other Account Mandate or document (in a form acceptable to the Bank) and approved by the Bank to represent (whether alone or collectively) the Client and to give Instructions in regard to any Account or Service and enter into any agreement or Transaction, request for new Services to be provided by, or Account (including sub-accounts) to be opened with the Bank on the Client's behalf, whether designated by the Client as an Authorised Signatory or as an Authorised Representative and on the basis of a general authority or a limited authority, and in respect of whose authority or powers the Bank has not actually received any written revocation, suspension or termination notice from the Client.
<b>Authorised</b>	Any Authorised Person designated by the Client as "Authorised Representative with

<b>Representative</b>	limited authority" under the Account Opening Booklet, any power of attorney or any other Account Mandate or document (in a form acceptable to the Bank) and approved by the Bank.
<b>Authorised Signatory</b>	Any Authorised Person designated by the Client as "Authorised Signatory with general authority" under the Account Opening Booklet, any power of attorney or any other Account Mandate or document (in a form acceptable to the Bank) and approved by the Bank.
<b>Bank</b>	EFG Bank AG, acting through its Hong Kong branch.
<b>Banking Code</b>	Code of Banking Practice jointly issued by The Hong Kong Association of Banks and The DTC Association.
<b>Bank Guarantee</b>	Any guarantee, standby letter of credit or other instrument from time to time issued or entered into by the Bank for or at the request of the Client pursuant to the Facilities under which the Bank incurs a liability to a third party (including another EFG Bank Group Member).
<b>Bank Guarantee Beneficiary</b>	Has the meaning given to it in Clause 7.2 of Part E of the General Conditions.
<b>Beneficial Owner</b>	(i) any person who beneficially owns or has control over the Account(s) or the assets under the Account(s), whether by virtue of ownership or other means, (ii) any person who is a beneficial owner under the Applicable Laws, (iii) any person who is ultimately responsible for originating the Instructions, or (iv) any person who stands to gain the commercial and economic benefit of the Account or any Transaction or bear the commercial or economic risks.
<b>Bills of Exchange Ordinance</b>	Has the meaning given to it in Clause 3.1(b) in Section 2 of Part B of the General Conditions.
<b>BO</b>	The Banking Ordinance (Cap. 155 of the Laws of Hong Kong).
<b>Booking Centre Services</b>	Has the meaning given to it in Clause 1.2 in Section 3 of Part B of the General Conditions.
<b>Business Day</b>	Any day (other than a Saturday, Sunday or public holiday) on which banks are open for business (including dealing in foreign exchange and foreign Currency deposits) to the public in Hong Kong and, if payment in a Currency other than HK Dollars is involved, in the principal financial centre for that Currency.
<b>Claims</b>	Any and all claims in respect of any delay, losses, damages, costs, expenses and charges (including any funding costs, foreign exchange losses, all duties, taxes and other levies, interest charges, premium, penalties and legal costs), actions, suits, proceedings, orders, claims, liabilities or demands of any nature and howsoever arising whether reasonably foreseeable or not and whether direct or indirect.
<b>Clearing House</b>	Has the meaning given to it in Clause 3.1(b) in Section 2 of Part B of the General Conditions.
<b>Client</b>	The person or persons in whose name(s) an Account is opened and maintained, and/or to whom Services are provided, by the Bank.
<b>Client Information</b>	Has the meaning given to it in Clause 16.1 in Section 1 of Part B of the General Conditions.
<b>Close(d) Out</b>	Terminate(d) a Transaction in accordance with Clause 13 of Part C of the General Conditions.
<b>Close-Out Event</b>	Has the meaning given to it in Clause 20.3 of Part E of the General Conditions.
<b>Collateral</b>	Any asset or guarantee acceptable to, and held by or for, the Bank as security and/or other assurance for the Client's or any Collateral Provider's obligations, including any and all of the assets and monies in whatever Currency held by the Bank for the Client's or any Collateral Provider's account, and the initial and any additional margin deposit placed with the Bank by the Client or any Collateral Provider, whether or not pursuant to a Collateral Document and include any margin provided by the Bank.



<b>Collateral Document</b>	Any document acceptable to the Bank which creates or evidences Collateral granted in favour of the Bank in connection with the Facilities or otherwise to assure the performance of the Client's obligations under any of the Facility Documents, and any other document from time to time required by the Bank in connection with the creation, validity, perfection or priority of any Collateral. For the avoidance of doubt, this includes any document creating or evidencing a mortgage, charge, pledge, lien, guarantee or similar.
<b>Collateral Lending Value</b>	Has the meaning given to it in Clause 20.1 of Part E of the General Conditions.
<b>Collateral Provider</b>	Any person who from time to time provides Collateral to the Bank.
<b>Correspondence</b>	Has the meaning given to it in Clause 7.4 in Section 1 of Part B of the General Conditions.
<b>Cost of Funds</b>	Has the meaning given to it in Clause 9.1 of Part E of the General Conditions.
<b>Currency</b>	Money denominated in the lawful currency of any jurisdiction (including the Euro) regularly traded by the Bank.
<b>Currency Equivalent</b>	Where the value of any sum or asset valued in one Currency expressed in another specified Currency in which the relevant Account is maintained in the books of the Bank at the Market Rate.
<b>Custodial Services</b>	Services for the safekeeping of any Traded Asset provided by the Bank from time to time pursuant to Clause 13 in Section 3 of Part B of the General Conditions (as may be withdrawn, added or modified by the Bank at its discretion).
<b>Custody Account</b>	Account through which the Bank provides Custodial Services.
<b>Deposit Channel</b>	Has the meaning given to it in Clause 3.1(b) in Section 2 of Part B of the General Conditions.
<b>Discretionary Management Mandate</b>	Discretionary management mandate or other discretionary portfolio management agreements entered into between the Bank and the Client from time to time.
<b>Drawing</b>	A drawing made or to be made by the Client on the Overdraft Account or (as applicable) the amount of such drawing for the time being outstanding.
<b>Early Termination Amount</b>	An amount determined by the Bank in its absolute discretion being: <ul style="list-style-type: none"> <li>(a) the Currency Equivalent of the total amount of losses or costs of the Bank (expressed as a positive number) or total amount of gains of the Bank (expressed as a negative number) in terminating or closing out the terminated Transaction(s) including any loss of bargain or cost of funding of the Bank or any loss or cost incurred as a result of the Bank terminating, liquidating, obtaining or re-establishing any hedge or transaction related to a terminated Transaction (or any gain resulting from any of them) and any losses and costs (or gains) in respect of any payment or delivery required to have been made (assuming all relevant conditions precedent had been satisfied) on or before the Early Termination Date and not paid or delivered; less</li> <li>(b) if the amount determined under paragraph (a) is a positive number, the Currency Equivalent of any margin or Collateral which the Bank wishes to apply against such losses or costs of the Bank.</li> </ul>
<b>Early Termination Date</b>	The date designated as such by the Bank in its absolute discretion and notified to the Client following a Termination Election by the Bank.
<b>eBanking Content</b>	<ul style="list-style-type: none"> <li>(a) The content, including text, software, script, computer code, music, sound, photographs, video, graphics, graphical user interface, face, forms, diagrams and other material used in connection with, incorporated or contained in or presented to the Client through the eBanking Service; and</li> <li>(b) any materials (including any software or computer code of any kind and user</li> </ul>

manuals) and information presented for use with the eBanking Service.

<b>eBanking Service</b>	The e-banking facility and service made available to Clients in accordance with Part D of these General Conditions through which a Service is provided through one or more channels of electronic access or self-service access, including the internet, Emails, electronic terminals or devices, any network or any other channels or means of access wherever located and as determined by the Bank from time to time.
<b>eDocument</b>	Has the meaning given to it in Clause 6.2 of Part D of the General Conditions.
<b>EFG Bank Group, EFG Bank Group Member, and Affiliate</b>	<p>The group from time to time comprising:</p> <ul style="list-style-type: none"><li>(a) the Bank and any of its Holding Companies, Subsidiaries and Affiliates;</li><li>(b) any person who is a "<b>controller</b>" (including a "<b>minority shareholder controller</b>", as such terms are defined in the BO) of the Bank, or any of its Holding Companies, Subsidiaries or Affiliates;</li><li>(c) any person in respect of which the Bank and/or any of its Holding Companies, Subsidiaries or Affiliates is a "<b>controller</b>" (including a "<b>minority shareholder controller</b>") (as such terms are defined in the BO); and</li><li>(d) any of the branches or offices of the Bank or other persons mentioned in paragraphs (a) to (c) above,</li></ul> <p>in each case wherever located (each an "<b>EFG Bank Group Member</b>").</p> <p><b>Affiliate</b>, in relation to any EFG Bank Group Member, means any other company or entity in which any EFG Bank Group Member (alone or together with any other EFG Bank Group Member) owns directly or indirectly any part of the voting share capital or equivalent right of ownership of such company or entity.</p>
<b>Email</b>	Communication by electronic mail in any form, including electronically scanned documents transmitted by electronic mail.
<b>Email Instructions</b>	Has the meaning given to it in Clause 6.1 in Section 1 of Part B of the General Conditions.
<b>EMU</b>	The European Monetary Union.
<b>e-Cheque</b>	Has the meaning given to it in Clause 3.1(b) in Section 2 of Part B of the General Conditions.
<b>e-Cheque Deposit Services</b>	Has the meaning given to it in Clause 3.1(b) in Section 2 of Part B of the General Conditions.
<b>e-Cheque Drop Box or e-Cheque Drop Box Service</b>	Has the meaning given to it in Clause 3.1(b) in Section 2 of Part B of the General Conditions.
<b>e-Cheque Drop Box Account</b>	Has the meaning given to it in Clause 3.1(b) in Section 2 of Part B of the General Conditions.
<b>e-Cheque Drop Box Terms</b>	Has the meaning given to it in Clause 3.1(b) in Section 2 of Part B of the General Conditions.
<b>e-Payment Services</b>	Has the meaning given to it in Clause 2.2 of Part D of the General Conditions.
<b>Euro and €</b>	The lawful currency for the time being of the Participating Member States of the EMU.
<b>Euro Clearing House Rules</b>	Has the meaning given to it in Clause 5.8 in Section 2 of Part B of the General Conditions.
<b>Event of Default</b>	Any of the events or circumstances set out in Clause 13.1 of Part E of the General Conditions.
<b>Exchange</b>	Any exchange or quotation system (in Hong Kong or elsewhere) on which Securities or other Traded Asset are traded.

<b>Expiration Date</b>	In respect of any Option, the day on which it expires (however described) specified in the relevant Transaction Confirmation.
<b>Facilities</b>	Overdraft, loans, foreign exchange and derivatives and other accommodation (however described) which the Bank may agree to make available to the Client from time to time at the request of the Client or otherwise arising in connection with the provision of any other Services to the Client.
<b>Facility Documents</b>	Means: <ul style="list-style-type: none"> <li>(a) any or all of the Facility Letters, the Collateral Documents, any documents specified as such in a Facility Letter and/or Collateral Document, and any other documents whose completion, execution and/or delivery the Bank may from time to time require in connection with the Facilities; and</li> <li>(b) the Agreement.</li> </ul>
<b>Facility Letter</b>	Any facility letter or agreement relating to a Facility.
<b>FATCA</b>	Has the meaning given to it in Clause 16.3(n)(i) in Section 1 of Part B of the General Conditions.
<b>Fax Instructions</b>	Has the meaning given to it in Clause 6.1 in Section 1 of Part B of the General Conditions.
<b>First Currency</b>	Has the meaning given to it in Clause 4 of Part C of the General Conditions.
<b>FINMA</b>	Financial Markets Supervisory Authority of Switzerland (or any successor or other authority or agency performing or assuming its or substantially similar functions).
<b>Fixed Advance</b>	An advance for a fixed term made or to be made available under the terms of the Facility Documents by the Bank to the Client, in such Currency of such amount and for such period as may be agreed to and accepted by the Bank.
<b>Foreign Exchange Transaction</b>	A Transaction for the sale or purchase of a specified amount of any Currency, whether on a spot or forward basis, by the Bank to or, as the case may be, from the Client for a specified amount of any other Currency agreed to by the Bank and the Client or on such other terms as may be specified in the relevant Transaction Confirmation.
<b>Foreign Restrictions</b>	Has the meaning given to it in Clause 5.7 in Section 2 of Part B of the General Conditions.
<b>Forward Contract</b>	Has the meaning given to it in Clause 4 of Part C of the General Conditions.
<b>Forward Rate</b>	Has the meaning given to it in Clause 3.1(b) of Part C of the General Conditions.
<b>Fund</b>	Any collective investment scheme such as mutual fund, unit trust, limited partnership or other similar scheme.
<b>Fund Orders</b>	Any subscription or redemption orders in respect of any Fund.
<b>FX Settlement Amount</b>	The settlement amount in a Foreign Exchange Transaction.
<b>General Conditions</b>	These General Conditions and Risk Disclosure Statements.
<b>General Terms</b>	Has the meaning given to it in Clause 2 in Section 1 of Part B of the General Conditions.
<b>Holding Company and Subsidiary</b>	<p><b>Holding Company</b>, in relation to any company or entity, means the company or entity of which such last-mentioned company or entity is a Subsidiary.</p> <p><b>Subsidiary</b>, in relation to any company or entity, means any other company or entity directly or indirectly under the control of the first-mentioned company or entity and, for this purpose, “<b>control</b>” means beneficial ownership (direct or indirect) of more than fifty per cent (50%) of the voting share capital or equivalent right of ownership of such company or entity, or power to direct its policies and management whether by contract or otherwise.</p>

<b>HK Dollars or HK\$</b>	The lawful currency for the time being of Hong Kong.
<b>HKICL</b>	Hong Kong Interbank Clearing Limited and its successors and assigns.
<b>HKMA</b>	The Hong Kong Monetary Authority (or any successor or other authority or agency performing or assuming its or substantially similar functions).
<b>HKSCC</b>	Hong Kong Securities Clearing Company Limited.
<b>Hong Kong</b>	Hong Kong Special Administrative Region of the People's Republic of China.
<b>Hong Kong Regulators</b>	Has the meaning given to it in Clause 10.1 in Section 3 of Part B of the General Conditions.
<b>Indemnitees</b>	The Bank and the other EFG Bank Group Members, their respective Agents, and their respective directors, officers, employees, agents and servants.
<b>Industry Rules and Procedures</b>	Has the meaning given to it in Clause 3.1(b) in Section 2 of Part B of the General Conditions.
<b>Instruction</b>	Any instruction, order, notice or other communication given, or purported to be given, by the Client or any Authorised Person in respect of any Account or Service by such means as the Bank may determine from time to time.
<b>Instruments</b>	Bills, drafts, promissory notes, orders, cheques or other instruments for the payment of money as the Bank may determine from time to time.
<b>Intermediary</b>	Has the meaning given to it in Clause 17.1 in Section 1 of Part B of the General Conditions.
<b>In-the-money Amount</b>	The amount by which the Market Rate exceeds the strike price specified in the relevant Transaction Confirmation (in the case of a call Option) or by which such strike price exceeds the Market Rate (in the case of a put Option) payable to the Option Buyer on exercise of an Option, or such other amount as may be calculated by the Bank in accordance with the relevant Transaction Confirmation.
<b>Investment Parameters</b>	The investment objectives, strategies and other investment parameters of a Managed Portfolio.
<b>ISP</b>	International Standby Practices of the International Chamber of Commerce as modified or replaced from time to time.
<b>Joint Holder</b>	Has the meaning given to it in Clause 21.1 in Section 1 of Part B of the General Conditions.
<b>Managed Portfolio</b>	A portfolio of cash and Traded Asset (including any cash or other forms of assets derived therefrom) under the discretionary management of the Bank pursuant to the Discretionary Management Mandate.
<b>Manager</b>	In relation to a Fund, means its investment advisor or investment manager.
<b>Margin</b>	Has the meaning given to it in Clause 7.6 in Section 3 of Part B of the General Conditions.
<b>Market Disruption Event</b>	The occurrence or existence on any scheduled trading day or Business Day (as applicable) of any of the following events, in the determination of the Bank: <ul style="list-style-type: none"> <li>(a) the suspension or material limitation of the following: (a) trading in all or any part of Securities, commodity, equity, Currency or other Traded Asset or a material number of components that make up an index which is a Traded Asset; (b) trading in Traded Asset generally on the relevant Exchange for trading in those assets; or (c) applications for and redemptions of any part of Traded Asset that is an interest in a Fund; or (d) trading in a market associated with any Securities, commodity, equity, Currency or other Traded Asset, or a material number of components that make up an index which is a Traded Asset during the one hour period that ends at the scheduled closing time for the relevant Exchange;</li> <li>(b) the relevant Exchange closes prior to its scheduled closing time on a trading day</li> </ul>

and the earlier closing time was not expected or announced with sufficient notice;

- (c) any component of an index ceases to exist or is materially changed, fails to be calculated and published, or the method of calculation materially changes;
- (d) any form of exchange control restriction or requirement of any nature whatsoever affecting availability, convertibility, credit or transfers of Currencies, commodities, Securities, financial instruments, funds or any other Traded Asset; or
- (e) any similar event the Bank reasonably declares to be a Market Disruption Event, including a force majeure event.

For the purposes of paragraph (a), (i) a limitation on the hours and number of days of trading will not constitute a Market Disruption Event if it results from an announced change in the regular business hours of the relevant Exchange; (ii) a limitation on trading imposed during the course of a day by reason of movements in price otherwise exceeding levels permitted by the relevant Exchange will constitute a Market Disruption Event; and (iii) issues of materiality are to be determined in the discretion of the Bank.

<b>Market Rate</b>	At any time the rate conclusively determined by the Bank to be the market rate available to the Bank at such time, in (a) any foreign exchange market of any financial centre chosen by the Bank which is then open for business, for the purchase or sale, as the case may be, of one Currency against another Currency for delivery on the specified date or, as the case may be, (b) such other market chosen by the Bank which is then open for business for the purchase or sale, as the case may be, of any Traded Asset against any Currency or (c) any relevant price, level, rate or amount which may also be conclusively determined by the Bank by reference to any display page, other published source or information vendor.
<b>Maturity Date</b>	The date of maturity of a Transaction as agreed by the Bank and the Client and set out in the relevant Transaction Confirmation, or subject to any Applicable Laws.
<b>Negative Interest Rate Charge</b>	If, at any particular time, the interest rate for interest-bearing deposits with the Bank falls below zero (0), a charge imposed by the Bank on deposits in any Currency maintained by the Client with the Bank at that negative rate per annum as in force at such time.
<b>Non-Physical Precious Metal</b>	Has the meaning given to it in Clause 10.4(a) in Section 2 of Part B of the General Conditions.
<b>Notice of Exercise</b>	A notification of the exercise of an Option given by telephone (or by such other means as may be determined by the Bank) by the Option Buyer before such time (in whatever jurisdiction) as is specified in the relevant Transaction Confirmation.
<b>Notional Quantity</b>	In respect of a Precious Metal Transaction or an Option over Precious Metal, the quantity designated as such in the relevant Transaction Confirmation being the quantity of the relevant Precious Metal by reference to which the amount due to be paid under that Precious Metal Transaction or Option is calculated.
<b>Open Transaction</b>	A Transaction, which has not been settled in accordance with its terms or Closed Out.
<b>Open Position</b>	At any time with respect to any Payment Date, the balance at such time of each Transaction in the Accounts maintained by the Bank pursuant to Clause 6.1 of Part C of the General Conditions in respect of such Payment Date.
<b>Option</b>	The right but not the obligation of the Option Buyer (i) to exchange a specified amount of one Currency for a specified amount of another Currency at a specified rate of exchange on a specific date or, (ii) to exchange a Notional Quantity of a Precious Metal at a specified price on a specific date, or, (iii) to undertake any other Transaction, including over-the-counter options in regard to any Securities traded on any Exchange or options over any Traded Asset, in any such case on such terms as may be specified in the relevant Transaction Confirmation.
<b>Option Buyer</b>	In respect of any Option, whichever of the Bank or its Associate or the Client that buys the Option from the other party to the Option.
<b>Option Seller</b>	In respect of any Option, whichever of the Bank or its Associate or the Client that sells the Option to the other party to the Option.
<b>Option</b>	The Transaction under or pursuant to which the Option is granted.

<b>Transaction</b>	
<b>Options Rules</b>	Has the meaning given to it in Clause 7.4 in Section 3 of Part B of the General Conditions.
<b>Options Trading Rules</b>	Has the meaning given to it in Clause 7.1 in Section 3 of Part B of the General Conditions.
<b>Other E-Instructions</b>	Has the meaning given to it in Clause 6.1 in Section 1 of Part B of the General Conditions.
<b>OTC</b>	Has the meaning given to it in Clause 16.3(m) in Section 1 of Part B of the General Conditions.
<b>Overdraft Account</b>	In relation to Part E, a current Account of the Client with the Bank which the Bank agrees may be overdrawn under the terms of the Facility Documents.
<b>Paperless</b>	Has the meaning given to it in Clause 2.2 of Part D of the General Conditions.
<b>Participating Member State</b>	Any member state of the European Union that adopts or has adopted the Euro as its lawful Currency in accordance with legislation of the European Union relating to the EMU.
<b>Payee Bank</b>	Has the meaning given to it in Clause 3.1(b) in Section 2 of Part B of the General Conditions.
<b>Payee Bank Account</b>	Has the meaning given to it in Clause 3.1(b) in Section 2 of Part B of the General Conditions.
<b>Payer Bank</b>	Has the meaning given to it in Clause 3.1(b) in Section 2 of Part B of the General Conditions.
<b>Payment Date</b>	The date on which any payment or delivery of any Traded Asset is required to be made in respect of any Transaction.
<b>PDPO</b>	The Personal Data (Privacy) Ordinance (Cap. 486 of the Laws of Hong Kong).
<b>Personal Data</b>	<p>"Personal data" as defined in the PDPO, being any data:</p> <ul style="list-style-type: none"> <li>(a) relating directly or indirectly to a living individual;</li> <li>(b) from which it is practicable for the identity of the individual to be directly or indirectly ascertained; and</li> <li>(c) in a form in which access to or processing of the data is practicable.</li> </ul> <p>For the avoidance of doubt, where the Client is a body corporate, "<b>Personal Data</b>" includes personal data relating to directors, shareholders, employees and agents of the Client or any third party.</p>
<b>Physical Precious Metal</b>	Has the meaning given to it in Clause 10.5(a) in Section 2 of Part B of the General Conditions.
<b>Physical Precious Metal Account</b>	a delivery Account for Transactions between the Bank and the Client in Precious Metal (i.e. Transactions which involve physical stock delivery of Precious Metal).
<b>PRC</b>	The People's Republic of China.
<b>Precious Metal</b>	Gold, silver, platinum, palladium and any other metal commonly regarded as a precious metal and stipulated by the Bank to be a Precious Metal.
<b>Precious Metal Account</b>	a delivery Account (but without any physical stock delivery of Precious Metal) for Transactions between the Bank and the Client in Non-Physical Precious Metal.
<b>Precious Metal Transaction</b>	A Transaction for the sale or purchase of a specified Notional Quantity of a Precious Metal, whether on a spot or forward basis, by the Bank to or, as the case may be, from the Client.
<b>Premium</b>	In respect of any Option, the purchase money or other monetary consideration which the

	Option Buyer pays or agrees to pay to the Option Seller for the Option.
<b>Professional Investor</b>	Has the meaning as given to it in Part 1 of Schedule 1 to the SFO and the Securities and Futures (Professional Investor) Rules (Cap. 571D of the Laws of Hong Kong).
<b>Purchase Instruction</b>	Instructions to buy any Traded Asset.
<b>PP</b>	Has the meaning given to it in Clause 24 of Part F of the General Conditions.
<b>Reference Currency</b>	Has the meaning given to it in Clause 3.1 of Part C of the General Conditions.
<b>Regulator</b>	Any regulator(s) of banks and/or financial services institutions and/or relevant regulator(s) in Hong Kong (including the HKMA and the SFC), Switzerland (including FINMA) or elsewhere having jurisdiction over the Bank or any EFG Bank Group Member (or any successor or other authority or agency of such regulator performing or assuming its or substantially similar functions).
<b>Relationship Centre Services</b>	Has the meaning given to it in Clause 1.3 in Section 3 of Part B of the General Conditions.
<b>Renminbi or RMB</b>	The lawful currency for the time being of the PRC.
<b>RMB Account</b>	A sub-account of the Account, denominated in RMB.
<b>RMB Clearing Agreement</b>	Any agreement of the Bank with the relevant clearing bank and/or domestic agent bank for RMB transactions.
<b>RMB Clearing House Rules</b>	Has the meaning given to it in Clause 5.8 in Section 2 of Part B of the General Conditions.
<b>SBLC</b>	A standby letter of credit.
<b>Sale Instruction</b>	Instructions to sell any Traded Asset.
<b>Scale of Charges Booklet</b>	The Bank's current scale of standard fees and charges for Accounts and Services published by the Bank from time to time.
<b>Second Currency</b>	Has the meaning given to it in Clause 4 of Part C of the General Conditions.
<b>Securities</b>	Any investment product in any part of the world of any nature of a type commonly referred to as securities, including any shares, stocks, warrants, bonds, units in any trust or Fund, or other financial instruments of any nature and any other analogous items of value, and all benefits arising from or attaching to any of the same.
<b>Security Breach Notification</b>	Has the meaning given to it in Clause 3.11 of Part D of the General Conditions.
<b>Security Code</b>	<p>Any one or more means accepted by the Bank to authenticate a Client and (where applicable) an Authorised Person seeking to access, use and/or give Instructions with respect to any Account and/or Service through telephone (including mobile or wireless telephone), internet, Email or any one or more other channels or means advised by the Bank from time to time, and which may include any confidential identification, numeric and/or alphabetic characters, codes, phrases, tokens, digital signatures or similar authentication methods (or a sequence of any of them), including:</p> <ul style="list-style-type: none"> <li>(a) the first password and any replacement password advised by the Bank to the Client and (where applicable) the Authorised Person(s); and</li> <li>(b) any subsequent password customised by the Client and (where applicable) the Authorised Person(s).</li> </ul>
<b>Security Mechanism</b>	Any security token or other device, equipment, or method which is used to generate a Security Code.
<b>SEHK</b>	The Stock Exchange of Hong Kong Limited.

<b>SEOCH</b>	The SEHK Options Clearing House Limited.
<b>Services</b>	Any and all services, products and facilities made, or to be made, available by the Bank to the Client from time to time (as may be withdrawn, added or modified by the Bank at its discretion).
<b>Settlement Amount</b>	In respect of an Open Position with respect to any given date, the positive or, as the case may be, negative amount as determined by the Bank at or about 2.00 p.m. Hong Kong time on the Business Day immediately preceding that date or such other time prescribed by the Bank by deducting (a) the sum of the Currency Equivalents at such time of each negative Transaction balance from (b) the sum of the Currency Equivalents at such time of each positive Transaction balance under the Open Position on such date.
<b>Settlement Currency</b>	Has the meaning given to it in Clause 3.1 of Part C of the General Conditions.
<b>SFC</b>	The Securities and Futures Commission in Hong Kong (or any successor or other authority or agency performing or assuming its or substantially similar functions).
<b>SFC Code</b>	The Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission.
<b>SFO</b>	The Securities and Futures Ordinance (Cap. 571 of the Laws of Hong Kong).
<b>SMS</b>	A Short Message Service communication to a mobile telephone duly registered with the Bank for the purpose of receiving notifications at the Bank's discretion from time to time in accordance with Clause 7.5 in Section 1 of Part B.
<b>Special Mandate</b>	Has the meaning given to it in Clause 4.4 in Section 3 of Part B of the General Conditions.
<b>Specific Terms</b>	Has the meaning given to it in Clause 2 in Section 1 of Part B of the General Conditions.
<b>Specific Transaction</b>	Has the meaning given to it in Clause 4.9 in Section 3 of Part B of the General Conditions.
<b>Spot Contract</b>	Has the meaning given to it in Clause 4 of Part C of the General Conditions.
<b>Subsidiary</b>	See definition of " <b>Holding Company</b> ".
<b>Surety Instrument</b>	A guarantee, SBLC or other similar instrument, issued by a bank or other financial institution acceptable to and approved by the Bank, to secure or as the subject of security for the repayment of the Total Liabilities.
<b>Termination Election</b>	An election made by the Bank pursuant to Clause 14.1(i) in Section 3 of Part B of the General Conditions.
<b>Third Parties Ordinance</b>	The Contracts (Rights of Third Parties) Ordinance (Cap. 623 of the Laws of Hong Kong).
<b>Total Liabilities</b>	At any time: <ul style="list-style-type: none"> <li>(a) all monies (whether principal, interest, fees, costs, charges, expenses, commissions or otherwise), obligations and liabilities which are now or may at any time in the future be or become due from, or owing or incurred by, the Client to the Bank or which the Client has agreed to pay or discharge under or in connection with any of the Facilities; and</li> <li>(b) all other liabilities and monies which are now or may at any time in the future be or become due from, or owing by, or incurred by the Client to the Bank, under or in connection with any Service, Instruction, Transaction or otherwise,</li> </ul> <p>in whatever Currency any of the above shall be denominated or owing, whether alone or jointly with any other person, whether current or otherwise, whether present, future, actual or contingent and whether as principal debtor, guarantor, surety or otherwise howsoever, including interest and all liabilities in connection with paying, accepting, endorsing or discounting any Instruments, or under any Bank Guarantee (whether a claim or demand has been made on the Bank under or in connection therewith).</p>
<b>Traded Asset</b>	Any Securities, Currency, foreign exchange, Precious Metal, commodities, certificates of



deposit, financial and debt instruments, Options, credit derivatives, bonds, notes, interest rates, indices, and any spots, forward contracts, swaps, options, warrants, derivatives or structured products, and other derivatives or structured products over or in respect of any such assets, rates, indices, instruments, transactions or products or any combination of any of the same, and any financial or investment products of any kind at the Bank's discretion.

<b>Trading Day</b>	Unless otherwise specified in the Agreement or the relevant Transaction Confirmation, means: <ul style="list-style-type: none"><li>(a) in respect of any Transaction over Securities, a commodity which is traded on an Exchange or an index for which the price or level is published on an Exchange, means any day on which the principal Exchange for trading of those Securities or commodities, or on which the index is published, is open for business;</li><li>(b) in respect of any Transaction over any other Traded Asset, any day on which the principal Exchange in respect of that Traded Asset is open for business, or on which a relevant price in respect of the Traded Asset is published which is required for making the relevant calculations of the parties' obligations under the Transaction, in each case as determined by the Bank in good faith and a commercially reasonable manner.</li></ul>
<b>Trading Facilities</b>	The foreign exchange trading facility, Currency Option trading facility, Precious Metal trading facility, Precious Metal Option trading facility, Securities Option trading facility (consisting of Options and over-the-counter equity and bond Option trading) and such other trading facility as may be made available by the Bank to the Client from time to time.
<b>Transaction</b>	A transaction in or over a Traded Asset entered into with the Client or on the Client's behalf from time to time.
<b>Transaction Confirmation</b>	The confirmation in the Bank's customary form or in any other form which the Bank may consider appropriate in the circumstances to be sent by the Bank to the Client as a record of the terms of a Transaction.
<b>Trust</b>	Has the meaning given to it in Clause 13.1.2(a) in Section 1 of Part B of the General Conditions.
<b>UCP</b>	Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce as modified or replaced from time to time.
<b>Underlying Indicator</b>	Has the meaning given to it in Clause 6.2(g) of Part F of the General Conditions.
<b>US Dollars or US\$</b>	The lawful currency for the time being of the United States of America.
<b>US Dollar Clearing House Rules</b>	Has the meaning given to it in Clause 5.8 in Section 2 of Part B of the General Conditions.
<b>Value Date</b>	The day specified in the relevant Transaction Confirmation as the day on which such Transaction shall be performed.
<b>Verbal Instructions</b>	Has the meaning given to it in Clause 6.1 in Section 1 of Part B of the General Conditions.

## 2. Interpretation

In the Agreement, unless the context otherwise requires, references to:

- (a) the "**Bank**", the "**Client**", any "**Collateral Provider**" and any "**EFG Bank Group Member**" shall include their respective successors, permitted assigns, permitted transferees and any persons deriving title under any of them;
- (b) an "**asset**" includes present and future properties, revenues and rights of every description;
- (c) a "**guarantee**" means any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
- (d) "**including**" shall be construed as "**including without limitation**", and references to "**include**", "**in particular**" and related expressions shall be construed similarly;
- (e) "**Parts**", "**Sections**" and "**Clauses**" are to the parts, sections and clauses of these General Conditions;
- (f) a "**person**" shall include any individual, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or two or more of the foregoing;
- (g) a "**regulation**" shall include any regulation, rule, official directive, request, order, directive, decree, code of practice, guidance, circular or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or legal, law enforcement, tax, regulatory or self-regulatory or other authority or organisation, including rules, requirements, customs and practices of any Exchange, market, clearing house, trading registration and central depository;
- (h) "**tax**" include every tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same);
- (i) the "**Agreement**", the "**General Conditions**", a "**Facility Document**" and any other document shall be construed as references to that document as amended, supplemented, re-stated or novated from time to time;
- (j) "**Applicable Laws**" and "**regulations**" include references to those Applicable Laws and regulations (as the case may be) as amended, modified, re-enacted or replaced from time to time;
- (k) terms in the singular include the plural and vice versa, and all references to any particular gender include all genders; and
- (l) references to time are, unless otherwise specified in this Agreement or a Transaction Confirmation, refer to Hong Kong time.

The headings in the Agreement are for ease of reference only.

## 3. Third Party Rights

Unless expressly provided to the contrary, a person who is not a party to the Agreement has no right under the Third Parties Ordinance to enforce or enjoy the benefit of any of its terms. Any Account Entity, any Agent of the Bank, any Associate of the Bank, any Intermediary of the Bank, any EFG Bank Group Member, any Indemnitee and any officer, employee, agent or servant of the Bank may, by virtue of the Third Parties Ordinance, rely on any provision of the Agreement which expressly confers rights on that person. Notwithstanding any term of the Agreement, the consent of any third person who is not a party to it is not required to rescind or vary the Agreement.

## **PART B: ACCOUNT AND GENERAL SERVICE TERMS AND CONDITIONS**

### **Section 1: General Terms and Conditions**

References to the term "**Clause**" in this Section 1 of Part B of the General Conditions shall mean a "**Clause**" in this Section.

#### **1. Application**

1.1 These General Conditions, together with (if an Account is opened with the Bank) the Account Opening Booklet, shall:

- (a) govern the relationship between the Client and the Bank in regard to all Accounts and Services; and
- (b) supersede all provisions in any previous account mandate executed by or on behalf of the Client in favour of the Bank, all provisions in any previous general terms and conditions issued by the Bank to the Client governing the banking, investment or trading relationship between the Bank and the Client and such other agreements (verbal or written) entered into between the Bank and the Client in respect of the Accounts and Services as the Bank may specify.

The Bank may require the Client to enter into additional documentation from time to time as a condition to opening or maintaining any Account or providing any Service, and in that event if there is any conflict or inconsistency between these General Conditions, the Account Opening Booklet and such additional documentation, the additional documentation shall prevail to the extent of such conflict or inconsistency and insofar as the additional documentation applies to the particular Account or Service in question.

1.2 **The Client acknowledges that in entering into the Agreement, the Client has not relied on any express or implied representation, warranty, collateral contract or other assurance made by or on behalf of the Bank before entering into the Agreement, and to the maximum extent permitted by and not inconsistent with any Applicable Laws waives all rights and remedies which might otherwise be available to it in respect of any such express or implied representation, warranty, collateral contract or other assurance.**

1.3 The Agreement and each Account and Service are subject to Applicable Laws. If there is any conflict between any provision of Applicable Laws and any provision of the Agreement, and the provision of Applicable Laws cannot be varied by contract, the provision of Applicable Laws shall prevail to the extent of such conflict.

#### **2. Application of Part B and Relationship with other Parts**

Unless otherwise agreed in writing by the Bank, this Part B of the General Conditions ("**General Terms**") shall apply to all Accounts and Services. If there is any conflict or inconsistency between the General Terms and the other Parts of the General Conditions ("**Specific Terms**"), the Specific Terms shall prevail to the extent of such conflict or inconsistency and insofar as the Specific Terms apply to the particular Account or Service in question.

#### **3. Availability of Services**

3.1 The Bank has the absolute discretion to determine whether or not to open or maintain any Account for the Client and make any Service available to the Client. Accordingly:

- (a) Each request for any Account or Service is subject to the Bank accepting that request.
- (b) The availability or continuing availability of any Account or Service is subject to the fulfilment of such conditions and the provision of such information and documents as the Bank may require from time to time.
- (c) The Bank may refuse to open any Account or provide any Service without providing any reasons thereof.

3.2 In particular, the Bank is not required to provide or permit (or continue to provide or permit) the use of any Account or Service in any of the following circumstances:

- (a) The Bank considers that an Event of Default may have occurred.
- (b) The Client or any Collateral Provider has failed to provide the Bank with any required Collateral or additional Collateral.

- (c) The Client has failed to satisfy any condition specified in the Agreement, any other Facility Document, or in any approval given by the Bank or as the Bank may otherwise notify to the Client from time to time.
- (d) The Client has not provided the Bank with all documents and information reasonably requested by the Bank.
- (e) The Bank is precluded from providing the Account or Service to the Client by circumstances which the Bank determines to be beyond its reasonable control.
- (f) The Bank (acting reasonably) determines that doing so may involve the breach of any Applicable Laws or may be inconsistent with the Bank's policies or prudent banking practice.

#### **4. Account Opening Booklet and Account Mandate, etc.**

- 4.1 The Client authorises the Bank to open and maintain such Account and provide such Service, and at any time thereafter to open such further Account and provide such further Service, as the Bank may in its absolute discretion agree.
- 4.2 The Bank may from time to time require the Client to provide documentation and/or information in respect of opening and maintaining any Account or the provision or continuation of any Service. **The Client represents and warrants that the information provided by or on behalf of the Client in connection with any application for or maintenance of any Account or Service is true, correct and complete, and acknowledges and agrees that the Bank will rely on the truthfulness, correctness and completeness of such information in assessing any such application or maintenance of any Account or Service.**
- 4.3 The Client agrees to provide the Bank with its specimen signatures and other information and documents as the Bank may from time to time require. The Client may also appoint one or more Authorised Person(s) for or in connection with the operation of any Account or Service. The Client must provide the Bank with the written document evidencing the authority given to each Authorised Person in a form agreed by the Bank and shall notify the Bank in writing of any changes of Authorised Person(s), together with the relevant specimen signature(s) of, and other information and documents relating to, each Authorised Person as the Bank may from time to time require. The Client agrees that the Bank can act on the Instructions of an Authorised Person to sign for and operate the Account and to provide Instructions on all matters in a manner as the Authorised Person thinks fit unless the Client has specifically limited the authority which it has granted to any such Authorised Person and has informed the Bank of such limitation in a manner prescribed by the Bank. The acts of the Authorised Persons are legally binding on the Client.
- 4.4 The Bank shall be authorised to act on the Account Mandate or other authorisation document of any Authorised Person accepted by the Bank and may treat the Account Mandate and such authorisation and the authority of any Authorised Person as subsisting, until the Bank has received written notice of any change from the Client, notwithstanding any entry in any public or commercial registers or any other publications (wherever situate or made).
- 4.5 The Client must notify any change to the Account Mandate or other authorisation document of any Authorised Person accepted by the Bank to the Bank in writing. Pending completion of the processing of any change in accordance with the Bank's usual operating procedures and control, the Client authorises the Bank to continue to process Instructions in accordance with, send notices, statements of Account and other communication to the contact details specified in, and in all other respects act in accordance with, the Account Mandate and such authorisation (including the authority of any Authorised Person) then existing. Changes will take effect within a reasonable time after the Bank has actually received the Client's written notice of such change. If the Client has Accounts which are covered by more than one Account Mandate, such change to one Account Mandate shall not vary or terminate the other Account Mandate.
- 4.6 **The Client accepts all risks arising from its opening and maintenance of any Account and acceptance of any Service, including any Claims suffered as a result of entering into any investment, trading or other transaction to the maximum extent permitted by and not inconsistent with any Applicable Laws.**

#### **5. Instructions**

- 5.1 The Bank may honour and comply with all (but may in its absolute discretion and without stating any grounds and without any liability whatsoever, refuse to act on any) Instructions whatsoever given in respect of any Account or Service. In particular, the Bank may at its discretion:
  - (a) honour and comply with:
    - (i) any drafts, cheques, bills of exchange, promissory notes, instruments, orders to pay and any other documents whatsoever (collectively "**Instruments**") expressed to be drawn, signed, accepted, endorsed or made or given by or on behalf of the Client and presented for payment against any Account, whether the Account is in credit or in debit or may become overdrawn as

- a result or otherwise (but without prejudice to the Bank's right to (i) refuse any unauthorised overdraft and (ii) charge interest on any debit balance in such Account from time to time at such prevailing rate as the Bank may determine); and
- (ii) any order to withdraw money on any Account or any Instructions to deliver, dispose of or deal with any Securities, other financial products, foreign currencies, Traded Asset, valuables, other assets, deeds or documents whatsoever from time to time in the Bank's possession or control for the Account or the Client (and whether by way of security, safe custody or otherwise) (including Instructions directing the transfer of funds to accounts in the name of the Client and any one or more of the Authorised Person(s) or for payments to be made to the Client or any one or more of the Authorised Person(s));
- (b) accept and act on:
- (i) any receipt as a valid discharge to the Bank for monies deposited with or owing by the Bank on any Account in the Client's name;
  - (ii) any Instruction countermanding payment or revoking Instruments, or orders or Instructions authorising payment, before payment is effected;
  - (iii) any Instruction with regard to the purchase or sale of or other dealings in Securities, other financial products, foreign currencies (including any contracts or options relating thereto) or Traded Asset;
  - (iv) any application or request for the issue of any letter of credit, guarantee, indemnity, counter-indemnity or similar instrument, and any Instructions in relation to the same; and
  - (v) any Instruction regarding any other transactions for any Account or the Client whether an Account is in credit or in debit or may become overdrawn in consequence or otherwise (but without prejudice to the Bank's right to (i) refuse any unauthorised overdraft and (ii) charge interest on any debit balance in such Account from time to time at such prevailing rate as the Bank may determine);
- (c) grant any overdraft, loan, advance or other Facilities or accommodation for any Account or the Client with or without Collateral and with or without limitation on such terms as the Bank may in its absolute discretion consider fit;
- (d) accept, as duly signed and executed by or on behalf of the Client, any Collateral Document creating or evidencing any Collateral over or in respect of any Securities, other financial products, foreign currencies, Traded Asset, valuables, other assets, deeds or documents (including security/safe deposit boxes and the property or assets held therein) whatsoever from time to time in the Bank's possession or control under any Account or for the Client whether by way of security, safe custody or otherwise; and
- (e) without limiting to the foregoing, until the Bank receives from the Client written notice to the contrary:
- (i) deliver, on the Instructions of the Client or the relevant Authorised Person(s), any Securities, other financial products, foreign currencies, Traded Asset, valuables, other assets, deeds, proxies and documents of any description held by the Bank in the Client's name; and
  - (ii) place to the credit of any (or the relevant) Account amounts or otherwise make payment to the Client in other manner as the Bank determines including dividends, interest and capital sums arising from financial products or Traded Asset (including Securities) received or collected by the Bank for the Client's credit.

5.2 The Client agrees that:

- (a) if the total in relation to one or more Instructions given by the Client or Authorised Person(s) exceeds the credit balance or the limit of Facilities granted to the Client in respect of the Client or an Account, the Bank may or may not carry out any of such Instructions in its absolute discretion, in whole or in part, regardless of the date they bear, the time of their dispatch by the Client or the time of their receipt by the Bank;
- (b) **the Client shall be liable for all withdrawals from any Account and shall be responsible for the repayment of all Facilities or accommodation which may be granted on any Account or any outstanding amount owing to the Bank, together with all interest, indirect taxes, commission and other banking charges and expenses (including legal costs on a full indemnity basis) and to assume full responsibility for the genuineness and propriety of all Instructions given by it or its Authorised Person(s); and**

- (c) nothing in the arrangements between the Bank and the Client shall be deemed as constituting an implied agreement restricting or negating or in any way prejudicing any lien, mortgage, charge, pledge, right of set-off or other right or remedy which the Bank may have under law.
- 5.3 Unless otherwise agreed by the Bank, Instructions given by the Client or any Authorised Person are irrevocable and binding on the Client, and may not be cancelled, withdrawn or amended without the Bank's prior written consent.
- 5.4 The Bank shall exercise reasonable diligence and care in the verification of signatures of the Client or the relevant Authorised Person (as the case may be), but shall be under no further duty to verify the authenticity or correctness of any Instructions or of any documents received or held by the Bank in connection with any Instructions or the provision of Services.
- 5.5 The Bank may act on any Instructions relating to the operation of any Account or Service which the Bank in good faith believes to have been given by the Client or, until receipt by the Bank from the Client of written notice of termination, suspension or changes of authority of any Authorised Person's authority (whether by the Client, whether due to the bankruptcy, liquidation, mental incapacity or other legal disability of the Authorised Person or for any other reason), such Authorised Person. **The Bank shall not be liable for any Claims in consequence of the Bank accepting or acting upon any such Instructions or documents (whether genuine or not), or for suspending execution of Instructions until it shall receive confirmation to its satisfaction of the validity of the same.**
- 5.6 Notwithstanding Clause 5.5, the Bank is entitled to act in accordance with its regular business practice and procedure and will only accept and act upon Instructions insofar as is (in the Bank's opinion) practicable and reasonable. For example (and without prejudice to the Bank's general right to refuse to act on any Instruction), the Bank may, in its sole discretion, do any of the following:
- (a) The Bank may refuse to act on any Instruction that is incomplete or unclear. However, the Bank may act on such Instruction if the Bank reasonably believes that it can complete, clarify or correct the Instruction without referring to the Client.
  - (b) The Bank may refuse to act if it receives one or more Instructions which conflict with each other.
  - (c) The Bank may refuse to act on any Instruction where it believes, in good faith, that such Instruction may be fraudulent, forged or unauthorised or that acting on it may involve a breach of trust or agreement or a breach of any Applicable Laws applicable to the Client, any Authorised Person, the Bank or any EFG Bank Group Member.
  - (d) The Bank may refuse to act on any Instruction where it believes, in good faith, that this may involve a breach of any policy or security procedure of the Bank or any EFG Bank Group Member or may be inconsistent with prudent banking practice.
  - (e) If the Bank determines that any Instruction or other circumstances might expose or lead (whether directly or indirectly) to loss and expense to the Bank or any EFG Bank Group Member, it shall be entitled to suspend the operation of any Account or Service and/or to require an indemnity from the Client or any third party before continuing to operate the Account or Service or complying with the Instructions.
  - (f) The Bank may decline or delay the execution of any Instruction which may cause an Account to be overdrawn. Nevertheless, the Bank may execute any such Instruction and if it does so, the Client shall immediately on demand repay any resulting overdraft or advance and all resulting interest, charges and fees at such rates as the Bank may determine at its discretion. If the Bank places an order or enters into any transaction for purposes of executing an Instruction which is subsequently not effected due to insufficiency of funds, assets or pre-arranged Facilities, the Bank may (but is not obliged to) at any time in its discretion place other orders or enter into other transactions to set-off the order so placed or transaction so entered. Any resulting loss (as to which and the amount of which any certificate given by the Bank's officers shall be conclusive) shall be borne by the Client but any resulting gain shall belong to the Bank.
  - (g) The Bank may refuse to act on any Instruction if it reasonably believes that the Client and/or Authorised Person lacks the legal or mental capacity to give Instructions. **In the absence of actual notice in writing to the contrary received from any competent person or authority, the Bank shall be entitled to assume that the Client and any Authorised Person has full legal and mental capacity at all times and the Bank shall not be liable for any actions taken by it in reliance on such assumption.**
  - (h) The Bank may require verification of any Instruction before acting on it (including by calling the Client and/or the Authorised Person or, where Instructions are not given in writing, by requiring them to be confirmed in writing). However, the Bank is entitled to act on an Instruction without having regard to whether it is followed by a signed written confirmation.

- (i) The Bank may prescribe any conditions subject to which it accepts any Instructions (including the execution or provision of additional information or documents).

**To the maximum extent permitted by and not inconsistent with any Applicable Laws, the Bank shall not be liable for any Claims of the Client in consequence of the Bank acting (or not acting) on any Instruction, except to the extent any Claim is due to the fraud, negligence or wilful misconduct of the Bank or its employees, agents or servants.**

- 5.7 **The Client agrees to ratify and confirm any Instruction which is given or purported to be given by any Authorised Person and received by the Bank before the Bank actually receives any written notice of revocation, suspension or termination of the Authorised Person's authority.**
- 5.8 **The Client acknowledges and agrees that any standing instruction of the Client with respect to any Account or Service shall cease to have effect upon the Bank receiving actual notice of the Client's death, incapacity, bankruptcy or liquidation.**
- 5.9 All written Instructions with signature(s) must bear signature(s) which, in the Bank's sole opinion, correspond(s) to the specimen signature(s) of the Client(s) and/or the Authorised Person(s) as provided to the Bank in the Account Mandate or in other forms specified by the Bank (or any change thereto accepted by the Bank from time to time). If the Client and/or the Authorised Person(s) consist of more than one person, each of them shall be deemed to have full signing authority unless the prevailing signing authority provided to the Bank provides otherwise.
- 5.10 All Instructions must be received by the Bank by the cut-off time as determined by the Bank from time to time at its absolute discretion. **The Bank may treat any Instruction which it receives after the specified cut-off time, or on a non-Business Day, as having been received on the next Business Day, and the Bank shall not be liable for any failure or inability to process any such Instruction on the day of receipt.** In addition, Instructions involving a foreign element can be effected only on days when banks in the relevant markets are open for business in the relevant jurisdictions.
- 5.11 **The Client agrees that the Client is under an express duty to the Bank to prevent any Instructions that are fraudulent, forged, unauthorised, or in actual or potential breach of trust or Applicable Laws. The Client shall exercise reasonable care, take reasonable precautions and establish adequate controls and security arrangements to prevent fraud, forgery or other unauthorised use or breach in relation to any Account or Service. The Client shall at all times keep confidential all passwords relating to the operation of the Account or Service and shall not disclose the same to any person other than an Authorised Person. The Client must notify the Bank immediately upon becoming aware of any actual or suspected fraud, forgery or other unauthorised use or breach (including the loss, theft, unauthorised use or compromising of any Security Code or security device). The Bank does not assume liability to the Client or any third party for any consequences arising out of or in connection with such actual or suspected fraud, forgery or other unauthorised use or breach, except to the extent a Claim is due to the fraud, negligence or wilful misconduct of the Bank or its employees, agents or servants.**

## **6. Manner of Instructions**

- 6.1 Unless the Bank specifies that Instructions must be given in a particular manner, Instructions can be given by any of the following means: in writing, verbally (whether or not given by telephone, including wireless or mobile telephone) ("**Verbal Instructions**"), Instructions transmitted by fax or similar means ("**Fax Instructions**"), Instructions transmitted by Email ("**Email Instructions**") or given by any other forms or devices of electronic communication, whether presently known or developed in the future ("**Other E-Instructions**"), provided that the Client executes and provides such authorisations, indemnities and/or other documents as the Bank may require. All Instructions must be sent within the specified timelines and to the address(es), telephone number(s), fax number(s), Email address(es) or such other contact method designated by the Bank for the receipt of such Instructions. The Bank may require different means of giving Instructions for different Accounts and/or Services and, where the Bank does so, it may (without assuming or incurring any liability whatsoever) refuse to accept Instructions not given by the prescribed means.
- 6.2 Without prejudice to Clause 5 above, Verbal Instructions, Fax Instructions, Email Instructions and Other E-Instructions may be accepted or refused at the Bank's sole discretion (and without giving reasons for any refusal). Without limiting the foregoing, the Bank reserves the right to refuse to accept any payment Instruction received by Email and any trading Instructions received by Verbal Instructions in its absolute and unfettered discretion and without giving any reason for doing so.
- 6.3 Where the Client gives Verbal Instructions, Fax Instructions, Email Instructions and/or Other E-Instructions to the Bank and the Bank has agreed that these are acceptable means of Instructions (whether in the Account Opening Booklet or any other authorisation accepted by the Bank), the Bank may (but is not obliged to) rely and act upon any such Instruction given from time to time as follows:

- (a) any Verbal Instruction (whether given by telephone or otherwise) given or purporting to be given by the Client or any Authorised Person;
- (b) any Fax Instruction containing or appearing to contain the signature(s) of the Client or any Authorised Person(s) authorising or purporting to authorise its issue;
- (c) any Email Instruction addressed to the Bank's designated Email address (as specified by the Bank from time to time) and having (or appearing to have) an originating Email address of the Client as specified in the Account Opening Booklet (or as last notified by the Client to the Bank in writing); or
- (d) any Other E-Instruction transmitted to the Bank in such manner as the Bank may from time to time specify.

**The Bank may rely and act upon such Instruction (i) without further authority from, or further notice to or from, the Client, (ii) without any inquiry as to the authority or identity of the person(s) giving or authorising (or purporting to give or authorise) the Instruction or its authenticity, (iii) irrespective of the circumstances at the time of such Instructions or the nature of the transaction, (iv) notwithstanding any error, misunderstanding, fraud, forgery or lack of clarity on the terms of an Instruction, and whether or not such Instruction was made or given with or without the Client's authority. In particular, any Email Instruction having or appearing to have an originating Email address of the Client or its Authorised Person(s) specified in the Account Mandate or otherwise notified to and accepted by the Bank shall be deemed for all purposes to have been sent by the Client or such Authorised Person(s) and the Bank shall not be obliged to verify the authenticity of the same and the Bank may treat any such Email Instructions as duly given and binding on the Client.**

- 6.4 Notwithstanding Clause 6.3, before executing any Instruction, the Bank may require the Client to verify its authenticity to the Bank's satisfaction and without liability for any Claims incurred by the Client as a result.
- 6.5 If the Client and/or the Authorised Person(s) consist of more than one person, Verbal Instructions from any one of such persons, or Email Instructions from a single Email account (or Other E-Instructions from a similar single electronic account), may be accepted and acted on by the Bank, notwithstanding that the terms of the Account Mandate or other authorisation documents would require more than one person to give Instructions.
- 6.6 **The Client acknowledges that in respect of any fax, Email or other electronic communication, there is a substantial risk of forgery or abuse, and in particular that the Bank will not be able to verify the signature of the Client in accordance with the Account Mandate or other authorisation documents, or that purported Instructions emanate from the Client or an Authorised Person. In consequence the Bank may either act on the basis of improper or fraudulent Instructions, or decline to act on proper Instructions. The Client agrees that all related risks (in particular without limitation risks of forgery or abuse) shall be borne solely by the Client.**

## **7. Communications by the Bank**

- 7.1 The Client must provide the Bank in writing with its address, telephone number, mobile phone number, fax number and/or Email address for the receipt of notices, statements, confirmations and other communications from the Bank and, unless otherwise agreed between the Client and the Bank, all communications will be sent to the Client's designated address, telephone number, mobile phone number, fax number and/or Email address.
- 7.2 The Client must promptly notify the Bank in writing of any change in the Client's address and contact details in accordance with Clause 4.5 and, if the Client fails to do so, the Client will be responsible for any Claims that may arise from the non-receipt of any communications. The Bank will notify the Client of any material change to its name, registered business address, licensing status, or the nature of the Services under the Agreement (including remuneration, if any, and the basis of payment for such Services, the details of margin requirements, interest charges, margin calls and the circumstances in which the Client's position may be closed without the Client's consent (where applicable)) in the conduct of the Bank's SFO-regulated activities.
- 7.3 If the Bank reasonably believes that the Client can no longer be reached at the address or contact details last notified to the Bank in writing, the Bank may, without further notice, suspend or stop sending communications to the Client.
- 7.4 Unless the Bank and the Client have otherwise agreed in writing, any communications from the Bank as well as correspondence or notifications received from third parties relating to any Account or Service, including any demands for payment, margin calls or other documents of any nature which may have legal consequences to the Client (collectively "**Correspondence**") shall be deemed to have been validly given to the Client (a) upon actual delivery by hand, (b) by mailing the relevant Correspondence by ordinary mail to the last address supplied by the Client for this purpose or (c) by sending it in any other manner (including fax, Email, SMS or other electronic means) the Bank may reasonably consider appropriate. The date of issue appearing on any statement or communication from the Bank (or in the case of third party communications the date specified on the copy (if any) retained by the Bank or otherwise in the dispatch list in the possession of the Bank) shall be



considered to be the date of delivery in the case of Correspondence sent by post (even if returned undelivered by the post). In the case of fax, Email SMS or other electronic transmission, the date shown in the Bank's transmission record shall be the applicable date of delivery.

- 7.5 Without limiting Clause 7.4, at its sole discretion the Bank may (but shall not be obliged to) send the Client notifications of Transactions, fund transfers or other information which the Bank believes may be relevant by SMS to the mobile telephone number provided by the Client to the Bank for this purpose either in the Account Opening Booklet or in any other written request to the Bank from time to time. The Client is responsible to ensure that the relevant mobile telephone is capable of receipt of SMS messages and that SMS service is available, and to preserve the security of the mobile telephone and any relevant Security Codes. Any SMS notifications will be given in addition to and not in place of any formal confirmations which the Bank is required to send to the Client and will be sent for information purposes only. **The Bank shall not be liable to the Client for any loss of any nature arising from use of, or failure to use, SMS notifications. In the event of any conflict or discrepancy between an SMS notification and a Transaction Confirmation, the latter shall prevail, but the Client should separately notify the Bank promptly upon receipt of any SMS which appears to be irregular or not to reflect the Client's understanding of the Transaction to which it relates. However, SMS messages are one-way communications from the Bank to the Client only and the Client should not reply to such messages by SMS. Any reply purporting to come from a Client in response to an SMS message may not be received by the Bank, and if received will not be acted upon.**

## **8. Communications to the Bank**

- 8.1 Any notice or other communication sent by the Client to the Bank in relation to any Account or Service shall be deemed to have been given when actually received by the Bank, and (in the case of any Instruction or other communication sent by fax, Email or other electronic means) when received in legible form, provided that where any notice or communication is received outside the Bank's normal business hours, it shall be deemed to have been given to the Bank on the next Business Day.

## **9. Instructions and Communications by Post, Telephone, Fax, Email etc.**

- 9.1 **The Client acknowledges and accepts all the risks of giving Verbal Instructions, Fax Instructions, Email Instructions or Other E-Instructions or of otherwise communicating with the Bank via post, telephone, fax, Email or other electronic means. Such risks include the risks of errors in transmission and technical defect, the risks of non-receipt, delay in receipt or incomplete receipt, the risk of loss of confidentiality, the risk that an Instruction may be processed more than once if the same Instruction is sent to the Bank in different forms, the risk of unauthorised interception or manipulation by an unauthorised person, the risks of fraud, forgery or lack of authority, and the risk that Email or other electronic communications cannot be guaranteed to be secure or virus free.**

- 9.2 **The Client will not assume that the Bank has actually received any Email Instructions or Other E-Instructions, and the Bank shall not be obliged to give any confirmation of receipt of any Email Instruction or Other E-Instruction (or any other Email or other electronic communication) to the Client.**

- 9.3 **The Client agrees to perform and ratify any contract entered into or action taken by the Bank as a result of Verbal Instructions, Fax Instructions, Email Instructions or Other E-Instructions.**

- 9.4 The Bank (or its agents) may (but, unless otherwise required by Applicable Laws, is(are) not required to) monitor and record Verbal Instructions from the Client and communications between the Bank and the Client by writing, audio or tape recording and/or any other method or device. Such monitoring or recording may be done without further prior warning or notice to the Client or any Authorised Person. The Client consents to such monitoring or recording on behalf of itself and each Authorised Person (and confirms that it is authorised to give such consent on each Authorised Person's behalf). Save in the case of manifest error, the Bank's record of any such Instructions or communications shall be conclusive and binding. Such records will be the Bank's sole property and they (or any transcripts thereof) may be used as evidence by the Bank in the event of a dispute and will be admissible in evidence in any proceedings. Subject to Applicable Laws, at the Client's request, the Bank may (at its discretion) permit the Client to access any such record. The Bank may require the Client to execute further documents and pay an administrative fee in connection with such request. Subject to Applicable Laws, the Bank may dispose of any such records and erase or destroy them after the expiration of such period as the Bank shall determine.

## **10. Alphanumeric Codes**

- 10.1 The Bank may at its discretion at the Client's request agree to allocate an alphanumeric code to any one or more Accounts and in such event the Client shall be bound by every transaction and document carrying such code. The Client acknowledges and accepts the risks inherent in the operation of an Account on the basis of codes.

- 10.2 For the avoidance of doubt, anonymous Accounts or Accounts in fictitious names are not permitted.

10.3 Where the Bank in its absolute discretion agrees to allocate an alphanumeric code to an Account, this does not affect the Bank's continuing obligation to fully comply with all Applicable Laws (including, for the avoidance of doubt, anti-money laundering, counter-terrorist financing, suspicious transaction reporting and similar laws and regulations). By way of example, the Bank is required to maintain full Client identification and verification records and may be required or expected to make all or part of them available to the HKMA, the SFC or other Regulators or government agencies in Hong Kong or elsewhere. By way of further example, in the case of any transfer from the Account, the Bank will be required to disclose certain details (including the remitter's name, address and account number) to the receiving bank in accordance with Applicable Laws and best practices for combating money laundering and terrorism. By requesting an alphanumeric code the Client accepts any such requirements and consents to all such disclosures.

#### **11. Statements of Account, Transaction Confirmations and Receipts**

11.1 The Bank may send the Client confirmations or advices of transactions and (unless otherwise agreed from time to time or required by Applicable Laws) monthly statements of account reflecting such transactions and balances in each Account.

11.2 **The Client undertakes to carefully examine and verify the correctness of each confirmation (including Transaction Confirmation), advice, receipt and statement of account and agrees that reliance may only be placed upon original confirmations, advices, receipts and/or statements issued by the Bank. The Client further undertakes to inform the Bank promptly in writing and in any event:**

(a) within fourteen (14) days from the date of any such confirmation, advice or receipt; and

(b) within ninety (90) days from the date of any such statement,

**of any discrepancies, omissions, incorrect or inaccurate entries in the Account or the contents of any confirmation, advice, receipt or statement or the execution or non-execution of any order or Instruction (including forgery, forged signature, fraud, lack of authority or negligence of the Client, any Authorised Person or any other person).**

11.3 **The Client agrees that, unless the Client so notifies any discrepancy to the Bank (as applicable) within fourteen (14) days or ninety (90) days (as the case may be) pursuant to Clause 11.2, the Bank may treat the relevant original confirmation, advice, receipt or statement as approved by the Client, in which case the same shall without further proof:**

(a) constitute conclusive evidence as between the Bank and the Client as to the correctness and accuracy of the relevant confirmation, advice, receipt or statement and all transactions, entries and balances set out therein; and

(b) bind the Client, who shall be deemed to have waived any rights or objections or to pursue any remedies against the Bank in respect thereof.

**Without prejudice to the above, the Bank may, at any time and without assuming or incurring any liability to the Client, reverse, rectify and/or correct any discrepancy in any confirmation, advice, receipt or statement caused by administrative, operational or computer errors or otherwise by the Bank's own error or omission. A document so reversed, rectified or corrected shall be binding as between the Bank and the Client.**

11.4 Where the Bank has designated an Account as dormant Account, the Client acknowledges and accepts that the Bank shall not be obliged to send any further statement to the Client, except where otherwise required by Applicable Laws.

11.5 The Bank will send a Transaction Confirmation in respect of each Transaction concluded to the Client in the same manner as any other confirmation or otherwise in a manner required by Applicable Laws. In the case of any margin Foreign Exchange Transaction or Precious Metal Transaction the Bank may (but shall not be bound to) also send a preliminary advice to the Client if it considers it necessary or desirable. The details contained in the Transaction Confirmation shall be evidence of the particulars of the Transaction and shall be binding and conclusive on the Client.

11.6 Any Transaction Confirmation is provided for record purposes only, and any Instructions given or authorised, if accepted, are accepted at the time when such Instructions are accepted and not at the time of the issue of the Transaction Confirmation.

11.7 A certificate signed by an authorised signatory of the Bank or the Bank's computer printout stating the amount due and owing from the Client under or in relation thereto and/or any other matter, including whether an Event of Default has occurred, shall, in the absence of manifest error, be conclusive against and binding on the Client.

- 11.8 Nothing in this Clause 11 shall limit the Client's right to question any discrepancies in respect of unauthorised transactions arising from the following:
- (a) forgery or fraud by any third party (including any employee, agent or servant of the Client) and in relation to which the Bank has failed to exercise reasonable care and skill;
  - (b) forgery or fraud by the Bank or its employees, agents or servants; and
  - (c) fraud, negligence or wilful misconduct of the Bank or its employees, agents or servants.
- 11.9 Notwithstanding any other terms of the Agreement, where the Client is a Professional Investor, the Client agrees that the Bank is not required to provide the Client with any contract notes, statements of account or receipts (as the case may be) in accordance with the Securities and Futures (Contract Notes, Statement of Account and Receipts) Rules (Cap. 571Q of the Laws of Hong Kong).

## 12. Agents

The Bank may employ or utilise agents, brokers, correspondents, dealers, custodians, sub-custodians, depositories, advisors, bankers, dealers, debt collection agencies, attorneys, managers, settlement agents, other third parties and any of its Associates (whether or not any of them is an EFG Bank Group Member) (each an "**Agent**") both within the jurisdiction and outside the jurisdiction and delegate to any such Agent the performance of all or part of the Bank's duties and exercise of the Bank's rights, may forward to any such Agent any relevant document as the Bank considers appropriate and may appoint any Agent to take delivery and to be registered as nominee of any of the Client's assets, in any part of the world. **The Bank shall not be liable for any negligence, act, omission or delay on the part of such Agent or bankruptcy or insolvency of such Agent, provided that the Bank has used reasonable care in selecting its Agent and has not expressly authorised such negligence, act, omission or delay. Where the Bank employs or utilises such Agent outside the jurisdiction, the Applicable Laws of that jurisdiction may apply, and the Client may not be protected in the same manner as in Hong Kong.**

## 13. Client's Responsibility; Representations and Warranties

13.1 The Client gives the following representations and warranties to the Bank:

### 13.1.1 Representations and Warranties given by all Clients

- (a) All information, documents and representations and warranties provided to the Bank by or on behalf of the Client in connection with any Account, Service and Instruction are true, correct, complete, authentic and not misleading.
- (b) The Client (unless it is a natural person) is duly incorporated or established and validly existing under the laws of its jurisdiction of incorporation or establishment.
- (c) The Client has full power, capacity, authority and legal right to, and has obtained all authorisations and consents necessary for it to, own its property and assets, (if applicable) to carry on its business, to execute and/or accept the Agreement and any documents entered into in connection with any of them, to open, maintain and operate any Account, utilise any Service and enter into and engage in the transactions contemplated therein, and to honour all of its obligations in respect of each of them.
- (d) The Agreement and any documents entered into in connection with any of them constitute legal, valid and binding obligations of the Client enforceable against the Client in accordance with their respective terms.
- (e) The opening and maintenance of any Account, the utilisation of any Service by the Client, the Instructions given to the Bank, the execution of the Agreement or any further documents and the performance by the Client of its obligations or the exercise of its rights thereunder will not (i) contravene or result in a breach or default under any Applicable Laws, judgments, orders, authorisations, agreements, trusts, obligations, customs or usages applicable to the Client, any Account or Service, (ii) (where applicable) contravene any provision of its constitutional documents or (iii) cause any limitation placed on it or (where applicable) the powers of its directors to be exceeded or result in the creation of or oblige it to create any encumbrance in respect of its assets.
- (f) Unless expressly disclosed otherwise to the Bank in writing in such form as the Bank may require, the Client is the sole legal and beneficial owner of each Account and all of the assets in the Account(s), free from any third party rights, claims or interests (other than those of the Bank), and will enter into each transaction as principal and not as trustee, agent or otherwise for and on behalf of any other person.

- (g) Unless expressly disclosed otherwise to the Bank in writing in such form as the Bank may require, the Client is ultimately responsible for originating the Instruction in relation to all Transactions and stands to gain the commercial or economic benefit of all Transactions and bear their commercial or economic risks.
- (h) Where the Client acts for or on behalf of any other person, the Client has implemented reliable know your customer systems to verify such other person's identity and to satisfy itself as to the source of the funds used to open or passing through any Account or the Bank.
- (i) Any Authorised Person appointed by the Client is duly appointed to act on behalf of the Client with all requisite authority to give Instructions on behalf of the Client, subject to any express limitations contained in the document appointing it or subsequently notified to the Bank in writing.
- (j) The Client is solvent, and no bankruptcy, liquidation, dissolution or insolvency proceedings with respect to the Client have been commenced by any person nor are they intended or anticipated by the Client, no Event of Default exists and there are no facts or circumstances relating to the Client or the Client's affairs which have not been disclosed to the Bank which, if disclosed, might reasonably be expected to cause the Bank to refuse to open any Account, to suspend or close any Account which has been opened, or to refuse to provide or continue to provide any Service to the Client, or to change the terms on which the same may be made available.

#### 13.1.2 **Additional Representations, Warranties and undertakings given by Clients who are trustees**

- (a) The Client enters into the Agreement in the capacity of trustee of the trust named in the Account Mandate ("Trust"), and not in a personal capacity, and the Client has full and unrestricted powers under the documents constituting the Trust to execute and/or accept the Agreement and any documents entered into in connection with it, to open, maintain and operate the Account(s), utilise the Services and enter into and engage in the transactions contemplated therein, and to honour all of the Client's obligations in respect of each of them, and that in doing so the Client shall not breach the express or implied terms of the Trust.
- (b) The terms of the Trust instrument (as specified in the Account Mandate or otherwise advised or provided to the Bank) and the performance of any of the Client's duties under the Trust will not breach any Applicable Laws.
- (c) The Client further acknowledges agrees and undertakes as follows:
  - (i) To provide the Bank annually upon each anniversary of the date of the Account Mandate (or when otherwise requested by the Bank) with the then current authorisation for each of the trustees for the time being of the Trust and to notify the Bank within five (5) Business Days of the retirement, death, insolvency or other incapacity of any trustee of the Trust.
  - (ii) The Bank will accept Instructions relating to the Account(s) only from the Client and will not be required to obtain any consent from, or see to the execution of any trust for, any other person, unless the Bank otherwise agrees in writing. If the Trust has more than one trustee, the Bank may refuse to accept Instructions from the Client unless they are given by all of the trustees acting jointly.
  - (iii) The Client accepts personal liability in relation to the Account(s) and Services for any breach of the Agreement and for any liability otherwise arising from and in connection with the Account(s) and Services if and to the extent that the Client has no right of indemnity under the Trust or the assets of the Trust are insufficient to discharge the liability.
  - (iv) If one or more of the trustees of the Trust retires, dies or becomes insolvent, then the Bank will hold the Client's assets delivered or transferred by the Client to or to the order of any continuing trustee(s). If there is no continuing trustee, the Bank will hold such assets to or to the order of the Bank, subject to the Agreement (including any credit balance in the Account(s)) until the Bank determines to its satisfaction the person(s) entitled to any title to or interest in the assets. The Bank's obligation to hold the Client's assets shall be without prejudice to any rights the Bank may have in respect of such assets arising out of any Collateral, set-off, counterclaim or otherwise or to any step which the Bank may in its discretion consider desirable in view of any claim by any person other than those claiming through the estate of the deceased (if applicable).
  - (v) **The Client shall indemnify each Indemnitee for any Claims which may be taken or made against, or which may be incurred or sustained by, such Indemnitee in**

relation to it holding such assets or in seeking a determination as to the person entitled to any title to or interest in any such assets.

- (vi) **The Client undertakes to keep each Indemnitee at all times fully and effectively indemnified from and against all Claims (except any tax imposed on and calculated by reference to the Bank's net income) which may be brought or preferred against the Bank or which an Indemnitee may incur or sustain or for which the Indemnitee may become liable by reason either directly or indirectly of the Bank having acted and agreed to act upon the Instructions of less than all of the trustees of the Trust from time to time or any breach of the Client's duties and obligations as trustee of the Trust, except to the extent due to the Indemnitee's fraud, negligence or wilful misconduct.**

#### **13.1.3 Additional Representations and Warranties given by Clients who are partnerships**

- (a) All of the partners have signed the Account Mandate or (if applicable) the partnership resolutions authorising its signing for and on behalf of the partnership in accordance with the partnership's constitutional documents.
- 13.2 The Client's representations and warranties are given at the date of the Account Opening Booklet or the Discretionary Management Mandate (as the case may be), and are deemed to be repeated, for so long as any Account shall remain open or any Service shall remain available to the Client, every time the Client applies for or uses any Account or Service or effects any transaction.
- 13.3 So long as any Account is maintained by the Client or any Service is engaged by the Client, the Client undertakes as follows:
- (a) To supply to the Bank immediately on demand at any time or from time to time such identity, financial and other information relating to the Client or any Collateral Provider (including the identities of the persons ultimately beneficially interested in the Account(s) and/or originating the Instruction for a Transaction and/or any trading contract executed on the Account(s) and/or Beneficial Owners) as the Bank may (in its absolute discretion and without giving any reason) request, and to notify the Bank immediately in the event of any material change to the information provided in or in connection with the Agreement. Without prejudice to the foregoing, the Client shall immediately inform the Bank of any changes to the particulars of the Client or in the event that the representations and warranties of the Client in the Agreement are no longer accurate or correct.
  - (b) To provide and maintain (or procure that any Collateral Provider or other person acceptable to the Bank provides and maintains) such Collateral or additional Collateral in such form and of such value as the Bank may from time to time require as security for the Client's obligations to the Bank and to provide and maintain (or procure the provision or maintaining) of such initial and maintenance margins as the Bank may from time to time require in connection with the provision of any Service.
  - (c) To comply, at the Client's cost and expenses with all Applicable Laws in respect of all Accounts, Services and Transactions.
  - (d) To pay on demand to the Bank any balance whatsoever owing by the Client from time to time in respect of the Total Liabilities.
  - (e) **At all times exercise due care to prevent payment or other orders or Instruments, Instructions, tests, codes, Security Codes or Security Mechanisms from coming into the possession of unauthorised persons and to prevent alteration in a manner which may facilitate fraud or forgery. The Client shall notify the Bank immediately on discovering or there is any reason to suspect that any orders, Instruments, Instructions, tests, codes, Security Codes or Security Mechanisms have been or may have been stolen, lost, misappropriated, mislaid or compromised, but such notification shall not relieve the Client from its liability to assume and bear the consequences of the same.**

#### **14. Bank's Responsibility and General Exclusion of Liability**

14.1 Any Traded Asset or other assets registered or otherwise held in the name of the Bank or its Agent for the Client's account shall be held, and any action which the Bank may take or omit to take in connection with any Account, Service or any Instruction shall be, solely for the Client's account and risk.

#### **14.2 To the maximum extent permitted by and not inconsistent with any Applicable Laws:**

- (a) **the Bank and the EFG Bank Group Members exclude all and any liability in respect of any Claims suffered by the Client or any other person due to or arising out of the Bank's handling or dealing with any Account(s) or Service(s) or Transactions and in consequence of the Bank acting (or not acting) on any Instruction, except to the extent the Claim is a direct and**

reasonably foreseeable consequence of fraud, negligence or wilful misconduct of the Bank or its employees, agents or servants; and

- (b) the Bank and the EFG Bank Group Members will not be responsible or liable for any loss of profit, revenue, savings, data, goodwill or business or any indirect, consequential, special, punitive or incidental loss or damage, whether arising based on a Claim in contract, tort (including negligence), breach of statutory duty or otherwise.

14.3 Without limiting the generality of the foregoing, to the maximum extent permitted by and not inconsistent with any Applicable Laws, the Bank and the EFG Bank Group Members shall not be responsible or liable to the Client in respect of:

- (a) any loss, destruction, late presentation or failure to present, demand, collect or give notice of non-payment or dishonour of any Instrument (including any drawings made under lost Instruments), whether the same is in the custody of the Bank or any properly authorised third party through whom such Instrument is presented for collection; or
- (b) any Claims, any depreciation or diminution in the value or loss of or damage to any Securities or Traded Asset or other assets under any Account, or in respect of any Service, any restriction or deduction applied thereto or to any payment in respect thereof, or any lost opportunity whereby the value of any such Securities or Traded Asset or other assets could have been increased, or for any other reason, or for the acts of any Agent appointed by the Bank in good faith.

14.4 At its discretion and without assuming or incurring any liability, the Bank may take any action in respect thereof that may seem to be expedient or in the Client's interest if it should not be possible to obtain the Client's Instructions or if (in the Bank's opinion) it would involve undue delay or expense to obtain such Instructions. The Bank may at its discretion and for the Client's account (but shall not be liable to) collect dividends, interest or other payments or pay calls, taxes, duties or other disbursements in respect thereof. The Bank shall not be bound to return Securities bearing serial numbers identical with those originally held so long as the Securities returned are of the same class, denomination and nominal amount and rank pari passu with those originally held subject always to any capital reorganisation or similar event which may have occurred in the meantime.

14.5 Notwithstanding that the Bank and its other offices and branches are as a whole a single legal entity, unless the Bank agrees otherwise, the Bank (as the Hong Kong branch of EFG Bank AG where the Account is kept or the Services are provided) is the only place where the Bank will honour any liability to the Client in respect of such Account or Service and/or repay any sum owed by the Bank to the Client. Accordingly, unless the Bank agrees otherwise, the Bank may not be required to honour such liabilities or repay such moneys at its head office or at any other of its branches outside Hong Kong.

14.6 To the maximum extent permitted by and not inconsistent with any Applicable Laws, the Bank may effect transactions for or on behalf of the Client through the agency of and/or with a counterpart which is related to the Bank whether directly or indirectly, or through or with another customer of the Bank even if a conflict of interest may arise, and may also effect transactions for or on behalf of the Client in which the Bank has a direct or indirect interest (whether material or not), including any transaction in which the Bank acts on its own account as counterparty, and the Bank shall be entitled to act as principal and retain all relevant profits and gains in any transaction at any time. The Bank shall take all reasonable steps to ensure that the Client receives fair treatment in the event that the Bank has such interest or in the event of an actual or potential conflict arising. If the Bank acts as the Client's agent then such transaction is entered into at the Client's risk, and notwithstanding any netting, set-off or closing out of applicable obligations, the Client must pay the Bank on demand and indemnify the Bank for any amount arising in connection with the transactions which would have been so netted, set-off or closed out but for the insolvency of the relevant counterparty, broker or agent in respect of the transaction.

14.7 The Bank is authorised to participate in and comply with the Applicable Laws and requirements of any Regulator or other organisation which regulates the conduct of business of the Bank and any system which provides central clearing, settlement and similar facilities for banks, financial institutions and/or in respect of Traded Asset and any other Applicable Laws but, in each case, without liability for any acts or omissions on the part of any such Regulator, the operator or manager of other organisation or system.

14.8 The Bank shall have no liability to the Client for any loss or expense suffered or incurred by the Client arising from any delay, failure or liability of the Bank to discharge any of its obligations in connection with the Account and/or the Services as a result of any means or causes beyond the Bank's control, including any market disruption or closure, changes in Applicable Laws, the actions, directions or orders of any Regulator or government or quasi-government body or court, fire, flood, typhoon or other serious weather conditions, any breakdown or failure of transmission or communication or in other electronic facilities, industrial action, hostilities, terrorist acts, force majeure, acts of God, Adjustment Events or any other occurrence or state of affairs which the Bank is unable to materially influence.

- 14.9 The Bank shall not be obliged or liable to engage in litigation and/or any other proceedings or actions relating to disputes about any of the Client's assets. In such cases, the Client may instruct the Bank to transfer such assets to the Client or to a third party designated by the Client. The Bank shall have no responsibility for the refusal by the issuer or counterparty of any assets to transfer them to the Client or the Client's designated party. It shall be the Client's sole responsibility to pursue any claim or dispute in relation to the Client's assets.
- 14.10 Without prejudice to any lien or right of set off or consolidation to which the Bank may be entitled as against the Client from time to time, insofar as any of the Client's obligations and liabilities to the Bank are contingent or future, the Bank's liability to the Client to make payment of any monies standing to any of the Client's Accounts shall, to the extent necessary to cover such obligations or liabilities, be suspended until the happening of the contingency or future event.
- 14.11 Each Indemnitee shall be entitled to the rights and benefit of every exemption from liability, every defence and every indemnity to which the Bank is entitled under this Clause 14.
- 14.12 Nothing in the Agreement shall exclude or limit the Bank's liability in respect of (a) death or personal injury caused by the negligence of the Bank or its agents, employees or servants, (b) fraud or the tort of deceit committed by the Bank or its agents, employees or servants, or (c) any other liability to the extent it cannot, as a matter of law, be excluded or limited.

## **15. General Indemnities**

- 15.1 To the maximum extent permitted by and not inconsistent with any Applicable Laws, the Client shall keep each Indemnitee harmless and shall fully indemnify each of them promptly on demand against any Claims (including legal costs on a full indemnity basis) (except any tax imposed on and calculated by reference to the Bank's net income) which the Bank shall conclusively certify as having been taken or made against, or sustained or incurred by, any of them in connection with, or arising out of, directly or indirectly:**
- (a) any Instructions given or purportedly given to the Bank (whether or not in the form of written Instructions), any other communication with the Bank (whether via post, telephone, fax, Email or other electronic means, or other means), or the Bank acting or declining to act in accordance with such Instructions or communications (including, for the avoidance of doubt, any act and deed of any Authorised Person in the exercise or purported exercise of his powers, discretion and authority);**
  - (b) the Bank using any system or means of transmission, communication, transportation or otherwise in carrying out any such Instructions given or purportedly given to the Bank (including due to loss, delay, misunderstandings, mistakes, distortions or duplications);**
  - (c) the Bank's provision of the Services to the Client (including transactions contemplated under the Agreement and in connection with all or any matters or transactions in respect of any Account or Services);**
  - (d) any unauthorised operation of Account or utilisation of Service by use of any Security Code or alphanumeric code;**
  - (e) any default in payment by the Client of any sum due from the Client or any third party under or in respect of any Account or any Service, or in the performance of any of its obligations or arising from the claim of any person to any interest in any Collateral, any Traded Asset sold to or purchased from the Client and/or any Service or transaction or in taking proceedings in respect thereof;**
  - (f) the collection of any cheque or other Instrument presented by the Client for collection or the guaranteeing of any endorsement or discharge of the same and in connection with all or any of the matters or transactions in respect of the Account or Services;**
  - (g) any change in Applicable Laws relating to any Account or Service or affecting the Agreement;**
  - (h) the Bank acting pursuant to the Agreement before its receipt of written notice of termination or revocation of the Agreement by operation of law applicable to the Client;**
  - (i) the Bank enforcing or attempting to enforce any rights it may have against the Client pursuant to the Agreement; and/or**
  - (j) any breach by the Client of any of the provisions in the Agreement or such other terms and conditions as are applicable to any Account, Services provided or to be provided by the Bank to the Client or transactions,**

except to the extent the same arise directly from their respective fraud, negligence or wilful misconduct. The Client expressly recognises that the Bank is or may become party to one or more transactions which are the reverse of the transactions contemplated in, or which effectively hedge the contingent liability of the Client under, the Agreement to which the Bank may refer for the purposes of computing its loss or expense.

**15.2 The Client shall indemnify and reimburse each Indemnitee on demand for all expenses (including legal costs (on a solicitor and own client basis) and out-of-pocket expenses) incurred by the Bank in contemplation of or otherwise in connection with the enforcement of, or the preservation of any rights under, the Agreement, any other Facility Document or any related documentation.**

15.3 The Client shall pay all stamp, documentary, registration or other like duties levied or imposed upon the Client or in respect of the Client's execution or performance of the Agreement, any other Facility Document and any related documentation and shall indemnify each Indemnitee against any such liabilities levied or imposed upon the Indemnitee or in respect of the Bank's execution or performance of the Agreement, any other Facility Document and any related documentation.

15.4 If (and only if) a Client is a private individual to whom the Banking Code applies, any indemnity for costs and expenses in the Agreement shall be construed so as to be limited to the recovery of costs and expenses of a reasonable amount and reasonably incurred.

15.5 Nothing in the Agreement shall require the Client to indemnify the Bank or any other person in respect of (a) death or personal injury caused by the negligence of the Bank or such other person, (b) fraud or the tort of deceit committed by the Bank or such other person, or (c) any other Claim or loss to the extent the giving of an indemnity for such Claim or loss is, as a matter of law, prohibited.

## **16. Confidentiality and Disclosure of Information**

16.1 The Bank may have in its possession information concerning the Client (including Personal Data), the state of any Account or any transaction of the Client with the Bank or any other information relating to the Client or the Client's transactions or dealings with the Bank (including Personal Data and other information on any Authorised Person or Beneficial Owner), whether or not acquired through the keeping of any Account or provision of any Services ("**Client Information**").

16.2 From time to time, it is necessary for the Client to supply the Bank with Client Information in connection with the opening or continuation of Accounts, the establishment or continuation of Facilities, the provision or continuation of Services or generally the Client's relationship with the Bank. Failure to supply such Client Information may result in the Bank being unable to open or continue an Account or Facility or to provide or continue to provide a Service or maintain the Client's relationship with the Bank. It is also the case that Client Information is collected from a Client in the ordinary course of the continuation of its relationship with the Bank, for example, when the Client writes a cheque or deposits money.

16.3 The purposes for which Client Information may be used include the following:

- (a) the processing of applications from the Client for the establishment of Accounts, Services and Facilities;
- (b) the daily operation, maintaining and provision of the Accounts, Services and Facilities provided to the Client;
- (c) conducting credit checks;
- (d) creating and maintaining the Client's credit history for present or future reference;
- (e) assisting other financial institutions to conduct credit checks and collect debts;
- (f) creating and maintaining the Bank's credit scoring models;
- (g) ensuring ongoing creditworthiness of the Client;
- (h) designing financial services or related products for the Client's use;
- (i) marketing (including organising and delivering seminars in respect of) services, products and other subjects (for example, donations and contributions for charitable and/or non-profit making purposes);
- (j) determining amounts owed to or by the Client or any Collateral Provider;
- (k) collection of amounts outstanding from, and enforcing obligations owing by, the Client and Collateral Providers;
- (l) credit (including mortgage) data sharing among other credit providers;
- (m) over-the-counter ("**OTC**") derivative reporting;



- (n) observing or complying with any obligations, requirements or arrangements for disclosing and using Client Information that apply to any EFG Bank Group Member or with which any of them is expected to comply according to:
  - (i) any Applicable Laws binding or applying to any EFG Bank Group Member within or outside Hong Kong (e.g. the Inland Revenue Ordinance (Cap. 112 of the Laws of Hong Kong) concerning automatic exchange of financial account information ("AEOI")). Under the laws, regulations and international agreements for the implementation of automatic exchange of financial account information and the U.S. Foreign Account Tax Compliance Act ("FATCA"), financial institutions are required to identify account holders (including certain policy owners and beneficiaries) and controlling persons of certain entity policyholders who are reportable foreign tax residents and report their personal data to the local tax authority where the financial institution operates or directly to the U.S. Internal Revenue Service. The local tax authority will provide this information to the tax authority of the reportable foreign tax resident's country of tax residence on a regular, annual basis. Without limiting the generality of this Clause, the Bank and/or any other EFG Bank Group Member will use personal data (including name, address, jurisdiction(s) of tax residence, tax identification number(s) in that jurisdiction(s), account balance and income information) for the purposes of AEOI and FATCA. The Client Information may be transmitted by the Bank and/or any other EFG Bank Group Member to the Hong Kong Inland Revenue Department or any other relevant domestic or foreign tax authority for transfer to the tax authority of another jurisdiction. The personal data may be transmitted by the Bank and/or any other EFG Bank Group Member to the U.S. Internal Revenue Service. In addition to AEOI and FATCA, the Bank and/or any other EFG Bank Group Member may be required to use and disclose Client Information under other Applicable Laws;
  - (ii) any present or future contractual or other commitment with local or foreign legal, regulatory, governmental, tax, law enforcement or other authorities, or self-regulatory or industry bodies or associations of financial services providers that is assumed by or imposed on any EFG Bank Group Member by reason of its financial, commercial, business or other interests or activities in or related to the jurisdiction of the relevant local or foreign legal, regulatory, governmental, tax, law enforcement or other authority, or self-regulatory or industry bodies or associations (e.g. guidelines or guidance given or issued by the Inland Revenue Department including those concerning AEOI);
  - (iii) any memorandum of understanding on international cooperation;
- (o) observing or complying with any obligations, requirements, policies, procedures, measures or arrangements for sharing data and information within the EFG Bank Group and/or any other use of Client Information in accordance with any EFG Bank Group-wide programmes for compliance with sanctions or prevention or detection of money laundering, terrorist financing or other unlawful activities;
- (p) enabling an actual or proposed successor of any EFG Bank Group Member to evaluate the intended succession;
- (q) enabling an actual or proposed assignee or transferee of, or participant or sub-participant in, any rights or obligations of the Bank in respect of the Client to evaluate the transaction intended to be the subject of the assignment, transfer, participation or sub-participation;
- (r) enabling an actual or proposed purchaser of all or part of the business or shares of any EFG Bank Group Member to evaluate the intended purchase transaction;
- (s) in connection with any EFG Bank Group Member commencing, defending or otherwise participating in any legal, arbitration, administrative or regulatory proceeding, action, investigation or inquiry before any court, tribunal or competent authority within or outside Hong Kong; and/or
- (t) any other purposes relating to the purposes listed above.

**16.4 The Client authorises and permits the Bank (including its respective officers, employees, agents and servants) to disclose such Client Information for any of the above-mentioned purposes to the following persons:**

- (a) any agent, contractor or third party service provider (whether or not an EFG Bank Group Member) providing services to any EFG Bank Group Member (including any legal advisor, auditor or other professional advisor; any rating agency, insurer or insurance broker, direct or indirect provider of credit protection, and any provider of any administrative, back office support, telecommunications, computer, payment or securities clearing or other services) in connection with the operation of its business;
- (b) any Agent to whom the Bank delegates any of its duties, functions or obligations under the Agreement;

- (c) any person who provides introducing services to the Bank or to whom the Bank provides introductions or referrals;
- (d) any third party fund manager (whether or not an EFG Bank Group Member) who provides asset management services to the Client;
- (e) any financial institution, Exchange, market or clearing house, depository, depository agent, payment clearing or settlement system, trade repository, Fund registrar, Manager, nominee, custodian, broker, issuer, manager or underwriter of Securities through, with or in which the Client has or proposes to have dealings;
- (f) any person with (or through) whom the Bank enters into any transaction as a counterparty, or who is the issuer, vendor, purchaser or agent of any of them;
- (g) the drawee bank providing a copy of a paid cheque (which may contain information about the payee) to the drawer;
- (h) credit reference agencies and, in the event of a default, debt collection agencies;
- (i) any swap or trade repository (including any OTC derivative trade repository) or similar facilities or institutions, or one or more systems operated by any of them and/or any relevant regulator, and their service providers;
- (j) any actual or prospective Collateral Provider;
- (k) any other EFG Bank Group Member;
- (l) any other person under a duty of confidentiality to an EFG Bank Group Member which has undertaken to keep such Client Information confidential;
- (m) any actual or prospective successor of any EFG Bank Group Member;
- (n) any person to (or through) whom the Bank assigns or transfers (or may potentially assign or transfer) all or any of its rights or obligations in respect of the Client (including an actual or proposed taker of a mortgage, charge, assignment or other security over any of the Bank's rights in respect of a Client);
- (o) any person to (or through) whom the Bank enters into (or may potentially enter into) any participation or sub-participation in relation to, or any other transaction under which payments are to be made by reference to, any actual or proposed Facility or the Client;
- (p) any actual or prospective purchaser of all or any part of any EFG Bank Group Member's business or shares;
- (q) any person to the extent required for purposes of any litigation, arbitration, administrative, investigative or regulatory proceedings or procedure;
- (r) any person to whom any EFG Bank Group Member is under an obligation or otherwise required or expected to make disclosure under and for the purposes of any memorandum of understanding, under the requirements of any Applicable Laws binding on or applying to any EFG Bank Group Member or with which any of them is expected to comply, or any disclosure pursuant to any contractual or other commitment of any EFG Bank Group Member with local or foreign legal, regulatory, governmental, tax, law enforcement or other authorities, or self-regulatory or industry bodies or associations of financial services providers that is assumed by or imposed on any EFG Bank Group Member by reason of its financial, commercial, business or other interests or activities in or related to the jurisdiction of the relevant local or foreign legal, regulatory, governmental, tax, law enforcement or other authority, or self-regulatory or industry bodies or associations;
- (s) subject, in the case of any Client who is an individual, to the Bank's policy on the use of Personal Data for promotional and marketing purposes as notified to such Clients from time to time in any statements, circulars, notices or other documents:
  - (i) a member of the EFG Bank Group;
  - (ii) third party financial institutions, insurers, credit card companies, securities, banking and investment services providers and providers of similar products and services;
  - (iii) third party reward, loyalty, co-branding and privileges programme providers;

- (iv) co-branding partners of the Bank and EFG Bank Group (the names of such co-branding partners can be found in the application form(s) for the relevant services and products, as the case may be);
- (v) charitable or non-profit making organisations; and
- (vi) external service providers (including telecommunication companies, data processing companies and information technology companies)

that the Bank or an EFG Bank Group Member engages for the purposes set out in Clause 16.3 above;

- (t) any other person where permitted or required by any Applicable Laws; and/or
- (u) any other person with the Client's consent (whether given expressly or by the Client's conduct (such as, if the Client asks that other person to accompany the Client to a meeting with the Bank) or otherwise),

**in each case whether in Hong Kong or elsewhere and irrespective of whether the laws concerning confidentiality, banking secrecy or data protection are more or less stringent in the place to which the information is transferred.**

**16.5 Without prejudice to Clause 16.4:**

- (a) **In order to facilitate the effective provision of banking and financial services to the Client from time to time by the EFG Bank Group, the Client authorises each EFG Bank Group Member to communicate to each other EFG Bank Group Member such information concerning the Client and the Account(s) or account(s) of the Client with any EFG Bank Group Member or Service(s) or services(s) of any EFG Bank Group Member engaged by the Client with the EFG Bank Group as may in its opinion be necessary or desirable for the provision of such services or general banking or regulatory purposes in any jurisdiction in which the EFG Bank Group Member providing the relevant services carries on business.**
- (b) **The Client acknowledges that the Bank or any EFG Bank Group Member shall be entitled to outsource or sub-contract any part of their respective banking or other operations to any service provider (whether or not an EFG Bank Group Member), whether or not in Hong Kong, on such terms and conditions as the Bank or any EFG Bank Group Member may think fit and, where the Bank or any EFG Bank Group Member considers necessary or appropriate, the Bank or any EFG Bank Group Member may transfer such Client Information to any service provider for the purpose of data processing or providing any service to the Bank or any EFG Bank Group Member or to the Client on its or their behalf.**
- (c) **The Client consents to the Bank or any EFG Bank Group Member giving status reports on the Client's Account(s) and Service(s) and banker's references when requested to do so by any bank, financial institution, recognised credit reference or credit enquiry agents and/or any other person.**
- (d) **The Client acknowledges and agrees that each person to whom the Bank or any EFG Bank Group Member has disclosed Client Information pursuant to the Agreement may also disclose such Client Information pursuant to any Applicable Laws with which such person is required or expected to comply.**

16.6 To the extent the Client Information includes Personal Data or other information relating to other persons (including any Beneficial Owner, or any officer, director, employee or shareholder), the Client shall ensure that the Client has that person's authority or consent for the Client to provide their information to the Bank or any EFG Bank Group Member for its or their holding, use, storage, processing, transfer, disclosure and/or reporting (directly or indirectly) by the Bank and/or any other EFG Bank Group Member in accordance with the Agreement and (in the case of Personal Data) the PDPO.

16.7 Without limiting the generality of the foregoing provisions of this Clause 16, for the purposes of the PDPO, the Bank shall be entitled to disclose information to such persons and for such purposes as set out in the statement of practice annexed to the Account Opening Booklet or otherwise as the Bank may from time to time notify to the Client in any statement issued by it pursuant to the PDPO.

**17. Communication of Orders regarding Accounts with EFG Bank Group Members**

17.1 Where the Client requests any EFG Bank Group Member (an "Intermediary") to communicate any order or instruction in respect of the Client's account with any other member of the EFG Bank Group (the "Account Entity"), the Client acknowledges that such Intermediary may accept or reject any such orders or instructions in its absolute discretion and without giving a reason for doing so, but should the Intermediary agree to communicate such orders or instructions it does so as the Client's agent and entirely at the Client's risk and, in consideration of it agreeing to do so and of the Account Entity acting on any such orders or instructions communicated by the

Intermediary on the Client's behalf, the Client agrees and undertakes that the Client shall keep the Intermediary and the Account Entity harmless and shall indemnify each of them promptly on demand fully against any Claims including Claims arising directly or indirectly from the communication, mis-communication, or failure of communication of orders or instructions from the Client through the Intermediary except to the extent the same arise directly from its respective fraud, negligence or wilful misconduct .

- 17.2 The Intermediary and the Account Entity shall have the right to refuse to communicate or execute any such orders or instructions until they received original confirmation in writing or other information or documents that they may require.

## **18. Anti-Money Laundering**

- 18.1 **The Client acknowledges and agrees that the Bank and any other EFG Bank Group Member are required to act in accordance with Applicable Laws in Hong Kong and other jurisdictions including anti-money laundering, anti-terrorist financing, suspicious transaction reporting, sanctions and anti-tax evasion-related laws and regulations. The Client agrees that the Bank may take, and may instruct any other EFG Bank Group Member (or may be so instructed by any other EFG Bank Group Member) to take any action which it or such other EFG Bank Group Member, in its absolute discretion, considers appropriate in connection with such laws and regulations. This may include (i) the interception and investigating of any payment message and other information or communications sent to, by or on behalf of the Client via the systems of the Bank or any other EFG Bank Group Member, (ii) the delaying or blocking of, or refusing to make, any payment and (iii) conducting further enquiries to ascertain whether the name of a sanctioned person actually refers to that person. Neither the Bank nor any other EFG Bank Group Member shall be liable for any loss or damage (whether direct or indirect including loss of profit or interest) suffered by any person arising as a result of or in connection with any such action, delay, blocking or failure to make any payment or the exercise of the Bank's rights under this Clause. In certain cases, the Bank's action may prevent or delay the processing of certain information. Neither the Bank nor any other EFG Bank Group Member warrants that any information on the Bank's systems relating to a payment message or other information or communication which is the subject of such action is correct or up-to-date when accessed whilst such action is being taken.**

- 18.2 The Client agrees to provide the Bank with any information requested by the Bank for complying with any such Applicable Laws.

## **19. Costs, Charges and Expenses**

- 19.1 **The Bank and its Associates shall be entitled to charge fees and charges for any Services performed or made available to the Client, or any action taken by the Bank in carrying out Instructions relating to the Account(s) and/or Service(s). Charges and fees may be charged at the Bank's customary rates as prevailing from time to time or as otherwise agreed with the Client in respect of any particular Account, Service or Transaction. Unless otherwise notified by the bank, the Bank's scale of standard fees and charges from time to time is set out in the Scale of Charges Booklet published by the Bank. Details of the basis of fees and charges for Services which are not stipulated in the Bank's Scale of Charges Booklet will be provided at the time the relevant Services are offered or upon request of the Client.**
- 19.2 **The Client shall, promptly on demand and in accordance with all other terms and conditions, pay to the Bank the amount of all reasonable costs and expenses incurred by the Bank (including legal fees, registration fees, and stamp duties) in connection with the opening and maintenance of any Account, the provision of the Services, the establishment, registration or perfection of any Collateral, and the enforcement of or preservation of any of the Bank's rights or the recovery of any amount due, owing or payable to the Bank under the Agreement or any other Facility Document.**
- 19.3 The Bank shall be entitled to debit any commissions, fees, interest (including, where applicable, Negative Interest Rate Charges on interest-bearing Accounts), charges or expenses payable by the Client to the Bank under the Agreement from the Account and, if necessary, make any Currency conversion at such rate as the Bank may determine. Upon having debited any such sums, the Bank will promptly inform the Client of the nature and amount of the fees, expenses or other charges so debited.
- 19.4 **If no Client-initiated transaction activity is recorded on an Account for twelve (12) consecutive months or such other period as the Bank may from time to time determine and notify to the Client, the Bank will treat such an Account as dormant. Dormant Accounts may be subject to a dormant Account fee in accordance with the Bank's then current Scale of Charges Booklet or as otherwise notified by the Bank to the Client. The Bank will give fourteen (14) days' prior notice to the Client before charging a dormant Account fee which accrues for the first time. If no further action is taken by the Client, the Bank may, without further notice, debit such sum (and all further dormant Account fees accruing on such Account) from the Account until there is no credit balance in such Account, at which point the Bank may close the Account.**

19.5 In the absence of specific Instructions, and within the limits of its own insurance, the Bank will at its discretion insure against ordinary risks of carriage of Securities or Traded Asset and valuables by the Bank at the expense of the Client.

19.6 The Client acknowledges and agrees that the Bank and its Associate may accept and retain for its sole benefit all normal banking charges, custody charges, normal dealing spreads, brokerage or agency commissions, rebates and fees paid to the Bank or such Associate by the Bank's Agent or other third party in connection with the provision of any Services by the Bank.

## 20. Payments

20.1 Any payment due from the Client to the Bank shall be made promptly to, or to the order of, the Bank on the due date or on demand and in the Currency in which it is due (unless otherwise required by the Bank). All such payments shall be made in full in immediately available and freely transferable funds without set-off or counterclaim or any restriction or condition, free and clear of and without deduction or withholding of any taxes, charges or fees of any nature, however the same may arise.

20.2 If at any time, any deduction or withholding is made or required to be made from any payment due from the Client to the Bank, the Client shall pay to the Bank, together with such payment, such additional amount as may be necessary to ensure that the Bank receives a net amount equal to the amount which it would have received had no such deduction or withholding been required or made.

20.3 If the sum paid or recovered is less than the amount then due, the Bank may apply that sum in such manner as the Bank may in its sole discretion think fit, (including placing the same in a suspense account) and the Client or the payer (if different) shall have no right to make any appropriation.

20.4 Any discharge from time to time by the Bank of the Client or any Collateral Provider shall be deemed to be made subject to the condition that it will be void to the extent that any security, disposition or payment to the Bank by the Client or any Collateral Provider is subsequently set aside, avoided or ordered to be surrendered, paid away, refunded or reduced for any reason whatever (whether as an unfair preference or otherwise) or proves otherwise to have been invalid, in which event, the Client and such Collateral Provider (if any) shall make good to the Bank upon first demand such amount as shall have been set aside, avoided, ordered to be surrendered, paid away, refunded or reduced or invalidated as aforesaid, and the Bank shall be entitled to enforce its rights (including all indemnities) contained in the Agreement, any other Facility Document or any other document entered into in connection with any of them against the Client or such Collateral Provider as if such discharge had not occurred.

**20.5 Unless otherwise agreed in writing between the Bank and the Client, if the Bank receives any payment (whether for credit into an Account or in payment of any sum due to the Bank) in a Currency other than (as applicable) the Currency of such Account or in which the payment is to be made, the Bank may at its absolute discretion convert such payment into (as applicable) the Currency of the Account for credit or in which the payment is to be made. The Bank may do so at such rate of exchange as the Bank may conclusively determine and the Client shall bear the cost of such conversion. The Bank shall be authorised to debit the Account with all costs, charges or exchange losses which the Bank incurs in connection with such conversion.**

## 21. Joint Account and Partnership

21.1 Where the Client comprises more than one person (whether in their own respective capacities or in their capacities as trustees for a beneficiary) (each a "**Joint Holder**") the following provisions shall apply.

**21.2 Each Joint Holder jointly and severally (that is, collectively and individually) agrees to the Agreement and shall be jointly and severally liable for all obligations and liabilities incurred on or in respect of such Account and for all Services, Facilities or accommodation which may be granted on such Account, together with all interest, commission and other banking charges and expenses (including legal costs on a full indemnity basis). The liability of each Joint Holder shall not be discharged or affected in any way by the death, bankruptcy or other incapacity of any other Joint Holder of such Account.**

21.3 The Bank may, at any time and without prior notice or requiring any authorisation, exercise a lien over any joint Account for the liabilities to the Bank of any Joint Holder or make any set off between a joint Account and any accounts in the name of any one of the Joint Holders, whatever the nature of such accounts or the Currencies in which they are denominated, in accordance with Clause 23.

21.4 Unless instructed to the contrary, the Bank shall be authorised (but not obliged) to credit the joint Account with funds received for the account of any of the Joint Holders.

21.5 The Bank may (without prejudice to its rights and remedies against any of the Joint Holders) deal separately with any Joint Holder on any matter. This may include settling, varying or discharging the liability of, or granting time or other indulgence to, or making other arrangements with, any of them.

21.6 Any Account Mandate shall not end automatically upon the death or legal incapacity of one of the Joint Holders, but shall remain in force until repudiated by the Bank or until written revocation by the survivor or survivors.

21.7 The following shall apply in the event of any Joint Holder's death:

- (a) The survivor(s) shall immediately give the Bank written notice thereof and the Bank shall be entitled (whether before or after receiving such notice) to take such proceedings, require such documentary evidence and inheritance or estate tax waivers, retain such portion of and/or restrict such transactions in the joint Account as the Bank may in its sole and absolute discretion deem advisable to protect the Bank and/or the Client against any legal or tax liability, penalty or loss under any Applicable Laws or otherwise.
- (b) The estate of any deceased Joint Holder shall be liable and each surviving Joint Holder shall continue to be jointly and severally liable to the Bank for any net debit balance or loss in the joint Account in any way resulting from the completion of transactions initiated before the Bank's receipt of the written notice of the Joint Holder's death or incurred in the liquidation of the Account or in the adjustment of the interests of the respective parties.
- (c) **It is the Joint Holders' express intention to create an estate or account as joint tenants with rights of survivorship and not as tenants in common. Subject to any specific instructions given to the Bank and/or subject to any claim by any competent authority, on the death of a Joint Holder the entire interest in the joint Account shall be vested in the surviving Joint Holder(s) on the same terms and conditions as before and the Bank shall be entitled to hold any credit balances, assets, deeds, documents and other property whatsoever held by it under the joint Account to the order of the survivor(s), but without in any manner releasing the deceased Joint Holder's estate from any obligation or liability under the joint Account.**

**Accordingly, a payment by the Bank of the outstanding assets in the joint Account to the remaining Joint Holder(s) shall be a sufficient discharge of the Bank's liability under the Account.**

**The above shall be subject to (i) any rights which the Bank may have in respect of such credit balances, assets, deeds, documents and other property arising out of any lien, mortgage, charge, pledge, set-off, counterclaim or otherwise, or (ii) any step which the Bank may consider necessary or desirable in the event of any Claim by any person other than the survivor(s), and each Joint Holder agrees to indemnify each Indemnitee in full for any Claim incurred in connection with the making of any such payment, the delivery of any such assets, deeds, documents or other property or complying with any request or authorisation from (as the case may be) the survivor(s) or the last survivor's personal representatives.**

**Without limiting the foregoing, the Bank shall not be obliged to honour Instructions for the disbursement of any assets from the joint Account unless it is satisfied that there is no actual or potential liability to the Bank in respect of any taxation or other third-party claim in Hong Kong or elsewhere arising on the death of such deceased Joint Holder.**

21.8 Upon the Bank receiving written notice of the death, bankruptcy or other incapacity of any Joint Holder, any automatic disposal Instructions or standing Instructions for the operation of a joint Account of such persons will cease to be effective.

21.9 Unless otherwise agreed by the Bank, any notice or communication sent by the Bank to any of the Joint Holders shall be deemed to have been sent to all of them and any notice or communication sent to the Bank by any of the Joint Holders shall be deemed to have been sent by each of them.

21.10 If the joint Account is operated on the Instructions of more than one Joint Holder or Authorised Person acting jointly, only Instructions from and documents executed in accordance with such joint authority will be accepted by the Bank and will be binding on each Joint Holder.

21.11 If the joint Account is operated on the Instructions of a single Joint Holder or Authorised Person, the Bank will accept Instructions from and documents executed by any one of such persons (including, for the avoidance of doubt, Instructions regarding the closure or termination of such Account) and authorisation given in writing by one of the Joint Holders or by his Authorised Person is sufficient to release the Bank from banking secrecy with regard to the joint Account.

21.12 If the Client is, and an Account is opened in the name of, a partnership (except one which has separate legal personality), the liabilities of the Client (i.e. the partnership) shall not be affected by, and shall continue and be binding on the Client and all partners from time to time constituting the Client (i.e. the partnership) despite, any change in:

- (a) the name or constitution of the partnership; or
- (b) the partners of the partnership due to death, bankruptcy, receivership, winding-up or retirement of any existing partner, or the addition of any new partner.

The Bank shall be entitled to debit such Account at any time in respect of any sum howsoever due or owed to the Bank by any partner from time to time constituting the Client (i.e. the partnership).

21.13 This Clause 21 governs the relations between the Client and the Bank only, irrespective of the internal relationship between the persons comprising the Client themselves or their successors and regardless, in particular, of their respective rights of ownership of the assets in the relevant Account.

## 22. Collateral

22.1 When any Collateral for any Services or transaction is required by the Bank as security for the Client's obligations to the Bank, the Client shall (and shall procure that any Collateral Provider accepted by the Bank for such purpose shall) maintain at all times sufficient Collateral as determined by the Bank in its sole discretion. The Client shall, at the request of the Bank, execute and deliver (and procure the execution and delivery by any Collateral Provider of) all such deeds and documents and take (and shall procure the taking by any Collateral Provider of) all such actions as the Bank may request in order to perfect the Bank's security interest in the Collateral.

22.2 The Bank may further:

- (a) require that the Client or any Collateral Provider enter into such Collateral Documents as the Bank may consider necessary or desirable;
- (b) determine and modify acceptable initial and maintenance margins for Collateral of different types;
- (c) at the cost of the Client register any shares or other Securities or assets held by it in the name of the Bank or any nominee for the Bank;
- (d) without prejudice to Clause 23, credit the income and proceeds of any sale of Securities, bonds or other instruments held as Collateral against the amount outstanding to the Bank, and restrict any further borrowing in respect of the amount so credited;
- (e) in respect of any Collateral, exercise on behalf of and at the risk of the Client or any Collateral Provider any stop-loss or close out any contracts or transaction which the Bank considers desirable to protect its interests and its security; and/or
- (f) require the Client to provide or procure the provision of such financial and other information relating to the Client or any Collateral Provider as the Bank may require.

22.3 The eligibility and relevant percentage of the value of the assets to be included in the computation of Collateral Lending Value shall be as determined by the Bank and advised to the Client from time to time. The Bank may at its discretion add or remove any specific assets or category or type of assets from eligibility and/or increase or reduce the eligible percentage of the Collateral Lending Value thereof.

22.4 Irrespective of the Bank's own monitoring procedures, it is the Client's obligation to monitor and maintain sufficient Collateral with the Bank such that the Client's liability to the Bank is secured with adequate Collateral at all times.

**22.5 In the event that the Collateral provided is, in the sole opinion of the Bank, no longer sufficient to meet its requirements, the Bank may (but shall not be obliged to) take such action as the Bank in its sole discretion deems fit, including placing stop-loss orders, closing out part or all of any open positions or realising such part or all of the Collateral as the Bank deems necessary to satisfy the liabilities of the Client without further notice to or consent from the Client or any Collateral Provider. If after any such action by the Bank the Client's Account remains in deficit, whether actual or contingent, the Client will be liable for the deficit and shall repay the Bank immediately upon demand.**

22.6 Immediately upon any demand by the Bank and at the Client's expense (including the payment of any legal costs and fees incurred by the Bank), the Client shall, and shall procure that any Collateral Provider shall, execute all such documents and do all such things as the Bank shall from time to time require to perfect, protect or enforce the Collateral or any part thereof and the Bank's title to the security thereby constituted or intended to be constituted by the Collateral, and to give effect to any of the rights conferred on the Bank, including any assignments and rights of subrogation.

22.7 The Client shall not, and shall procure that any Collateral Provider shall not, sell, transfer, assign, encumber, pledge, create any further mortgage or charge over, dispose of or otherwise deal with the Collateral or any part thereof or any interest therein.

- 22.8 Notwithstanding that the Bank may be appointed as a custodian or agent or otherwise act in any other fiduciary capacity for all or part of the Collateral, the Bank may upon the enforcement of its rights, sell, dispose of, realise or otherwise deal with the Collateral as the Client's agent or as mortgagee, chargee or pledgee thereof, as the case may be, as the Bank may at its absolute discretion deem fit without incurring any liability whatsoever or howsoever in respect of such fiduciary capacity.
- 22.9 The Client further authorises, and shall procure that any Collateral Provider shall authorise, the Bank (at its absolute discretion) 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 Bank's claims against the Client in the event of any proceedings in or analogous to bankruptcy, liquidation, winding-up, composition or arrangement and the Bank may apply any or all of such proceeds to such account, obligation or liability of the Client as the Bank may (in its absolute discretion) from time to time conclusively determine.

### **23. Consolidation of Accounts, Lien and Right of Set-Off**

- 23.1 In addition to any general lien or similar right to which the Bank may be entitled by law, the Bank shall have a continuing lien over all assets, items of value and rights (whatever their nature or maturity dates), held or to be held for the Client's account at the Bank (including assets held in any Custody Account) or with third parties, or in safety deposit boxes rented by the Bank to the Client, or otherwise in the Bank's possession or control for any reason whatsoever and whether or not in the ordinary course of the Bank's business, for all sums due to the Bank resulting from its business relationship with the Client including the payment of all obligations of the Client in connection with any Transactions and irrespective of their maturity dates or the Currencies in which they are denominated, with power for the Bank to sell such assets or items of value without notice to the Client.
- 23.2 Immediately on the Client's default, the Bank may sell such assets or items of value (whether by way of public or private sale or otherwise) without any judicial proceedings whatsoever. The Bank may retain from the proceeds obtained the total amount due to the Bank, including all costs, charges and expenses incidental to such sale. **The Client shall be responsible to the Bank for any deficiency whatsoever and howsoever arising and will immediately on demand pay the amount of such deficiency to the Bank. The Client agrees to perform all such acts as the Bank may reasonably consider necessary for the purpose of maintaining, protecting or (if required) perfecting the Bank's right of lien.**
- 23.3 **The Bank may at any time and without prior notice to the Client, and in addition to its rights under general law, combine, consolidate, merge, set-off, transfer or apply all or any credit balance on any Account or account (whether subject to notice or not and whether matured or not and in whatever currency) of the Client or to which the Client is beneficially entitled, whether jointly or otherwise, with the Bank, any of its Agents, any of its branches or other offices or with any EFG Bank Group Member anywhere in the world with all liabilities to the Bank and set off, debit, withhold, apply or transfer any sum or sums standing to the credit of any one or more of such Accounts or accounts (even if this requires the breaking of any deposit before its maturity date) in or towards satisfaction of the Total Liabilities, and for such purpose the Bank may convert any Currency to another Currency in its absolute discretion. The Bank's rights shall not be affected by the Client's bankruptcy, insolvency, death or winding-up. Nothing in this Clause shall be construed so as to constitute a security interest, whether by way of charge or otherwise.**

To the maximum extent permitted by and not inconsistent with any Applicable Laws, the circumstances under which the Bank may exercise its rights of set-off against the Client include (i) where any of the obligations or liabilities of the Client owing or incurred to the Bank become overdue, (ii) where any attachment, distress, execution or similar process is levied against the Client, (iii) where a bankruptcy, winding-up or similar petition is filed against the Client, (iv) where a liquidator, trustee, administrator, receiver or similar officer is appointed over all or a substantial part of the Client's business or assets or (v) where the Bank has reason to believe that the Client is unable to pay its debts when due. The Bank will promptly inform the Client after exercising any rights of set-off.

### **24. Termination, Suspension etc.**

- 24.1 The Client may close all or any Accounts or terminate all or any Services at any time by written notice to the Bank, in which event the Bank may at its discretion either immediately close out all existing deposits and contracts and Transactions (notwithstanding that they have not reached maturity) or hold any deposits or contracts or Transactions to maturity or terminate any Service, and having done so consolidate all relevant balances and account to the Client for the net amounts due in accordance with the Client's Instructions.
- 24.2 **The Bank may at any time (without giving reasons and without assuming or incurring any liability whatsoever) close, suspend or freeze any Account with the Bank, or convert any Account with the Bank into another type of Account with the Bank by giving reasonable prior written notice to the Client. Under normal circumstances, the notice period shall be not less than thirty (30) days.**



**Notwithstanding the foregoing, in the event of any exceptional circumstances including the actual or suspected use of any Account for or in connection with any criminal, fraudulent and/or illegal activities or transactions, the Bank may close, suspend or freeze any Account without giving prior notice and also notwithstanding that the relevant Account(s) is or are in credit. Any termination of any Account(s) shall not affect any liability of the Client in respect of any Open Transaction which is outstanding at the time of termination, or any other liability of the Client or any Collateral Provider unless and until any negative account balance has been reduced to nil.**

- 24.3 The Bank reserves the right, in particular, to cancel all credit committed or advanced, in which case all amounts owed to the Bank shall immediately become due and payable.**
- 24.4 Upon termination by the Bank, and in the absence of any express agreement with the Client as to the disposal of the same, the Bank may at its sole discretion take any one or more of the following actions:**
- (a) determine that a Termination Election will apply and that all Transactions will be Closed Out or terminated;**
  - (b) exercise its rights under Clause 14.1 in Section 3 of Part B of the General Conditions as if an Event of Default had occurred; or**
  - (c) at the cost of the Client close out all contractual positions and liquidate all investments held in connection with the Account and take such other steps as it may consider appropriate, and may mail to the Client at its last known address for Correspondence shown in the records of the Bank (which shall be conclusive) a cheque or pay to the Client in other manner as the Bank determines for the net proceeds of the realisation of the Account(s), in such Currency as the Bank may consider appropriate, and the liability of the Bank to the Client in respect of the Account(s) of the Client shall thereby be discharged in full.**

## **25. Amendments**

- 25.1 Unless specifically provided otherwise in the Agreement, the Bank may at its discretion at any time alter, amend, delete, supplement or substitute any provisions of the Agreement or adopt new terms and conditions and/or other rules by giving the Client notice as follows prior to any such variation taking effect:**
- (a) thirty (30) days' notice where the variation affects fees and charges payable by the Client (unless such fees and charges are not within the Bank's control) and/or the liabilities or obligations of the Client; or**
  - (b) reasonable notice for all other variations.**
- 25.2 Such variation shall be deemed to be incorporated in the Agreement (in the case of a variation requiring thirty (30) days' notice) upon the expiry of that period and (in the case of a variation requiring reasonable notice) upon the expiry of the notice period set out in the notice (each an "Effective Date"). The variation shall bind the Client if (i) the Client or any Authorised Person continues to operate or use any Account or Service on or after the Effective Date or (ii) the Client fails to take steps to dispute such variations prior to the Effective Date.**
- 25.3 Notice of variation will generally be given in writing. However, the Bank may also give notice by statement insert, display, advertisement or by such other means as the Bank considers an appropriate and effective means of notification. The notice of variation will show the variation of the Agreement, how the Client may indicate refusal and the consequence of such refusal. When any variation involves substantial changes or if the changes are complicated, the Bank may provide a summary of the key features or, if the Bank deems appropriate, a consolidation or re-statement of the revised Agreement.**
- 25.4 Where a new or enhanced Service involves a cost or potential liability or potential risk of financial loss to the Client, the Bank will not automatically enroll the Client for that new or enhanced Service without the Client's express consent. Where a new or enhanced Service does not involve a cost or potential liability or potential risk of financial loss to the Client, the Bank will allow the Client a reasonable period (which will not be less than fourteen (14) days) to decline acceptance and will indicate how the Client may decline acceptance.**

## **26. Waiver and Severability**

- 26.1 No failure or delay by the Bank in exercising any right, power or remedy under the Agreement, any Facility Document or any document relating to any of them, or any time granted for performance of any obligations of the Client, shall impair such right, power or remedy or operate as a waiver, nor shall any single or partial exercise of the same preclude any further exercise or the exercise of any other right, power or remedy. The rights, powers and remedies provided in the Agreement, any Facility Document and each document relating to**

them entered into from time to time are cumulative and do not exclude any other rights, powers and remedies provided by law.

- 26.2 If at any time any provision of the Agreement, any Facility Document or any other document relating to them is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, the legality, validity and enforceability of such provision under the law of any other jurisdiction, and of the remaining provisions of the Agreement, Facility Document and each document relating to them shall not be affected or impaired thereby. Each of the Bank's rights, powers and remedies shall continue in full force and effect until and unless expressly amended or waived in writing by the Bank.

## **27. Further Assurance**

At the Bank's request, the Client shall promptly do or procure the doing of all such acts and things and execute or procure the execution of all such instruments and documents as the Bank may in its sole discretion consider necessary or desirable for giving full effect to the Agreement, any Facility Document, any other document entered into in connection with any of them or any Instructions given, or for securing to the Bank the full benefits of all rights, powers and remedies conferred upon the Bank under any of the same.

## **28. Miscellaneous**

- 28.1 For all purposes, including any legal proceedings, a certificate by any of the Bank's officers as to the sums and liabilities for the time being due or incurred to the Bank by the Client shall, in the absence of manifest error, be conclusive evidence thereof against the Client.
- 28.2 Where the Bank has the right to make any determination or to exercise any discretion as regards any matter under the Agreement, such right or discretion may be exercised by the Bank in such manner as the Bank shall solely decide.
- 28.3 Unless the Bank specifically agrees otherwise, information including interest and exchange rates, stock prices and product information quoted by the Bank's customer service hotlines or through the internet or other electronic channels is for indication purposes only and is not binding. The actual rate or price that shall apply to a particular transaction can only be determined at the time the transaction is entered into. Any rate, price and information offered by the Bank for the purpose of the relevant transaction shall be binding on the Client upon their acceptance by the Client or (where applicable) the relevant Authorised Person(s) irrespective of any different rate, price or information quoted by the Bank.

## **29. Time of the Essence**

Any time, date or period mentioned in the Agreement may be extended by mutual agreement between the Bank and the Client or waived by the Bank, but subject thereto, as regards any time, date or period originally fixed or so extended or waived, or any margin call made hereunder, time shall be of the essence.

## **30. Assignment, etc.**

- 30.1 The Client shall not in any way assign, transfer (whether by novation or otherwise), declare a trust over, encumber, charge or otherwise dispose of its rights, interests, powers or obligations under the Agreement and in respect of any Account, Services or transactions or any assets kept in the custody of the Bank or any Agent without the Bank's prior written consent.
- 30.2 The Agreement and any other documents entered into from time to time in connection with it (including any documents relating to the provision of any Collateral to the Bank) shall operate for the benefit of the Bank (including, for the avoidance of doubt, its successors, permitted assigns, permitted transferees and any persons deriving title under any of them), notwithstanding any change by way of amalgamation, consolidation or otherwise in the constitution of the Bank or any such successor, permitted assign, permitted transferee or any person deriving title under any of them. The Bank may at any time assign or otherwise transfer (including by novation), dispose of or deal with all or any of the Bank's rights, interest, powers and/or obligations under the Agreement and any other documents or Collateral relating to it to any person, in whole or in part in its absolute and unfettered discretion and without requiring the Client's or any other person's consent. The Bank shall be released and discharged from any liability or responsibility in respect of any Collateral so transferred, but shall retain all its rights, interest and powers in respect of Collateral not so transferred.
- 30.3 The Bank shall not be required to recognise any person other than the Client as having any interest in any Account and without limitation the Bank shall not be under any obligation to account to any third party beneficial owner of the assets in any Account disclosed by the Client to the Bank or, in the case of any Account designated as a trust Account to any person who is not established to the satisfaction of the Bank to be the trustee of the relevant trust for the time being.
- 30.4 The Agreement shall be binding on the Client and its estate, executors, personal representatives, trustee in bankruptcy, receiver, liquidator or other successor in title. If the Client is a partnership, the Agreement shall

apply notwithstanding any change in the membership of the Client, the death, bankruptcy, retirement, receivership, winding-up or retirement of any partner(s) or the admission of any new partner(s).

### **31. Governing Law and Dispute**

- 31.1 The construction, validity and performance of the Agreement, all non-contractual obligations (if any) arising from or connected with the Agreement, and all relations between the Bank and the Client shall be governed by Hong Kong law.
- 31.2 Subject to any right of the Client to resolve any complaint under the Financial Dispute Resolution Scheme, any dispute, controversy, difference or claim arising out of or relating to any relations between the Bank and the Client, or to the Agreement, including the existence, validity, interpretation, performance, breach or termination thereof or any dispute regarding non-contractual obligations arising out of or relating to the Agreement (a “**Dispute**”) shall be referred to and finally resolved by arbitration administered by the Hong Kong International Arbitration Centre (HKIAC) under the HKIAC Administered Arbitration Rules in force when the Notice of Arbitration is submitted. The law of this arbitration Clause shall be Hong Kong law. The seat of arbitration shall be Hong Kong. The number of arbitrators shall be three. The arbitration proceedings shall be conducted in English.
- 31.3 At any time before the Bank has submitted either a Notice of Arbitration or an Answer to the Notice of Arbitration, as the case may be, in relation to the resolution of a Dispute, the Bank, at its sole option, may elect by notice in writing to the Client that such Dispute shall instead be heard by the courts of Hong Kong or by any other court of competent jurisdiction. Following any such election, no arbitral tribunal shall have jurisdiction in respect of such Dispute. In the event that the Bank serves a written notice of election in respect of a Dispute, the Client agrees with the Bank that the courts of Hong Kong shall have non-exclusive jurisdiction to hear and determine the Dispute and, for such purposes, irrevocably submit to the jurisdiction of such courts. Nothing in this Clause 31.3 shall (or shall be construed so as to) limit the right of the Bank to bring proceedings for the determination of a Dispute against the Client in any other court of competent jurisdiction, nor shall the bringing of such proceedings in any one or more jurisdictions preclude the bringing of proceedings by the Bank in any other jurisdiction (whether concurrently or not) if and to the extent permitted by law. For the purposes of this Clause 31.3, the Client irrevocably waives any objection which the Client might now or hereafter have to the courts of Hong Kong being nominated as the forum to hear and determine any proceedings arising out of or in connection with the Agreement and the Client agrees not to claim that any such court is an inconvenient or inappropriate forum.
- 31.4 The Client agrees that any legal process (including, any documents initiating court proceedings such as a writ of summons) in connection with any proceedings in Hong Kong or a notice referred to in Clause 31.3 above (by which the Bank may elect that a Dispute shall be heard by the courts of Hong Kong or by any other court of competent jurisdiction) may be sufficiently served on the Client by service on the Client by pre-paid recorded delivery or delivery by hand or courier to the address of the Client given in the Account Opening Booklet, Account Mandate of the Bank or such other address as the Client may from time to time notify in writing to the Bank. Where the Client does not have an address in Hong Kong, the Client shall, if required by the Bank, appoint an agent for service or process in Hong Kong. Nothing in the Agreement shall affect the right of the Bank to serve process on the Client in any other manner permitted by law.
- 31.5 To the extent that the Client or its assets may in any jurisdiction be entitled to immunity from suit, execution, attachment or other legal process (whether or not such immunity is claimed), the Client hereby irrevocably waives such immunity to the fullest extent permitted by the laws of such jurisdiction.

### **32. Language**

Upon request, the Bank shall provide the Chinese version of this Agreement, which will be provided for reference only. If there is any inconsistency or conflict between the English and Chinese versions of the Agreement, or any other document relating to any Account or Services which is translated into Chinese or any other language from time to time, the English language version shall prevail to the extent of such discrepancy or inconsistency.

***The Client acknowledges that, prior to signing of the Account Opening Booklet or the Discretionary Management Mandate (whichever is applicable), the Bank has recommended the Client to carefully read the Agreement and such other documents, to ask questions on, and understand, the Agreement and any such other documents, and to seek independent advice and assistance thereon (including Chinese translation and interpretation) and that, by signing the Opening Account Opening Booklet or the Discretionary Management Mandate (whichever is applicable), the Client is deemed to have read, understood and accepted the Agreement and such other documents.***

## Section 2: Banking Services

References to the term "Clause" in this Section 2 of Part B of the General Conditions shall mean a "Clause" in this Section.

### 1. Deposits and Withdrawals

1.1 The Bank reserves the right to:

- (a) impose minimum or maximum amounts or balance requirements in respect of the opening, operation and/or closing of Accounts, including minimum balances or required to be maintained in interest-bearing Accounts before interest is payable on credit balances in such Accounts;
- (b) specify the Currencies in which it accepts deposits and in which any Account in a foreign Currency may be denominated as well as the method of payment from and/or into any such Account;
- (c) specify the time periods for which time deposits may be placed with the Bank; and
- (d) designate and change the Account numbers of any Account.

1.2 The Client may make deposits into, and withdrawals from, any Account in such manner as the Bank may prescribe from time to time. However, the Bank may at any time refuse to accept a deposit into, or allow a withdrawal from, any Account or limit the amount that may be deposited or withdrawn, or return all or part of a deposit. The Bank may do so at its absolute discretion and without giving any reason.

1.3 Unless the Bank agrees otherwise, no deposit is available for withdrawal until the Bank has actually received it and credited the funds to the Account. If the Bank allows withdrawal of a deposit which is not received by the Bank, the Bank may reverse the relevant credit entries to the Account and take any other rectification action which the Bank considers necessary, which reversal and other action shall be binding on the Client.

1.4 If a cash deposit is not immediately verified, it is subject to counting by the Bank and, in the case of any discrepancy between the amount on the deposit receipt and the Bank's cash count, the latter shall be final and conclusive. Deposit receipts issued by the Bank are not valid receipts unless validated by the Bank's machine stamp or computer terminal or signed by the Bank's duly authorised signatory. A deposit receipt does not evidence that the deposit has been cleared.

1.5 The Bank may accept deposits by cheque or other Instrument or by telegraphic or electronic transfer. Unless otherwise agreed by the Bank, the Client may not withdraw the proceeds of Instruments deposited (whether drawn on the Bank or sent for collection) or funds transferred until they are cleared. Without prejudice to Clause 7.1, if the Bank allows withdrawal of the proceeds before they have been cleared and the Instrument or transfer is dishonoured, the Client must repay the Bank promptly on demand and the Bank may debit the relevant amount (including applicable fees and charges) from the Account.

1.6 If the Bank (in its absolute discretion) accepts deposits of foreign Currency cheques, the following conditions apply:

- (a) The Bank reserves the right to elect which cheques drawn on foreign banks to purchase and which to send for collection. If the Bank purchases a cheque, it will credit the relevant Account (using the Bank's prevailing buying rate) with the proceeds immediately, under advice to the Client, subject to (i) the required time for clearing the cheque before the credited funds can be withdrawn from the Account and (ii) the Bank's right of recourse to the Client in the event of dishonour.
- (b) If the Bank sends a foreign Currency cheque for collection, the Uniform Rules for Collection of the International Chamber of Commerce (as revised or amended from time to time) will apply and the proceeds will only be credited to the Account after the Bank has received payment from the foreign bank.
- (c) If cheques purchased are dishonoured or cheques collected are subsequently, pursuant to any Applicable Laws, required to be repaid or refunded, the Bank may debit the Account with the value of the cheque as calculated by the Bank using the higher of (i) the Bank's prevailing selling rate or (ii) the original buying rate, plus any charges as determined by the Bank.
- (d) The Bank will debit overseas charges (if any) to the Account under advice to the Client.
- (e) Cheques received after the relevant cut-off times specified by the Bank from time to time will be processed on the next following Business Day.

**The Client acknowledges the risks involved in accepting foreign Currency cheques as payment or settlement of transactions, including the risk arising from refund periods imposed by the Applicable**

**Laws of some foreign jurisdictions which may require the Bank to refund a cheque (sometimes even after clearing and payment of the proceeds to the payee). The Bank may seek repayment from the Client in respect of any cheque required to be refunded or repaid. The Client shall indemnify the Bank in full for any consequences arising from, and any Claims made against the Bank by any third party as a result of the payment and settlement of foreign Currency cheques by the Bank for the Client.**

- 1.7 The Bank may, at the Client's sole risk and cost, return dishonoured, unpaid or returned cheques or Instruments by ordinary mail to the Client's address last notified to the Bank.
- 1.8 The Client may only draw on credit balances (or pre-approved Facilities) on any Account with the Bank. The Client may not use any Account balance to draw on accounts with another EFG Bank Group Member.
- 1.9 Subject to Clause 1.12, the Bank will pay interest only on credit balances on Accounts with the Bank (and not for credit balances on accounts maintained with the Bank's correspondents). Interest will be paid at such rates (if any) and at such times as the Bank may from time to time determine. No interest will be paid on uncleared funds. Unless otherwise specified, no interest is paid on credit balances in current Accounts.
- 1.10 Interest on interest-bearing Accounts is calculated on a simple interest basis and accrues daily on the basis of a 360-day year or 365-day year (in both ordinary and leap years) as specified by the Bank for the relevant Currency in accordance with applicable convention. The Bank pays interest at monthly or other regular intervals as determined by the Bank but special arrangements may apply to time deposits. Any rate of interest (except for a time deposit) may be varied by the Bank at any time without prior notice to the Client. The details applicable to the Client's Account can be obtained from the Client's relationship manager.
- 1.11 Overdrafts on any Account are only allowed with the Bank's prior written agreement. However, the Bank may accept an Instruction to withdraw or transfer any amount from an Account, or to pay any Instrument, notwithstanding that such withdrawal, payment or transfer results in an Account being overdrawn or in debit. If the Bank allows an overdraft, this only applies for that particular Instruction and, unless the Bank expressly agrees otherwise, the Bank shall have no obligation to allow a similar overdraft in the future. If the Client overdraws any Account or exceeds any agreed borrowing limit without the Bank's prior agreement, the Bank reserves the right to charge default interest and/or other charges at such rates as it may from time to time determine.
- 1.12 The Bank will not pay interest on deposits in an interest-bearing Account if the interest rate for such deposit falls to or below zero and, if the interest rate falls below zero, the Bank will impose a Negative Interest Rate Charge on the applicable deposit.**

## **2. Time Deposits**

- 2.1 Failure to maintain the specified minimum balance of any time deposit may result in no interest or in reduced interest being payable and the Bank may impose a reasonable service charge for the period during which the specified minimum balance is not maintained.**
- 2.2 Unless otherwise indicated below, the following provisions apply to time deposits:
  - (a) Time deposits placed with the Bank will be evidenced by a contemporaneous deposit receipt, confirmation or advice. Such deposit receipt, confirmation or advice is only evidence of the relevant deposit and not a document of title and shall not be pledged, charged or otherwise encumbered as security.
  - (b) Time deposits may only be placed in such Currencies, in such minimum initial deposit amounts and for such fixed deposit periods as the Bank may from time to time determine. Interest on time deposits is fixed for the entire deposit period and is paid at such rate and calculated on such basis as determined by the Bank from time to time. Details of the terms applicable to each time deposit are made available to the Client at the time of making the deposit or upon request.
  - (c) Time deposits are repayable only on the specified maturity date. If this falls on a non-Business Day, it will be extended to the next following Business Day and interest thereon shall be paid up to but excluding that date. **Notwithstanding the foregoing, if so requested by the Client, the Bank may at its discretion permit the early withdrawal (in full or in part) of a time deposit, in which case the Bank reserves its right:**
    - (i) not to pay interest, to deduct any interest already paid or to pay reduced interest on such time deposit (or the relevant part thereof) withdrawn early; and/or**
    - (ii) to prescribe such charges and/or other terms and conditions as the Bank may consider appropriate.**
  - (d) On maturity, the proceeds of the time deposit will be dealt with in accordance with any Instructions for renewal or other disposal then held by the Bank. The Client shall provide the Bank, in writing or in any

other form acceptable to the Bank, with renewal or disposal Instructions at least one (1) Business Day prior to the maturity of a time deposit. Interest ceases to be payable after the maturity date unless the time deposit is renewed. Upon each renewal of a time deposit, a renewal confirmation will be issued to the Client. Where automatic renewal Instructions are given for a time deposit, the prevailing rate on the maturity date will be applied for the succeeding deposit period. If the Bank does not receive any renewal or disposal Instructions prior to the maturity date, the Bank may (but shall have no obligation to) automatically renew the time deposit (together with interest accrued thereon) for the same deposit period, at the then applicable interest rate.

- (e) Withdrawal Instructions for time deposits and denominated in HK Dollars and US Dollars must be received in writing by the Bank one (1) Business Day before the maturity date (or by such other cut-off time as the Bank may from time to time specify). Withdrawal Instructions in other Currencies must generally be received at least two (2) Business Days prior to the maturity date (by such cut-off time as the Bank may from time to time specify).

### 3. e-Cheques

#### 3.1 e-Cheque Deposit Services provisions - application and definitions

- (a) The provisions in this Clause 3 apply to the Bank's services relating to e-Cheques. The other provisions of these General Conditions which apply to paper cheques or generally to the Bank's Services continue to apply to e-Cheque and the Bank's e-Cheques Deposit Services to the extent that they are relevant and not inconsistent with the provisions in this Clause 3. The provisions of this Clause 3 prevail if there is any inconsistency between them and the provisions of these General Conditions with respect to the e-Cheque Deposit Services.

- (b) In this Clause 3, the following terms have the following meanings:

**"Bills of Exchange Ordinance"** means the Bills of Exchange Ordinance (Cap. 19 of the Laws of Hong Kong);

**"Clearing House"** means HKICL;

**"Deposit Channel"** means any channel offered by the Bank from time to time for presentment of e-Cheques for deposit;

**"e-Cheque"** means a cheque (including a cashier's order), issued in the form of an electronic record (as such term is defined in the Electronic Transactions Ordinance (Cap. 553 of the Laws of Hong Kong)) with an image of the front and back of the e-Cheque or e-cashier's order (as the case may be). e-Cheques may be issued in HK Dollars, US Dollars and RMB;

**"e-Cheque Deposit Services"** mean the Services offered by the Bank to the Client from time to time for depositing e-Cheques;

**"e-Cheque Drop Box"** or **"e-Cheque Drop Box Service"** means an electronic drop box provided by the Clearing House that accepts presentment of e-Cheques in respect of which an e-Cheque Drop Box user must register an e-Cheque Drop Box Account with the Clearing House before presenting e-Cheques to a Payee Bank Account, as this term may be amended from time to time in accordance with the e-Cheque Drop Box Terms;

**"e-Cheque Drop Box Account"** means a user account for the e-Cheque Drop Box Service, and for which each user must register with the Clearing House before using the e-Cheque Drop Box for presenting e-Cheques for deposit into a Payee Bank Account, as this term may be amended from time to time in accordance with the e-Cheque Drop Box Terms;

**"e-Cheque Drop Box Terms"** means all the terms and conditions prescribed by the Clearing House from time to time for governing the e-Cheque Drop Box Service provided by the Clearing House and the use of the e-Cheque Drop Box Service;

**"Industry Rules and Procedures"** means the rules and operating procedures governing the handling of e-Cheques adopted by the Clearing House and the banking industry from time to time;

**"Payee Bank"** means the bank at which a Payee Bank Account is held;

**"Payee Bank Account"** means, in respect of each e-Cheque presented for deposit using the e-Cheques Deposit Services, the bank account of the payee of the e-Cheque maintained with the Bank into which the e-Cheque is to be deposited which may be a sole name or a joint name account of the payee; and

"Payer Bank" means the bank which digitally signed an e-Cheque created by its customer.

### 3.2 Nature and scope of e-Cheques Deposit Services

- (a) The Bank may provide e-Cheque Deposit Services at its discretion. If the Bank provides e-Cheque Deposit Services to the Client, the Client may deposit e-Cheques. In order to use the e-Cheque Deposit Services, the Client has to provide such information and documents and accept such terms and conditions which may be required or prescribed by the Bank and the Clearing House respectively from time to time. The Client may also be required to sign forms and documents prescribed by the Bank from time to time.
- (b) e-Cheque Deposit Services allow the Client and other persons to present e-Cheques (whether payable to the Client and/or any other holder of the Payee Bank Account) for deposit with the Bank (as Payee Bank), using the e-Cheque Drop Box Service offered by the Clearing House or using the Bank's Deposit Channels, in accordance with Clause 3.3 below.
- (c) The Bank may provide e-Cheque Deposit Services relating to e-Cheques that are issued in any Currency specified by the Bank from time to time, including HK Dollars, US Dollars or RMB.
- (d) The Bank has the right to set or vary from time to time the conditions for using the e-Cheque Deposit Services. These conditions may include the following (or any of them):
  - (i) the service hours of the e-Cheque Deposit Services (including cut-off times for presenting e-Cheques); and
  - (ii) any fees and charges payable by the Client for the e-Cheque Deposit Services.

### 3.3 e-Cheque Deposit Services

- (a) The e-Cheque Deposit Services may allow presentment of e-Cheques for deposit with the Bank (as Payee Bank) using the e-Cheque Drop Box Service provided by the Clearing House or using the Bank's Deposit Channels.
- (b) e-Cheque Drop Box Service
  - (i) The e-Cheque Drop Box Service is provided by the Clearing House. The Client is bound by the e-Cheque Drop Box Terms in relation to the Client's use of the e-Cheque Drop Box Service. The Client is solely responsible for performing its obligations under the e-Cheque Drop Box Terms.
  - (ii) In order to use the e-Cheque Drop Box Service, the Client is required by the e-Cheque Drop Box Terms to register an e-Cheque Drop Box Account with one or more Payee Bank Account for presenting e-Cheques. The Client is allowed by the e-Cheque Drop Box Terms to register an e-Cheque Drop Box Account with a Payee Bank Account that is the Client's same-name account or an account other than the Client's same-name account. The Client is responsible for the presentment of all e-Cheques by itself or any other person using its e-Cheque Drop Box Account (including presentment of any e-Cheques to a Payee Bank Account other than the Client's same-name account).
  - (iii) Any issue relating to the use of the e-Cheque Drop Box Service should be handled in accordance with the e-Cheque Drop Box Terms. The Bank may (but has no obligation to) provide reasonable assistance to the Client. In particular, the Bank does not have the electronic record or image of any e-Cheque deposited using the e-Cheque Drop Box Service. On the Client's request, the Bank may (but has no obligation to) provide the date, e-Cheque amount, e-Cheque number, payee name and any other information agreed by the Bank relating to an e-Cheque deposited using the Client's e-Cheque Drop Box Account.
  - (iv) The Bank gives no representation or guarantee, whether express or implied, relating to the availability, quality, timeliness or any other aspect of the e-Cheque Drop Box Service provided by the Clearing House. Unless otherwise stated in the e-Cheque Drop Box Terms, the Client bears the responsibilities and risks relating to the use of the e-Cheque Drop Box Service. The Bank is not liable for loss, damage or expense of any kind which the Client or any other person may incur or suffer arising from or in connection with the use of the e-Cheque Drop Box Service.
- (c) The Bank's Deposit Channels

The Bank may specify or vary from time to time (i) the available Deposit Channels without notice; and (ii) the terms governing the use of any Deposit Channel.

### 3.4 Handling of e-Cheques, associated risks and the Bank's liabilities

#### (a) Handling of e-Cheques

The Client understands that the Bank and other banks have to follow the Industry Rules and Procedures in the handling, processing, presentment, payment, collection, clearance and settlement of e-Cheques payable to the Client. Accordingly, the Bank is entitled to collect any e-Cheque payable to the Client by presenting that e-Cheque to the Payer Bank in accordance with the Industry Rules and Procedures even if the Bills of Exchange Ordinance may not expressly provide for presentment of e-Cheques or may specify any other manner for presentment of cheques.

#### (b) Restriction of the Bank's liability

**Without reducing the effect of the provisions of these General Conditions:**

- (i) **the Bank is not liable for loss, damage or expense of any kind which the Client or any other person may incur or suffer arising from or in connection with the use of the e-Cheque Deposit Services or the handling, processing, presentment, payment, collection, clearance or settlement of e-Cheques presented by the Client or any other person using the Deposit Channels provided by the Bank to the Client, except to the extent that any loss, damage or expense incurred or suffered is direct and reasonably foreseeable arising directly and solely from the Bank's negligence or wilful default or that of the Bank's officers, employees or agents;**
- (ii) **in particular and for clarity, the Bank is not liable for loss, damage or expense of any kind which the Client or any other person may incur or suffer arising from or in connection with the following (or any of them):**
  - (1) **use of the e-Cheque Drop Box Service by the Client or any other person, or the e-Cheque Drop Box Terms;**
  - (2) **the Client's failure to comply with its obligations relating to the e-Cheque Deposit Services;**
  - (3) **presentment of any e-Cheque payable to the Client in accordance with the Industry Rules and Procedures despite the provisions of the Bills of Exchange Ordinance; and**
  - (4) **any failure or delay in providing the e-Cheque Deposit Services, or any error or disruption relating to the e-Cheque Deposit Services, caused by or attributed to any circumstance beyond the Bank's reasonable control; and**
- (iii) **in no event will the Bank be liable to the Client or any other person for any loss of profit or any special, indirect, consequential or punitive loss or damages.**

#### (c) The Client's confirmation and indemnity

- (i) The Client accepts the restriction of liabilities and disclaimers imposed by the Bank and the Clearing House in relation to the e-Cheque Deposit Services and the services provided by the Clearing House respectively. The Client accepts and agrees to bear the risks and the liabilities for depositing e-Cheques.
- (ii) **Without reducing the effect of any indemnity given by the Client under these General Conditions or any other rights or remedies that the Bank may have, the Client will indemnify the Bank and the Bank's officers, employees and agents and hold each of them harmless against all liabilities, claims, demands, losses, damages, costs, charges and expenses of any kind (including legal fees on a full indemnity basis and other expenses reasonably incurred) which may be incurred or suffered by the Bank or any of them and all actions or proceedings which may be brought by or against the Bank or any of them as a result of or in connection with the Bank's provision of the e-Cheque Deposit Services or the Client's use of the e-Cheque Deposit Services.**
- (iii) The above indemnity does not apply to the extent that it is proved that any liabilities, claims, demands, losses, damages, costs, charges, expenses, actions or proceedings are direct and reasonably foreseeable arising directly and solely from the Bank's negligence or wilful default or that of the Bank's officers, employees or agents.



- (iv) The above indemnity shall continue to have effect after the termination of the e-Cheque Deposit Services.

#### 4. Credits / Inward Remittances

- 4.1 The Bank may, without being under any obligation to do so, accept any inward remittances of funds, Securities or other items of value made by any third party for the account of the Client. Whenever the Client's Account has been credited with amounts in advance of collection, such credits are entered subject to collection by the Bank, and the Bank may in its absolute discretion refuse to permit the Client to draw against such credits until collected. The Bank shall have the right, without prior notice to the Client, to reverse against any Account any inward remittances credited if they have not been paid or if they arise by reason of operational error (including operational error claimed by any correspondent or third party banker).
- 4.2 Inward remittances (whether in HK Dollars or any other Currency) may not be credited to an Account on the same day if the Bank does not receive the related payment advice before the relevant cut-off times as specified by the Bank from time to time. Interest will not accrue on any inward remittance until the funds are actually cleared and credited to the Account.

#### 5. Conditions of Outward Remittances

In the event that the Client requests the Bank to make any telegraphic transfer or other outward remittance (a "remittance"), the following conditions shall apply to any such remittance save to the extent that the Bank may otherwise stipulate prior to making the remittance:

- 5.1 The Bank shall send the remittance entirely at the Client's risk and is at liberty to send the remittance either by plain text or in cipher and the Client acknowledges that the Bank may use any means as the Bank considers reasonable in the circumstances to execute a remittance Instruction, including using any funds transfer system or any intermediary bank in the execution of such Instruction. **The Bank shall not be liable for any loss, delay, error, omission which may occur in the transmission of the message or for its misinterpretation when received or any delay caused by the clearing system of the country in which the payment is to be made or any act, default or negligence of the beneficiary's bank in collecting the remittance. In no event shall the Bank under any circumstances be liable for any loss of profits or contracts or special, indirect or consequential loss or damages.**
- 5.2 The Bank may, at its absolute discretion, require from the Client or any one of the Client's Authorised Persons, confirmation of the remittance application by means of telephone or other manner acceptable to the Bank before acting on the same. The Bank may refuse to act on the application in the absence of such confirmation (in which event the Bank shall have the absolute discretion to determine the disposal of the relevant application), without responsibility or liability on the Bank for any such refusal or delay in acting as a result. The Client shall be responsible for all losses resulting directly or indirectly from fraudulent, duplicate or erroneous remittance Instructions originated or confirmed by any current Authorised Person.
- 5.3 In the absence of specific Instructions, the remittance will be effected in the Currency of the country in which payment is to be made.
- 5.4 All charges/commission outside Hong Kong are for the beneficiary's account unless specified. If specified for the Client's account, such charges/commission shall be in accordance with the Bank's prevailing charge tariff schedule.
- 5.5 The Bank reserves the right to draw any remittance on a different place from that specified by the applicant if in its sole opinion operational circumstances so require.
- 5.6 Where the Bank is unable to provide a firm exchange rate quotation, the Bank shall effect the remittance on the basis of a provisional exchange rate which shall be subject to adjustment when the actual exchange rate is ascertained. Any difference between the provisional rate and the actual rate shall be debited / credited (as the case may be) to the Client's Account and subject to Clause 5.11 below, any shortfall or overpayment shall be for the Bank's account if the Client has no account with the Bank in the relevant Currency.
- 5.7 **Outward remittances may be subject to laws, regulations, foreign exchange controls or other controls, restrictions or measures ("Foreign Restrictions"). It is the Client's sole responsibility to ascertain and comply with such Foreign Restrictions and Clients are strongly advised to make their own enquiries in this regard. The Bank assumes no responsibility for advising the Client of any Foreign Restrictions and neither the Bank nor its correspondents or agents shall be liable for any loss or delay as a result of a payment being subject to such Foreign Restrictions.**
- 5.8 Without limiting the provisions of Clause 5.6 above, in respect of any application for a remittance, the Client:
- (a) acknowledges that (a) the operation of the US Dollar clearing system will be subject to the US Dollar Clearing House Rules and the US Dollar Operating Procedures referred to therein (as the same may be modified from time to time) (together the "**US Dollar Clearing House Rules**"), (b) the operation of

the Euro clearing system will be subject to the Euro Clearing House Rules and the Euro Clearing Operating Procedures referred to therein (as the same may be modified from time to time) (together the "**Euro Clearing House Rules**") and (c) the operation of the RMB clearing system will be subject to the RMB Clearing House Rules and the RMB Operating Procedures referred to therein (as the same may be modified from time to time) (together the "**RMB Clearing House Rules**");

- (b) agrees that, without prejudice to the foregoing, the HKMA shall not owe any duty or incur liability to applicant in respect of any claim, loss, damage or expense (including loss of business, loss of business opportunity, loss of profit, special, indirect or consequential loss) (even if the HKMA knew or ought reasonably to have known of their possible existence) of any kind or nature whatsoever arising in whatever manner directly or indirectly from or as a result of:
  - (i) anything done or omitted to be done in good faith by the HKMA or by the settlement institution of the US Dollar clearing system, HKICL or any member of the (as the case may be) the US Dollar Clearing House, Euro Clearing House or RMB Clearing House in the management, operation or use (including the termination and/or suspension of the settlement institution, the US Dollar, Euro or RMB clearing facilities or any such member) of the US Dollar Clearing House, Euro Clearing House or RMB Clearing House the US Dollar, Euro or RMB clearing facilities or any part of any of them;
  - (ii) without prejudice to paragraph (b)(i) above, by the giving of any notice, advice or approval in relation or pursuant to the US Dollar Clearing House Rules, Euro Clearing House Rules or RMB Clearing House Rules (as the case may be).
- 5.9 Subject to Clause 5.2, the Bank will use reasonable endeavours to process applications received by the Bank on or before the next Business Day.
- 5.10 Applications for same day value are subject to the payment into beneficiary account being received before the cut-off time of the relevant beneficiary bank and the cut-off times related to the geographical location of the destination. On request, the Bank will provide the Client (if available) with further information on a per transaction basis as to when a cross-border transfer will usually reach its destination.
- 5.11 If a remittance, once made, is returned to the Bank for any reason and the Client requests a refund of the remittance amount from the Bank, the Bank may, at its discretion make the payment to the Client at the prevailing buying rate for the relevant Currency less all charges and expenses.
- 5.12 The Client agrees and acknowledges that, in processing cross-border funds transfers, other banks may deduct fees from the payment order issued to them. The Bank is entitled to collect from the Client all remittance charges and other charges including those collected or to be collected by the Bank's correspondent, agent or sub-agent in connection with carrying out the Instructions in accordance with the Bank's prevailing charge tariff schedule. If available, the Bank will provide details of any fees charged by such other bank and whether there is any option for such fees to be paid by the remitting or the recipient party.
- 5.13 Notwithstanding the provisions of Clause 25 of Section 1 of Part B, the Bank reserves the right to revise all remittance charges which are outside its control and the conditions and procedures set out in this Clause 5 from time to time without any notice.**
- 5.14 The Bank may refuse to effect a remittance of RMB if the application does not fulfill the requirements as designated by the HKMA or the relevant clearing bank in Hong Kong from time to time.
- 6. Foreign Currencies**
- 6.1 The Client understands and accepts that foreign Currency deposits, Accounts and transactions involve currency exchange rate risk, in particular, that (a) any earnings on foreign Currency deposits are dependent on the prevailing exchange rates at the time of maturity or withdrawal and (b) adverse exchange rate movements may erase interest earnings completely and reduce the principal amount.
- 6.2 The Bank may, in its sole discretion, effect payments from a foreign Currency Account, or redeem time deposits which are denominated in foreign Currencies, in full or in part in the HK Dollar (or another Currency) equivalent of the relevant foreign Currency amount, calculated at the prevailing Market Rate (as conclusively determined by the Bank). To the extent that circumstances in Currency markets render certain particular Currencies unobtainable from time to time, the Bank also reserves the right to effect payments from a foreign Currency Account, or redeem time deposits which are denominated in foreign Currencies, in full or in part in an alternative Currency as agreed between the Client and the Bank at the prevailing Market Rate.
- 6.3 Without limiting Clause 6.2, if an event occurs which the Bank determines in its absolute discretion as being beyond the Bank's reasonable control and where such event affects or may affect the Currency of an Account of the Client, the Bank may, at its absolute discretion, convert the Currency of that Account at the prevailing exchange rate determined by the Bank to another Currency which is a freely transferable Currency at the

time, as selected by the Bank in its absolute discretion and every payment for the Account will be in the new Currency.

- 6.4 Where in order to pay the proceeds of any transaction, instrument or other transfer to an Account denominated in a different Currency or where any payment, settlement, combination, set-off or transfer requires the conversion from one Currency into another, the Bank may convert the proceeds into a Currency and in a manner the Bank considers appropriate at the prevailing Market Rate.
- 6.5 Where the Client is obliged to make a payment to the Bank in one Currency, but makes payment in another, or where the Bank in exercise of any rights which it may have to recover sums due to it applies sums held in another Currency against the amount due, the payment obligation shall not be treated as discharged unless on conversion to the Currency in which payment should have been made the Bank receives the full amount due, and the **Client shall fully indemnify the Bank against any deficiency arising on such conversion and in respect of all other losses (including the cost of making any conversion) which the Bank may reasonably incur or suffer, provided always that in proving a deficiency or loss the Bank shall not be obliged actually to make such conversion and it shall be sufficient for the Bank to show that it would have suffered the deficiency had an actual conversion been made.**
- 6.6 Unless the Bank in its sole discretion otherwise think fit, any payment from the Bank to the Client shall be payable only in the Currency in which it is due and shall be subject to all Applicable Laws, customs and usages (including any foreign exchange restrictions or controls) and the sovereign risk of the country of such Currency. Without prejudice to the foregoing, the Bank shall discharge its obligations relating to a foreign Currency Account exclusively at the place where such Accounts are held by way of a credit entry in the country of the Currency concerned at any of its banking correspondents or at a bank designated by the Client in that country, and the Bank shall in no circumstances be required to discharge such payment obligations by making delivery of cash.

## 7. Cheques and Other Instruments

- 7.1 The Bank shall have the right, without prior notice to the Client, to reverse against any Account any Instruments, or remittances credited or discounted, if they have not been paid or if the proceeds thereof cannot be freely disposed of, and the Bank may in its absolute discretion refuse to permit the Client to draw against such credits until collected. Until settlement in full of a debit balance, the Bank retains the right to claim payment in full of the total amount of the Instrument (plus interest, charges, commissions and costs) against any party liable thereon under the law governing bills of exchange and promissory notes or on any other legal grounds. The Bank shall be authorised to enforce such claim for its own account until such time as any debit balance shall have been repaid in full. In addition, the Bank shall be entitled to cause protest to be made in the event of such instruments being dishonoured.
- 7.2 The Client is authorised to draw a cheque on the Bank only if it has available in its Account sufficient funds to cover it. The Bank reserves the right, without informing the Client, to dishonour cheques issued without funds or without sufficient funds available in its Account. The Bank shall, in addition, have the right to refuse to deliver cheques and to demand the return of any unused cheques.
- 7.3 **Subject only to the Bank having exercised usual diligence, the Bank shall not be liable for any damage resulting from the issue, use (including fraudulent use), disappearance or falsification of cheques and other Instruments. The Bank is expressly authorised to consider the bearer of a cheque as duly entitled to payment of the amount thereof.**

## 8. Non-execution or Faulty Execution of Orders

- 8.1 If a Client gives to the Bank a number of orders for a total amount in excess of its available assets or credit granted, the Bank shall not be obliged to execute any of them but may determine at its discretion, irrespective of the dates of such orders, which of them (if any) to execute.
- 8.2 **Without limiting in any manner the scope of Clause 14 in Section 1 of Part B, in the event of damage resulting from the non-execution or faulty execution of an order due to any fault of the Bank or its Associates, to the maximum extent permitted by and not inconsistent with any Applicable Laws the Bank's liability shall nevertheless be limited to the actual direct and foreseeable loss attributable to the defective order, unless in the particular circumstances, it has expressly accepted greater liability in writing or in the case of fraud on the part of the Bank or any of its employees, agents or servants.**

## 9. RMB Accounts etc.

- 9.1 A Client who is qualified under the Applicable RMB Regulations may request the Bank to open, and the Bank may in its absolute discretion accept such request and open, an RMB Account for the purposes and subject to the restrictions set out in these General Conditions.
- 9.2 Any RMB Account and RMB transaction shall at all times be subject to the Applicable RMB Regulations and the Applicable RMB Operational Arrangements and may be subject to account limits, and withdrawal

constraints and other restrictions stipulated in the Applicable RMB Regulations and/or Applicable RMB Operational Arrangements. For example:

- (a) Inward and outward RMB telegraphic transfers or remittances to and from the PRC may only be effected subject to compliance with applicable approval or other requirements of the relevant PRC authorities and/or banks.
- (b) Unless the Bank agrees otherwise, the Client may not rely upon any RMB Account balance as Collateral and such balance will not be counted towards the available limit for any Facility offered by the Bank.
- (c) **The Bank may refuse to open or provide or may suspend or terminate an RMB Account or RMB Service or may refuse to effect or may unwind the relevant RMB transaction if it has, in its sole opinion, reason to suspect that the Client does not or does no longer fulfil the relevant requirements under the Applicable RMB Rules and the Applicable RMB Operational Arrangements. The Client alone shall be liable for all Claims resulting therefrom and shall indemnify the Bank for any actions, suits, proceedings, claims, demands, loss, damages, liabilities and costs and expenses which may be taken or made against, or which may be incurred or sustained by, the Bank as a result.**

9.3 The Client shall be bound by and comply with the Applicable RMB Regulations in force from time to time, whether or not notice of any amendments is given to the Client. The Bank reserves the right to amend the General Conditions, specifications (including fees and charges) and information applicable to any RMB Account or RMB Service at any time and from time to time and in accordance with the Applicable RMB Regulations, the RMB Clearing Agreements, the Applicable RMB Operational Arrangements or prevailing limitations in the Hong Kong market. Unless the Applicable RMB Regulations and/or RMB Clearing Agreements require otherwise, such changes shall become effective subject to the Bank's notice to the Client which may be given by display, advertisement or other means as the Bank thinks fit.

9.4 **Without limiting the generality of Clause 6.1, the Client acknowledges that RMB transactions involve additional currency risk as a result of Currency, convertibility and other controls which are or may be imposed from time to time under Applicable RMB Regulations and which may affect the availability or convertibility of RMB, the availability of certain or all RMB transactions (including the exchange and conversion of RMB through banks in Hong Kong or elsewhere) and/or gains or losses arising from RMB transactions.**

9.5 **The Bank may in its sole discretion report all or any transactions and information relating to the Client, any RMB Account, RMB Service and/or RMB transaction (including any intentional or inadvertent breach of these General Conditions, the Applicable RMB Regulations or the Applicable RMB Operational Arrangements) to the relevant authorities, clearing or settlement banks or bodies and/or domestic agent banks as required by the Applicable RMB Regulations and/or the RMB Clearing Agreements and in that respect supply them any information, including details of the identity and contact information of the Client, as the Bank shall deem appropriate. Unless the Applicable RMB Regulations and/or RMB Clearing Agreements require otherwise, the Bank may do so without prior notice and without giving reasons.**

9.6 The Bank may not act on any Instruction as a result of which the balance of an RMB Account may, in the Bank's sole opinion, fall below any minimum limit or exceed any maximum limit specified by the Bank from time to time. If an RMB Account ceases to meet any applicable minimum limit or exceeds any applicable maximum limit, the Bank may (but shall have no obligation to) transfer funds from any other Account of the Client to the relevant RMB Account or transfer funds from the relevant RMB Account to any other Account of the Client to restore compliance with the applicable minimum or maximum limits (as the case may be).

9.7 The Bank may pay interest on credit balances in a RMB Account at such rates and times as the Bank may in its absolute discretion determine from time to time.

9.8 **The Client agrees that the Bank may (without limiting any other rights of the Bank), without prior notice to the Client, debit any charges or other payments due from the Client to the Bank under the Agreement from the RMB Account and/or any other funds held in the Account.**

## 10. Precious Metal Accounts and Physical Precious Metal Accounts

10.1 The provisions in this Clause 10 shall apply if the Bank, in its absolute discretion, has agreed at the request of the Client to open one or more Precious Metal Account(s) and/or Physical Precious Metal Account(s) for the Client. Precious Metal Accounts and Physical Precious Metal Accounts may only be opened for such Precious Metals as the Bank may from time to time accept. The Bank may permit the Client to open more than one Precious Metal Account or Physical Precious Metal Account provided that each separate Precious Metal Account or Physical Precious Metal Account is distinctly identifiable in such manner as the Bank shall require.

The balances in a Precious Metal Account or a Physical Precious Metal Account will be recorded in terms of weight or quantity on the statements sent to the Client.

**10.2 The Client recognises and acknowledges that Precious Metals markets are volatile and there is a possibility that a substantial loss will be incurred from an investment in Precious Metals. A Precious Metal Account or a Physical Precious Metal Account is not a principal-protected product and is not equivalent to a time deposit and provides no yield or interest.**

**10.3 A Precious Metal Account or a Physical Precious Metal Account is not a “protected deposit” and is not protected by the Deposit Protection Scheme in Hong Kong.**

10.4 The following provisions apply to Precious Metal Accounts:

- (a) A Precious Metal Account is a delivery Account (but without any physical stock delivery of Precious Metal), whereby the amount payable by the Bank to the Client or the amount receivable by the Bank from the Client is based on the quantities that the Client may agree to sell or purchase calculated according to the reference prices of the relevant Precious Metal quoted by the Bank from time to time. The reference Precious Metal is Precious Metal bars or unallocated Precious Metal held in the Loco London or Loco Zurich or other markets from time to time as determined by the Bank at its discretion (referred to in this Clause 10 as “**Non-Physical Precious Metal**”).
- (b) The Bank may from time to time sell to or purchase from the Client Non-Physical Precious Metal pursuant to the Client’s purchase or sale Instructions in accordance with the General Conditions and the Bank shall record in the Precious Metal Account the quantity of Non-Physical Precious Metal so purchased and/or sold by the Client. Any balance amount of Non-Physical Precious Metal not yet re-sold by the Client shall be recorded in the Precious Metal Account as owing and due by the Bank to the Client and dealt with in accordance with this Clause 10.
- (c) The price per unit at which the Client makes a purchase or (as the case may be) a sale of Non-Physical Precious Metal is the prevailing price for purchase or (as the case may be) sale per unit of the relevant Precious Metal which the Bank conclusively determines at the time it executes the relevant purchase (or sale) Instruction. This price shall be binding on the Client and is recorded in the receipt relating to the purchase (or sale). Any price quoted by the Bank at any other time is for reference only and is valid only at the precise time it is quoted.
- (d) Unless specifically agreed otherwise, (i) a purchase of Non-Physical Precious Metal will be settled by an immediate debit of the Client’s designated Account and (ii) the proceeds of a sale of Non-Physical Precious Metal will be paid by direct credit to the Client’s designated Account.
- (e) Each purchase or sale Instruction must be given in the form prescribed by the Bank from time to time, specifying the relevant Precious Metal Account designation and the number of units of the relevant Non-Physical Precious Metal to be purchased or (as the case may be) sold. By giving such an Instruction, the Client confirms that it has the full right, power and authority to purchase or (as the case may be) sell the Non-Physical Precious Metal specified in that Instruction.
- (f) Instructions for the purchase or (as the case may be) sale of Non-Physical Precious Metal will only be accepted by the Bank if placed by the Client on a Business Day.
- (g) An Instruction to sell by the Client shall be irrevocable once received by the Bank and the content of the details completed on such form shall be conclusive evidence as to the number of units of Non-Physical Precious Metals to be sold.
- (h) The maximum amount of Non-Physical Precious Metal that can be sold by the Client is limited to the actual balance of the Non-Physical Precious Metal for the time being held in its Precious Metal Account as recorded in the Bank’s books and records, so that the Client shall not oversell any Non-Physical Precious Metal and the Client’s Precious Metal Account shall never be allowed to show any oversold balance.
- (i) The Bank’s books and records as to the transactions relating to the Precious Metal Account and the quantity of Non-Physical Precious Metal for the time being owing and due by the Bank to the Client under such Precious Metal Account shall be conclusive and binding on the Client (save and except for manifest error) whether or not such transactions and/or balance have been entered on the relevant Precious Metal Account.
- (j) **If (a) any change of Applicable Laws prohibits or renders the maintenance or operation of any Precious Metal Account and/or the Agreement or any part thereof unlawful or (b) the Client shall fail to execute or re-execute (as the case may be) within such time as requested by the Bank such further document(s) which the Bank at its sole and absolute discretion deems necessary (whether for its administrative purposes or as a result of the revision of documentation relating to the Precious Metal Account), the Bank shall be entitled to immediately and without notice or**

**first obtaining the Client's consent close the Precious Metal Account and thereupon shall sell all the Non-Physical Precious Metal for the time being recorded in such Account to be due by the Bank to the Client, whereupon such Account shall be closed and any balance due to the Client shall be transferred to such other Account of the Client as the Bank may consider appropriate.**

- (k) The Client agrees that the following express conditions shall apply in relation to any and all of the Non-Physical Precious Metal purchased under a Precious Metal Account and recorded therein as owing and due by the Bank to the Client:-
- (i) Unless expressly agreed otherwise by the Bank in accordance with this Clause 10.4(k)(i), the Bank shall not be under any duty and/or liability in any circumstances to deliver (whether in Hong Kong or anywhere in the world) all or any Precious Metal purchased as Non-Physical Precious Metal physically or in specie to the Client and the Client shall have no right and shall at no time be entitled to demand and/or request such delivery. The Client does not have any ownership, right and possession of any physical Precious Metal in the Precious Metal Account. Precious Metal allocation in a Precious Metal Account is notional only and is solely for valuation of the Client's investment. However, at the Client's request the Bank may (but shall not be obliged to) agree in its absolute discretion to withdraw any amount of Non-Physical Precious Metal standing to the credit of the Client's Precious Metal Account and provide physical delivery of the same at such place and time as may be agreed with the Client upon payment to the Bank of such physical delivery premium and expenses as the Bank may stipulate.
  - (ii) The Bank shall not be under any duty and/or liability in any circumstances to appropriate, set aside and/or allot to the Client any Precious Metal from time to time held by the Bank to the Client and/or any Precious Metal Account and the Client shall have no right and shall at no time be entitled to demand and/or request such appropriation setting aside and/or allotment.
  - (iii) The Client hereby acknowledges that, the Bank and/or its Associate shall be entitled to retain all profits, commissions, fees, benefits or other advantages from the sale or purchase of Non-Physical Precious Metal in accordance with these terms and conditions (whether specifically in relation to the Client's Precious Metal Account(s) or otherwise), if any and the same shall accrue absolutely to the Bank and/or its Associate (as the case may be), if applicable.
  - (iv) The Bank's liability for any Non-Physical Precious Metal purchased by the Client and recorded as owing and due by the Bank to the Client in a Precious Metal Account shall be absolutely and conclusively discharged if the Bank (1) purchases back from the Client such Non-Physical Precious Metal at the then quoted purchase price and (2) pays and/or credits the proceeds thereof to the Account of the Client.
- (l) The operation of a Precious Metal Account shall be restricted to purchases from and sales to the Bank of Non-Physical Precious Metal under or through the Non-Physical Precious Metal concerned. If at any time the Client wishes to close a Precious Metal Account, the Client may only do so by selling all the units of Non-Physical Precious Metal therein to the Bank at the purchase price quoted by the Bank at the time of such sale and receiving the proceeds of sale thereof in Hong Kong Dollar or other Currencies in accordance with these terms and conditions.
- (m) **The Client hereby authorises the Bank to withhold, appropriate and/or earmark from any Precious Metal Account from time to time, without requiring the Client's prior consent, such units of Non-Physical Precious Metal for the time being recorded in the Precious Metal Account as may be required to discharge the Client's liability to the Bank from time to time (whether actual or contingent, joint or several). If the Client shall fail to pay to the Bank any amount due but unpaid by the Client to the Bank as demanded, the Bank shall be entitled to sell at such time or times as the Bank may at its sole and absolute discretion deem fit all or so much of the Non-Physical Precious Metal in the Precious Metal Account at the then quoted purchase price as if any Instruction for sale had been duly received from the Client and apply the proceeds of sale in or towards settlement of any amount owing by the Client to the Bank after deducting the costs and expenses incurred by the Bank in effecting any such sale.**
- (n) The Client hereby expressly agrees that no Precious Metal of any kind shall be delivered to the Bank physically for deposit to a Precious Metal Account and acknowledges that the Bank shall be entitled to reject such deposit.
- (o) In addition, except as to Non-Physical Precious Metal in a Precious Metal Account, the Bank is not under any duty to purchase from the Client (and shall be entitled to reject any offer for sale by the Client of) any Precious Metal whether of the same fineness or of any other kind.
- (p) The Bank does not impose any handling charges other than the actual purchasing or selling price of the Non-Physical Precious Metal at the time of transaction. Except for fees and charges specifically mentioned in the Scale of Charges Booklet, any other fees and charges incurred by the Bank for operational or administrative purposes and the Bank's profit margin are already inherently contained in

and subsumed in the bid/offer spread as mentioned in the Scale of Charges Booklet. **The Bank reserves the right to amend or alter any of the fees and charges and/or to introduce or impose new fees and/or charges at any time in accordance with Clause 25 of Section 1 of Part B and Applicable Laws.**

10.5 The following provisions apply to Physical Precious Metal Accounts:

- (a) At the Client's request, the Bank may (but shall not be obliged to) agree to provide a Service for the custody of Precious Metal in physical form ("**Physical Precious Metal**") by opening a Physical Precious Metal Account for the Client. Subject to the provisions below and subject to further agreement of the Bank, the holder of a Physical Precious Metal Account is entitled to claim physical stock delivery of the amount of Precious Metal shown on the Physical Precious Metal Account.
- (b) Subject to paragraph (c) below, Physical Precious Metals in the standard commercial grades and forms (e.g. bars, polished bars, granules) as well as standard commercial coins (i.e. those issued in large series) deposited by the Client for safe custody or purchased by the Client will be kept according to category in collective deposits, at the Bank or in other locations, unseparated from the holdings of other clients and the Bank's own holdings in the same category. The Client is entitled to a share of the collective deposit proportionate to the Client's own holdings.
- (c) Physical Precious Metals which are not in standard commercial form and coins with numismatic value will be kept individually in separate custody. In principle, Physical Precious Metals in the standard commercial grades and forms will only be kept separately if the Client issues express Instructions to this effect. Exceptionally, however, the Bank may at its sole and absolute discretion decide to keep Physical Precious Metals in the standard commercial grades and forms in separate custody. The Client retains ownership of the Physical Precious Metal in separate custody.
- (d) The Client can deposit its Physical Precious Metal holdings at such location of the Bank's office as the Bank may specify from time to time. Any withdrawals shall only be made at the location specified by the Bank. For administrative reasons, the Bank must be notified not less than five (5) Business Days before any withdrawal.
- (e) On request, the Bank may at the Bank's discretion agree to deliver Physical Precious Metal to another destination at the Client's expense and risk (which the Client acknowledges and agrees to bear), provided this is practicable and in compliance with Applicable Laws in force at the time at the desired delivery point. Delivery costs will be charged to the Client and debited to the Client's Account.
- (f) Unless otherwise agreed, delivery shall be made in bars satisfying the normal commercial standards for minimum fineness. Claims amounting to less than one bar will be satisfied by delivery of Physical Precious Metal in smaller units, subject to the Client paying the manufacturing premium applicable at the time of delivery.
- (g) In the case of deliveries of Physical Precious Metal held in collective custody, any differences in weight or fineness compared with the holdings recorded will be settled at the market price prevailing at the time of delivery which shall be determined at the Bank's sole and absolute discretion and shall be binding on the Client.
- (h) If Applicable Laws, force majeure or similar conditions prevent the Bank from fulfilling its delivery obligations at the agreed point and in the agreed manner, the Bank shall be entitled to effect delivery at a place and in the manner it deems appropriate under the circumstances, at the Client's expense and risk.

**10.6 The Client shall be responsible for, and shall keep harmless and indemnify the Bank against any tax (except any tax imposed on and calculated by reference to the Bank's net income) or other levy or penalty imposed upon the Bank by Applicable Laws or by any Government, regulatory or other relevant authority with respect to the establishment, issuance or operation of any Precious Metal Account and Physical Precious Metal Account, the custody and physical stock delivery of Precious Metals and the sale or purchase of Precious Metal held in connection therewith, including where the Bank is liable to pay or withhold any such tax, levy or penalty for the Client as a result of the Client's failure to pay the same or the Client's breach or non-compliance with any legal or regulatory requirement applicable to the Client.**

### Section 3: Investment Services

References to the term "**Clause**" in this Section 3 of Part B of the General Conditions shall mean a "**Clause**" in this Section.

#### 1. Services

- 1.1 The Bank reserves the right, in its absolute discretion and without giving any reason, to refuse or cease to provide any Services involving Traded Asset to the Client.
- 1.2 In respect of an Account which is opened and maintained with the Bank, the Account is booked in Hong Kong and the Bank (i.e., EFG Bank AG Hong Kong Branch), as the booking centre, provides general execution and custody services in Traded Asset ("**Booking Centre Services**"). The Agreement sets out the relationship between the Bank (as the booking centre) and the Client, and their respective rights and obligations.
- 1.3 In respect of an Account which is opened and maintained with the Bank, in addition to the Booking Centre Services, the Client may request the Bank (i.e., EFG Bank AG Hong Kong Branch) or other EFG Bank Group Member to be the relationship centre to provide the Client additional general investment services in Traded Asset ("**Relationship Centre Services**"), and the Bank or other EFG Bank Group Member has the absolute discretion to accept or refuse the request without giving any reasons. The provision of Relationship Centre Services by the Bank (as the relationship centre) shall be governed by the Agreement.
- 1.4 The Client (regardless of whether or not an Account is opened or maintained with the Bank) may request the Bank (i.e., EFG Bank AG Hong Kong Branch) to provide discretionary management services, the terms of which shall be governed by these General Conditions (to the extent applicable) or such other agreements as may be required by the Bank from time to time (including the Discretionary Management Mandate or other discretionary management agreement between the Bank and the Client).
- 1.5 The Client understands and agrees that if the Bank is the booking centre only (and the Bank has not agreed to provide any Relationship Centre Services or discretionary management services to the Client), the following provisions shall apply:
  - (a) each and every Transaction to be conducted by the Bank for or on behalf of the Client shall be upon specific Instructions of the Client, and the Bank will not provide any solicitation, investment advice or recommendation to the Client on such Traded Asset. The Bank does not act as the Client's investment advisor or fiduciary in relation to such Traded Asset, and the Bank does not hold out any of its directors, employees or Agents, in the conduct of Booking Centre Services, as having authority to provide any solicitation, advice or recommendation on Traded Asset on behalf of the Bank;
  - (b) the Client will be responsible for all its decisions in investing in, holding or disposing of any Traded Asset. Before entering into any Transaction, the Client shall fully understand and assess the nature, features and risks of the Transaction having regard to its investment objectives, financial situation, investment experience and other relevant circumstances, and shall seek independent professional advice as it considers appropriate;
  - (c) since the Bank will not solicit or provide any investment advice or recommendation to the Client in relation to any Traded Asset, the Client may not benefit from the protection offered by Applicable Laws on suitability assessment of a Transaction for the Client as may otherwise be applicable in a solicited or advisory transaction; and
  - (d) **the Bank shall not be held liable or responsible for the Relationship Centre Services provided by other EFG Bank Group Member.**
- 1.6 The Client understands and agrees that if the Account is booked in Hong Kong and the Bank is also the relationship centre, the following provisions shall apply:
  - (a) unless otherwise specifically agreed by the Bank, the Bank is providing the Services in Traded Asset on a non-discretionary basis and the Bank has no authority to make any investment decisions on the Client's behalf; and
  - (b) in respect of Relationship Centre Services (excluding discretionary management services):
    - (i) each and every Transaction to be conducted by the Bank for or on behalf of the Client shall be upon specific Instructions of the Client;
    - (ii) the Client will be responsible for all its decisions in investing in, holding or disposing of any Traded Asset;
    - (iii) before entering into any Transaction, the Client shall fully understand and assess the nature, features and risks of the Transaction having regard to its investment objectives, financial situation, investment experience and other relevant circumstances, and shall seek independent professional advice as it considers appropriate; and



- (iv) (unless otherwise specifically agreed by the Bank) the Bank has no duty to monitor the performance of the Traded Asset on on-going basis.
- 1.7 If the Bank solicits the sale of or recommends any financial product to the Client, the financial product must be reasonably suitable for the Client having regard to the Client's financial situation, investment experience and investment objectives. No other provision of the Agreement or any other document the Bank may ask the Client to sign and no statement the Bank may ask the Client to make derogates from this Clause. For the purposes of this Clause, "financial product" means any securities, futures contracts or leveraged foreign exchange contracts as defined under the SFO. Regarding "leveraged foreign exchange contracts", it is only applicable to those traded by persons licensed for Type 3 regulated activity.**
- 1.8 In respect of derivative products, the Bank shall provide to the Client on request product specifications and any prospectus or other offering document covering any derivative products and an explanation of margin procedures and the circumstances under which the Client's positions may be closed without the Client's consent.
- 2. Transactions Generally**
- 2.1 The Bank may effect Transaction with or for the Client as principal or agent. Unless otherwise indicated on the contract note or agreed by the Bank or notified to the Client, the Bank shall act as agent of the Client in all Transaction. and the Client shall be bound by the Transaction entered into by the Bank (as agent of the Client). Subject to Applicable Laws, the Bank shall be entitled in its absolute discretion to act as principal for its own benefit as a counterparty in any Transaction involving the Client. Any Transaction may be made to, from or through such persons or entities (including any EFG Bank Group Member) as the Bank may think appropriate. The Client acknowledges and agrees that when the Bank or any other EFG Bank Group Member acts in any of the abovementioned principal capacities or in any other position of conflicts, the interests of the Bank or such EFG Bank Group Member may conflict with the interests of the Client. Where the Bank or any other EFG Bank Group Member acts as principal as counterparty in any Transaction involving the Client, subject to Applicable Laws, the Bank or such EFG Bank Group Member shall be entitled to do so for its benefit, without being liable to account or disclose to the Client for any profit thereby accruing to the Bank or such EFG Bank Group Member. The Bank shall have full power to delegate its authority in whole or in part to any EFG Bank Group Member as it may deem fit.
- 2.2 The Bank or other EFG Bank Group Members may receive remuneration, compensation or other benefits or advantages (whether monetary or otherwise) in connection with any Transaction, which are managed, advised, issued or distributed by the Bank or other EFG Bank Group Members, which may give rise to conflict of interests. The Client agrees that the Bank may at its discretion make payments to other EFG Bank Group Members out of the fees, commissions or spreads which the Client pays to the Bank.
- 2.3 Where the Bank executes any Transaction for the Client through a broker, the Client agrees that the Bank may receive and retain cash rebates and soft dollar commissions from the broker subject to the Applicable Laws. Such soft dollar commissions may include research and advisory services, economic and political analysis, portfolio analysis, market analysis, data and quotation services, computer hardware and software incidental to the above goods and services; clearing and custodian services and investment-related publications.
- 2.4 Without prejudice to the foregoing, the Client consents that subject to Applicable Laws:
- (a) the Bank and other EFG Bank Group Members shall not be obliged to notify and account to the Client or any other person for the fact or the amount of any fees, remunerations, profits, commissions, rebates, discounts, spreads or any other benefits or advantages (whether monetary or otherwise) arising from any Transaction;
  - (b) the Bank and other EFG Bank Group Members shall be entitled to accept and retain such fees, remunerations, profits, commissions, rebates, discounts, spreads or other benefits or advantages (whether monetary or otherwise) arising from any conflict of interests; and
  - (c) the Bank and other EFG Bank Group Members shall be entitled to act and continue to act in such capacities that may give rise to any conflict of interests.
- 2.5 All Transactions by the Bank and the Services provided in respect of any Traded Asset shall be subject to all Applicable Laws and the applicable terms of business of any Agents. The Bank is expressly authorised to do such things as it may in its absolute discretion deem necessary to comply therewith.
- 2.6 The Bank shall not be responsible for the performance of any Traded Asset. The Client acknowledges and agrees that past performance of any Traded Asset is not indicator of future performance. The Client acknowledges that the Bank does not authorise any of its employees or Agents to provide any assurance or guarantee on the performance of any Traded Asset for the purpose of encouraging the Client to apply for any Services or enter into any Transaction.

- 2.7 Unless the Client has specifically given written Instruction or standing authority to the Bank to the contrary, the Bank is authorised and directed to credit any sales or redemption proceeds or other payments received for the account of the Client to its Account after the Bank actually receives the same.
- 2.8 Notwithstanding anything contained in these General Conditions and except as otherwise agreed by the Bank in writing there shall be no delivery by the Bank or the Client of any Traded Asset, except those held in a Custody Account in accordance with Clause 13.
- 3. Instructions (applicable to Booking Centre Services, Relationship Centre Services and (to the extent applicable) discretionary management services of the Bank)**
- 3.1 The Client shall give Instructions to the Bank in the manner and by such time as prescribed by the Bank from time to time. All Instructions shall be given to the Bank before the cut off time as determined by the Bank from time to time. Unless otherwise notified by the Bank all Instructions of the Client shall be irrevocable and binding on the Client.
- 3.2 **The Bank may, but is under no obligation to, enter into any Transaction with or on behalf of the Client, and may implement such transaction within such time as the Bank considers reasonable in the circumstances and will not be liable for any delay in implementing such transactions. The Bank is also entitled to decline to act or stop to act on any Instructions of the Client without assigning any reason therefor.** Without prejudice to any of the foregoing or any other provision of the General Conditions, the Bank may at its absolute discretion (but is not obliged to):
- (a) refuse to execute any Instructions which violate or may violate any Applicable Laws or the relevant subscription agreement, information memorandum, prospectus or other offering document relating to the relevant Traded Asset, or any contractual or other obligations of the Bank or any EFG Bank Group Member;
  - (b) refuse to execute a Sale Instruction before receiving the entire or any part of the Traded Asset to be sold in such amount and form and by such time as required by the Bank;
  - (c) refuse to execute any Sale Instruction, which is not covered in whole or in part;
  - (d) refuse to execute a Purchase Instruction if there are insufficient monies held in cleared funds in the settlement currency in the Account or otherwise held by the Bank for such purpose;
  - (e) execute a Purchase Instruction only up to the balance available in the settlement currency in the Account or otherwise held by the Bank for such purpose; and
  - (f) repurchase, at the cost of the Client, any Traded Asset sold which is found to be defective in some manner or which has not been delivered in time.
- 3.3 Where the Bank receives any Instruction which is not expressly marked as a confirmation or modification of an existing Instruction, the Bank may in its absolute discretion treat the same in good faith as a new and separate Instruction.
- 3.4 In the event that the Client places any "stop-loss" order and market conditions make it difficult or impossible to execute such order, the Client hereby releases and discharges the Bank from all liability arising out of the non-execution of such "stop-loss" order and authorises the Bank, in such circumstances, to execute such order at such rate and in such manner as the Bank may deem appropriate.
- 3.5 Unless the Bank otherwise agrees and notwithstanding any terms to the contrary in the Agreement, the Bank will not accept and effect any Purchase Instruction of the Client unless there are sufficient cleared funds in the Account or held with the Bank for such purpose, or the Bank has agreed to advance funds to the Client, or the Client has other arrangements in place to the Bank's satisfaction to make sufficient cleared funds available, to meet the settlement obligations in time. In case of any shortfall of funds, the Bank may but is not obliged to sell or liquidate any relevant Traded Asset that the Client had contracted to buy on such terms as the Bank may deem fit, and the Bank reserves its rights to recover from the Client any losses, charges and expenses suffered or incurred by the Bank therefrom. If the Transaction is denominated in a Currency (which is different from the Currency held in the Account or held with the Bank for such purpose), the Bank is authorised (but not obliged) to carry out any foreign exchange transaction at such exchange rates at its discretion, and at the expense and costs of the Client. Where the Client has placed a number of Instructions and there are insufficient monies or available credit facilities to meet the resulting obligations of all these Instructions, the Bank may at its discretion decide which of the Instructions will be executed irrespective of the dates of the Instructions. The amount due on any Transaction will usually be paid by the Client or debited from the Account before the actual delivery of the relevant Traded Asset to the Client or into the Account, and the Bank will not be responsible for any losses for non-delivery of the Traded Asset, except to the extent the losses are direct and reasonably foreseeable consequences of the fraud, negligence or wilful misconduct of the Bank or its employees, agents or servants.

- 3.6 Unless the Bank otherwise agrees and notwithstanding any terms to the contrary in the Agreement, the Bank will not accept and effect any Sale Instruction of the Client unless there are sufficient Traded Asset in the Account or held with the Bank for such purpose which are free from any liens and encumbrances whatsoever to meet the settlement obligations in time. In case of any shortfall of Traded Asset, the Bank may but is not obliged to buy any relevant Traded Asset that the Client had contracted to sell on such terms as the Bank may deem fit and the Bank reserves its rights to recover from the Client any losses, charges and expenses suffered or incurred by the Bank therefrom. On receipt of any Sale Instruction, the Bank is authorised to debit the Account with the relevant Traded Asset or otherwise dispose of the relevant Traded Asset held with the Bank for the purposes of the Sale Instruction on or at any time before completion of the Transaction. The Client undertakes that it will not withdraw or in any way deal with all or any part of the Traded Asset which is subject of the Sale Instruction until completion of the relevant Transaction.
- 3.7 **The Client agrees and acknowledges that the Bank will not be responsible or liable to the Client for any loss arising directly or indirectly from or as a result of, any act or omission of or delay of any seller, buyer, counterparty, issuer or guarantor (as applicable) of any Traded Asset or their agents or any Agents of the Bank, to make valid or timely payments or delivery to the Bank or perform their other obligations. The Bank will only pay the Client any monies or deliver to the Client any Traded Asset which the Bank actually receives.**
- 3.8 The Client acknowledges that all its Sale Instructions will be treated as long sales unless it has specifically indicated to the Bank that they are covered short sales, in which case, the Client will comply with the short selling requirements under Applicable Laws. No short selling of Traded Asset by the Client (whether as principal or as agent) will be permitted without the Bank's prior knowledge and agreement and will in all events be subject to the Bank being satisfied that (i) the Traded Asset is of a type permitted under Applicable Laws to be sold short; (ii) (if so required under Applicable Laws) the sale is fully covered; (iii) (if so required under Applicable Laws) the Client (or the Client's principal) has a presently exercisable and unconditional right to vest the Traded Asset sold in the purchaser, and (iv) (if so required under Applicable Laws) in the case of any borrowing of Traded Asset for such purpose the lender has the relevant Traded Asset available to lend or deliver to the Client (or the Client's principal). The Client confirms that it will provide the Bank with documentary evidence, confirmation and assurance on short sale orders within such time, in such form and with such information and documents as may be requested under any Applicable Laws, or as requested by the Bank from time to time.
- 3.9 For the Hong Kong market, if the Client designates an Instruction in Securities as a short selling order and sends it over to the Bank for execution at or through the SEHK, the Client must in respect of each short selling order confirm in writing to the Bank at the time of placing the order that:
- (a) the order is a short sale order;
  - (b) the Client understands the relevant Applicable Laws on short sale orders;
  - (c) the Client has presently exercisable and unconditional right to vest the Securities to which the order relates in the purchaser of such Securities; and
  - (d) to the extent that the Client has borrowed the Securities or obtained a confirmation from the lender that it has the Securities available to lend, the lender has the Securities to which the order relates available to lend to the Client.
- 3.10 If in the Bank's opinion it is reasonably necessary to do so in order to meet the Instructions of the Client in regard to Traded Asset in certain jurisdictions; primarily but not limited to Thailand, Malaysia and Indonesia, the Client agrees and authorises the Bank to trade on the Client's behalf with non-Bank approved counterparties or brokers in those jurisdictions, who may also act as custodian for the Client's Traded Asset. These counterparties, brokers and custodians are specifically designated and appointed by the Clients, and are not the agents of or under the control of the Bank. To the maximum extent permitted by and not inconsistent with any Applicable Laws, the Bank accepts no liability for any default of any nature by them, for whatever reason unless such default arises directly as a result of the fraud, negligence or wilful misconduct of the Bank or its employees, agents or servants. **All such trades shall be undertaken at the sole risk of the Client, including the credit risk of the counterparty or broker, and may not be settled on a delivery-against-payment basis.**
- 3.11 The Client agrees that the Bank may aggregate any Instructions received from the Client with the Bank's own orders or with the orders of any EFG Bank Group Member or any other customers of the Bank or any EFG Bank Group Member. The Client acknowledges that such aggregation may on some occasions operate to the disadvantage of the Client and on other occasions to the advantage of the Client.
- 3.12 The Bank may execute any Instructions of the Client in a series of Transactions over a period of time and report to the Client an average price for such series of Transactions instead of the actual price for each particular Transaction.

3.13 The Client acknowledges and agrees that it may not be allocated for the full quantity of the Traded Asset subscribed for or purchased. Any subscription and purchase of Traded Asset is subject to availability. The Bank will make any allocation in accordance with its internal policy on allocations or in such other manner as the Bank considers appropriate. The Bank will not accept any requests for alteration or waiver of allocations after the allocations are made. Any allocation given to the Client shall be binding on the Client.

#### 4. Discretionary Management (applicable to discretionary management services of the Bank only)

4.1 This Clause 4 shall apply only where the Client has entered into a Discretionary Management Mandate and the Bank has agreed to provide discretionary management Services to the Client.

4.2 The Client shall select the Investment Parameters of each Managed Portfolio, and the Client shall notify the Bank in writing of any changes to the Investment Parameters from time to time. The Client requests the Bank to apply the Investment Parameters to the management of that Managed Portfolio. By signing the Discretionary Management Mandate, the Client grants the Bank (which for this purpose includes any person employed by the Bank or any other Agents of the Bank) with the full and absolute discretion to, subject to the Investment Parameters, manage on its behalf all monies and assets of any kind held in the Managed Portfolio from time to time and exercise the discretionary authorities including to:

- (a) invest and reinvest on behalf of the Client the monies and assets in the Managed Portfolio, and do all things and carry out all operations whenever deemed by the Bank to be appropriate in managing the Managed Portfolio, including the buying and selling or disposing of, subscription to or otherwise dealing in financial instruments and investments of all kinds including foreign exchange, stocks, bonds, debentures, unit trusts, mutual funds, hedge funds, Funds, notes, certificates of deposit, medium term bank notes, non voting shares, book entry debts, Precious Metals, traded options on Securities, currencies, interest rates and stock market indexes (buying and selling calls and puts), OTC options and warrants, and other derivative products, Securities, Traded Asset and investments of all kinds, and making or retaining cash deposits at its discretion; and
- (b) negotiate, enter into and execute Transactions at the Bank's discretion, and carry out any and all other transactions and executing such documents as the Bank may determine from time to time, without specific prior notification to or specific consent or Instruction from the Client.

The Client acknowledges that the effect of such authorisation has been explained and the Client fully understands the risks and consequences in connection therewith.

4.3 The Bank is expressly authorised to subscribe for and to buy and sell or dispose of any interest in any investment products in any part of the world managed or promoted by the Bank or any EFG Bank Group Member, notwithstanding that this may be considered as a conflict of interest. Such transactions will be carried out on arm's length terms consistent with best execution standards and on terms that are no less favourable than those that could reasonably have been expected had such transactions been effected through or with an independent third party. The Client understands and agrees that the EFG Bank Group as a whole may derive additional benefits in such cases but that the interests of the Client remain paramount in determining the investment. In addition, whilst the Bank will be acting as the Client's agent in managing the Managed Portfolio, the Bank may also act as principal on transactions effected for the Managed Portfolio. Where the Bank acts as principal, such transactions will be undertaken at such rates and with such spreads or margins as determined by the Bank from time to time but which shall be fair and reasonable and characterised by good faith.

4.4 In addition to the general mandate granted above, by completion of Part B of the Schedule to the Discretionary Management Mandate (a "**Special Mandate**"), the Client may grant to the Bank a Special Mandate to manage the Managed Portfolio in accordance with the instructions given in the Special Mandate, and the Client expressly accepts the fact that under the Special Mandate, if given, the Managed Portfolio might not reflect the investment policies generally applied by the Bank, or may conflict with the investment principles or objectives indicated in the Appendix to the Discretionary Management Mandate. Despite the instructions given in the Special Mandate, the Bank shall still exercise investment management authority with due skill and care.

4.5 In the management of the Managed Portfolio the Bank may delegate any of its powers or authorities from time to time to any EFG Bank Group Member which the Bank reasonably considers to have relevant expertise in the management of any asset class, investment category or product type, or which the Bank otherwise believes would be beneficial for the management of the Managed Portfolio, and the Bank may disclose and transfer any information on or related to the Managed Portfolio (including the transactions thereunder) and/or the Client (including its Beneficial Owners) to any such EFG Bank Group Member, (including any EFG Bank Group Member who is located within or outside of Hong Kong).

4.6 All investments and transactions made or entered into or acts taken by the Bank on behalf of the Client under a Discretionary Management Mandate shall be binding on the Client. The Client expressly approves and ratifies in advance all actions that the Bank takes or refrains from taking in managing the Managed Portfolio and acknowledges that, to the maximum extent permitted by and not inconsistent with any Applicable Laws

and without limitation to any other provisions in the Agreement, the Bank shall not incur any liability whatsoever for the consequences of operations that the Bank shall have in good faith performed or refrained from performing. **Without limitation to the foregoing, the Bank does not guarantee any specific result or return on any investments made under the Managed Portfolio, and that the value of any investments may fall as well as rise, and that the Bank shall not be liable for any decline, depreciation or diminution in the value of any investments, or any lost opportunity whereby the value of any such investments could have been increased, or for the acts of any Agent appointed by the Bank in good faith, unless such loss is a directly and reasonably foreseeable consequence of fraud, negligence or wilful misconduct of the Bank or its employees, agents or servants. To the maximum extent permitted by and not inconsistent with any Applicable Laws and without limitation to any other provisions in the Agreement, the Client agrees to indemnify the Bank and hold it harmless of and from all costs, expenditures and damages incurred by the Bank in the course of undertaking the discretionary management Services.**

- 4.7 The currency of reference, i.e. the currency in which the Client desires the performance of the Managed Portfolio to be evaluated, is as indicated in the Discretionary Management Mandate, and if no currency is indicated, then in US Dollars. Nothing in this Clause 4 shall preclude the Bank from carrying out and/or executing investments or other transactions in any other currency.
- 4.8 The Bank may from time to time and subject to Applicable Laws and the Bank's internal control guidelines undertake cross trading of hedge and mutual funds and Securities and other Traded Asset between the Bank and the Clients and different Clients of the Bank. Such cross trading shall at all times be dealt at fair market value using publicly available information.
- 4.9 Without prejudice to any of the foregoing, the Bank may in its absolute discretion but shall not be obliged to act on any Instruction given by the Client to carry on a specific transaction in respect of a Managed Portfolio ("**Specific Transaction**") which is in accordance with the Investment Parameters. For the avoidance of doubt, to the extent applicable, Clause 3 above shall apply to any such Instructions given by the Client to the Bank. In the event the Client gives specific Instructions as to the making or realisation of any investments or requires the Bank to take any other action in respect of the Managed Portfolio from time to time at the Client's own initiative, and to the extent that the Bank does not exercise discretion in respect of such investments, the Bank may record such an investment order as a "non-discretionary investment" order of the Client for which the Bank has not exercised its discretion, and the Client shall be responsible for making the decisions in such investments. **The Bank shall accept no responsibility or liability for the monitoring the performance of any such non-discretionary investments. The Client also understands that such Instructions may conflict with the investment strategy of the Bank for investment portfolios managed by the Bank (whether made known to the Client or not) and the Client accepts full responsibility for all of the possible consequences thereof both with regard to any conflict with the investment policy applied by the Bank and generally in respect of any losses or costs thereby incurred.** Notwithstanding the aforementioned, the Bank is entitled to decline to act or stop to act on any non-discretionary investment Instructions without assigning any reason therefor.
- 4.10 Save as expressly authorised by the Client in the Special Mandate, the Bank shall not, without the Client's express prior written consent, carry out any margin trading or commit the Client to any borrowing, other than such short term borrowing as the Bank may consider to be necessary or expedient to provide liquidity for settlement requirements. Where the Client authorises the Bank to conduct margin trading or other borrowing for the Managed Portfolio:
- (a) the Client shall deposit with the Bank Collateral acceptable to the Bank in such form and within such time as the Bank may require from time to time; and
  - (b) if any margin call remains outstanding or any Collateral required is not provided, the Bank is not obliged to take any action under and pursuant to the Agreement in relation to meeting such margin call and/or satisfying such Collateral requirement and the Client shall not hold the Bank liable for any costs, expenses and losses in connection thereto.

The Client also acknowledges that the Collateral requirements imposed by the Bank may affect the Bank's investment decisions in respect of the Managed Portfolio, and agrees that the Bank may exercise its rights in respect of the Collateral under the Agreement notwithstanding its obligations under the Discretionary Management Mandate. Nothing in this Clause shall prejudice the Bank's rights in respect of any part of the Collateral.

- 4.11 The Bank may charge a management fee and custody fee in accordance with its fee schedule from time to time in force and may debit the same to the Account (if any) of the Client. The Client acknowledges and agrees that the Bank, any EFG Bank Group Member or their respective Agents may accept and retain for their sole benefit all normal banking charges, custody charges, normal dealing spreads, brokerage or agency commissions, soft commissions, rebates and fees paid to the Bank or such persons by any other third person in connection with the provision of any Services by the Bank under or in connection with the Managed Portfolio. The Bank is also authorised to debit the Account (if any) of the Client with the costs, fees, brokerage commissions and any other charges and expenses (including its own and those of any third party intermediary

or service provider) incurred in respect of any investments subscribed or purchased and of any deposits placed or renewed, and/or to credit the Account (if any) of the Client with the net proceeds of any investments sold or realised and deposits uplifted and to give good receipts and discharges for all moneys payable or receivable in respect of such transactions.

- 4.12 The Bank is authorised but is under no obligation, to exercise in the name of the Client, with right of substitution the proprietary and voting rights and any other kind of rights related to the assets under the Managed Portfolio which are registered in the name of the Bank or its Agents (including nominees). **To the maximum extent permitted by and not inconsistent with any Applicable Laws, the Bank shall not be liable for any delay or failure to forward to the Client any communications received from any company or other entity of whatever kind in respect of any investments under the Managed Portfolio.**
- 4.13 Unless otherwise notified by the Client to the Bank in writing, the Client represents and warrants that it is the person with ultimate beneficial interests of the Managed Portfolio. The Bank is authorised to provide information of the beneficial ownership in investments and other information relating to the Client and/or the Managed Portfolio when requested to do so by the respective share registrars of such companies or as required by Applicable Laws. Without prejudice to the generality of the foregoing or any other provisions in the Agreement, where the Bank is required by any authorities in any jurisdiction to disclose the name, beneficial identity and such other information concerning the Client or the Managed Portfolio as such authorities may require, the Client agrees to provide such information concerning the Client and/or the Managed Portfolio within such time as the Bank may require in order for the Bank to comply with such requirements. The Client acknowledges and understands that if the information set out in this Clause is not provided within the requisite time period, the Bank may be required by the authorities to close out any open positions and the Bank shall not be liable to the Client for any loss as a result. This Clause shall continue in effect notwithstanding the termination of the Discretionary Management Mandate, closure of any Account or termination of any agreement the Client has with the Bank or any EFG Bank Group Member. **The Client acknowledges that the representations, warranties and disclosure of the Client will be relied upon by the Bank in giving such representations, warranties and disclosure on behalf of the Client. The Client agrees to indemnify and hold harmless each Indemnitee in full against all reasonable losses, damages, claims, liabilities, costs or expenses arising out of or in connection with the breach of the representations or warranties. This Clause 4.13 shall not prejudice any other provisions in the Agreement.**
- 4.14 The Client acknowledges that the realisation of investments and the availability of proceeds will depend on the redemption terms of the relevant investments and accepts that the assets in the Managed Portfolio may be invested in investment instruments that are non-public and not listed on an Exchange or other organised markets, which may only be redeemed or sold periodically or on specific dates. The redemption terms of certain investment instruments may also require a notice period of several months to be observed and/or provide for deferred payment and/or payment subject to bid/ask spreads compared to the net asset value of the relevant investment instruments. All of the foregoing can substantially delay the realisation of the Managed Portfolio and the availability of any sales proceeds.

## 5. New Listing of Securities

- 5.1. In the event that the Client requests and authorises the Bank to apply as agent for the Client for an issue of a new listing of Securities on any Exchange, the Client:
- (a) authorises the Bank and its Agents to make such application on behalf of the Client;
  - (b) agrees to become familiarised with, and comply with, all the terms and conditions governing the Securities of the new listing and/or issue and the application for such new Securities as set out in the prospectus and/or offering document and the application form or any other relevant document in respect of such new listing and/or issue, and the Client agrees to be bound by such terms and conditions;
  - (c) gives to the Bank all the representations, warranties and undertakings which an applicant for Securities in a new listing and/or issue is required to give (whether to the issuers, sponsors, underwriters or placing agents of the relevant Securities, the Exchange or any other relevant regulators or persons);
  - (d) represents and warrants that the application is made solely for the benefit of the Client; and the application for such Securities to be made by the Bank is and will be the only application made or intended to be made for the benefit of the Client, and no other application for such Securities will be made by or on behalf of the Client; and
  - (e) authorises the Bank and its Agents to disclose, represent and warrant to the relevant Exchange and/or the issuer of the relevant Securities (who shall be entitled to place reliance on the same) that the application is being made by the Bank as agent for the Client, and that such application is the only application made and intended to be made by or on behalf of the Client, and no other application is being made or is intended to be made by the Client itself or for the benefit of the Client by any other person (If the Client is an unlisted company whose sole business is dealing in shares, then any

application made on behalf of the Client shall be deemed to be an application made for the benefit of the controlling shareholder).

## **6. Investment Funds**

- 6.1 Notwithstanding the generality of the foregoing and other provisions herein, with regard to each Purchase Instruction for any Fund, the Client represents, warrants and undertakes the following:
- (a) the Client has received, read and fully understood the offering documents, the subscription agreements and any other supplement and documents (including any key fact sheets, financial statements and other reports) in relation to the Fund;
  - (b) the Client fully understands the structure, nature, features, the terms and conditions and the risks of the Fund and accepts the same. In particular, the investments in the Fund may not be principal protected and is subject to the risks as described in the Fund documentation;
  - (c) the Client is and will continue to be an eligible investor of the Fund;
  - (d) the Client's Purchase Instruction is subject to the general conditions of the Fund, and to the Applicable Laws of its relevant place of registered domicile;
  - (e) the Client will promptly execute any documents and provide the Bank such information that may be required by the Bank, the Fund or representatives of the Fund from time to time;
  - (f) the Client complies and will continue to comply with all investor requirements, subscription conditions, sale and/or transfer restrictions, undertakings, representations, warranties and indemnities set out in the Fund documentation and the constitutive documents of the Fund, and shall be bound by the terms thereof;
  - (g) the Client understands that the Fund documentation are not prepared by the Bank, and that to the maximum extent permitted by and not inconsistent with any Applicable Laws, the Bank shall not be liable to the Client for any error, misstatement or omission in such Fund documentation or any loss suffered by the Client in connection with any transaction entered into or steps taken or omitted to be taken on the basis of such Fund documentation;
  - (h) where the Bank or its Agent is required to provide on behalf of the Client any representation or warranty to the Fund or any representatives of the Fund, the Client confirms that each such representation or warranty shall be true, accurate and not misleading and is given as if the same are given by the Client to the Fund or any representatives of the Fund directly. The Client will inform the Bank promptly if any such representations or warranties shall become untrue, inaccurate or misleading in any way; and
  - (i) the Client will meet any capital calls of the Fund as and when required. If there are insufficient funds in the Account or otherwise held with the Bank for such purpose to meet capital calls of the Fund by the required deadline, the Client agrees that the Bank may take such action (including liquidating the Fund positions) as it considers necessary.
- 6.2 When executing the Purchase Instruction in respect of a Fund, the Client agrees that the Bank may have to subscribe for the Fund in the Bank's name, but for the account and risk of the Client. The Client acknowledges that acceptance of any Instructions in Funds by the Bank on the Client's behalf shall be at the absolute discretion of the Fund or the representatives of the Fund (as the case may be). The Bank has no authority to accept the Instructions on behalf of the Fund, unless otherwise notified by the Bank to the Client.
- 6.3 The Client's Instruction to purchase, sell or otherwise deal in the Fund will be executed in accordance with the Bank's usual practice and having regard to the Bank's prescribed cut-off time and as such, may not be effected on the same day as the day on which the Instruction is placed. The Bank shall not be responsible for any price difference as a result of executing the Instruction in accordance with the Bank's usual practice and time, unless directly occasioned by fraud, negligence or wilful misconduct of the Bank or its employees, agents or servants.
- 6.4 The receipt by the Bank of any Fund Orders at or before the cut-off time shall not constitute any confirmation, guarantee or commitment in respect of any successful execution of any Fund Orders nor execution by any specified time or on any specific terms. In addition, the Bank may, but is not obliged to, process on the same day any Fund Orders that are received by the Bank after the cut-off time of that day as determined by the Bank from time to time. To the extent that any Fund Order is not received by the Bank on a Business Day, the Bank reserves the right but is not obliged to process it on the next Business Day.
- 6.5 The placement and execution of Fund Orders are subject to the transfer agent's terms and conditions and the Fund or Fund administrator's rules, terms and conditions, which may differ for each Fund and may vary from time to time without prior notice given by the Bank to the Client. The Client shall refer to the latest Fund

documentation and contact the Fund or the Fund representatives to re-confirm the specific rules, terms and conditions in respect of the particular Fund. Any Fund Order of the Client is not confirmed to be executed unless and until the Client has received a written confirmation of the same from the Bank.

- 6.6 Unless otherwise specifically requested by the Client, any Fund Order that is not executed on the same day of its order placement shall automatically be placed for execution on the next available dealing day or period. Any Fund Order of the Client is valid until the Fund Order has been successfully executed or alternatively, withdrawn by the Client and accepted by the Bank.
- 6.7 The Client acknowledges that the Bank may rely on valuations from the Fund, representatives of the Fund or other third parties for the purposes of reporting to the Client the value of any investments in the Fund and the Bank shall have no duty to verify the accuracy of such valuations.
- 6.8 In respect of any dividends or distributions of the Fund which are received by the Bank on behalf of the Client, unless otherwise instructed by the Client, the Bank will credit any cash dividends into the Account or handle in such other manner as the Bank determines. All dividends and distributions paid to the Client shall be net of any applicable taxes, fees, charges and expenses incurred by the Bank or its Agents. The Bank has no duty to ascertain and shall not be responsible for the adequacy of the dividends or distributions.
- 6.9 In respect of any redemptions of Funds, the Client acknowledges that these may only be made in accordance with the Fund documentation. The Bank may credit any redemption proceeds (net of any applicable taxes, fees, charges and expenses incurred by the Bank or its Agents in connection with the redemption) received by the Bank on behalf of the Client into any Account or make payment of the same in such manner as the Bank determines. The Bank has no duty to ascertain and shall not be responsible for the adequacy of the redemption proceeds.
- 6.10 In respect of any switching or exchange of Funds, the Client acknowledges that these may only be made in accordance with the Fund documentation. If the Client gives an Instruction to the Bank to effect a switching or exchange, the Bank will subscribe for the Fund required only after confirmation and completion of the redemption of the relevant existing Fund which is being switched or exchanged.
- 6.11 In respect of any transfers of Funds, the Client acknowledges that these may only be made in accordance with the Fund documentation. Any Instruction of the Client to transfer any Fund shall be deemed to be an Instruction to transfer all the interests of the Client in that Fund unless otherwise agreed by the Bank.
- 6.12 The Client agrees that the Bank or its Agents, may on request by any Fund or any representative of the Fund, disclose any Client Information (including the identities of the Client and its Beneficial Owners) to such persons (including the Fund, its representatives, or any legal, regulatory, governmental, tax, law enforcement or other authorities, or self-regulatory or industry bodies or associations of financial services providers) and for such purposes in connection with the Fund as may be specified in such request.

## **7. Options Trade on The Stock Exchange of Hong Kong Limited**

- 7.1 The provisions in this Clause 7 shall apply in respect of any Services provided by the Bank to the Client in relation to any options listed or traded on the SEHK. Unless the context otherwise requires or the terms are otherwise defined herein, capitalised terms used in this Clause 7 shall have the same meanings as defined in the Options Trading Rules of The Stock Exchange of Hong Kong Limited (the "**Options Trading Rules**").
- 7.2 The Bank will keep information relating to the Client's Account involving options confidential, but may provide any such information to the SFC and the HKMA to comply with their requirements or requests for information. The Client waives banking secrecy in this respect.
- 7.3 The Client confirms that, unless otherwise agreed by the Bank, the Account involving options is operated solely for the Client's account and benefit, and not for the benefit of any other person.
- 7.4 The Bank will collect margin requirements and premium in accordance with all applicable laws, rules and regulatory directions (the "**Options Rules**"), which include the Options Trading Rules, the Clearing Rules of The SEHK Options Clearing House Limited and the rules of the HKSCC.
- 7.5 The Client agrees that the terms of the Standard Contract for the relevant options series shall apply to each Client Contract between the Bank and the Client, and that all Client Contracts shall be created, exercised, settled and discharged in accordance with the Options Rules.
- 7.6 The Client agrees to provide the Bank with cash and/or Securities and/or other assets ("**Margin**") as may be agreed from time to time, as security for the Client's obligations to the Bank under the Agreement.
- 7.7 The Margin should be paid or delivered as demanded by the Bank from time to time; and the amounts required by way of Margin should not be less than, but may exceed, the amounts as may be required by the Options Rules in respect of the Client's open positions and delivery obligations, and further Margin may be



required to reflect changes in market value.

- 7.8 If the Bank accepts Securities by way of Margin, the Client will on request provide the Bank with such authority as the Bank may require under the Options Rules to authorise the Bank to deliver such Securities, directly or through an Options Exchange Participant, to SEOCH as SEOCH Collateral in respect of Exchange Traded Options Business resulting from the Client's Instructions to the Bank; and the Bank does not have any further authority from the Client to borrow or lend the Client's Securities or otherwise part with possession (except to the Client or on the Client's Instructions) of any of the Client's Securities for any other purpose.
- 7.9 Without limiting the generality of any other provisions of the Agreement, the Client agrees to indemnify each Indemnitee against all losses and expenses resulting from breach of the Client's obligation under this Clause, including costs reasonably incurred in collecting debts from the Client, and in closing the Account involving options.**
- 7.10 Without limiting the generality of any other provisions of the Agreement, if the Client fails to comply with any of the Client's obligations and/or to meet the Client's liabilities under this Clause, including failure to provide Margin, the Bank may:
- (a) decline to accept further Instructions from the Client in respect of Exchange Traded Options Business;
  - (b) close out some or all of the Client's Client Contracts with the Bank;
  - (c) enter into Contracts, or into transactions in Securities, futures or commodities, in order to settle obligations arising or to hedge the risks to which the Bank is exposed in relation to the Client's failure;
  - (d) dispose of Margin, and apply the proceeds thereof to discharge the Client's liabilities to the Bank, and any proceeds remaining after discharge of all the Client's liabilities to the Bank should be paid to the Client.
- 7.11 The Client agrees to pay interest on all overdue balances (including interest arising after a judgment debt is obtained against the Client) at such rates and on such other terms as the Bank has notified to the Client from time to time.
- 7.12 In respect of all Contracts effected on the Client's Instructions, the Client will pay the Bank, within the time period notified by the Bank, Premium, the Bank's commission and any other charges, and applicable levies imposed by the SEHK, as have been notified to the Client; and the Bank may deduct such Premium, commissions, charges and levies from the Account involving options.
- 7.13 The Bank may place limits on the open positions or delivery obligations that the Client may have at any time.
- 7.14 On exercise of a Client Contract by or against the Client, the Client will perform the Client's delivery obligations under the relevant contract, in accordance with the Standard Contract and as the Client has been notified by the Bank.
- 7.15 Upon request, the Bank shall provide the Client with product specifications for Options Contracts.
- 7.16 The Bank will notify the Client of material changes in respect of the Bank's business which may affect the Services involving options that the Bank provides to the Client.

## **8. Margin and Credit Facilities**

- 8.1 The Bank may in its absolute discretion agree from time to time to provide financial accommodation and/or otherwise facilitate the Client to carry out trading in Traded Asset on a margin basis, subject to such Collateral requirements and upon such terms as the Bank may think fit, and the Bank may fix a margin limit from time to time. Unless otherwise agreed between the Parties, any financial accommodation provided shall be subject to the terms in Part E. The Client must provide the Bank with an initial margin cover as Collateral by deposit of assets or otherwise as agreed with the Bank before entering into any Transaction, and within the time as specified by the Bank in. The required initial margin may vary with each type of Transaction and the amount may be determined and varied by the Bank from time to time in its absolute discretion and advised to the Client from time to time. The Bank may at its discretion at any time change the applicable margin requirement which can be obtained from the Bank, and the Client shall provide additional Collateral as required by the Bank from time to time to satisfy the Bank's prevailing margin requirements. The provision of margin shall also be subject to Clauses 8.3 to 8.6 of Part E of the General Conditions.
- 8.2 To the extent permissible and not inconsistent with any Applicable Laws, the Client acknowledges and agrees that any margin and credit limits indicated by the Bank to the Client may change at any time and from time to time as the Bank sees fit, and the Bank is not required to assign any reason for such change or give any notice to or obtain any consent from the Client.**

## 9. Additional Representations, Warranties and Undertakings of the Client

9.1 The Client represents, warrants and undertakes to and for the benefit of the Bank (which representations, warranties and undertakings will be deemed to be repeated by the Client on each date on which an Instruction is given or a Transaction is entered into (as the case may be)) that:

- (a) all information furnished by or on behalf of the Client to the Bank in connection with each Instruction, each Transaction and each agreement and document in connection therewith is and will be true, accurate and complete in every material respect;
- (b) the Client shall comply with all Applicable Laws (including securities and other laws and the rules and regulations of the applicable Exchange and markets relevant to the purchase, holding or sale of Securities and other financial products) and no Transaction shall be made directly or indirectly on behalf of any other person or entity or otherwise in circumvention of any Applicable Laws of any jurisdiction;
- (c) the Transaction entered into by the Client is in compliance with all Applicable Laws and terms and conditions of the Traded Asset and other contracts or arrangements applicable to the Client;
- (d) the Client has full power, authority and legal right and has obtained all licences, authorisations and consents and made all the notifications and filings necessary to give each Instruction and enter into and execute each Transaction and all related agreements and documents and to exercise its rights and perform its obligations thereunder; and all the required licences, authorisations and consents are and shall remain valid, in full force and effect;
- (e) unless otherwise notified to the Bank, each Transaction is entered into by the Client on its own behalf and all Traded Asset are and shall remain in the sole and beneficial ownership of the Client and are and shall remain free from any claims and any lien, pledge, mortgage, charge, security or other encumbrance whatsoever other than any security interest conferred on the Bank under the Agreement;
- (f) the obligations of the Client under the Instructions, Transaction and the related agreements and documents are duly authorised, legal, valid, binding and enforceable against the Client;
- (g) each and every party who has any financial interest whatsoever in any Traded Asset sold to or purchased from the Client and/or any transaction has joined in liability hereunder;
- (h) prior to entering into any Transaction (except where the Transaction is entered into by the Bank on behalf of the Client under the Discretionary Management Mandate which is not a Specific Transaction) that the Client has read and fully understood:
  - (i) the subscription agreements, term sheets, information memorandum, offering documents or similar documents (including all annexures and supplements) in respect of the Transaction;
  - (ii) the terms and conditions (including the structure, nature, features and risks) in respect of the Transaction; and
  - (iii) the margin requirements, if applicable;
- (i) (except where the Transaction is entered into by the Bank on behalf of the Client under the Discretionary Management Mandate which is not a Specific Transaction) that in entering into any Transaction, the Client has done so based on the Client's own judgment after it fully assesses the terms and conditions (including the structure, nature, features and risks) in respect of the Transaction and its investment objectives, financial situation, investment experience and other personal circumstances, and the Client has sought independent professional advice as it deems appropriate;
- (j) the Client is fully aware that the Transaction may be highly speculative and declares that:
  - (i) the Client knows and understands the high risk of loss involved in these types of transactions, and that different types of transactions may carry particular risks; and
  - (ii) the Client understands that values of Traded Asset can fall as well as rise and that the Client may not recover the full amount invested. Past performance is not necessarily a guide to what may happen in the future; and
  - (iii) no guarantee of profit has been made to it by the Bank, its Agents or by any other person or persons.

## 10. Disclosure of Information

10.1 Without limitation to any provisions in the General Conditions, if the Client effects transactions for account of its clients, whether on a discretionary or non-discretionary basis, and whether as agent or by entering into matching transactions as principal with its clients, in relation to a transaction where the Bank has received an enquiry from the SEHK and/or the SFC and/or government agencies or Regulators in Hong Kong ("**Hong Kong Regulators**"), the following provisions shall apply:

- (a) Subject to as provided below, the Client will immediately upon request by the Bank (which request shall include the relevant contact details of the relevant Hong Kong Regulators), inform the relevant Hong Kong Regulators of the identity, address, occupation and contact details of the client for whose account the transaction was effected (or, in the case of a back to back principal transaction the counterparty with whom the Client is transacting) and (so far as known to the Client) of the person with the ultimate beneficial interest in the transaction. The Client shall also inform the Hong Kong Regulators of the identity, address, occupation and contact details of any third party (if different from the client or the ultimate beneficiary) who originated the transaction and any "Know Your Client" documentation to the relevant Hong Kong Regulators.
- (b) If the Client effected the transaction for a collective investment scheme, discretionary account or discretionary trust, the Client shall, immediately upon request by the Bank (which request shall include the relevant contact details of the relevant Hong Kong Regulators), inform the relevant Hong Kong Regulators of the identity, address and contact details of the scheme or account or trust in question and if applicable, the identity, address and contact details of the person who, on behalf of the scheme, account or trust, instructed the Client to effect the transaction. In addition, the Client shall immediately inform the Bank when its discretion to invest on behalf of such scheme, fund, account or trust has been overridden, amended or terminated and, upon request by the Bank, immediately inform the relevant Hong Kong Regulators of the identity, address, occupation and contact details of the person(s) who gave the Instructions in relation to the transaction.
- (c) Without prejudice to the above, if the Client is aware that the Client's client is acting as intermediary for the underlying clients, and the Client does not know the identity, address, occupation and contact details of the underlying clients, the Client confirms that: (i) the Client has arrangements in place with the Client's client which entitle the Client to obtain such information from the Client's client immediately upon request; and (ii) the Client will, on request from the Bank, promptly request such information from the Client's client on whose instructions the transaction was effected, and provide the information to the relevant Hong Kong Regulators immediately upon receipt from its client.
- (d) The Client confirms that, where necessary, the Client has obtained all consents or waivers from the Client's own clients or other relevant persons, to release to the relevant Hong Kong Regulators the information referred to above. In particular, if the Client effects a transaction for the account of another person and it is in a jurisdiction with client secrecy laws, the Client confirms that:
  - (i) the Client's client(s) or the relevant person(s) have waived the benefit of the secrecy law in relation to any enquiry by the relevant Hong Kong Regulator; and
  - (ii) any such waiver is valid and binding under the laws of such relevant jurisdiction.
- (e) The Client acknowledges and understands that if the information set out in this Clause 10 is not provided within two (2) Business Days of the request by the relevant Hong Kong Regulators or such other time prescribed in the request, the Bank may be required by such Hong Kong Regulators to close out any open positions and/or suspend the provision of any Services under the Agreement and the Bank shall not be liable to the Client or any other person for any loss as a result.
- (f) The provisions of this Clause 10 shall continue in effect notwithstanding the termination of the Agreement, closure of any Account, termination of the provision of any Services, or termination of any agreement the Client has with the Bank or any EFG Bank Group Member.

**10.2 The Client acknowledges that the representations, warranties and disclosure of the Client will be relied upon by the Bank in giving such representations, warranties and disclosure on behalf of the Client. The Client agrees to indemnify and hold harmless each Indemnitee in full against any and all reasonable Claims arising out of or in connection with any breach of the representations, warranties or disclosure.**

## **11. Compliance with Laws and Limits**

11.1 The Client undertakes that it will not engage or attempt to engage in any market misconduct provisions set out in Part XIII or Part XIV of the SFO.

11.2 The Client agrees that it shall be solely responsible for compliance with the provisions of Parts XV and IIIA of the SFO, the Securities and Futures (Short Position Reporting) Rules (Cap. 571AJ of the Laws of Hong Kong), the Securities and Futures (Contracts Limits and Reportable Positions) Rules (Cap. 571Y of the Laws of Hong Kong), the Securities and Futures (OTC Derivative Transaction - Reporting and Record Keeping

Obligations) Rules (Cap. 571AL of the Laws of Hong Kong) and any other Applicable Laws relating to disclosure of interests, position reporting and position limits.

- 11.3 The Client shall not exceed any position or transaction limits under Applicable Laws or otherwise imposed by the Bank from time to time. Such limits may include minimum or maximum sizes for Transactions. If any such limits are exceeded, the Bank may disclose the Client Information and the Client's positions to the Exchange and other regulators, and/or liquidate any of the positions and take such actions as the Bank considers appropriate without notifying the Client or obtaining prior consent from the Client.
- 11.4 The Bank may determine to vary any position or transaction limits or margin levels at any time in its absolute discretion. The Client acknowledges, in certain circumstances, the effect of such a determination may be an immediate change in limits or levels and/or require additional margin or Collateral to be deposited or transferred immediately.

## 12. Fees and Charges

- 12.1 The Client shall pay such fees, charges and expenses as maybe prescribed by the Bank from time to time in respect of the Accounts, Services and Transactions. The Bank is expressly authorised and directed to deduct any amount due and owing to it by the Client from any monies held or received by it for and on behalf of the Client or from any monies standing to the credit of any Account of the Client. If there are insufficient funds standing to the credit of the relevant Account of the Client or otherwise held with the Bank, the Client shall pay the amount of such shortfall immediately on demand. Without prejudice to any other rights of the Bank under the Agreement and Applicable Laws, the Client agrees and acknowledges that the Bank may dispose of the Client's Securities or Securities collateral in settlement of any liability owed by or on behalf of the Client to the Bank, any nominees or a third party.

## 13. Custodial Services

- 13.1 The Bank is authorised and requested to establish a Custody Account for the purpose of holding any Traded Asset delivered to or collected by the Bank for such account in accordance with the Client's Instructions and accepted by the Bank, **and the Client shall be responsible for and indemnify each Indemnitee against all taxes, charges, expenses and assessments incurred by or assessed against the Indemnitee in connection with such Custody Account or the Traded Asset held in or purchased or sold for it, and without limiting any other rights which the Bank may have to effect recovery of the same the Bank is authorised to charge the Custody Account or any other account which the Client may hold with the Bank with all such taxes, reasonable charges, expenses or assessments without prior notice to the Client.**
- 13.2 The Client agrees and authorises the Bank to open and operate segregated or designated custody account(s) with the Bank's appointed custodian or agent for the purpose of meeting the disclosure of interest rules on the relevant markets, tax reporting requirements or requirements under any Applicable Laws. The Client agrees to pay the Bank's fees, including out-of-pocket expenses as imposed by the custodian or agent in relation to the operation of such account(s), in accordance with the Bank's published Scale of Charges Booklet in force at the relevant time unless otherwise notified by the Bank.
- 13.3 The Bank shall be entitled to charge the Client for the provision of Custodial Services, together with the fees of any sub-custodian, clearing agency, depository appointed or other Agents in respect or any Traded Asset held.
- 13.4 The Bank will provide reasonable safekeeping for any Traded Asset held in a Custody Account and will endeavor to collect and, subject to the other provisions of the Agreement, pay out the income derived from any such Traded Asset held in accordance with the Client's Instructions. Traded Asset held in a Custody Account shall be held at the Client's sole risk and the Bank shall not be liable for any loss or claim however the same may arise unless directly occasioned by the fraud, negligence or wilful misconduct of the Bank or its employees, agents or servants. **The provision of Custodial Services by the Bank to the Client does not constitute the Bank a trustee and the Bank shall have no trust or other obligations in respect of the assets held in the Custody Account other than those expressly provided in the Agreement.**
- 13.5 Unless prevented by the nature of the assets or any special agreement or unless otherwise required under Applicable Laws, the Bank is authorised (but not obliged) to pool any Traded Asset, or cause them to be pooled, with other assets held by the Bank. In these circumstances, the rights, obligations and risks of the Client shall be proportional to its share of the assets so held by the Bank on its behalf.
- 13.6 Where any fractional shares, subscription rights, warrants, warrant options or similar rights are received from time to time for the benefit of the Client, then unless otherwise instructed by the Client by reasonable prior notice, the Bank may sell the same at the best price reasonably obtainable and credit the sales proceeds into the Client's Account or deal in other manner as the Bank determines. **To the maximum extent permitted by and not inconsistent with any Applicable Laws, the Bank shall not be liable for any loss or diminution of profit occasioned by the timing of any such sale, or any factors which render it impracticable to carry out such sale at a reasonable price or at all.**

- 13.7 The Bank may at its discretion register Traded Asset held in the Custody Account in the name of the Bank or in the name of its nominees or any Traded Asset depository or such other person as the Bank may direct in which such Traded Asset may be held. The Bank may enter into nominee and sub-custodial agreements in accordance with the Applicable Laws in Hong Kong or the country in which such nominee and sub-custodial arrangements are made with either clearing agencies or other depository institutions. The Bank is hereby appointed as the agent of the Client for the purpose of entering into such agreements and executing on the Client's behalf any necessary documents to cause the Traded Asset subject thereto to be registered as appropriate, in the name of such nominee, sub-custodian or other person so appointed. **To the maximum extent permitted by and not inconsistent with any Applicable Laws, the Bank shall not be liable or responsible for any act or omission of such custodian, nominee, other appointed person, Traded Asset depository or clearing agency.**
- 13.8 Unless otherwise required by Applicable Laws, the Bank is not bound to inform the Client of shareholders, bondholders or unitholders meetings of any Traded Asset of which is entrusted by the Client to the Bank for safekeeping. Subject to Applicable Laws, while the Bank will endeavor to forward relevant communications to the Client, and to respond in accordance with the Client's Instructions, it shall have no responsibility to monitor or act upon any such communications or offers made in respect of any Traded Asset held as part of the Custodial Services, and the Bank shall have no liability for any loss of any kind arising directly or indirectly in consequence of any delayed transmission of communications to or from the Client or for any inadvertent failure or inability to forward any such communication. Unless expressly agreed otherwise, the Bank will not be obliged to on behalf of the Client as shareholder, bondholder or unitholder or in any other capacity exercise voting rights attached to Traded Asset held in safe custody and, in particular, the Bank is not obliged to request voting instructions from the Client.
- 13.9 Notwithstanding any other provisions in the Agreement, the Client accepts that where Securities are held on the Client's behalf in jurisdictions where the law may require that the Beneficial Owner's identity be revealed in the course of criminal or other investigations or otherwise required under Applicable Laws, the Bank may release such information.
- 13.10 The Bank may (but shall not be obliged to) account to the relevant authorities in any jurisdiction for any withholding or other taxes payable in respect of any Traded Asset held in a Custody Account and the Client shall indemnify the Bank against all such taxes (even if imposed solely as a result of the Bank's safekeeping of the Traded Asset or the use of a clearing agency, custodian or agent for such Traded Asset). The Client shall be responsible for obtaining any refunds of taxes to which it may be entitled whether by reason of the application of a double tax treaty or otherwise.**
- 13.11 In the event that any Securities held or to be transferred into in a Custody Account are or become (i) no longer listed on any Exchange and/or (ii) the issuer(s) of the Securities is/are insolvent and/or is/are subject to insolvency, bankruptcy or similar proceedings or actions and/or (iii) the issuer(s) of, or other obligor(s) under, the Securities has/have defaulted in its/their payment and/or other obligations under the Securities, then the Client agrees and acknowledges that without prior notice to or further agreement of the Client that:
- (a) the Bank may accept or continue to hold such Securities, notwithstanding that they may not be capable of being traded or realised in the foreseeable future or at all;
  - (b) any statement of account or valuation issued by the Bank will reflect a nil or zero value for such Securities;
  - (c) the Bank shall not be obliged to take any action in connection with any of such Securities, including voting at any shareholders' or bondholders' meeting, making or filing any claim or proof of debt in respect of the Securities, or otherwise acting in any manner in connection with any of such Securities; and
  - (d) if the Bank at its sole discretion determines that it is in the best interest of the Client to take any action in connection with any of such Securities it shall do so on the basis of the Bank's best reasonable efforts, at the cost and expense of the Client and the Client's sole risk but strictly without liability of any nature on the Bank's part for any loss or claim however the same may arise unless directly occasioned by the fraud, negligence or wilful misconduct of the Bank or its employees, agents or servants.
- 13.12 The Client agrees that if for any reason, at the Bank's sole discretion, the Bank considers it inappropriate or impracticable for the Bank to continue to hold the Securities or any of them, the Client will promptly make alternative arrangements for the custody upon the Bank's request.

#### **14. Termination Events and Close out**

- 14.1 Without prejudice to the rights of the Bank under Clause 13.1 of Part C of the General Conditions, if any Event of Default shall occur and be continuing in respect of the Client or (as the context may permit) any Collateral Provider, including, a failure to provide any additional margin due under Clause 8 when due then in any such event, then without prejudice to any other rights which the Bank may have against the Client or any third party and without prior notice to the Client, the Bank may (but is not obliged to) immediately or at any time thereafter take any one or more of the following actions:

- (a) suspend (temporarily or permanently) or terminate any Account, or the Bank's relationship with the Client and determine that all amounts which are, or may in the future become, payable by the Client to the Bank are immediately due and payable;
  - (b) close-out or exercise (or abandon, in the case of options) any one or more Transactions using any method the Bank deems appropriate;
  - (c) cover positions by trading or entering into further Transactions on behalf of the Client;
  - (d) take such other action as a reasonably prudent person would take in the circumstances to protect the Bank's position;
  - (e) liquidate all or any margin or Collateral at the price which the Bank deems appropriate in the circumstances;
  - (f) take any action permitted and exercise any other power or right which the Bank may have under the law, the rules of any relevant Exchange or the Agreement (including the terms of any Transaction Confirmation);
  - (g) apply any amounts standing to the credit of the Client (including any margin or Collateral or the proceeds from liquidating any margin or Collateral) against any amounts which the Client owes to the Bank (of any nature and however arising, including any amounts due and unpaid under any Transaction and any contingent amounts), or generally to exercise the Bank's right of set-off against the Client;
  - (h) after any amounts standing to the credit of the Client are applied against any amounts which the Client owes to the Bank, and following the exercise of the Bank's right of set-off against the Client, demand any shortfall from the Client, hold any excess pending full settlement of any other obligations of the Client, or pay any excess to the Client; and/or
  - (i) the Bank may determine that a Termination Election will apply and that all Transactions will be Closed Out or terminated.
- 14.2 Where the Bank determines that a Termination Election will apply under Clause 14.1(i) or Clause 24 in Section 1 of Part B, and that all Transactions will be Closed Out or terminated, then:
- (a) the Bank may by notice to the Client designate a day not earlier than the day such notice is effective as the early Close Out date in respect of all Transactions, and that Early Termination Date will occur on the date as specified in such notice, whether or not any relevant Event of Default is then continuing; and
  - (b) the Bank will determine the Early Termination Amount (if any) payable in respect of that Early Termination Date as set out in this Clause 14.
- 14.3 Without prejudice to any other provision of these General Conditions (including any obligation in relation to an Early Termination Date including the obligations to pay any Early Termination Amount), on the Early Termination Date the Transactions will be terminated and no further schedule payment or delivery in respect of those terminated Transactions (or any default interest in respect of those scheduled payments or deliveries) will be required to be made by any party.
- 14.4 On or as soon as reasonably practicable following the Early Termination Date, the Bank will calculate the Early Termination Amount in respect of the terminated transactions and notify the Client in writing of the Early Termination Amount, and the date on which the Early Termination Amount must be paid.
- 14.5 If the Early Termination Amount is a positive number, the Client must pay that amount to the Bank, together with interest on the Early Termination Amount payable at the rate notified to the Client for the period from and including the Early Termination Date to and including the date that the Early Termination Amount is actually paid.
- 14.6 If the Early Termination Amount is a negative number, the Bank must pay the absolute value of that amount to the Client, together with interest on the Early Termination Amount payable at the rate notified to the Client for the period from and including the Early Termination Date to and including the date that the Early Termination Amount is actually paid.
- 14.7 The Bank and the Client agree that any Early Termination Amount is a reasonable pre-estimate of loss and is not a penalty. The Bank and the Client agree that any Early Termination Amount is payable for the loss of bargain and loss of protection against future risks, and except as otherwise provided for in these General Conditions, the parties will not be entitled to recover any additional damages as a consequence of the termination of the Transactions.

- 14.8 Where the Bank is unable for whatever reason to calculate promptly the Early Termination Amount due to or from the Bank as the result of a Termination Election, the Bank may at its option (but without being required to do so) make an interim calculation, and the parties shall make provisional settlement on the basis of the same until such time as the Bank is able to make a final calculation, when such settlement shall be adjusted as necessary, provided always that in lieu of any claim the Bank may have with respect to settlement of any Closed Out Transaction, the Bank may elect in writing to be indemnified by the Client against all losses and expenses of a reasonable amount and of any nature which the Bank may from time to time certify that it has reasonably suffered or incurred in respect of such Closed Out Transaction (including any liabilities resulting from the Bank covering, reducing or eliminating any unmatched position which would have been matched but for such cancellation and Close Out), except in the case of fraud, negligence or wilful misconduct of the Bank or its employees, agents or servants, and the Bank may take, or refrain from taking, such action at such time or times and in such manner as the Bank, in its absolute discretion, considers expedient or desirable to cover, reduce or eliminate any such loss, cost, expense or liability.
- 14.9 The Client may be affected by any curtailment of, or restriction on, the capacity of the Bank to trade in respect of open positions as a result of action taken by the SFC under Applicable Laws or for any other reason, and that in such circumstances, the Client may be required to reduce or close out its open positions with the Bank.

## Section 4: China Connect

This Section sets out the additional terms relating to the provision of certain Services by the Bank and the Bank's Service Provider(s) to the Client in relation to Northbound trading under China Connect.

References to the term "**Clause**" in this Section 4 of Part B of the General Conditions shall mean a "**Clause**" in this Section.

### 1. Definitions

In this Section, the following words shall have the meanings given below:

<b>A Share(s)</b>	Any Securities issued by companies incorporated in Mainland China which are listed and traded on Mainland China A Share markets (Shanghai and Shenzhen) and not on the SEHK.
<b>Beneficial Owner</b>	For the purposes of this Section, any person or entity referred to in Rule 537 of the SEHK Rules.
<b>Cash</b>	All cash or cash equivalents in Renminbi received and held by the Bank on the terms of this Section.
<b>Cautionary Level</b>	Has the meaning given to it in Clause 23.3.
<b>CCASS</b>	The Central Clearing and Settlement System of Hong Kong.
<b>China Connect</b>	The Securities trading and clearing links programme developed by the SEHK, SSE, HKSCC and ChinaClear for the establishment of mutual market access between the SEHK and SSE and the Securities trading and clearing links programme developed by the SEHK, SZSE, HKSCC and ChinaClear for the establishment of mutual market access between the SEHK and SZSE.
<b>China Connect Authority(ies)</b>	The respective Exchanges, clearing systems and governmental and regulatory bodies which provide services and/or regulate China Connect and activities relating to China Connect, including the SEHK, SSE, SZSE, HKSCC, ChinaClear, CSRC, PBOC, SAFE, SAT, the SFC, the HKMA and any other regulator, agency or authority with jurisdiction, authority or responsibility in respect of China Connect.
<b>China Connect Laws</b>	The Applicable Laws of Hong Kong and Mainland China in respect of China Connect, trading China Connect Securities through China Connect, or any activities in connection with China Connect, including the China Connect Rules.
<b>China Connect Market</b>	The stock markets operated by the SSE and SZSE that fall within the scope of the China Connect.
<b>China Connect Market System</b>	The system used for the trading of China Connect Securities on the SSE or SZSE, as operated by the SSE or SZSE.
<b>China Connect Rules</b>	Any Applicable Laws published or applied by any China Connect Authority or China Connect related entity in respect of China Connect or any activities in connection with China Connect.
<b>China Connect Securities</b>	Any Securities listed and traded on the SSE or SZSE which may be traded by Hong Kong and international investors under China Connect.
<b>China Connect Service</b>	The order-routing service through which Northbound orders placed by an exchange participant may be transmitted by the SEHK Subsidiary to the SSE or SZSE for the buying and selling of China Connect Securities and any related supporting services.
<b>China Connect Trading Day</b>	A day on which the SEHK is open for Northbound trading, where "T day" denotes the China Connect Trading Day on which a transaction is executed and "T+1 day" denotes the day which is one China Connect Trading Day after T day.
<b>ChinaClear</b>	China Securities Depository and Clearing Corporation Limited.
<b>ChiNext Shares</b>	A Shares accepted for listing and admitted to trading on the ChiNext market operated by the SZSE from time to time.



<b>Clearing Participant</b>	Has the meaning given to it in the rules of CCASS.
<b>Client Forced-sale Notice</b>	Has the meaning given to it in Clause 20.1.
<b>CSIPF</b>	Has the meaning given to it in Clause 46.
<b>CSC</b>	The China Connect Market System for receiving and routing orders under China Connect to the trading system on a China Connect Market for automatic matching and execution.
<b>CSRC</b>	China Securities Regulatory Commission.
<b>CSRC China Connect Rules</b>	The Several Provisions on the Interconnection Mechanism for Mainland and Hong Kong Stock Markets, as promulgated by the CSRC to prescribe the launch and operation of China Connect.
<b>Daily Quota</b>	Has the meaning given to it in Clause 7.2.
<b>Designated SPSA</b>	The specific SPSA to which a SPSA Sell Order relates.
<b>Eligible Margin Trading Securities</b>	Has the meaning given to it in Clause 34.1.
<b>Forced-sale Notice</b>	Has the meaning given to it in Clause 20.1.
<b>H Shares</b>	Any Securities issued by companies incorporated in Mainland China and listed on the SEHK.
<b>HKEx</b>	Hong Kong Exchanges and Clearing Limited.
<b>Mainland China</b>	People's Republic of China (which for the purpose of this Section, excludes Hong Kong, Macau and Taiwan).
<b>Mainland China Listco</b>	Has the meaning given to it in Clause 21.
<b>Mainland China Resident</b>	Any natural person holding a resident identification card or other equivalent government issued identification of Mainland China, and not having permanent residence in other jurisdictions outside of Mainland China.
<b>Northbound</b>	Denotes the trading of China Connect Securities by Hong Kong and international investors through China Connect.
<b>Original CP</b>	Has the meaning given to it in Clause 20.3.
<b>Permitted Level</b>	Has the meaning given to it in Clause 23.3.
<b>PBOC</b>	People's Bank of China.
<b>Pre-Trade Checking</b>	The requirement under Mainland China law under which the SSE or SZSE may reject a sell order if an investor does not have sufficient available China Connect Securities in its account.
<b>QFII</b>	Qualified Foreign Institutional Investor(s).
<b>Recipient Agent</b>	Has the meaning given to it in Clause 20.3.
<b>RQFII</b>	Renminbi Qualified Foreign Institutional Investor(s).
<b>SAFE</b>	State Administration of Foreign Exchange of Mainland China.
<b>SAT</b>	The State Administration of Taxation of Mainland China.

<b>SEHK Rules</b>	The Rules and Regulations of the SEHK.
<b>SEHK Subsidiary</b>	A wholly-owned subsidiary of the 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.
<b>Service Provider(s)</b>	Such exchange participants, dealers, brokers, contractors, custodians, information service providers, providers of execution facilities and providers of other financial products and Agents (including their respective delegates) as may be engaged by the Bank from time to time in providing the Services.
<b>Shenzhen-Hong Kong Stock Connect</b>	The Securities trading and clearing links programme developed by the SEHK, SZSE, HKSCC and ChinaClear for the establishment of mutual market access between the SEHK and SZSE.
<b>Special China Connect Securities</b>	Any Securities listed on the SSE or SZSE which the SEHK (after consulting with the SSE or SZSE) accepts or designates as eligible only for China Connect sell orders and not China Connect buy orders.
<b>SPSA</b>	Has the meaning given to it in the General Rules of the Central Clearing and Settlement System.
<b>SPSA Sell Order</b>	Has the meaning given to it in Clause 6.5.
<b>SSE</b>	The Shanghai Stock Exchange.
<b>SSE Listing Rules</b>	The Rules Governing the Listing of Stocks on the Shanghai Stock Exchange.
<b>SSE Rules</b>	The rules, operation procedures, circulars and notices of the SSE in respect of the stock listing and trading activities taking place on the SSE.
<b>SZSE</b>	The Shenzhen Stock Exchange.
<b>SZSE Listing Rules</b>	The Rules Governing the Listing of Stocks on the Shenzhen Stock Exchange and the Rules Governing the Listing of Shares on the ChiNext of Shenzhen Stock Exchange.
<b>SZSE Rules</b>	The rules, operation procedures, circulars and notices of the SZSE in respect of the stock listing and trading activities taking place on the SZSE.
<b>Taxes</b>	All 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 this Section or (iii) the Client.

## **2. Home Market Rules**

- 2.1 A fundamental principle of China Connect is that the laws and rules of the home market of the applicable Securities shall apply to investors in 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 Mainland China Securities regulations. Nevertheless, certain Hong Kong legal and regulatory requirements will also apply to Northbound trading.
- 2.2 If the Client breaches or fails to comply with any Applicable Laws in respect of China Connect (including the SSE Rules, SZSE Rules, China Connect Rules and other applicable China Connect Laws), or the disclosure and other obligations referred to in the SSE Listing Rules, SZSE Listing Rules or SSE Rules are breached, the SSE and SZSE shall have the power to carry out an investigation and may, through the SEHK or the SEHK Subsidiary, require the Bank or the Service Provider to provide relevant information and materials (including information and personal data related to the Client or the Beneficial Owner) to assist in their investigation.
- 2.3 The Client acknowledges and consents that the Bank and/or the Service Provider may provide, if so required by the SEHK at the request of the SSE or SZSE (for the purpose of assisting the SSE or SZSE in its regulatory surveillance of the market(s) operated by the SSE or SZSE under China Connect and enforcement of the SSE Rules or SZSE Rules and as part of the regulatory cooperation arrangement between the SEHK, SEHK Subsidiary, SSE and SZSE), information and personal data concerning the Client and/or the Beneficial Owner with respect to any instruction or Transaction made or entered into by the Bank or the Service Provider under China Connect on the Client's behalf. The Client further acknowledges and consents to the disclosure,

transfer and provision of such information and personal data by the SEHK (whether directly or through the SEHK Subsidiary) to the SSE or SZSE upon request by the SSE or SZSE.

- 2.4 The Client must comply with, be liable and responsible for any breach by the Client of the SSE Rules, SZSE Rules, China Connect Rules, China Connect Laws and all Applicable Laws of Mainland China relating to the Client's trading in China Connect Securities. The Client shall seek external professional advice as necessary. As a result of breach or failure to comply with the SSE Rules, SZSE Rules, China Connect Rules, China Connect Laws and any other Applicable Laws, the Client may be liable to regulatory investigations and shall be liable and responsible for the relevant legal and regulatory consequences, including regulatory or criminal penalties.
- 2.5 The SEHK has the power not to extend the China Connect Service to the Client and the power to require (including at the request of the SSE or SZSE) the Bank and the Service Providers not to accept instructions from the Client, including if it is found that the Bank, the Service Providers or any of their clients (as the case may be) have or may have committed any abnormal trading conduct or failed to comply with the SSE Rules, SZSE Rules, China Connect Rules and other China Connect Laws. The SSE or SZSE may request the SEHK to require the Bank and the Service Providers to issue warning statements (verbally or in writing) to their clients, and not to extend Northbound trading services to their clients. In such a case, the Client may receive related warning statements and Northbound trading services may not be provided to the Client.
- 2.6 The Client acknowledges and accepts the risks that the Client's instructions to trade in China Connect Securities may not be accepted by the Bank, the Service Provider(s) or any China Connect Authority. The Bank shall not be liable to the Client for any loss whatsoever and howsoever (including without limitation, as a result of any corporate action of any company which may have an impact on any stock price) arising out of or in connection with the execution of, partial execution of, or failure to execute any Instruction unless such liability is directly caused by the fraud, negligence or wilful misconduct of the Bank or its employees, agents or servants. The Client acknowledges that market conditions and restrictions on the days on which trading in China Connect Securities is permitted under the China Connect Rules, China Connect Laws and any other Applicable Laws may make it impossible to execute an Instruction.
- 2.7 The Client represents, warrants and undertakes that:
- (a) (unless the Client has informed the Bank in writing) the Client will be liable as a principal in respect of all Transactions made or entered into by the Bank or the Service Provider under China Connect on the Client's behalf;
  - (b) the Client has and will have full power and capacity, and has taken and will have taken all necessary corporate and other action to authorise the Client, to enter into, and perform the Client's obligations under, this Section and all Transactions made or entered into by the Bank or the Service Provider under China Connect on the Client's behalf;
  - (c) this Section and each Transaction made or entered into by the Bank or the Service Provider under China Connect on the Client's behalf are the Client's valid and binding obligations enforceable against the Client, subject to bankruptcy or other Applicable Laws;
  - (d) the Client has obtained and will continue to maintain all necessary authorisations and approvals of any governmental or regulatory body required for the Client to use the services and enter into, and to perform the Client's obligations under, this Section and the Transactions made or entered into by the Bank or the Service Provider under China Connect on the Client's behalf;
  - (e) by entering into and performing any Transaction contemplated by this Section, the Client is not subject to any restriction or prohibition from engaging in such Transaction under, and the Client has complied with and will not violate, any China Connect Rules, China Connect Laws or any other Applicable Laws;
  - (f) at the time of transfer by the Client of any investments under any Transactions made or entered into by the Bank or the Service Provider under China Connect on the Client's behalf, other than as contemplated herein, the Client will have full and unqualified right to make such transfer and upon such transfer the transferee will receive all right, title and interest in and to those investments free from any adverse interest; and
  - (g) the Client holds legal and (except where the Client is acting as a trustee and has disclosed this to the Bank) beneficial title to all investments held on the Client's behalf under this Section free from any adverse interest.
- 2.8 The above representations, warranties and undertakings shall be deemed to be repeated immediately before each Transaction or dealing is carried out for or any Service is provided to the Client or on the Client's behalf.

### **3. Eligible Investors**

- 3.1 There are eligibility restrictions for investors trading via China Connect. By agreeing to this Section, the Client represents and warrants that the Client is not (i) a Mainland China Resident (or alternatively if the Client is a

Mainland China Resident, the Client's entry into any Transactions via China Connect must not violate the Applicable Laws of Mainland China including those in relation to foreign exchange control and reporting); or (ii) a legal entity incorporated under the laws of Mainland China. The Client also warrants and undertakes to use legitimate offshore (i.e. non-Mainland China) assets to make investments through Northbound trading. The above representations, warranties and undertakings shall be deemed to be repeated immediately before each Transaction or dealing is carried out for or any Service is provided to the Client or on the Client's behalf.

#### **4. Eligible Securities**

- 4.1 The Client will only be able to trade selected Securities listed on the SSE and SZSE, being the China Connect Securities, as prescribed by the China Connect Laws, any other relevant regulations, and/or as stipulated by the Bank in the Bank's sole discretion from time to time. The Client further acknowledges that apart from China Connect Securities, the Client may not be able to trade other Securities listed on the SSE or SZSE, or subscribe for shares or other types of Securities from initial public offerings on the SSE or SZSE.

#### *Trading and Settlement Restrictions*

#### **5. Pre-Trade Checking**

- 5.1 The SEHK is required to check that in respect of any Northbound sell orders given by a Service Provider, the relevant Service Provider holds sufficient available China Connect Securities to be able to fill such Northbound sell orders. Pre-Trade Checking will be carried out at the start of each China Connect Trading Day.
- 5.2 Accordingly, the Client may be unable to execute Northbound sell orders due to Pre-Trade Checking related requirements. In particular, the Client 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 a Service Provider or if for any other reason the Bank or a Service Provider considers that there is or may be non-compliance with any China Connect Rules or other China Connect Laws.
- 5.3 Any risk, loss or cost resulting from non-compliance or potential non-compliance with Pre-Trade Checking requirements and/or the relevant China Connect Rules or other China Connect Laws shall be borne by the Client.

#### **6. Settlement**

- 6.1 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.
- 6.2 Although the transfer of the China Connect Securities precedes the cash transfer, 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 day when both the Securities and the cash are settled or, where the purchase was pre-funded, the settlement date would be the date on which the Securities are released.
- 6.3 The Client agrees to ensure that, at the time the Client gives Instruction for buying China Connect Securities or selling China Connect Securities, there shall be:
- (a) in the case of buying China Connect Securities, sufficient and available cleared RMB funds in the Account to meet the purchase price and stamp duties, levies, commissions and all other transaction-related costs, reasonable charges and expenses for buying the China Connect Securities, as and when required for settlement as determined by the Bank in the Bank's sole discretion from time to time; or
  - (b) in the case of selling China Connect Securities, sufficient and available China Connect Securities in the Account (including the SPSA) at such time as required under the China Connect Rules, China Connect Laws, or other Applicable Laws (including rules relevant to Pre-Trade Checking) or by such time as otherwise determined by the Bank in the Bank's sole discretion from time to time.
- 6.4 Unless otherwise agreed by the Bank, Instructions for buying China Connect Securities or selling China Connect Securities on the Client's behalf will only be accepted by the Bank if:
- (a) in the case of buying China Connect Securities, the Client has sufficient and available cleared RMB funds in the Account to meet the purchase price and stamp duties, levies, commissions and all other transaction-related costs, reasonable charges and expenses for buying the China Connect Securities, as and when required for settlement as determined by the Bank in the Bank's sole discretion from time to time; or
  - (b) in the case of selling China Connect Securities, the Client has sufficient and available China Connect Securities in the Account (including the SPSA) at such time as required under the China Connect

Rules, China Connect Laws, or other Applicable Laws (including rules relevant to Pre-Trade Checking) or by such time as otherwise determined by the Bank in the Bank's sole discretion from time to time.

- 6.5 The Bank may but is not obliged to allow the Client to place a sell order for China Connect Securities held in a SPSA (such sell order shall be referred to as a "**SPSA Sell Order**"). The Bank has the absolute discretion not to accept a SPSA Sell Order without providing any reason thereof. If the SPSA Sell Order is executed, the relevant China Connect Securities will be delivered to the Bank or the Bank's clearing participant or such other persons designated by the Bank for settlement.
- 6.6 If the Bank so agrees, the Client may instruct the Bank to execute a SPSA Sell Order in relation to a Designated SPSA, subject to the following and such other requirements as may be required by Applicable Laws or as prescribed by the Bank from time to time:
- (a) the Client must have opened the Designated SPSA with a custodian participant in accordance with the General Rules of the Central Clearing and Settlement System and Applicable Laws and the Designated SPSA has been assigned with an investor identification number (if so required) in accordance with Applicable Laws;
  - (b) the Client has designated the Bank to be an executing broker for the Designated SPSA and authorised the Bank to execute on behalf of the Client the sale of the China Connect Securities in the Designated SPSA, and the Bank and the relevant China Connect Authorities or the SEHK Subsidiary have accepted such designation;
  - (c) the Client has provided all information as the Bank may request in relation to the Designated SPSA;
  - (d) there are sufficient China Connect Securities in the Designated SPSA to settle the delivery obligations on the settlement date;
  - (e) the SPSA Sell Order must be designated as a SPSA Sell Order in the relevant Instruction given to the Bank and contain such information (including the relevant investor identification number if so required under Applicable Laws) and be in such form and manner as may be prescribed by the Bank from time to time;
  - (f) the Bank shall be entitled to rely on and use all information and confirmations the Client provides to the Bank in relation to a SPSA Sell Order, and to disclose the same to such other person as the Bank considers appropriate in relation to that SPSA Sell Order;
  - (g) the total number of shares which can be subject to SPSA orders in respect of China Connect Securities in a SPSA shall not exceed the threshold set out in the Applicable Laws;
  - (h) the relevant China Connect Securities delivered by the Client (or its custodian participant on its behalf) in settlement of a SPSA Sell Order are delivered from and settled through the Designated SPSA; and
  - (i) the Client has complied with, and has procured its relevant custodian participant to comply with all applicable requirements as may be imposed by any China Connect Authority or the SEHK Subsidiary and under Applicable Laws or such other requirements as prescribed by the Bank from time to time.
- 6.7 The Bank will reject a SPSA Sell Order if any of the requirements set out in Clause 6.6 is not satisfied. The Bank has the absolute discretion to refuse to accept the Client's designation as an executing broker for a SPSA or to provide execution services in relation to SPSA Sell Orders. The Bank may at any time in its absolute discretion refuse or withdraw its consent to execute any SPSA Sell Order in relation to any or all of the Client's SPSAs without providing any reason thereof.
- 6.8 By instructing the Bank to execute a SPSA Sell Order, the Client represents and warrants that:
- (a) the Designated SPSA has been designated to the Client and an investor identification number (if so required) has been assigned to the Designated SPSA in accordance with Applicable Laws;
  - (b) the Client's custodian holds the Designated SPSA on the Client's behalf and the Client has authorised and designated the Bank to be an executing broker for the Designated SPSA to execute on its behalf the sale of China Connect Securities in the Designated SPSA;
  - (c) there are sufficient China Connect Securities in the Designated SPSA and that the Client has made arrangements with the relevant custodian participant to deliver the relevant China Connect Securities in the Designated SPSA to the Bank or its clearing participant to ensure timely settlement of the SPSA Sell Order; and
  - (d) the Client has authorised the reproduction, replication and transmission of the stock holding records of the Designated SPSA by the Bank for the purpose of enabling the SEHK and the SEHK Subsidiary to carry out the Pre-Trade Checking.
- 6.9 If for whatever reason there is late, incomplete or failed delivery of China Connect Securities in relation to a SPSA Sell Order, the Client:

- (a) undertakes to indemnify and hold the Bank harmless for any costs, losses or expenses it incurs as a result of the late, incomplete or failed delivery, including but not limited to any costs and taxes associated with buying equivalent China Connect Securities to cover the shortfall, any penalties imposed by any China Connect Authority, and any financing costs, hedging costs and mark-to-market losses suffered;
- (b) undertakes to provide, or procure that the relevant custodian participant provides, promptly all information and documents relating to any outstanding or overdue short stock positions as may be required by HKSCC or other China Connect Authority to determine that the outstanding or overdue short stock position is due to the failure of the relevant custodian participant to deliver China Connect Securities from the relevant SPSA to the Bank;
- (c) undertakes to procure the delivery of such China Connect Securities to the Bank or its clearing participant as soon as possible, and in any case within such time as may be required by the Bank to enable it to meet its delivery obligations; and
- (d) accepts that the sellable balances of the relevant SPSA may be adjusted in accordance with Applicable Laws.

6.10 The Client undertakes that:

- (a) without the prior consent of the Bank, it will not make any change in the status of any SPSA for which the Bank has been designated as an executing broker, including but not limited to, termination or suspension of that SPSA or revocation of appointment of the Bank as a designated executing broker for that SPSA; and
- (b) the Client will forthwith notify the Bank of any events or potential events that may lead to the aforesaid changes.

## **7. Quota Restrictions**

- 7.1 Purchases of China Connect Securities through China Connect are subject to certain quota controls and restrictions as set out in the China Connect Rules or China Connect Laws. As a result, there is no assurance that a buy order can be successfully placed through China Connect.
- 7.2 The daily quota limits the maximum value of all the Northbound buy trades that can be executed by the Bank or Service Providers on each China Connect Trading Day ("**Daily Quota**"). The quota controls may change from time to time without prior notice and the Client should refer to the HKEx website and other information published by the HKEx for up-to-date information.
- 7.3 The SEHK, SSE and SZSE have in place dynamic price checking and may implement other restrictions on buy orders in order to prevent the artificial use or filling of the quota or other restriction.
- 7.4 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 quota, pricing and other restrictions, the Bank will be unable to carry out any such buy orders and any Instruction to buy (which is submitted but not yet executed) will be restricted, rejected or suspended.

## **8. Day Trading Restrictions**

- 8.1 Day (turnaround) trading is not permitted on the Mainland China A Share market under Applicable Laws (which are subject to change from time to time). If the Client buys China Connect Securities on T day, the Client may be able to sell the China Connect Securities 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 the Client by the Bank from time to time) on T+1 day.
- 8.2 Unless otherwise permitted by Applicable Laws and agreed by the Bank, the Client shall not sell or instruct the Bank to sell any China Connect Securities which are the subject of the relevant China Connect buy order on the same China Connect Trading Day.

## **9. No Off-exchange Trading and Transfers**

- 9.1 Unless otherwise permitted by the CSRC and under China Connect Laws and agreed by the Bank, the Client, the Bank and the Service Providers shall not trade or provide services to facilitate trading of any China Connect Securities through any venue other than through the China Connect Market System, and the Bank shall not match, execute or arrange for the execution of any sale and purchase Instructions or any transfer Instructions from the Client in respect of any China Connect Securities in any manner other than through China Connect in accordance with the China Connect Rules and other China Connect Laws.

## **10. Limit Orders**

- 10.1 Unless otherwise permitted by the China Connect Rules and other China Connect Laws and agreed by the Bank, only limit orders with a specified price are allowed, where buy orders may be executed at or lower than the specified price and sell orders may be executed at or higher than the specified price; and market orders will not be accepted.

## **11. Currency Settlement and Currency Conversion**

- 11.1 As all Northbound trading is effected and settled in RMB, if the Bank or the Service Provider does not receive sufficient RMB before settlement of a Northbound buy order to settle such purchase of China Connect Securities, settlement may be delayed and/or fail and the Client may not acquire title to, sell or transfer the relevant China Connect Securities. The Client must therefore have sufficient RMB funds in the Client's Account in accordance with Clauses 6.3 and 6.4 above in respect of any Instruction for transactions in China Connect Securities.
- 11.2 Where it is necessary to convert one Currency to another, such conversion may be carried out automatically by the Bank in a manner the Bank considers appropriate at the prevailing rate conclusively determined by the Bank to be the market rate available to the Bank at such time. Any risk, loss or cost resulting from any conversion of one Currency into another Currency shall be borne by the Client.

## **12. Price Limits**

- 12.1 China Connect Securities are subject to price limits (if applicable) based on the previous China Connect Trading Day's closing price, which may be changed from time to time. All orders in respect of China Connect Securities must be within the price limits (if applicable). Any orders with a price beyond such price limits will be rejected by the SSE or SZSE.

## **13. Restrictions on selling China Connect Securities**

- 13.1 Unless otherwise permitted by Applicable Laws and agreed by the Bank, the Client is prohibited from using China Connect Securities purchased through China Connect to settle any sell orders placed through channels other than China Connect. Accordingly, there may be a limited market and/or lower liquidity for China Connect Securities purchased through China Connect (as compared to the same shares purchased through other channels). In addition, scrip entitlements received by the Client in respect of China Connect Securities may not be eligible for trading through China Connect. Accordingly, there is a risk of no liquidity for such shares received by way of scrip entitlement.

## **14. Delisting of Listed Companies**

- 14.1 According to the SSE Listing Rules and SZSE Listing Rules, if any SSE-listed company or SZSE-listed company 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 investors' interest to undue damage, the SSE-listed company or SZSE-listed company 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 only be allowed to sell such China Connect Security and are restricted from further buying. For details concerning the risk alert board, please refer to the SSE Listing Rules, SZSE Listing Rules and SSE Risk Alert Board Provisional Trading Arrangement and any other relevant sources from time to time.

## **15. Disclosure of Information on Beneficial Owner**

- 15.1 Without limitation to any provisions in the General Conditions, 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 Hong Kong and Mainland China authorities.

## **16. No Over-The-Counter Trade, Manual Trade or Block Trade**

- 16.1 Unless otherwise permitted by Applicable Laws and agreed by the Bank, there will be no over-the-counter trade facility, manual trade facility or block trade facility for Northbound trading under China Connect.

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

- 17.1 Consistent with the current practice in Mainland China, unless otherwise agreed by the Bank, if the Client is engaged in Northbound trading wishes to amend an order, the Client must first cancel the original order and then input a new one. Accordingly, order priority will be lost and, subject to the quota restrictions (such as Daily Quota restrictions), the subsequent order may not be filled on the same China Connect Trading Day.

## 18. Authorisation

- 18.1 The Client authorises the Bank to effect the Client's Transactions contemplated under this Section in such manner and through instructing any Service Provider(s) (including any of EFG Bank Group Member, members or participants of any Exchange or clearing house, agents, or local and/or overseas brokers and dealers in the relevant markets) on such terms and at such times as the Bank may absolutely decide and deem fit, and the Bank acknowledges that the terms of business of such Service Provider(s) shall apply to such Transactions and the Client agrees to be bound by such terms. Unless otherwise disclosed in this Section or in the relevant contract notes or Transactions Confirmations or notified to the Client in writing, the Bank will act as the Client's agent in respect of all Transactions executed pursuant to this Section.

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

## 19. Special China Connect Securities

- 19.1 The 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 the SSE or SZSE). In addition, any Securities or options (which are not already accepted as China Connect Securities) received by the Client as a result of any distribution of rights or entitlements, conversion, takeover, other corporate actions or abnormal trading activities may be accepted or designated by the SEHK as Special China Connect Securities. The Client will only be able to sell, but not buy, any Special China Connect Securities.

## 20. Forced Sale, Transfer and Disgorgement

- 20.1 Where, under the terms of the China Connect Rules or other China Connect Laws, the Bank or a Service Provider receives notice (a "**Forced-sale Notice**") from a China Connect Authority requiring the Bank or a Service Provider to sell and liquidate China Connect Securities, the Bank shall be entitled to issue a corresponding notice (a "**Client Forced-sale Notice**") to the Client requesting the Client to sell and liquidate such China Connect Securities that the Client holds in its Account (as determined by the Bank in its sole discretion) within the time period specified by the relevant China Connect Authority, and the Client undertakes to comply with any such Client Forced-sale Notice.
- 20.2 In relation to any Forced-sale Notice, the Client is deemed to have authorised the Bank or the Service Provider to sell or arrange for the sale of such China Connect Securities on the Client's behalf at such price and on such terms as the Bank or the Service Provider may determine in its absolute discretion if the Client fails to timely comply with a Client Forced-sale Notice, to the extent necessary to comply with all China Connect Rules and other China Connect Laws.
- 20.3 Where any China Connect Securities owned by the Client that are the subject of a Client Forced-sale Notice have been transferred from the holding of the Clearing Participant who settled the relevant Northbound buy order as the Bank considers appropriate (the "**Original CP**") to another Clearing Participant or custodian (the "**Recipient Agent**"), the Client is deemed to have authorised the Bank or the Service Provider to provide instructions to the Recipient Agent on the Client's behalf to return the relevant China Connect Securities to the Original CP for sale and liquidation in accordance with all China Connect Rules and other China Connect Laws. The Bank will inform the Recipient Agent of such authorisation as the Bank considers appropriate and, the Client undertakes to instruct the Recipient Agent to act accordingly where required.
- 20.4 The Client is deemed to have authorised the Bank or the Service Provider to sell or arrange for the sale of any quantity of China Connect Securities owned by the Client if the Bank or the Service Provider receives notice from any China Connect Authority requiring the Client to disgorge any profits as a result of the "short swing profit rule", as further described under Clause 22.
- 20.5 In addition to the above, the Client is deemed to have authorised the Bank or the Service Provider to sell, transfer or carry out any other action in relation to China Connect Securities owned by the Client if the Bank or the Service Provider is instructed to do so by any China Connect Authority or if the Bank or the Service Provider otherwise determines in its absolute discretion that it is necessary or desirable to do so in order to comply with any China Connect Rules or other China Connect Laws.

## 21. Disclosure of Interests

- 21.1 Under Mainland China laws, rules and regulations, if the Client holds or controls shares (on an aggregate basis, i.e., across 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, the Client must disclose such interest within the period specified by the relevant China Connect Authorities, and the Client must not buy or sell any such shares within the period specified by the relevant China Connect Authorities. The Client must also disclose any substantial change in the Client's holding as required by the relevant China Connect Authorities.



- 21.2 Where a Mainland China incorporated company has both H Shares listed on the SEHK and A Shares listed on the SSE or SZSE, if an investor is 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, the investor is also under a duty of disclosure pursuant to Part XV of the SFO.
- 21.3 It shall be the Client's own responsibility to comply with any disclosure of interest rules in Hong Kong and Mainland China from time to time imposed by the relevant China Connect Authorities and under Applicable Laws and arrange for any relevant filings.

## **22. Short Swing Profit Rule**

- 22.1 Under Mainland China laws, rules and regulations, the "short swing profit rule" requires the Client to return any profits made from purchases and sales in respect of China Connect Securities of a Mainland China Listco if (a) the Client's shareholding in the Mainland China Listco exceeds the threshold prescribed by the relevant China Connect Authority and Applicable Laws from time to time and (b) the corresponding sale transaction occurs within the six months after a purchase transaction, or vice versa. The Client must comply with the "short swing profit rule".

## **23. Foreign Ownership Limits**

- 23.1 Under Mainland China laws, there is a limit on how many shares a single foreign investor is permitted to hold in a single Mainland China Listco, and also a limit on 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 listed company, whether the relevant holdings are through Northbound Trading, QFII/RQFII regime or other investment channels). It shall be the Client's own responsibility to comply with all foreign ownership limits from time to time imposed by China Connect Rules and other China Connect Laws. Such legal and regulatory restrictions or limitations may have 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, the Client may suffer through the Client's trading or investment losses in China Connect Securities.
- 23.2 If the Bank becomes aware that the Client has breached (or reasonably believes that the Client 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 as a result of any Forced-sale Notice issued by the SSE or SZSE, the Bank will sell such China Connect Securities pursuant to Clause 20 if the Client fails to comply with the corresponding Client Forced-sale Notice in order to ensure compliance with all China Connect Rules and other China Connect Laws. In such case, no buy orders for the relevant China Connect Securities will be accepted until the SSE or SZSE informs the SEHK Subsidiary or SEHK that the aggregate foreign shareholding has fallen below a certain percentage. The SEHK may determine in its absolute discretion which Service Providers and what quantity of China Connect Securities should be subject to a Forced-sale Notice (this will be on a "last-in, first-out" basis), and the SEHK's (or the SEHK Subsidiary's) own records shall be final and conclusive.
- 23.3 Under Mainland China laws, where foreign investors hold more than a specified percentage (the "**Cautionary Level**") of the issued shares of a single Mainland China Listco in aggregate, upon notification by the SSE or SZSE to the SEHK Subsidiary, the 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 the Client's buy orders until the aggregate shareholding of foreign investors is reduced to below the specified percentage (the "**Permitted Level**") as advised by the SSE or SZSE.
- 23.4 The single foreign investor limit and the aggregate foreign investor limit are subject to change from time to time and the Bank shall not be under any obligation to inform the Client of any such changes to foreign ownership limits.

## **24. Taxation**

- 24.1 **The Client will be fully responsible for any Taxes in respect of China Connect Securities (including any tax on dividend distribution or any other Mainland China taxes), and the Client agrees to fully indemnify each Indemnitee in the event the Client or the Service Providers incur any Hong Kong and/or Mainland China Taxes arising from or in connection with any China Connect Securities which the Client holds, trades or otherwise deals in.**
- 24.2 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. The Client expressly authorises the Bank and the Service Providers to withhold, charge and/or deduct from the Client's Account with the Bank, any Taxes and fees, which may be collected in RMB, as required by the relevant Applicable Laws. The Client agrees that the Bank has no obligation to seek or claim any reduction, relief, refund, or otherwise reclaim any amount from any authorities (including any China Connect Authorities) or

from any Service Provider(s) and the Bank has no obligation to credit any amount in respect of an amount deducted or withheld in connection with the China Connect Securities. Any amount so deducted or withheld is not refundable to the Client by the Bank or the Service Provider(s).

- 24.3 Prior to investing in China Connect Securities, the Client is strongly urged to consult the Client's own tax advisers and counsel with respect to the possible tax consequences to the Client of such investment since such tax consequences may differ in respect of different investors.

## **25. Foreign Fees and Levies**

- 25.1 Trading in China Connect Securities may be subject to additional fees and levies under the relevant Applicable Laws and imposed by foreign regulators. The amounts of such fees and levies may change from time to time. The Client may only receive any payment or proceeds of sale or redemption of the investment less such fees and levies.

## **26. Insider Dealing, Market Manipulation and Other Market Conduct Rules**

- 26.1 Northbound trading through China Connect will be subject to Mainland China Applicable Laws 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 be different from those under Mainland China laws and regulations. If the Client is unfamiliar with the Mainland China market conduct requirements and restrictions, the Client should seek specialist advice before engaging in trading through China Connect.

### *Other Operational Issues*

## **27. Scripless Securities**

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

## **28. Company Announcements on Corporate Actions**

- 28.1 Any corporate action in respect of China Connect Securities will be announced by the relevant issuer through the SSE website, the SZSE website and certain officially appointed newspapers. HKSCC will also record 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. The Client engaged in Northbound trading may refer to the SSE website, the SZSE website 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 China Connect Trading Day. The Client should note that SSE-listed issuers and SZSE-listed issuers publish corporate documents in Chinese only, and English translations will not be available.
- 28.2 Following existing market practice in Mainland China, the Client engaged in Northbound trading will not be able to attend meetings by proxy or in person, unlike the current practice in Hong Kong in respect of SEHK-listed shares.
- 28.3 The Bank does not and cannot ensure the accuracy, reliability or timeliness of any company announcements of corporate actions and the Bank does not accept 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. The Bank 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.

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

- 29.1 Without limitation to any provisions in the General Conditions, the SEHK may require the Bank or the Service Provider to provide information on the Client's profile, and the type and value of the Client's orders in relation to Northbound trading of China Connect Securities and the trades which the Bank executed for the Client at such intervals and in such form as the SEHK may specify from time to time for purposes of their 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.

## **30. Client Error**

- 30.1 **To the maximum extent permissible and not inconsistent with any Applicable Laws, the Bank shall not be liable for any loss, damage or expense or consequential loss, damage or expense suffered by the Client as a result of any trading in China Connect Securities based on the Client's Instructions. Neither the Bank nor a Service Provider will be able to unwind any trade in China Connect Securities. The**

Client should consider carefully the settlement arrangements in respect of China Connect Securities under China Connect, including quota restriction which may affect the Client's ability to mitigate the consequences of error trades.

- 30.2 The China Connect Rules and China Connect Laws generally prohibit any off-exchange trading or transfers in China Connect Securities. However transfers may be permitted between the Client and the Bank or the Service Provider 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. The Bank shall have no 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.

### 31. Retention of Information

- 31.1 The Client acknowledges and accepts that the Bank or the Service Provider may be required under the China Connect Rules and China Connect Laws to keep records of (a) all orders and trades executed on the Client's behalf; (b) any instructions received from the Client and (c) the Client's account information in relation to Northbound trading for a period of not less than 20 years.

### 32. China Connect Market System

- 32.1 The SEHK or the SEHK Subsidiary (after consulting with the 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 the SEHK may consider appropriate. The Client will not be able to buy or sell China Connect Securities on the SEHK through China Connect during any period in which trading of China Connect Securities is suspended. In particular, the Client should note that while trading is suspended on China Connect Securities by the SEHK, trading of such China Connect Securities may continue on the SSE or SZSE. The Client may remain exposed to fluctuations in the value of China Connect Securities caused by trading on the SSE or SZSE during the period when trading of such China Connect Securities is suspended by the SEHK.
- 32.2 The 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, the SEHK or the SEHK Subsidiary (with the agreement of the SEHK) may cease the provision of the China Connect Northbound trading service permanently.
- 32.3 Such suspension, restriction or cessation will affect the Bank's ability to accept and process the Client's orders and the Client is 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 the Client's orders will be accepted or processed, notwithstanding that China Connect Securities may be traded through other channels including by PRC investors on the SSE or SZSE.
- 32.4 Further, the SEHK Rules state that where any H Shares with corresponding A Shares accepted as China Connect Securities are suspended from trading on the SEHK, but the corresponding A Shares are not suspended from trading on the SSE or SZSE, the service for routing the China Connect sell orders and China Connect buy orders for such A Shares to the SSE or SZSE for execution will normally remain available. However, the SEHK may, in its discretion, restrict or suspend such service without prior notice and the Client's ability to place the Client's sell orders and buy orders may be affected.
- 32.5 The China Connect Market System is a new 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 the SSE or SZSE. **The Bank is not responsible for any delay or failure caused by the China Connect Market System and the Client accepts all risks arising from trading China Connect Securities through the China Connect Market System. The Bank shall not be responsible or held liable for any loss or damage directly or indirectly suffered by the Client arising from or in connection with the China Connect Service or the CSC through Northbound trading including the following:**
- (a) any 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 such as the hoisting of the Typhoon Signal number 8 in Hong Kong or other force majeure events, including the cancellation of any or all China Connect orders input by Service Providers;
  - (c) any suspension, delay, interruption or cessation of trading of any China Connect Securities on the SSE or SZSE;

- (d) any delay or failure to route any China Connect orders, 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 events beyond the Bank's control or the control of the SEHK;
  - (e) in the event that a China Connect order which a Service Provider has requested to be cancelled is not cancelled for any reason whatsoever;
  - (f) in the event that the SEHK, SSE or SZSE requires the Bank to reject any order for China Connect Services;
  - (g) any delay, failure or error of any China Connect Market System or any system upon which the SEHK Subsidiary is reliant in providing the China Connect Service; and
  - (h) any delay or failure to execute, or any error in matching or executing any, China Connect order due to reasons beyond the control of the SEHK, HKEx or the SEHK Subsidiary including 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.
- 32.6 The Client understands that HKSCC, HKEx, SEHK, SEHK Subsidiary, SSE, SZSE, the subsidiary of SSE, the subsidiary of SZSE and their respective directors, employees and agents are not responsible or held liable for any such loss or damage directly or indirectly suffered by the Client, the Bank, special participants and non-clearing participants of CCASS (if applicable) or any third parties, arising from or in connection with Northbound trading, the China Connect Clearing Services (as defined under the General Rules of CCASS), the CSC, the SEHK, SSE or SZSE making, amending or enforcing the China Connect Rules, SSE Rules or SZSE Rules, or any action taken by the SEHK, SSE or SZSE in discharge of its supervisory or regulatory obligations or functions including any action taken to deal with abnormal trading conduct or activities.
- 32.7 If there is any delay or failure to send any order cancellation requests in the circumstances described in Clause 32.5 above, the Client shall, in the event such order is matched and executed, remain responsible to fulfil any settlement obligations in respect of such transaction.

### **33. Trading Day and Operational Hours**

- 33.1 China Connect may only operate on days when both Hong Kong and Mainland China markets are open for trading and when banks in both markets are open on the corresponding settlement days as specified under the China Connect Rules. It is therefore possible that there are occasions when it is a normal trading day for the Mainland China market but Hong Kong investors cannot carry out any China Connect Securities trading. The Client should take note of the days China Connect is open for business and decide according to the Client's own risk tolerance capability whether or not to take on the risk of price fluctuations in China Connect Securities during the time when China Connect is not open for trading.
- 33.2 The 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 the Client of any such determinations by the SEHK as to the operational hours of the China Connect Service.
- 33.3 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 the 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 China Connect Trading Day under China Connect.

### **34. Margin Trading**

- 34.1 The Client acknowledges and accepts that the Bank shall not be obliged to offer margin trading of China Connect Securities, unless specifically agreed by the Bank and upon such terms as the Bank may prescribe from time to time, in which event the Client shall note that 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 publish the list of Eligible Margin Trading Securities from time to time.
- 34.2 The SSE or SZSE may suspend margin trading activities in any specific A Share where the volume of margin trading activities in such A Share exceeds the threshold determined by the SSE or SZSE and resume margin trading activities when the volume drops below a prescribed threshold. Where the SEHK is notified by the SSE or SZSE that a suspension or resumption involves a Security within the list of Eligible Margin Trading Securities, the HKEx will disclose such information on its website. In such circumstances, any margin trading in the respective China Connect Security shall be suspended and/or resumed accordingly. Where abnormal

margin trading activities occur, the SEHK and/or SEHK Subsidiary may reject any instruction which in its judgment contravenes any Applicable Laws, require the Bank and/or the Service Providers to stop accepting instructions from or acting for the Client, and/or take other enforcement action. The Bank shall not have any obligation to update the Client in respect of the list of Eligible Margin Trading Securities or any restrictions or suspensions in respect of margin trading from time to time. **The Bank shall not be liable for the Client's inability, or delay or restriction in the Client's ability, to conduct margin trading in China Connect Securities in any circumstances.**

### **35. Rights Issuances**

- 35.1 Where the Client receives as entitlements shares or other types of Securities from the issuer of a China Connect Security, if such entitlement Security:
- (a) is a China Connect Security, the Client will be allowed 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 the SSE or SZSE, the Client may be allowed to sell the entitlement Security through China Connect but will not be permitted to buy such entitlement Security;
  - (c) is a SSE-listed security or SZSE-listed security but is not traded in RMB, the Client will not be allowed to buy or sell the entitlement Security through China Connect unless and until otherwise provided by the China Connect Authorities. The China Connect Authorities may not provide for treatment of such entitlement security; and
  - (d) is not listed on the SSE or SZSE, the Client will not be allowed to buy or sell the entitlement Security on China Connect unless and until alternative arrangements (if any) have been provided by HKSCC. HKSCC may not put in place such alternative arrangements.

### **36. Odd Lot Trading**

- 36.1 Odd lot trading in China Connect Securities can only be conducted in accordance with the China Connect Rules and any other Applicable Laws as prescribed from time to time.

### **37. Stock Borrowing and Lending**

- 37.1 The Client acknowledge and accept that there shall be no stock borrowing and lending of China Connect Securities, unless specifically agreed by the Bank and upon such terms as the Bank may prescribe from time to time, in which event the Client acknowledges and accepts that stock borrowing and lending of China Connect Securities is subject to the China Connect Rules and any other Applicable Laws, and shall only be conducted for the following purposes:
- (a) for the purpose of short selling in accordance with the China Connect Rules provided that the stock loan period (inclusive of the date of stock loan and stock return) does not exceed one calendar month;
  - (b) for the purpose of enabling the Client to sell China Connect Securities held by the Client but which have not been transferred to the relevant HKSCC clearing stock account in time to meet the Pre-Trade Checking requirements set out in the China Connect Rules, provided that the stock loan period does not exceed one day and is non-renewable; and
  - (c) for such other purposes as the SEHK, SSE or SZSE may specify from time to time.

### **38. Short Selling**

- 38.1 The Client acknowledges and accepts that there shall be no short selling of China Connect Securities, unless specifically agreed by the Bank and upon such terms as the Bank may prescribe from time to time, in which event the Client shall note that short selling of China Connect Securities is subject to the China Connect Rules and any other Applicable Laws, and shall only be conducted in respect of China Connect Securities included in the list of eligible China Connect Securities for short selling published by the SEHK from time to time and must not exceed the limit(s) set by the SEHK in respect of the relevant China Connect Security for each China Connect Trading Day and for a rolling period of time specified by the SEHK from time to time.
- 38.2 Naked short selling of China Connect Securities is prohibited.
- 38.3 The Client will be fully responsible for understanding and complying with short selling requirements as amended from time to time and for any consequences of non-compliance.

### 39. RMB Conversion

- 39.1 Depending on the Client's country of residence, RMB may not be freely convertible and conversion may be subject to such exchange controls and restrictions that may be imposed from time to time. The Client's ability to remit or repatriate funds into Mainland China or out of Mainland China will be restricted by the Applicable Laws. There is no guarantee that the exchange rate of RMB will not depreciate.
- 39.2 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 the Client.

### 40. ChiNext Market

- 40.1 The Client agrees that trading under the Shenzhen-Hong Kong Stock Connect on ChiNext Shares will be subject to such qualification on the Client as the China Connect Rules may provide from time to time. The Client agrees to provide the Bank with such information and assistance reasonably requested by the Bank in order to satisfy any qualification requirements relating to the trading of ChiNext Shares. The Bank may, without liability, reject any Instructions from the Client to purchase or sell ChiNext Shares if it is not satisfied that the Client satisfies the China Connect Rules.
- 40.2 If the Client gives Instructions to the Bank to purchase or sell any ChiNext Shares, the Client warrants, represents and undertakes to the Bank that:
- (a) the Client fulfills the qualification requirements under the China Connect Rules; and
  - (b) (where the Client is an intermediary (as defined in the SFO) or the Client is a person which carries on business outside Hong Kong in an activity in respect of which it is regulated overseas and which, if carried on in Hong Kong, would constitute a regulated activity under the SFO) the Client will ensure that only persons who fulfill the qualification requirements under the China Connect Rules are allowed to buy or sell ChiNext Shares.
- 40.3 The above representations and warranties shall be deemed to be repeated immediately before each Transaction or dealing is carried out for or any Service is provided to the Client or on the Client's behalf in relation to ChiNext Shares.
- 40.4 If the Client is aware that any of the above representations and warranties will or may become incorrect, the Client must give prior notice to the Bank immediately upon the Client becoming aware of the same, and before such representations and warranties become incorrect. The Client must also notify the Bank immediately if any of the above representations and warranties has become incorrect.
- 40.5 Without limitation to any provisions in this Section and in the General Conditions, upon the Bank receiving notice from the Client that any of the above representations and warranties may become incorrect, or if any of the above representations and warranties has become incorrect:
- (a) the Bank shall be entitled, in its sole discretion from time to time, to request the Client to unwind positions of ChiNext Shares;
  - (b) the Client shall provide reasonable assistance to the Bank to facilitate the Bank to make a non-compliance report to the SEHK; and
  - (c) the Client shall provide reasonable assistance to the Bank to address any enquiries and investigations from any China Connect Authorities.
- 40.6 **The Client shall fully indemnify the Indemnitees against all claims, actions, liabilities (whether actual or contingent) and proceedings against any of the Indemnitees and bear any losses, costs, charges or expenses (including legal fees) of reasonable amount wherever incurred or situate which are reasonably incurred which the Indemnitees may suffer or incur arising from or in connection with or resulting from any breach by the Client of any of the above representations and warranties.**

*Risks associated with investing in China Connect Securities*

### 41. Assets Held Overseas

- 41.1 The Client's assets (including China Connect Securities) received or held by the Bank outside Hong Kong are subject to the Applicable Laws of the relevant overseas jurisdiction which may be different from the SFO and the rules made thereunder. Consequently, such assets may not enjoy the same protection as that conferred on the Client's assets received or held in Hong Kong.

### 42. General Risks Associated with Investing in China Connect Securities

- 42.1 Country 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. Before the Client trades, the Client should enquire about any rules relevant to the Client's particular transaction. The Client's local regulatory authority will be unable to compel the enforcement of the rules of regulatory authorities or markets in other jurisdictions where the transactions in China Connect Securities have been effected.

#### 42.2 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.

#### 42.3 General legal and regulatory risk

The Client must comply with all China Connect Laws and China Connect Rules. The China Connect Rules, China Connect Laws and other Applicable Laws are still subject to development and there is uncertainty and risk as to their scope, application, and interpretation, including any new taxes, fees or levies and whether the arrangements contemplated under this Section are permitted. Any change in any China Connect Laws or China Connect 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. The Client may incur loss in the event that the China Connect Authorities determine that the arrangements under this Section are not permitted or in the event of any change to the China Connect. In the worst case scenario, the Client may lose a material part of the Client's investments in China Connect Securities. The Client should read, understand and accept all relevant rules and any amendments thereof and seek independent professional advice if needed.

#### 42.4 Currency risk

- (a) RMB is not yet freely convertible for non-Hong Kong residents, 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 investors to convert RMB into HK 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 the Client's preference.
- (b) In addition, the value of RMB against HK 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 the RMB securities and the realisation price of the RMB securities. For non-RMB based investors who are trading in RMB securities, they may also sustain loss in the event that they subsequently convert any RMB proceeds back to HK Dollars or other base Currencies.
- (c) There are also significant restrictions on the remittance of RMB into and out of Mainland China for non-Hong Kong residents. If, due to any Applicable Laws as amended from time to time, the issuer of the 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. Investors may therefore be exposed to additional foreign exchange risk and liquidity exposures.
- (d) The liquidity and trading price of China Connect Securities may be adversely affected by the limited availability of RMB outside Mainland China and the restrictions on the conversion of RMB. These factors may affect the amount of liquidity in RMB for investors and accordingly adversely affect the market demand for China Connect Securities.

### 43. Taxation

- 43.1 Income or profit from trading in any investments may be subject to withholding 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, the Client may be subject to dividend withholding tax imposed by the SAT or other relevant China Connect Authorities. In such event, unless the issuer agrees to gross-up the income or profit received by the Client, the Client may only receive any payment or proceeds of sale or redemption of the investment less the withholding tax or other tax, as required by the China Connect Laws and other Applicable Laws. The Client 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.

#### **44. Risk of Margin Trading**

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

#### **45. Investor Compensation Fund**

- 45.1 Trading in China Connect Securities does not enjoy the protection afforded by the Investor Compensation Fund established under the SFO. Accordingly, the Client trades in China Connect Securities at the Client's own risk.

#### **46. China Securities Investor Protection Fund (中國投資者保護基金) ("CSIPF")**

- 46.1 Northbound trading under the China Connect will not be protected by the CSIPF.
- 46.2 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 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, therefore they are not protected by CSIPF in Mainland China. Accordingly, the Client trades in China Connect Securities at the Client's own risk.

#### **47. Quota Used Up**

- 47.1 When the Daily Quota is used up, no further buy orders will be accepted. Buy orders which have already been accepted will not be affected by the using up of the Daily Quota, while sell orders will continue to be accepted. Depending on the balance of the Daily Quota situation, acceptance of new buy orders may or may not subsequently resume during the same China Connect Trading Day or on the following China Connect Trading Day.

#### **48. Foreign Shareholding Restrictions**

- 48.1 The trading, acquisition, disposal and holding of securities under the China Connect are subject at all times to Applicable Laws, including the foreign shareholding restrictions, which impose purchasing and holding limits. These limitations and restrictions may have the effect of restricting the Client's ability to purchase, subscribe for or hold any China Connect Securities or take up any entitlements in respect of China Connect Securities, or requiring the Client to reduce the Client's holdings in any China Connect Securities, whether generally or at a particular point of time, and whether by way of forced sale or otherwise, and notwithstanding that the Client's individual holding does not exceed such limitations or restrictions. As such, the Client may incur loss arising from such limitations, restrictions and/or forced sale.

#### **49. Restrictions on Selling Imposed by Front-end Monitoring**

- 49.1 For a Client who keeps its China Connect Securities outside of its brokers, if the Client wants to sell certain China Connect Securities it holds, the Client must transfer those China Connect Securities to the respective accounts of its brokers before the cut-off time as specified by the Bank in the Bank's sole discretion from time to time. Only settled China Connect Securities are allowed to be sold on any China Connect Trading Day.

#### **50. The recalling of eligible stocks**

- 50.1 The list of China Connect Securities is subject to change and certain China Connect Securities may be recalled from the scope of eligible securities for trading via the China Connect. When a stock is recalled from the scope of eligible stocks for trading via the China Connect for any reason, the stock can only be sold but is restricted from being bought. This may affect the Client's investment portfolio or strategies. The Client should therefore pay close attention to the list of eligible stocks as provided and renewed from time to time by the SSE, SZSE and SEHK.



## 51. Risk of ChinaClear Default

- 51.1 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's liabilities in Northbound trades under its market contracts with clearing participants will be limited to assisting clearing participants in pursuing their claims against ChinaClear. HKSCC will in good faith, 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. Although the likelihood of a default by ChinaClear is considered to be remote, Clients should be aware of this arrangement and of this potential exposure before engaging in Northbound trading.

## 52. Risk of HKSCC Default

- 52.1 The Bank's provision of services pursuant to this Section 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 it and the Client may suffer losses as a result. The Bank shall have no responsibility or liability for any such losses.

## 53. Ownership of China Connect Securities

- 53.1 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.
- 53.2 The Client should conduct the Client's 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 Rules as they may be amended and supplemented from time to time. The Client should also consult the Client's own legal advisers to make the Client's own assessment of the Client's rights as a Northbound investor in China Connect Securities.
- 53.3 However, the Client should note that as China Connect is a recent initiative there may be some uncertainty surrounding such arrangements. 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.

## 54. Disclosure Obligations

- 54.1 The Client may be subject to Mainland China Applicable Laws in respect of disclosures of interest in China Connect Securities, and may be restricted from acquiring or disposing of China Connect Securities under Applicable Laws. For example, in the event the Client's interest in China Connect Securities crosses a stipulated threshold under the Mainland China Applicable Laws, the Client may be required to disclose the Client's details and interest holding positions to Mainland China regulators, and may be restricted from further acquiring or disposing of, or from receiving proceeds or other returns from acquiring, holding or disposing of, such China Connect Securities within a stipulated time frame or as prescribed by Applicable Laws from time to time. The Client may not be eligible for any exemption from the disclosure requirements and the relevant trading restrictions in respect of China Connect Securities and the Client is solely responsible for compliance with such Applicable Laws. The Bank is not obliged to determine, advise or assist the Client in any way in respect of the disclosure obligations or trading restrictions applicable to the Client under any Applicable Laws. **The Bank shall not be liable for any loss or damage that the Client may incur arising from such disclosure obligations or trading restrictions applicable to the Client under any Applicable Laws.**

## 55. Additional Risks Relating to ChiNext Shares

- 55.1 Subject to the China Connect Rules, only Clients who fulfill the qualification requirements as required by the China Connect Rules may trade in ChiNext Shares. The Client should be aware of the risks of dealing in ChiNext Shares. Listed companies in the ChiNext market are usually in their preliminary stage of development with smaller operating scale and shorter operating history and less mature business model and their businesses are usually subject to higher uncertainty and more fluctuations in their performance. Hence, they are subject to higher market volatility and risks and higher turnover ratios than companies listed on the main board of the SZSE. Their stock prices may experience a higher fluctuation as the performance of these

companies changes. There are fewer circulating shares on the ChiNext market, hence stock prices may be relatively more easily manipulated and may experience higher fluctuation upon market speculation.

- 55.2 The rules and regulations regarding securities in the ChiNext market are less stringent in terms of profitability and share capital than those applicable to the main board market and SME board market of the SZSE. The Client should familiarise itself with the rules and regulations regarding the ChiNext market before investing in ChiNext Shares.
- 55.3 The Client should make the decision to invest only after due and careful consideration. The greater risk profile and other characteristics of the ChiNext market mean that it is a market more suited to professional or other sophisticated investors.
- 55.4 The Client should seek independent professional advice if the Client is uncertain of or has not understood any aspect of this risk disclosure statement or the nature and risks involved in trading of ChiNext Shares.

## **56. Acknowledgements**

- 56.1 This Section describes some of the key risk factors and other information concerning China Connect (including the risks described in Clauses 41 to 55). This Section does not disclose all the risks and other significant aspects of Northbound trading through China Connect. The Client should ensure that it understands the nature and risks of China Connect and Northbound trading and the Client should consider carefully (and consult its own advisers where necessary) whether trading in China Connect Securities is suitable for the Client in light of the Client's circumstances. The decision to trade in China Connect Securities is the Client's and the Client should not trade in China Connect Securities unless the Client fully understands and is willing to assume the risks associated with China Connect (including prohibition of trading China Connect Securities, being liable or responsible for breaching the SSE Listing Rules, SSE Rules, SZSE Listing Rules, SZSE Rules and other Applicable Laws), and is able to comply with all relevant China Connect Laws and China Connect Rules. By giving the Bank Instructions, the Client is deemed to acknowledge the risks and agree to the terms set out in this Section.
- 56.2 The Bank does not represent that the information set out in this Section is up to date and does not undertake to update the information set out in this Section.
- 56.3 The Client acknowledges that the Client has received this Section and the risk disclosure statements contained therein (including Clauses 41 to 55) and has been invited to read and understand the same, to ask questions and take independent advice if the Client wishes.

## **PART C: FINANCIAL TRANSACTIONS**

Unless otherwise specified herein, references to the term "**Clause**" in this Part C of the General Conditions shall mean a "**Clause**" in this Part. References to the term "**Transactions**" in this Part C of the General Conditions shall mean a "Transaction between the Bank and the Client" or as the context may require a "Transaction between the Bank's Associate and the Client".

This Section sets out the additional terms relating to the Transactions.

### **1. General**

- 1.1 Except as provided to the contrary in any Transaction Confirmation, Transactions entered into in accordance with this Part C and governed by the terms of this Part C may be Transactions between the Bank and the Client, or Transactions between the Bank's Associates and the Client. Unless otherwise specifically agreed by the Bank, each Transaction shall be governed by the terms and conditions of the relevant Transaction Confirmation and other provisions of the Agreement. Each Transaction shall be separate and independent from each other. Each Transaction Confirmation in respect of a Transaction between the Bank and the Client constitutes a supplement to, and forms part of, the Agreement and shall be read together with other provisions of the Agreement and be construed as one single agreement between the Bank and the Client. To the extent that there is any inconsistency between the terms of any Transaction Confirmation of a Transaction and other provisions of the Agreement, the terms of the Transaction Confirmation shall prevail in respect of that Transaction.
- 1.2 In the event that the counterparty to the Transaction is the Bank's Associate, the Bank is hereby appointed as the Client's agent, in its own name or in the name and on behalf of the Client and entirely at the Client's risk, to negotiate and enter into the Transactions, and receive or (on the Client's Instructions) give any notices or other communications in respect of that Transaction, and the provisions of Clause 12 of Section 1 of Part B shall apply as if such Associate was an 'Agent' for the purpose of the Agreement.
- 1.3 The Bank reserves the right, in its absolute discretion and without giving any reason, to refuse or cease to enter into any particular Transaction with the Client.
- 1.4 Irrespective of the relevant Value Date, the value of each transaction shall be calculated daily or, if required by the Bank in its absolute discretion, more frequently, on the basis of such quote on such market(s) as the Bank may in its sole and absolute discretion deem appropriate.

### **2. Option Transactions**

- 2.1 The Option Seller under any Option Transaction shall grant an Option to the Option Buyer and the Option Buyer shall pay the Option Seller the Premium on the Premium Payment Date and all such other amounts as may be specified in the relevant Transaction Confirmation on the due date.
- 2.2 The Premium and such other amounts shall be credited to or debited from the Client's Account in the relevant Currency Equivalent.
- 2.3 An Option may be exercised by the Option Buyer giving the Option Seller a Notice of Exercise requiring that the Option Seller either deliver the relevant Securities, instrument or Traded Asset the subject of the Option (in the case of an Option for calling for the delivery of any Securities, instrument or Traded Asset as specified in the Transaction Confirmation) or (in any other case) pay to the Option Buyer on the Payment Date specified in the Transaction Confirmation or Notice of Exercise (as applicable) the In-the-money Amount (as conclusively determined by the Bank based upon the Market Rate at the time of exercise or as soon as possible thereafter), in which event the Bank shall debit or credit the Client's Account accordingly. A Notice of Exercise shall be irrevocable once delivered to the Option Seller.
- 2.4 If the Bank or its Associate is the Option Buyer and the Client is the Option Seller, and the Bank is unable to reach the Client by telephone in order to give a Notice of Exercise, the Bank shall (as the case may require) transfer any relevant Securities, instruments or Traded Asset from the relevant Custody Account or debit the Client's Account with the In-the-money Amount (as determined by the Bank based upon the Market Rate at the time of exercise or as soon as possible thereafter).
- 2.5 Unless otherwise required by the Applicable Laws, the Option Seller shall not be obliged to notify the Option Buyer of any matter relating to an Option, including the impending or actual expiry of the Option or the need to serve a Notice of Exercise.
- 2.6 In the event that the Option Seller or Option Buyer is the Bank's Associate, the Bank is hereby appointed as the Client's agent, in its own name or in the name and on behalf of the Client to negotiate and enter into Option Transactions, and receive or (on the Client's Instructions) give any Notice of Exercise.

### 3. **Non-deliverable Forward Foreign Exchange Transactions**

3.1 In a forward Foreign Exchange Transaction the Client agrees to either:

- (a) sell an amount of one Currency (the "**Reference Currency**") against another (the "**Settlement Currency**"); or
- (b) buy an amount of one Currency (the "**Reference Currency**") against another (the "**Settlement Currency**"), on the Value Date at an agreed rate of exchange (the "**Forward Rate**"). Unless a Foreign Exchange Transaction is entered into on the basis that the relevant Currency is to be deliverable, then on the Value Date of the relevant Transaction settlement shall be made by the Bank either crediting or debiting the Account of the Client in the Settlement Currency with the FX Settlement Amount as calculated below.

3.2 The FX Settlement Amount for a Transaction under Clause 3.1(a) will be credited to the Client's Account if the amount by which the amount of the Settlement Currency purchased specified in the relevant Transaction Confirmation, calculated at the Market Rate, exceeds the amount calculated at the Forward Rate specified in the relevant Transaction Confirmation, or will be debited to the Account of the Client in the Settlement Currency with the amount by which it falls short of the amount calculated at the relevant Forward Rate (as the case may be).

3.3 The FX Settlement Amount for a Transaction under Clause 3.1(b) will be credited to the Client's Account if the amount by which the amount of the Settlement Currency purchased specified in the relevant Transaction Confirmation, calculated at the Market Rate, falls short of the amount calculated at the Forward Rate specified in the relevant Transaction Confirmation, or will be debited to the Account of the Client in the Settlement Currency with the amount by which it exceeds the amount calculated at the relevant Forward Rate (as the case may be).

### 4. **Foreign Exchange and Precious Metal Swap Transactions**

In a Foreign Exchange or Precious Metal Swap Transaction the Client enters into paired contracts, under one of which (the "**Spot Contract**") the Client agrees to sell (or purchase) a certain amount of one Currency (the "**First Currency**") or a Precious Metal and purchase (or sell) an equivalent amount of another Currency (the "**Second Currency**") at a specified rate at the near date, and under the other of which (the "**Forward Contract**") the Client enters into a forward Foreign Exchange or Precious Metal Transaction to sell (or purchase) the same amount of the Second Currency against the First Currency or that Precious Metal at a specified rate at the future date. The Client's Account will be debited or credited (as the case may require) with the relevant amount of the First Currency or that Precious Metal, and the Second Currency for both the Spot Contract and the Forward Contract on the applicable Payment Date.

### 5. **Payment Obligations**

5.1 Whenever a Transaction is entered into, that Transaction shall not constitute or give rise to a separate contract but instead all payment obligations that would or might otherwise arise in respect of that Transaction shall be determined in accordance with, and settled by the payments (if any) to be made under, Clause 6.

5.2 In relation to each Payment Date, the Bank shall maintain in its records a running account in each Currency to be paid, and the Currency Equivalent of each Traded Asset to be bought and sold, under a Transaction on that date, and as soon as reasonably practicable after the entering into of each Transaction which requires a payment or delivery on that Payment Date, the Bank shall:

- (a) credit to the Account of the Client maintained in the relevant Currency an amount equal to the amount of that Currency to be paid by the Bank to the Client under such Transaction;
- (b) debit to the Account of the Client maintained in the other relevant Currency an amount equal to the amount of that Currency to be paid to the Bank by the Client under such Transaction;
- (c) in respect of a Precious Metals Transaction, credit to the Account of the Client maintained in respect of the relevant Precious Metal an amount equal to the Currency Equivalent of the Notional Quantity of that Precious Metal to be sold by the Bank to the Client under such Transaction; and
- (d) in respect of a Precious Metals Transaction, debit to the Account of the Client maintained in respect of the relevant Precious Metal an amount equal to the Currency Equivalent of the Notional Quantity of that Precious Metal to be purchased by the Bank from the Client under such Transaction.

5.3 Notwithstanding the foregoing, any Transaction entered into after the occurrence of an Event of Default arising by reason of the death, incapacity, dissolution, insolvency or institution of bankruptcy or liquidation proceedings of the Client or any Collateral Provider shall constitute a separate Open Position with a separate set of balances.

## 6. Payments and Computations in respect of Trading Transactions

- 6.1 Subject to Clause 7 and/or to the extent that the Bank and the Client agree otherwise, on each Payment Date the balance of each Currency and the Currency Equivalent of the Notional Quantity of each Precious Metal in the Accounts of the Client maintained pursuant to Clause 5 shall be payable by the Bank in the case of each positive Currency balance and by the Client in the case of each negative Currency balance. Settlement shall be effected on such Payment Date by the Bank crediting or debiting, as the case may be, the Account of the Client with the Settlement Amount of the Open Position with respect to such Payment Date.
- 6.2 The obligations of the Bank under these General Conditions in respect of the Transactions are subject to the condition precedent that no Event of Default with respect to the Client or any Collateral Provider has occurred and is continuing and each other applicable condition precedent specified in the Agreement.
- 6.3 Each payment (whether by way of direct payment, transfer, debit and credit) between the Bank and the Client in respect of a Transaction, except and to the extent otherwise specified herein, shall be made in US Dollars in immediately available funds by no later than the close of business (Hong Kong time) on the relevant Payment Date, and shall be made to or for the account of the Bank or, as the case may be, the Client.
- 6.4 Each payment by the Client shall be made in full, and free and clear of and without deduction for any present or future taxes, levies, imposts, duties, charges, fees, deductions, withholdings, turnover taxes, stamp taxes and any conditions or restrictions resulting in a charge imposed by any jurisdiction or any political subdivision thereof (all of which are referred to in this Clause as "**Taxes**") upon such payment to the Bank other than income and franchise taxes (or their equivalent) of the country and any political subdivisions thereof of which the Bank is a resident or in which the Bank is conducting business. If the Client shall be required by law to deduct any Taxes from or in respect of any payment hereunder, (i) the payment shall be increased as may be necessary so that after making all required deductions (including deductions applicable to any additional payment under this Clause 6) the Bank receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Client shall make such deductions, and (iii) the Client shall pay the full amount deducted to the relevant taxation or other authority in accordance with applicable laws. **The Client will indemnify the Bank on demand for the full amount of any Taxes paid by the Bank and any liability (including penalties, interest and expenses) arising there from or with respect thereto, whether or not such Taxes were legally asserted. The agreement and obligation of the Client contained in this Clause 6 shall survive the payment in full of the other obligations of the Client hereunder.**
- 6.5 Without prejudice to Clause 19.3 of Section 1 of Part B in respect of the settlement of other Currencies, all the Bank's obligations under the Agreement in respect of Transactions are payable solely at and by the Bank's branch in Hong Kong and are subject to the laws of Hong Kong and no other branch of the Bank or any of its Associates shall be liable or responsible for such obligations.
- 6.6 The Bank may in its absolute discretion and without any notice to or consent from the Client, and irrespective of any rate quoted at the time such Transaction is entered into, adjust the Market Rate in respect of any Transaction to include a service charge for that Transaction. The Bank shall be entitled to retain the amount of such adjustment as payment for such service charge.

## 7. Roll-over Transactions

- 7.1 At any time on or before the Value Date of any Foreign Exchange or Precious Metals Transaction, the Client may request and the Bank may, in its absolute discretion, agree to exchange matured obligations under such Transaction for future obligations on such terms, as the Bank and the Client shall agree.
- 7.2 In the absence of any request from the Client to so exchange obligations, the Bank may (but is not bound to) in its absolute discretion as it deems fit for the protection of the Client (i) exchange matured obligations under the relevant Transaction for future obligations for such amount, duration and costs and subject to and upon such other terms and conditions as the Bank may in its absolute discretion impose and the Bank may credit or, as the case may be, debit the Account of the Client or any other account of the Client accordingly; (ii) deem the Client to have entered into an offsetting spot contract with the Bank immediately prior to the maturity of any Transaction, or (iii) consider each Transaction and deal with the matter in such manner as the Bank may, in its absolute discretion, think fit without in any such case being liable to account to the Client for any loss suffered by the Client as a result save to the extent that such loss result directly from the fraud, negligence or wilful misconduct of the Bank or its employees, agents or servants.

## 8. Dual Currency Investment

- 8.1 "Dual Currency Investment" is a structured investment product under which in return for an enhanced rate of interest the Client grants the Bank the right to repay the investment in either the Investment Currency or an Linked Currency, at the Bank's option, and in respect of Dual Currency Investments the following terms of this Section shall apply.

- (a) Dual Currency Investments may be made in such Currency as the Bank may agree at its absolute discretion. The Bank may impose such additional conditions in relation to any Dual Currency Investment as the Bank thinks fit in respect of the Currency, such additional terms to be contained in the relevant Transaction Confirmation.
- (b) Each Dual Currency Investment must be of not less than a minimum amount specified by the Bank from time to time.
- (c) Any repayment of a Dual Currency Investment (whether on maturity or otherwise) as provided in Clause 8.2 below shall be paid to the credit of an account of the Client with the Bank in Hong Kong unless the Bank shall at its sole discretion agree to the contrary.

#### 8.2 Return and Currency of Dual Currency Investment

- (a) On the Maturity Date, or upon any earlier repayment (as the case may be) the Bank shall pay to the Client for value on such date, subject as provided below, for the credit of such account with the Bank, the principal amount of the Dual Currency Investment and interest thereon calculated in accordance with Clauses 8.2(b) and 8.2(c), such payment to be credited in either the Investment Currency or the Linked Currency at the Bank's sole option.
- (b) Interest shall be calculated on the investment amount of the Dual Currency Investment on the basis of the number of days in the Tenor (or which have been elapsed prior to any breaking of the Dual Currency Investment for whatever reason) and the day-count of the relevant Interest Year (which could be 360 or 365).
- (c) Interest shall accrue at the rate specified in the relevant Transaction Confirmation.

#### 8.3 Withdrawals

A Dual Currency Investment may not be withdrawn prior to its Maturity Date without the consent of the Bank. The Bank may at its absolute discretion refuse to give such consent, or impose such conditions as the Bank may determine for the withdrawal of such Dual Currency Investment, such conditions to include the deduction of such breakage costs as the Bank shall determine conclusively acting in good faith. Such breakage costs shall include the costs, expenses, liabilities or losses incurred or suffered by the Bank as a consequence of breaking its hedge, or funding from other sources in respect of the Dual Currency Investment and therefore the total amount repaid on withdrawal may be less than the principal amount of the Dual Currency Investment.

#### 8.4 No Renewal

No automatic renewal of Dual Currency Investments can be arranged.

#### 8.5 In this Clause 8, the following words and expressions shall have the following meanings:

**"Dual Currency Investment"** means each investment lodged with the Bank pursuant to this Clause 8 the principal amount of which being set out in the relevant Transaction Confirmation;

**"Interest Year"** means the number of days in a year for the purpose of calculating the accrual of interest determined by the Bank by reference to the current market practice in Hong Kong in respect of the Initial Currency;

**"Investment Currency"** means, in relation to each Dual Currency Investment, the Currency in which the investment funds are denominated when received by the Bank, as set out in the relevant Transaction Confirmation;

**"Investment Date"** means, in relation to each Dual Currency Investment, the date on which such Dual Currency Investment is made with the Bank, such date being a Business Day, as set out in the relevant Transaction Confirmation;

**"Linked Currency"** means, in relation to each Dual Currency Investment, the Currency in which such Dual Currency Investment including any interest thereon may be repaid by the Bank at its option, as set out in the relevant Transaction Confirmation;

**"Tenor"** means, in relation to each Dual Currency Investment, the period from and including the Investment Date to, but excluding, the Maturity Date as specified in the relevant Transaction Confirmation (and for the purposes of this definition, no adjustment to the Maturity Date as contemplated in the definition of "Maturity Date" as set out below shall be made).

### 9. Precious Metal Linked Investment

9.1 "Precious Metal Linked Investment" is a structured investment product under which in return for an enhanced yield the Client grants the Bank the right to repay the investment in either the Underlying Precious Metal, Investment Currency or Alternate Currency, at the Bank's option, and in respect of Precious Metal Linked Investment the following terms of this Section shall apply.

- (a) Precious Metal Linked Investments may be made in the form of (i) the Underlying Precious Metal as against the Alternate Currency; or (ii) the Investment Currency as against the Underlying Precious Metal, as the Bank may agree at its absolute discretion. The Bank may impose such additional conditions in relation to any Precious Metal Linked Investment as the Bank thinks fit including in respect of the Investment Currency, the Alternate Currency or the Underlying Precious Metal, such additional terms to be contained in the relevant Transaction Confirmation.
- (b) Each Precious Metal Linked Investment must be of not less than a minimum amount specified by the Bank from time to time.
- (c) Any repayment of a Precious Metal Linked Investment (whether on maturity or otherwise) as provided in Clause 9.2 below shall be paid to the credit of an account of the Client with the Bank in Hong Kong unless the Bank shall at its sole discretion agree to the contrary.

9.2 Return on Precious Metal Linked Investment

- (a) On the Maturity Date, or upon any earlier repayment (as the case may be, and as determined by the Bank) the Bank shall pay to the Client for value on such date, subject as provided below, for the credit of such account with the Bank, an amount determined in accordance with the Transaction Confirmation and credited in either the Investment Currency or delivered in the form of Precious Metal as determined in accordance with the Transaction Confirmation.
- (b) The return shall be calculated on the investment amount of the Precious Metal Linked Investments on the basis of the number of days in the Tenor (or which have been elapsed prior to any breaking of the Precious Metal Linked Investments for whatever reason) and the day-count of the relevant interest Year (which could be 360 or 365).
- (c) The return shall accrue at the rate specified in the relevant Transaction Confirmation.

9.3 Withdrawals

A Precious Metal Linked Investment may not be withdrawn prior to its Maturity Date without the consent of the Bank. The Bank may at its absolute discretion refuse to give such consent, or impose such conditions as the Bank may determine for the withdrawal of such Precious Metal Linked Investment, such conditions to include the deduction of such breakage costs as the Bank shall determine conclusively acting in good faith. Such breakage costs shall include the costs, expenses, liabilities or losses incurred or suffered by the Bank as a consequence of breaking its hedge, or funding from other sources in respect of the Precious Metal Linked Investment and therefore the total amount repaid on withdrawal may be less than the principal amount of the Precious Metal Linked Investment.

9.4 No Renewal

No automatic renewal of Precious Metal Linked Investments can be arranged.

9.5 In this Clause 9, the following words and expressions shall have the following meanings:

**"Alternate Currency"** means, in relation to each Precious Metal linked Investment, the Currency in which such Precious Metal Linked Investment including the investment and any return thereon may be repaid by the Bank at its option, as set out in the relevant Transaction Confirmation.

**"Interest Year"** means the number of days in a year for the purpose of calculating the return determined by the Bank by reference to the current market practice in Hong Kong

**"Investment Currency"** means, in relation to each Precious Metal Linked Investment, the Currency in which the Underlying Precious Metal are denominated when received by the Bank, as set out in the relevant Transaction Confirmation.;

**"Investment Date"** means, in relation to each Precious Metal Linked Investments, the date on which such Precious Metal Linked Investment is made with the Bank, such date being a Business Day, as set out in the relevant Transaction Confirmation.

**"Precious Metal Linked Investment"** means each investment lodged with the Bank pursuant to this Clause 9 the investment amount of which being set out in the relevant Transaction Confirmation.

"**Tenor**" means, in relation to each Precious Metal Linked Investments, the period from and including the Investment date to, but excluding, the Maturity date as specified in the relevant Transaction Confirmation (and for the purposes of this definition, no adjustment to the Maturity Date as contemplated in the definition of "Maturity Date" as set out above shall be made);

"**Underlying Precious Metal**" means the Precious Metal in which the Precious Metal Linked Investment is made, as set out in the relevant Transaction Confirmation.

#### **10. Conflict of Interests**

- 10.1 The Bank or any EFG Bank Group Member may from time to time, subject to all Applicable Laws, take the opposite position to that of the Client whether on its own account or for the account of others.
- 10.2 The Bank and any of its directors, officers, employees or agents may trade on its/their own account in accordance with the Bank's personal dealings policy.

#### **11. Adjustment Events**

If an Adjustment Event occurs or is proposed to occur on or before the Maturity Date for a Transaction or in relation to an Account or any other Services provided by the Bank or a Traded Asset which is the subject of the Transaction or Service or held in the Account, the Bank may, in its absolute discretion elect to take any one or more Adjustment Event Actions in relation to the Transaction, the Account or the Services. If in the reasonable opinion of the Bank, it is not possible to deal with the occurrence of the Adjustment Event by taking an Adjustment Event Action, the Bank may determine to terminate and Close Out all or a portion of all or any Transactions, the Services or the Account. The Bank will notify the Client of any proposed Adjustment Event Action before it takes such action or as soon as reasonably practicable after it takes any such action, and the Bank will notify the Client of the effective date of the Adjustment Event Action.

#### **12. Market Disruption Events**

- 12.1 Where a Market Disruption Event has occurred or is continuing in respect of Traded Asset which is the subject of a Transaction, an Account or any Service on a relevant date for making a determination, payment, adjustment, amendment or calculation for that Transaction, Account or Service or on the Maturity Date then the Bank may reasonably determine in its discretion either:
  - (a) to take action required to reflect any adjustment, change, substitution, delay, suspension, or other action taken in relation to its or its Affiliate's hedging arrangements; or
  - (b) that the date for the determination, payment, adjustment, amendment or calculation in relation to the affected Transaction, Account or Service is to be the first succeeding scheduled trading day on which there is no Market Disruption Event in respect of the affected Transaction, Account or Service, and the relevant date for the making of such calculation or determination for each Traded Asset, Transaction, Account or Service that is not affected by the occurrence of a Market Disruption Event shall be the original scheduled date. However, if there is a Market Disruption Event in respect of an affected Transaction, Account or Service on each of the 8 scheduled trading days immediately following the original date that, but for the Market Disruption Event, would have been the date on which the determination or calculation was made or the Maturity Date, then:
    - (i) that 8th scheduled trading day is to be taken to be the Maturity Date or the relevant date for the determination, payment, adjustment, amendment or calculation (as applicable) in respect of the affected Transaction, Account or Service, despite the Market Disruption Event; and
    - (ii) the Bank must on that 8th scheduled trading day in good faith and in its discretion determine the relevant price, level, rate or amount of the affected Transaction, Account or Service or other observation to be reached for the calculation or determination on that date taking into account such matters as the Bank, in its sole discretion, sees fit, including the method of determining the price, level, rate or amount of the affected Transaction, Account or Service used in the Bank's or its Affiliate's hedges for the Transaction, Account or Service.
- 12.2 The Bank must, as soon as is reasonably practicable notify the Client of the existence or occurrence of a Market Disruption Event (as applicable). Without limiting the obligation of the Bank to notify the parties as set forth in the preceding sentence, failure of the Bank to notify the Client of the occurrence of a Market Disruption Event will not affect the validity of the occurrence and effect of such Market Disruption Event. If an event is both a Market Disruption Event and an Adjustment Event, the Bank may, acting in good faith and a commercially reasonable manner, determine whether to treat the event as either a Market Disruption Event or an Adjustment Event or both (if possible).

#### **13. Closing Out**



- 13.1 Notwithstanding any provision of these General Conditions, the Bank may Close Out all or any part of any Open Transaction at any time or times in the Bank's absolute discretion.
- 13.2 A Transaction may be closed out by:
- (a) The Client and the Bank entering into a Transaction with the same Value Date, Expiration Date or Payment Date, as the case may be, as that Open Transaction but under which the Traded Asset sold, granted or bought by each party (or one party) is the opposite of, and, where relevant, the same amount as, the Traded Asset sold, granted or bought by it under that Open Transaction; or
  - (b) The Bank deeming the Client to have asked and agreed to enter into a Transaction as provided in (i) above at the Market Rate for that Transaction prevailing at the time it is deemed to be entered into; or
  - (c) The Bank terminating that Open Transaction and calculating at the time of termination the Early Termination Amount in respect of that Transaction provided that for the purposes of the definition of Early Termination Amount, the date on which the Transaction is actually terminated will be deemed to be the Early Termination Date for the Transaction; or
  - (d) Any other means determined by the Bank from time to time (including any cancellation agreed between the Client and the Bank)
- 13.3 Before each Value Date, the Client must have entered into Transactions with the Bank to Close Out all Open Transactions with that Value Date. Except to the extent that a Transaction has already been Closed Out before such time the Bank may (but will not be obliged to) Close Out all or any part of that Transaction without reference to the Client in any manner specified in Clause 13.2.
- 13.4 When a Transaction is Closed Out by the Bank in accordance with Clause 13.2(c), the only amount payable in respect of that Transaction will be, subject to Clause 6.1, the Early Termination Amount in respect of the Transaction calculated by the Bank at the time of that Close Out and shall be payable by the Bank or, as the case may be, the Client on the Value Date or (if different) the Payment Date and the Bank will adjust the relevant running accounts referred to in Clause 5.2 appropriately.

## PART D: EBANKING TERMS AND CONDITIONS

References to the term "**Clause**" in this Part D of the General Conditions shall mean a "**Clause**" in this Section.

### 1. Interpretation

- 1.1 This Part D shall, together with the other provisions of these General Conditions, apply to eBanking Services.
- 1.2 In the event of any inconsistency between this Part D and any other provision of these General Conditions:
  - (a) the General Conditions shall prevail to the extent that the inconsistency relates to any Services (other than eBanking Services); and
  - (b) this Part D shall prevail to the extent that the inconsistency relates to the eBanking Services.
- 1.3 For the purposes of this Part D:
  - (a) references to the Client shall be deemed to include each Authorised Person of the Client; and
  - (b) references to an Instruction shall be deemed to refer to Instructions issued by the Client through the eBanking Services.

### 2. eBanking Services

- 2.1 The Bank may from time to time determine the scope of the eBanking Services made available to the Client, including the introduction of any new or enhanced eBanking Services from time to time as notified to the Client in accordance with these General Conditions or otherwise agreed by the Bank.
- 2.2 eBanking Services include online transfer services to facilitate fund transfer Instructions (including inter-account transfer and outgoing/third party wire transfer services), e-Payment services (the "**e-Payment Services**"), the "Paperless" service ("**Paperless**"), the account aggregation service ("**Aggregation**"), internet Securities trading services and secure messaging services.
- 2.3 If the Client registers for any eBanking Service, the Client shall be taken to have read and agreed to be bound by the terms and conditions of this Part D and any additional terms and conditions governing the use of and access to such eBanking Services and any disclosures by the Bank in respect of any such eBanking Services, as set out on any channel or means of access through which such eBanking Services are accessed by the Client.
- 2.4 **The Bank may, in its absolute discretion, at any time terminate any eBanking Services provided to the Client and shall, where reasonably practicable or as required by Applicable Laws, provide prior written notice of such termination to the Client.**
- 2.5 **The Bank may restrict, block or suspend access to any eBanking Services without providing any reason or prior notice, in the event that the Bank considers it necessary or otherwise in its absolute discretion.**

### 3. Access and Security

- 3.1 In order to use the eBanking Services, the Client must be registered and accepted by the Bank for the use of such eBanking Services.
- 3.2 The Client may only access the eBanking Services by complying with the Bank's instructions and procedures regarding the use of Access Procedures and upon the Client being duly authenticated by the Bank pursuant to such Access Procedures.
- 3.3 The Access Procedures issued by the Bank may be sent to the last known address of the Client or as notified by the Client in the matter acceptable to the Bank, which shall be at the Client's sole risk. The Access Procedures remain the exclusive property of the Bank.
- 3.4 **The Bank will provide the Client with an initial password for access to the eBanking Services. Upon the Client's first use of the eBanking Services or following a request for a password to be reset, the password generated by the Bank must be changed by the Client immediately upon accessing the eBanking Services. The Bank strongly recommends that the password be changed periodically (and the Bank may require such changes from time to time) and that the Client adheres to the security precautions and advice made available to the Client through the eBanking Services. The Client is recommended to check regularly for updates to any such security precautions and advice.**

- 3.5 The Bank may review and maintain up-to-date and best-fit security precaution measures to protect the Client from fraudulent transactions as far as may be practicable. The Client may from time to time be required to upgrade the Access Procedures issued to the Client in order to comply with any security protection and/or regulatory requirements.
- 3.6 If the Client has been duly identified and authenticated in accordance with the Access Procedures:
- (a) the Bank shall be authorised to act upon any Instruction given by the Client through the eBanking Services; and
  - (b) the Bank shall be under no further duty to verify the identity or authorisation of the Client or the authenticity of any Instruction.
- 3.7 Without prejudice to any other provision of this Part D, the Bank may require the re-authentication of the Client prior to processing any Instruction or transaction.
- 3.8 Notwithstanding any other provision of this Part D, the Bank reserves the right to:
- (a) at its sole discretion and without providing any reason, deny or otherwise restrict the use of or access to the eBanking Services, or to request that the Client provides additional identification or verifying information to the satisfaction of the Bank; or
  - (b) decline or terminate access to the eBanking Services if the Client does not meet the Bank's security requirements.
- 3.9 The Bank may restrict or block access to and use of the eBanking Services if the Client has not been authenticated satisfactorily by the Access Procedures or if incorrect Access Procedures have been utilised on consecutive occasions. Such access may only be reinstated by a written request from the Client to the Bank. The Bank may also deactivate or revoke the use of any Access Procedures at any time (including following receipt of a Security Breach Notification (as defined below)) without providing any reason and without prior notice to the Client.**
- 3.10 The Client must keep secure and maintain the confidentiality and integrity of the Access Procedures issued by the Bank in order to prevent fraudulent or unauthorised use or abuse of the eBanking Services. In particular, the different means of identification and authentication (such as passwords and usernames) must be kept separately and should not be stored in any form which may enable an unauthorised person to access or make use of them. In selecting passwords, easily guessed combinations and/or personal information such as telephone numbers, dates of birth or a recognisable part of the Client's name or initials should be avoided. Passwords used for the eBanking Services should not be used for accessing other services (for example, connection to the internet or accessing other websites). In particular the Client should take all reasonable security precautions including:**
- (a) not allowing anyone else to use the password or disclosing their passwords to anyone including the Bank's staff or any governmental authorities. The Bank's staff will never ask for the Client's password. If in doubt, the Client should immediately contact the Bank;**
  - (b) never writing down the password on the Security Device or other Access Procedures or on anything usually kept with or near it;**
  - (c) not writing down or recording the password without disguising it;**
  - (d) not disclosing their personal information such as information on their identity card or passport, addresses or bank accounts to any persons failing to prove their identities or any doubtful websites;**
  - (e) not attempting to access the eBanking Services through public or shared computers or through hyperlinks embedded in e-mails unless the Client has verified the authenticity or genuineness of the website through which the eBanking Services are accessed;**
  - (f) ensuring that their computers and/or devices are securely configured and that they are adequately protected from computer viruses and malicious programs, for example, by installing a personal firewall and regularly updating their anti-virus software and any program security patches; and**
  - (g) not using or connecting to any third party intermediary account aggregation or similar services through which the Client's Account Procedures are disclosed to anyone other than the Bank.**
- 3.11 If the Client suspects or is aware that an unauthorised third party has the knowledge of or access to its Access Procedures or that any Access Procedure has been compromised in any other way (such

as by loss, theft or disappearance) or that any unauthorised transactions have been conducted on its Account using its Access Procedures, the Client must immediately cease using such Access Procedure and notify the Bank immediately by telephone ("Security Breach Notification"). The Security Breach Notification shall be confirmed in writing by the Client and delivered to the Bank, failing which the Bank shall not be obliged to act upon the Security Breach Notification. The Client agrees to be bound by and be liable for all Instructions and any transactions resulting from any Instructions (including any Instructions or transactions which the Bank was unable to stop from executing or processing) made using its compromised Access Procedures until such time as the Bank has received the Security Breach Notification from the Client and has deactivated or revoked the use of such compromised Access Procedures. The Client agrees that it is the Client's own responsibility to verify whether any Instructions or transactions which have not been processed as a result of a Security Breach Notification are in fact validly authorised, and to submit new Instructions if necessary.

#### 4. Instructions

- 4.1 The Client may issue Instructions to the Bank through the eBanking Services and the Bank is authorised to act upon any such Instructions received by it. Each such Instruction is irrevocable and binding on the Client and may not be rescinded or withdrawn without the Bank's consent, which may be withheld in the Bank's sole and absolute discretion.
- 4.2 The Bank will generally treat the Client's Instruction as received when the Bank actually receives it. If the Client's Instruction is received after the relevant cut-off time on a Business Day or on a day which is not a Business Day, the Client acknowledges and agrees that the Instruction shall be deemed to be received by the Bank at the start of the next Business Day or such other time as determined by the Bank. If the Client instructs the Bank to effect a transaction in the future, the Client's Instruction will be deemed to be received by the Bank on the date on which the transaction is to be effected by the Bank. **The Client acknowledges that Instructions and transactions may not in all cases be processed immediately or at any particular time of the day.**
- 4.3 **The Bank may from time to time and without prior notice to the Client determine and update the applicable cut-off times in respect of any particular function of the eBanking Services. The Client agrees to check the prevailing cut-off times with the Bank through its website or otherwise before sending any Instructions through the eBanking Services.**
- 4.4 The Bank shall only be obliged to act on an Instruction if it is practicable and reasonable to do so, and such Instruction can be processed in accordance with the Bank's regular business practices and procedures. The Bank shall not be obliged to act on any Instruction where the Bank has reasonable grounds for believing that the Instruction has not been given by the Client or where the Bank is not satisfied that carrying out the Instruction would comply with the Bank's anti-money laundering policy or other policies of any EFG Bank Group Member. **The Bank shall also not be obliged to act on any Instruction where the Instruction or transaction in question would exceed any daily transaction limit which the Bank applies to the Client's use of the eBanking Services from time to time. Without prejudice to the foregoing, the Bank may, in its absolute discretion, refuse to act on any Instructions without notice to the Client for any reason whatsoever and to the extent permissible and not inconsistent with any Applicable Laws, the Bank may also delay acting on any Instruction for any reason whatsoever and shall not be liable for any such delay.**
- 4.5 The Bank may in its discretion require, and the Client agrees to provide, such further information or confirmation of Instruction before processing any Instruction, including any information required for the purpose of identifying the beneficiary of any transfer or for determining the purpose of any transaction. Instructions through the eBanking Services (including an Instruction to transfer funds and/or to trade in Securities) shall not be processed by the Bank until the requested information or confirmation of Instruction has been provided by the Client. **The Bank shall not be liable for any failure to act on any Instructions or to process any transaction while any such request for information or confirmation is outstanding or any information or confirmation provided is not to the Bank's reasonable satisfaction.**
- 4.6 The Bank may from time to time set or determine maximum transfer and transaction limits in respect of the Client's use of the eBanking Services. When placing an Instruction (including any payment and Securities trading Instruction), the Client may be notified if any such limit will be exceeded as a result of the processing of such Instruction. The Bank may decline any Instruction which exceeds the Bank's permitted limits. Before giving any fund transfer or Securities trading Instructions, the Client should have regard to any applicable value dates for transfers and settlement in or out of the Account and ensure that sufficient cleared funds and/or Securities are or will at the time of the transfer and settlement be available.
- 4.7 **The Client is solely responsible for ensuring the accuracy, adequacy and completeness of all Instructions submitted through the eBanking Services and the availability of funds and Securities in order to carry out any Instruction. The Bank is not obliged to verify the accuracy, adequacy, validity and/or completeness of Instructions, and shall not be liable for any loss arising as a result of any Instructions either appearing to the Bank to be validly given through the eBanking Services or refused**

or delayed by the Bank as a result of any Instructions appearing to the Bank to be invalid, inaccurate, inadequate or incomplete in any respect, or if there are insufficient funds or Securities to carry out the Instructions or if the processing of any such Instruction would exceed any agreed limit.

- 4.8 **The Client acknowledges that the internet may be an unreliable means of communication and that there may be a delay or failure in transmission or receipt of Instructions, information or communications through the eBanking Services. The Bank shall not be liable as a result of any Instructions not being received promptly or at all.**
- 4.9 In order to comply with regulatory requirements, the Bank may send notifications by Email or SMS (or any other alternative means, if the Bank becomes aware that such notifications were not successfully delivered to the Client) upon completion of any transaction (including any fund transfer or Securities transactions) through the eBanking Services.
- 4.10 **No Instructions may be given to the Bank through the secure messaging function incorporated in the eBanking Services, and if purported to be given by such means, such Instruction may be disregarded by the Bank at its absolute discretion without any liability on its part.**

## 5. e-Payment Services

- 5.1 If the Client has registered for the e-Payment Service, the provisions of this Clause 5 shall apply in addition to the other provisions in this Part D.
- 5.2 The transactions which the Client may carry out on the Account shall be determined by the Bank from time to time, including instructing the Bank to pay money to another Account which the Client holds with the Bank or to pay money to the account of a third party which has been designated and approved by the Client in writing as an account to which amounts can be transferred from the Account.
- 5.3 **If there are insufficient funds or pre-arranged credit available in the relevant Account for the purpose of any Instructions, the Bank shall not be liable for any loss or liability arising in connection therewith, but the Bank may, in its sole and absolute discretion, process any such Instructions notwithstanding such insufficiency without seeking the prior consent of, or otherwise notifying, the Client. The Client agrees to be fully responsible for any overdraft, advance or debit arising as a result.**
- 5.4 **In the event that any transfer Instruction cannot be effected by the intended receiving bank for any reason whatsoever, the Client shall be liable for any charges imposed, or any other action taken, by the receiving bank.**
- 5.5 The Bank shall be entitled to effect any payment and to require the Client to effect any payment in any Currency as the Bank may prescribe. Where a conversion of one Currency into another Currency is required, such conversion shall be effected at the rate determined by the Bank to be prevailing in the relevant foreign exchange market at the relevant time and such determination shall be conclusive and binding on the Client.

## 6. Paperless

- 6.1 If the Client has registered for Paperless, the provisions of this Clause 6 shall apply in addition to the other provisions in this Part D.
- 6.2 Paperless allows the Client to access advices, statements, receipts or regular reports such as portfolio valuation reports (collectively, "**Advices & Statements**") made available through the eBanking Services in electronic form (including receipt of Advices & Statements by Email), and to receive any other Correspondence from the Bank or third parties relating to any Account or Service through the eBanking Service in electronic form (including by Email) (each, an "**eDocument**"). If the Client has registered for Paperless, the Client agrees not to receive Advices & Statements or other Correspondence in paper form by physical delivery and further agrees that eDocuments accessible through the eBanking Services shall for all purposes be treated as if they were physical documents duly delivered to the Client. If the Client has registered for Paperless, the Client shall be deemed to have served a notice of termination of the Client's hold mail service (if any) and any such hold mail service shall be terminated in accordance with the General Conditions.
- 6.3 **The Bank may charge such additional fees or costs for using Paperless. The Client may request physical copies of eDocuments, subject to the Bank's discretion and upon payment of such fees as the Bank may determine from time to time.**
- 6.4 The Bank reserves the right to send notifications to the Client by SMS or Email, at the Bank's discretion, upon the issuance of eDocuments. The Bank also reserves the right to send physical copies of any Advices & Statements or other Correspondence to the Client as soon as practicable if it fails to issue eDocuments or make them available to the Client through the eBanking Services. Where Advices & Statements or other Correspondence are accessed electronically through Paperless and are not posted or emailed to the Client,

the Bank will advise the Client (by SMS or Email, at the Bank's discretion) when an Advice & Statement or other Correspondence is available for access through Paperless.

- 6.5 By registering for Paperless, the Client shall provide an Email address and/or mobile telephone number for the purposes of receiving eDocuments and other notifications in respect of Paperless. The Client represents and warrants that such Email and/or mobile telephone number is valid and undertakes to promptly advise the Bank of any changes to such contact information. The Client understands and acknowledges that it is the obligation of the Client to frequently check for eDocuments and other notifications in respect of Paperless which are sent to the Client's Email address and/or mobile telephone number.**
- 6.6 The Bank may in its absolute discretion re-send any notifications or contact the Client through any other means if the Bank believes the initial delivery of the notification may have failed. The Bank shall not in any event be under any duty to guarantee the delivery of any notification, and except to the extent required by Applicable Laws, the Bank shall not have any obligation to re-send any notification which may have failed for any reason (including due to reasons beyond the Bank's control).
- 6.7 All eDocuments made available through the eBanking Services shall be deemed to be delivered to the Client at the time they are made accessible to the Client. The Client is advised to regularly check the eBanking Services for new eDocuments, whether or not notifications have been sent by the Bank, and to keep copies of eDocuments for the Client's reference. Except to the extent required by Applicable Laws, eDocuments will only be made available for a period of time as determined by the Bank, whether or not the Client has reviewed and/or downloaded them.
- 6.8 The Client agrees to read and verify all eDocuments promptly and advise EFG as soon as possible of any suspected discrepancies, unauthorised transactions or other irregularities arising, including suspicious entries and/or any other concerns. The time limits for reporting suspected discrepancies as referred to in Clause 11 in Section 1 of Part B shall apply to eDocuments and the relevant time periods shall run from the date upon which the eDocuments are deemed to be delivered to the Client in accordance with this Clause 6.**
- 6.9 The Client agrees that eDocuments shall be conclusive evidence of the matters to which they relate (whether or not the same has been reviewed or approved by the Client), and in the event of any dispute, the Bank's version of each eDocument shall be the relevant document of record except in the case of manifest error.
- 6.10 The Client understands and accepts that revocation of consent to the provision of Advices & Statements or other Correspondence via Paperless will be subject to its giving of advance notice of the revocation as the Bank may reasonably require.
- 6.11 The Client understands and accepts that internet and Email services are subject to (and may suffer failure or delay in processing and/or transmitting orders, communications or information as a result of) certain information technology risks and disruption, including interruption, failure of hardware or software, errors, transmission blackout, delayed transmission due to online traffic or incorrect data transmission due to the public nature of the internet, market volume or volatility, system failure or upgrades or maintenance or for other reasons. Accordingly, there may be time lag between the date of issuance of Advices & Statements and other Correspondence and the date on which the same is made available at Paperless.**

## **7. Account Aggregation Service**

- 7.1 If the Client has registered for Aggregation, the provisions of this Clause 7 shall apply in addition to the other provisions in this Part D.
- 7.2 Aggregation is accessible through the eBanking Services and provides a consolidated view of the Client's Accounts opened with EFG Bank Group Members.
- 7.3 The Client is required to register for Aggregation, and such registration may be accepted at the Bank's sole discretion. In order for Aggregation to be available to the Client, the Client must also be registered with the respective EFG Bank Group Member(s) for ebanking or other internet banking services. The Client may withdraw from Aggregation at any time by notice in writing to the Bank.
- 7.4 The availability of Aggregation is subject to Applicable Laws and restrictions in Hong Kong and other jurisdictions. The Bank reserves the absolute right to review and determine the scope and availability of Aggregation from time to time. The Bank's determination as to the availability of Aggregation and any applicable restrictions on the use of Aggregation shall be final.
- 7.5 The Bank provides Aggregation to the Client for the Client's convenience only and solely in reliance on the information and data provided by the relevant EFG Bank Group Members. The Bank cannot guarantee the accuracy, timeliness or completeness of any information or data made available under Aggregation. The Client acknowledges and agrees that Aggregation does not affect the responsibility of the relevant EFG Bank

Group Member(s) to separately provide transaction confirmations and statements or other information in accordance with the prevailing agreements between the Client and the relevant EFG Bank Group Member(s), and in accordance with the Applicable Laws and practices governing such accounts. To the extent Aggregation involves an EFG Bank Group Member, the Client acknowledges and agrees that this shall not be construed to be any representation that any EFG Bank Group Member (other than the Bank) conducts business in Hong Kong.

**7.6 Without limiting any of the Bank's other rights under these General Conditions, the Client acknowledges and agrees that the EFG Bank Group and its employees, authorised contractors and agents, regulators, auditors, third party service providers, legal advisers and other persons may have access to Client Information as may be reasonably required for providing Aggregation, investigating complaints and complying with Applicable Laws.**

**7.7 The Client agrees that the Bank may, in accordance with Applicable Laws, access and link the Client's accounts and/or portfolios held in any country or jurisdiction with an EFG Bank Group Member for the purposes of Aggregation, and to retrieve, use and hold such data and information in the Bank's servers for the purpose of providing Aggregation. Should the Client have any concerns in this regard, the Client is advised to seek guidance from the Client's taxation and/or legal advisers.**

**7.8 The Client agrees and undertakes to promptly comply with any instructions the Bank may issue to the Client at any time in connection with the use of Aggregation and in the event the Client fails to comply, the Bank may terminate Aggregation at any time without prior notice to the Client and without liability for any loss or damage incurred in connection therewith.**

## **8. Account and Transaction Information**

8.1 Information relating to any Account or transaction made available by the Bank through the eBanking Services is for reference only and may not be up to date or conclusive, and the Bank does not assume any responsibility for the accuracy and completeness of such data or information made available to the Client through the eBanking Services. In the event of any discrepancy, the Bank's internal records in respect of such Accounts and transactions shall be final and conclusive.

8.2 The Client agrees that all Instructions in electronic form shall be treated as written and original documents. The Client shall not dispute or challenge the validity or enforceability of any Instruction on the grounds that it is made in electronic form or is not a written or original document and the Client waives any such right the Client may have at law. The Client acknowledges and agrees that all such records in relation to Instructions are admissible in evidence and that the Client shall not challenge or dispute the admissibility, reliability, accuracy or the authenticity of the contents of such records solely on the basis that such records were incorporated and/or set out in electronic form or were produced by or are the output of a computer system, and the Client hereby waives its rights (if any) to such challenge or dispute.

## **9. Market Information and Third Party Links**

9.1 Market prices may fluctuate rapidly and any information provided by the eBanking Services, including rates or pricing information, is provided for reference only. **Unless any confirmed rate or price is offered and accepted by the Client within the specified time limit, the Bank shall not be liable for any loss (including loss of opportunity) or liability suffered by the Client or arising out of any Instructions given through the eBanking Services being executed at the prevailing rate or price at the time of execution. Furthermore, the Bank cannot guarantee that any such information available or provided through the eBanking Services reflects the commercial reality at the time the information is provided (including to account for any time as may be necessary for the execution of any Instruction or transactions pursuant to the information provided) or that any such information is true, accurate and complete and not misleading in any way.**

9.2 Except as otherwise specified in writing by the Bank, the information accessible to the Client through the eBanking Services does not constitute binding offers on the part of the Bank (and any proposed transaction is at all times subject to acceptance by the Bank in its sole discretion), nor should any such information be construed to be any representation that any EFG Bank Group Member (other than the Bank) conducts business in Hong Kong.

**9.3 The eBanking Services may contain references or hyperlinks to third party websites exclusively for the convenience of the Client. No EFG Bank Group Member shall be liable for the availability, content and/or further references or hyperlinks on any third party websites. The inclusion on the eBanking Services of any such references or hyperlinks shall not be deemed to be an endorsement, recommendation, approval, guarantee or introduction of any third parties or of any service/products on their websites, nor of the content of such websites. No EFG Bank Group Member shall in any circumstances be deemed to be a party to any contractual arrangements, in any form, entered into between the Client and the providers and/or affiliates of such third party external websites, unless otherwise expressly agreed by the Bank.**

## 10. Indemnity

Without limiting any of the Bank's other rights under these General Conditions, to the maximum extent permitted by and not inconsistent with any Applicable Laws, the Client shall keep each Indemnitee harmless and shall fully indemnify each of them promptly on demand against any Claims (including legal costs on a full indemnity basis) (except any tax imposed on and calculated by reference to the Bank's net income) which the Bank shall conclusively certify as having been taken or made against, or sustained or incurred by, any of them in connection with, or arising out of, directly or indirectly the provision of the eBanking Services, except to the extent the same arise directly from their respective negligence, wilful misconduct or fraud. If (and only if) a Client is a private individual to whom the Banking Code applies, any indemnity for costs and expenses in this Part D shall be construed so as to be limited to the recovery of costs and expenses of a reasonable amount and reasonably incurred.

## 11. Liability

- 11.1 By registering for and using the eBanking Services, the Client confirms full awareness and understanding of the risks and responsibilities involved in the use of the eBanking Services (including fraudulent use or user blockage following authentication errors). The Client undertakes to take all necessary precautions and security measures and agrees to assume all risks in connection with unauthorised or fraudulent use of the eBanking Services.
- 11.2 If the Client acts fraudulently or with gross negligence (such as failing to safeguard properly the Access Procedures for accessing the eBanking Service), the Client will be liable for any direct loss arising as a result of unauthorised transactions conducted through the Account or in relation to the eBanking Services.
- 11.3 The Client will be liable for all losses arising as a result of the Client's gross negligence (such as where the Client knowingly allows the use by others of the Access Procedures) or the Client fails to inform the Bank as soon as reasonably practicable after they find or believe that their Access Procedures for accessing the eBanking Services have been compromised, lost or stolen, or that unauthorised transactions have been conducted over their Accounts (whether arising as a result of the Client failing to follow the safeguards set out in Clause 3 above if such failure has caused the losses or otherwise).
- 11.4 While the Bank shall take all reasonable practicable steps to maintain the security of the eBanking Services, the Bank does not warrant that any information or data downloaded from the eBanking Services will be free from viruses, malware and/or other malicious or destructive items which may adversely affect the devices, equipment and software of the Client.
- 11.5 The Bank shall not be responsible or liable for any loss of profit, revenue, savings, data, goodwill or business or any indirect, consequential, special, punitive or incidental loss or damage, whether arising based on a claim in contract, tort (including negligence), breach of statutory duty or otherwise as a result of technical deficiencies (including transmission errors, network overload, interference, interruption of service, maintenance and unauthorised third party access) or in connection with the Client's equipment or the data stored therein.
- 11.6 The Bank is not responsible for providing any material or equipment required for the use of the eBanking Service, nor shall the Bank be responsible for ensuring the proper installation or functionality of any such material or equipment. The Bank assumes no responsibility to the Client arising in connection with the downloading or use of software by the Client.
- 11.7 The Bank does not warrant that the eBanking Services may be accessed or used from any jurisdiction other than Hong Kong and the Client is advised to seek any necessary advice in considering the Client's circumstances. The Bank is not responsible or liable for any loss of profit, revenue, savings, data, goodwill or business or any indirect, consequential, special, punitive or incidental loss or damage, whether arising based on a claim in contract, tort (including negligence), breach of statutory duty or otherwise incurred in connection with the eBanking Services being accessed or inaccessible from or used in any other jurisdiction apart from Hong Kong.
- 11.8 The Bank is not responsible or liable for any loss of profit, revenue, savings, data, goodwill or business or any indirect, consequential, special, punitive or incidental loss or damage, whether arising based on a claim in contract, tort (including negligence), breach of statutory duty or otherwise that may result from the inability to access the eBanking Services at any time (whether due to blockage, termination, security reasons or otherwise).
- 11.9 Nothing in this Part D shall exclude or limit the Bank's liability in respect of (a) death or personal injury caused by the negligence of the Bank or its agents, employees or servants, (b) fraud or the tort of deceit committed by the Bank or its agents, employees or servants, or (c) any other liability to the extent it cannot, as a matter of law, be excluded or limited.



## 12. Disclosure

- 12.1 Without limiting any of the Bank's other rights under these General Conditions, the eBanking Services and the Client information and data held therein may be stored in servers maintained in or outside of Hong Kong, whether hosted by the EFG Bank Group and/or its Affiliates, and connection to and use of the eBanking Services will require data transmission and related services provided by third parties who may not be under the control of the Bank. In connection with the use of the eBanking Services, the Client authorises the disclosure, release, transmission, processing and retention of any and all information whether relating to the Client, the Accounts with the Bank or otherwise, to or by such parties as the Bank in its absolute discretion deems necessary or desirable for the purpose of providing the eBanking Services.
- 12.2 The Client is aware that the internet is a public network and is not a completely secure means of communication. While the Bank shall take all reasonably practicable steps to protect the Client's information and data, the Bank shall not be liable for any consequent disclosure of the Client's information.

## 13. Intellectual Property Rights

- 13.1 The Client acknowledges and agrees that the eBanking Content is the exclusive property of the Bank and/or its third party licensors. The Client acknowledges and agrees that the Client is only permitted to use the eBanking Content in accordance with this Part D and as expressly authorised by the Bank.
- 13.2 Nothing in this Part D shall transfer any right, title or interest in the eBanking Services or the eBanking Content to the Client and the Client may not copy, reproduce, modify, distribute, publish or commercially exploit the eBanking Content or create derivative works from this eBanking Content without the Bank's prior written consent. The Client agrees that it shall not decompile, reverse engineer, input or compile any of the eBanking Content or attempt to do so.

## 14. Fees

- 14.1 **The Bank may charge fees for using the eBanking Services at the prevailing rates determined by the Bank from time to time.**

The Client should report any actual or suspected loss of the security token or possible security breach in respect of any password, or any complaint in regard to the operation of the eBanking Services to the Bank as follows:

***EFG Bank AG, Hong Kong Branch  
18 /F, International Commerce Centre  
1 Austin Road West  
Kowloon, Hong Kong***

***Attn : Operations Support Team***

***Telephone Number : + 852 2298 3000  
Email : hkopssp@efgbank.com***

## 15. Data Privacy

- 15.1 The Client acknowledges having received the Bank's Personal Information Collection Statement in relation to protection of the Client's Personal Data as required by the PDPO. The Client confirms that any Client Information (including Personal Data) in regard to the Client or any other authorised user collected by or in the possession of the Bank in connection with the eBanking Service may be transferred and stored on servers outside Hong Kong in order to provide the eBanking Services, and acknowledges that it will not be possible to provide such services without transferring the relevant data out of Hong Kong.

## **PART E: CREDIT FACILITIES**

References to the term "**Clause**" in this Part E of the General Conditions shall mean a "**Clause**" in this Section.

### **1. Application of Part E and Relationship with other Parts**

1.1 This Part E of the General Conditions shall apply to all Facilities and shall form part of, and be deemed to be incorporated into, the terms of each Facility and (if any) each Facility Letter and each agreement entered into between the Bank and the Client in relation to a Facility and/or (if any) pursuant to a Facility Letter. The terms and conditions of any particular Facility which the Bank may make available to the Client are subject to the terms and conditions of the Agreement and the other Facility Documents.

1.2 If there is any conflict or inconsistency between any provision in this Part E and any provision in the other Parts of the General Conditions, the provisions in this Part E shall prevail to the extent of such conflict or inconsistency. If there is any conflict or inconsistency between this Part E and the terms of any Facility or (if any) any Facility Letter, the terms of such Facility (or if any) such Facility Letter shall prevail.

### **2. Availability and Review of Facilities**

2.1 **Unless the Bank expressly agrees otherwise, all Facilities are provided on a strictly uncommitted basis. Accordingly, the availability of all Facilities is subject to the Bank's absolute discretion and the Bank shall be under no obligation to make (or where it has agreed to make available) to continue to make available all or any part of any Facility or to permit any particular utilisation of any of them.**

2.2 **All Facilities are subject to the Bank's customary overriding right at any time to require immediate repayment on demand.**

2.3 **The Bank may in its absolute discretion review any or all Facilities at any time and from time to time. Pursuant to such review, the Bank may at any time (at its absolute discretion and without the consent of the Client or any other party) by giving notice to the Client vary, amend or extend the availability or repayment period, or terminate, cancel or suspend or require repayment of, or cash collateral in respect of, all or any part of the Facilities and all other amounts actually or contingently due to the Bank under the Facilities. The Bank shall not be required to provide any reason for termination. If so terminated, the Facilities shall forthwith cease to be available for utilisation. In addition:**

(a) **the Total Liabilities shall become immediately due and payable (unless the Bank gives notice otherwise) and the Bank shall have the right to require immediate repayment of all sums then owing to it; and**

(b) **the Client shall procure the release and discharge of the Bank from all Bank Guarantees and other contingent and/or unmatured liabilities owing, sustained or incurred by the Bank pursuant to the utilisation by the Client of any of the Facilities and, pending such release or discharge, shall place the Bank in funds by paying to the Bank, for credit to a suspense or other account or accounts as the Bank may decide, the amount which the Bank requires to satisfy in full each of such Bank Guarantees and other contingent and/or unmatured liabilities and any costs and expenses in relation thereto.**

### **3. Facility Amount and Purpose**

3.1 If the Bank (in its absolute discretion) agrees to make a Facility available to the Client, the maximum amount available under the Facility is subject to the facility limit advised to the Client as determined by the Bank at its sole discretion by reference to the value of the Collateral held with the Bank (which Collateral must satisfy the Bank's margin requirements for such Facility and may therefore exceed the Facility limit advised to the Client). Without prejudice to the generality of Clause 2, the Bank may review any Facility amount and limit at any time at its absolute discretion.

3.2 Facilities may only be used for lawful and legitimate purposes. The purpose of each Facility may be varied with the Bank's prior written consent. The Bank shall not be required to enquire, investigate or monitor, and the Bank shall not be responsible for, the use of any Facilities by the Client. However, the Bank may request the Client to provide such information regarding the purpose and use of any Facilities as it may reasonably require and the Client agrees to provide such information to the Bank as soon as practicable.

### **4. Utilisation Conditions**

4.1 Any utilisation of any of the Facilities by the Client shall be subject to:

(a) the Bank's prior approval;

- (b) the terms of the relevant Facility Document(s) (including this Part E of the General Conditions); and
  - (c) the completion, execution and delivery of such documents as the Bank may require.
- 4.2 The proceeds of any utilisation in HK Dollars shall be subject to all regulations issued by the HKMA (and, if applicable, any other relevant Regulator(s)) in force from time to time as well any other restriction(s) which the Bank may (in its absolute discretion) from time to time impose.
- 4.3 In addition, the following additional conditions (and such other conditions as the Bank may in its absolute discretion specify from time to time) shall apply to each utilisation of any Facility:
- (a) each utilisation request must be made in the form and manner, and must be received by the Bank prior to the utilisation at the time, as the Bank may from time to time prescribe;
  - (b) the Client's and any Collateral Provider's representations and warranties in the Facility Document(s) shall be true and correct as if repeated on the date of such utilisation;
  - (c) no breach of or default (however described) under any Facility Document shall have occurred and no such breach or default will be caused by, or result from, such utilisation; and
  - (d) there shall have been no material adverse change in the condition (financial or otherwise), prospects or assets of the Client and (if any) any other Collateral Provider.

## 5. Fixed Advances

- 5.1 The Client may request for a Fixed Advance from the Bank by delivering to the Bank a duly executed notice in such form as the Bank may specify or otherwise agree (whether in any Facility Letter or otherwise), not later than 10:00 a.m. (Hong Kong time) on the second Business Day (or such later date or at such other time agreed to by the Bank) before the drawdown date specified in such request or in such other manner as may be agreed by the Bank.
- 5.2 Without limiting the generality of Clause 4.1(a), each such Fixed Advance is subject to the Bank's prior approval and the Bank shall, at any time, have the right to refuse to make any Fixed Advance requested by the Client.
- 5.3 The Client shall repay each Fixed Advance in full on the date of its maturity, together with accrued interest in arrears. Interest on any Fixed Advance having a tenor of six (6) months or more shall be payable by the Client in arrears quarterly (or at such other intervals as may be determined by the Bank).

## 6. Overdraft Facility

- 6.1 The Client may, subject to receiving the Bank's prior approval, draw on the relevant Overdraft Account(s) in accordance with the terms of the Facility Documents. The Bank shall, at any time, have the right to refuse any Drawing from any Overdraft Account. **Interest on all Drawings shall be payable monthly at the end of the calendar month in arrears (unless otherwise provided in the relevant Facility Letter or notified by the Bank to the Client). All Drawings together with any unpaid interest thereon, commission, discount and other bank charges (if any) are repayable, and shall be repaid in full by the Client, on demand.**
- 6.2 The Bank may, in its absolute discretion upon the Client's request, allow any overdraft or increase of overdraft beyond any specified overdraft limit from time to time in respect of any Account. However, this shall be without prejudice to the Bank's overriding right to refuse to allow any subsequent overdraft or increase of overdraft beyond any specified overdraft limit from time to time. Any such overdraft or increase of overdraft shall be deemed to be a Drawing under a Facility and the terms and conditions set out in this Part E and the other Parts of the General Conditions shall apply thereto, despite that the Client may not have executed a Facility Letter.

## 7. Issue of Bank Guarantees

- 7.1 The Client may, subject to receiving the Bank's prior approval (including prior Bank approval in respect of the terms and conditions, form and duration of the relevant Bank Guarantee), request for the issue of a Bank Guarantee by executing and delivering to the Bank, not later than three (3) Business Days (or such later date agreed to by the Bank) before the proposed date of issue of such Bank Guarantee, such documents (including an application and any related undertaking to indemnify and reimburse the Bank in respect of the Bank's obligations under such Bank Guarantee) and any approvals and consents which the Bank may require in connection with such issue.

Any Bank Guarantee which the Bank agrees to issue for or on behalf of the Client must be in a form and

substance satisfactory to the Bank.

- 7.2 In consideration of the Bank issuing, at the Client's request, Bank Guarantees from time to time (whether as surety, principal debtor, primary obligor or otherwise), the Client hereby agrees that:
- (a) the Bank need not check or verify the use or purpose of any Bank Guarantee which the Client requests to be issued under the Facilities;
  - (b) if the Bank notifies the Client that a beneficiary or any other person entitled to receive payment under a Bank Guarantee (the "**Bank Guarantee Beneficiary**") has made a claim or demand on the Bank to pay any sum under that Guarantee, the Client shall pay to the Bank all amounts payable by the Bank under or in connection with that Bank Guarantee (whether or not the Bank has already paid such sum), despite that at the time of such claim or demand, the Bank is not liable or required by law to make any payment under or in connection with that Bank Guarantee and despite any fact or circumstance which may constitute a defence or discharge to the Bank in respect of such claim or demand;
  - (c) the Bank shall pay the amounts referred to in paragraph (b) forthwith on receipt of such notice, unless the notice specifies otherwise in which case the Client shall make such payment as specified in the notice or otherwise on the Bank's demand; and
  - (d) the Bank may at all times immediately pay, discharge and satisfy any amounts claimed or demanded by the Bank Guarantee Beneficiary under or in connection with any Bank Guarantee without reference to or further authority from the Client and without further investigation or enquiry and despite that the Client disputes the validity of any such demand or payments (whether or not such dispute is disclosed or known to the Bank). The Bank need not concern itself with the propriety of any claim made or purported to be made under or in connection with any Bank Guarantee and it shall not be a defence to any demand made by the Bank of the Client in relation to any Bank Guarantee, nor shall any of the Client's obligations hereunder be affected or impaired by the fact that the Bank was or might have been or be justified in refusing payment, in whole or in part, of any such amounts claimed or demanded.

**7.3 The Client further undertakes to indemnify and hold harmless each Indemnitee from and against any and all claims, suits, judgments, costs, losses, fines, penalties, damages, liabilities, expenses, fees, charges and disbursements (including fees and expenses of any of the Bank's legal and other professional advisers and/or any expert witness for any Indemnitee) and any taxes thereon (together, "Costs") arising out of, in connection with, or as a result of, any Bank Guarantee, including any Costs arising out of any action for injunctive relief or other judicial or administrative relief or arbitration arising out of or in connection with any Bank Guarantee.**

**7.4 Unless otherwise expressly agreed by the Bank in writing, and despite any automatic reduction clause in any Bank Guarantee, the Client's obligation to indemnify the Bank for the full amount of the Bank's liability under any Bank Guarantee shall not be reduced by reason of any partial performance of the contract between the Bank Guarantee Beneficiary of that Bank Guarantee and the Client.**

7.5 If, at the Client's request, the Bank agrees to amend any Bank Guarantee so as to:

- (a) extend its expiry date or the time for presentation of claims under it;
- (b) modify any other term of it; or
- (c) increase the amount of that Bank Guarantee,

the Client's obligations under the Facility Documents shall, despite any such amendment (however fundamental and of whatsoever nature), be binding on the Client with regard to that Bank Guarantee as so amended and to any action taken by the Bank or any of the Bank's agents or correspondents pursuant to such amendment.

- 7.6
- (a) Unless the Bank agrees otherwise, each Bank Guarantee issued under the Facilities as an SBLC shall be subject to the UCP or ISP and, to the extent not inconsistent therewith, shall be governed by the laws of Hong Kong.
  - (b) The Bank is authorised to accept or, as the case may be, pay all drafts or documents purporting to be drawn or presented under any SBLC.
  - (c) The Client shall, as applicable, accept and pay, or accept upon presentation and pay at maturity, all documents presented or drafts drawn in accordance with the terms of any SBLC.
  - (d) The Bank may restrict negotiations under any SBLC to other EFG Bank Group Members or to any

correspondent or agent of its choice and the Bank is authorised to accept and/or pay for the account of the Client all drafts purporting to be drawn upon the Bank, any EFG Bank Group Member or any correspondent or agent of the Bank (as the case may be) under such SBLC.

- (e) In relation to the tender of documents under any SBLC, it shall be sufficient and proper compliance with the terms thereof if the documents purport to be in order and, taken as a whole, contain the description of the obligations as given in the SBLC and appear complete and regular on their face under general scrutiny and none of the Bank, any other EFG Bank Group Member or any correspondent and agent of the Bank shall be responsible for the genuineness, correctness or form of documents or any endorsement thereon or any misrepresentation therein as to any matter.
- (f) **The Client shall hold the Bank, any other EFG Bank Group Member and any correspondent and agent of the Bank free from any liability or responsibility for the consequences (which shall not, in any way, affect the rights of the Bank hereunder) arising from delay or loss in transit, transmission or otherwise of any message, letter, document, draft or the proceeds thereof or the delay, interruption, mutilation, omission or other error in the transmission or delivery of any messages, by mail, facsimile or otherwise, or any error in translation or interpretation of technical terms or arising from any ambiguity in Instructions from the Client and the Bank shall have the right to transmit the terms of any SBLC without translating them.**
- (g) **The Client shall indemnify each Indemnitee in respect of any claim, loss, liability or expense howsoever arising from or in connection with any SBLC or the related documents, property or proceeds.**

**7.7 None of the Bank, the other EFG Bank Group Members or any correspondent and agent of the Bank shall be responsible for the following and none of the following shall, in any way, affect the rights of the Bank hereunder:**

- (a) **the form, legal effect, correctness, validity, sufficiency or genuineness of documents even if such documents should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged;**
- (b) **failure of any draft to bear any reference or adequate reference to the relevant SBLC, or failure of documents to accompany any draft at negotiation, or failure of any person to send documents apart from drafts as required by the terms of the SBLC or failure of any person to note the amount of any draft on the reverse of a SBLC or to surrender or take up a SBLC; and**
- (c) **any consequences arising from causes beyond the Bank's reasonable control.**

7.8 No invalidity or unenforceability of all or any part of this Clause 7 shall affect any rights of indemnity or otherwise (whether from the Client or any other person) which the Bank could or may have in the absence of or in addition to this Clause 7. The indemnity in this Clause 7 shall continue until all the terms, covenants and conditions of the Facility Documents have been fully and completely performed by the Client or otherwise discharged and the Bank has been irrevocably and completely discharged from all its obligations under each of the Guarantees.

## **8. Trading Facilities**

8.1 The Client may, subject to receiving the Bank's prior approval, utilise any of the Trading Facilities for any Transaction, provided that the duration of any such Transaction or transaction shall, unless otherwise agreed by the Bank, not exceed the period of twelve (12) months (or such other period as may be determined from time to time by the Bank in its absolute discretion). For purposes of any Trading Facilities, all Transactions entered into by the Client shall be governed by these General Conditions (including, for the avoidance of doubt, Part C and Part E of these General Conditions).

8.2 **The Client must provide the Bank with an initial margin cover as Collateral in the form of cash deposits and/or liquid financial assets acceptable to the Bank from time to time and/or otherwise as agreed with the Bank before entering into any Trading Facility, and within the time limit (if any) as specified by the Bank. The required initial margin may vary with each type of Trading Facility and the amount may be determined and varied by the Bank from time to time in its absolute discretion and advised to the Client from time to time. Notwithstanding the provision of any Trading Facility, the Bank may at its discretion at any time change the applicable margin requirement which can be obtained from the Bank, and the Client shall provide additional Collateral as required by the Bank from time to time to satisfy the Bank's prevailing margin requirements.**

8.3 **The margin cover provided by the Client may fall below the amount required by the Bank due to various reasons such as book losses arising from mark-to-market valuation of outstanding**

Transactions, or losses arising from closed-out Transactions, or a fall in the value of the Collateral. The Client is obliged to monitor and ensure the margin cover with the Bank is sufficient at all times.

8.4 If in its sole discretion the Bank considers for whatever reason that the margin cover is insufficient at any time it may take such steps as it may deem appropriate including:

- (a) calling upon the Client at short notice to provide such additional Collateral as is determined by the Bank in its sole discretion. This amount may be substantial and may exceed the amount originally committed as initial margin;
- (b) realizing such part or all of the Collateral as the Bank deems necessary to satisfy the Client's liabilities without further notice to or consent from the Client or the Collateral Provider; and/or
- (c) closing out, liquidating, setting off (notwithstanding that any of the same has not yet matured), realizing or otherwise dealing with any or all outstanding Transactions (whether or not any additional loss may thereby arise) at such time and by such means or in such manner as the Bank in its sole discretion thinks appropriate without further notice to or consent from the Client. In the event any Transactions are liquidated at a loss and the loss exceeds the aggregate Collateral value less other liabilities due from the Client to the Bank (whether actual or contingent), the Client will be liable for any shortfall.

8.5 The Client hereby authorises and directs the Bank, without prior notice to the Client, to allocate from existing funds and/or assets in any Account of the Client maintained with the Bank (if any) such amount of such Currency and/or assets as the Bank may from time to time in its absolute discretion think fit as initial or additional margin, as the case may be.

8.6 All and each part of any initial and additional margin shall act as security for all the obligations of the Client to the Bank under these General Conditions. Any interest, dividend or other benefit (if any) on any asset deposited with the Bank as margin will be added to and form part of the margin deposited as security for all such obligations.

## 9. Interest and Service Charges

9.1 Interest shall be charged by the Bank in respect of any Facility at such rate and calculated and compounded on such basis as the Bank may in its absolute discretion determine from time to time and which will be specified, if applicable, in the relevant Facility Letter or other document related to the Facility or (with respect to overdrafts) in the Scale of Charges Booklet or, if not so specified, at such rate as the Bank may advise to the Client from time to time. The Bank may at any time and from time to time vary the rate of interest (including default interest) in its absolute discretion by giving written notice.

Unless the Bank otherwise advises in writing, interest rates comprise (i) the Bank's Cost of Funds and (ii) an additional interest rate (often referred to as margin). "Cost of Funds" means, in relation to any sum and any period, the cost to the Bank of funding that sum for that period, as determined by the Bank in its sole discretion, by reference to (i) the percentage rate per annum of interest at which deposits in the relevant Currency (for a comparable amount and period) were being offered to the Bank in the Hong Kong interbank market or other relevant interbank market on the relevant day and (ii) the percentage rate per annum determined by the Bank to be the cost to it of complying with reserves, liquidity, deposit or other requirements with respect to the sum concerned).

9.2 The Client acknowledges and agrees that the Bank will not under any circumstances at any time pay any interest to the Client in respect of any Facility even if the cost of funding the Facility to the Bank (whether it is based on Cost of Funds or any base lending rate) falls below zero. If the cost of funding the Facility to the Bank falls below zero, the Bank may determine the amount of Cost of Funds or the relevant base lending rate (as the case may be) as zero at the Bank's sole discretion.

9.3 Bank Guarantee commission is not refundable in respect of any period following the discharge, release or cancellation, for any reason whatsoever, of the relevant Bank Guarantee.

9.4 The Bank shall be entitled to charge default interest at the rate of three per cent (3%) (or such other rate as the Bank may determine in its absolute discretion from time to time) above the interest rate then applicable to the relevant Facility, which default interest shall be calculated on a monthly compounded basis (or on such other basis as the Bank may determine from time to time) on any sums (whether principal, interest, default interest, fees, charges, expenses, commissions or otherwise) unpaid by the Client when due from the due date(s) until payment of such monies (after as well as before judgment).

A certificate by any of the Bank's authorised signatories as to the applicable default interest rate shall, in the absence of manifest error, be binding and conclusive evidence.

- 9.5 Interest (including default interest) shall continue to be charged, and the Bank shall be entitled to continue to capitalise interest in relation to outstanding amounts owed in respect of any Facility or on other monies (as applicable), despite the termination of any Account or Facility or the Client's relationship with the Bank, until payment in full of all sums owing by the Client to the Bank after as well as before judgment.
- 9.6 Interest (including default interest) charged in respect of any Facility shall be calculated on the basis of the actual number of days elapsed in a 365-day year (if denominated in HK Dollars or any other Acceptable Currency for which the market convention is to calculate interest on the basis of a 365-day year) or a 360-day year (if denominated in US Dollars or any other Acceptable Currency for which the market convention is to calculate interest on the basis of a 360-day year) (in each case both ordinary and leap years) as the Bank may specify in accordance with market convention. Regular interest is payable on the last day of each interest period and at least quarterly if the interest period exceeds three (3) months or for such payment frequency as otherwise agreed by the Bank from time to time.

Overdraft interest shall be accrued and debited to the Client's Account monthly in arrears. The Bank will notify the Client when it charges overdraft interest.

- 9.7 **A service charge may be charged by the Bank in respect of any Facility granted to the Client in such quantum or at such rate as the Bank may in its absolute discretion determine from time to time. The Bank reserves the right to charge for any excess Drawings above the stipulated limit (if any) at rates to be determined by the Bank. Service charges will generally be specified in the relevant Facility Letter (or other document related to the Facility).**

## 10. Payment Provisions

- 10.1 The Client shall pay to the Bank on demand all fees, exchange expenses, interest, commissions, bank charges, disbursements and all other expenses whatsoever due to or incurred by the Bank, the other EFG Bank Group Members or any agent and/or correspondent of the Bank in relation to the issue of any Bank Guarantee or in respect of the Accounts, Services, Facilities, or Transactions provided, or (as applicable) effected on behalf of the Client, by the Bank and such other entities to the Client.
- 10.2 Each payment to be made to the Bank shall be made on the date it is due or, as the case may be, immediately on demand, in the Currency in which the amount is outstanding and in immediately available and freely transferable funds to such account as the Bank may from time to time designate, and the Client authorizes the Bank at any time to debit any of the Total Liabilities (whether accrued or contingent) from any Account.
- 10.3 If any payment falls due on a non-Business Day, it shall be made on the next succeeding Business Day and all calculations of interest, commission and fees shall be adjusted accordingly. However, if, in the case of the payment of any Fixed Advance and/or the accruing interest the next succeeding Business Day falls in another month of the year, the payment shall be made on the immediately preceding Business Day and all calculations of interest, commission and fees shall be adjusted accordingly.
- 10.4 If the Facilities or any of them is terminated under any provision of any Facility Document, any sum which is payable under the Facilities or that Facility on a date falling after the termination date shall be prepaid on the date of such termination and all calculations of interest, commission and fees shall be adjusted accordingly. The Client shall in every such case indemnify the Bank for any broken funding cost sustained or incurred by the Bank as a result of each such prepayment.
- 10.5 Without in any way prejudicing or reducing the Bank's rights or the Client's obligations under the Facility Documents, the Client hereby agrees as follows:
- (a) All payments to the Bank (whether by way of principal, interest, commissions and taxes or of any other kind) shall be made in full without any set-off, deduction or withholding whatsoever and shall be paid to the Bank in the same Currency as the Currency of the respective amount outstanding under the Facilities. Further, the Client expressly commits to separately and directly pay any taxes payable at the Client's domicile (if any) and warrants that the Bank will not be liable for any such payments, taxes, deductions or withholdings, and undertakes to hold the Bank harmless in respect of any demands for such payments, taxes, deductions or withholdings.
  - (b) If the Client is required by law to make any deduction or withholding from any such sum on account of taxes, the sum payable shall be increased by such amount as may be necessary so that after making such required deduction or withholding, the Bank receives, on the due date for payment of such sum, a net amount equal to the sum the Bank would have received had no such deduction or withholding been required to be made.
  - (c) **Any amount received or recovered by the Bank in respect of any sum expressed to be due to it from the Client under any Facility Document in a Currency other than the one in which such**

sum is denominated (the "Contract Currency") (whether as a result of a judgment or order of a court or tribunal of any jurisdiction or its enforcement), shall only constitute a discharge to the Client to the extent of the amount in the Contract Currency which the Bank is able, in accordance with its usual practice, to purchase with the amount so received or recovered in such other Currency on the date of that receipt or recovery (or, if it is not practicable to make that purchase on that date, on the first date on which it is practicable to do so). If that amount in the Contract Currency is less than the amount in the Contract Currency due to the Bank under the relevant Facility Document, the Client shall indemnify the Bank against any loss, cost and expense (including the cost of making any such purchase) which the Bank may incur or suffer.

10.6 Each of the indemnities in this Clause 10:

- (a) constitutes a separate and independent obligation from the other obligations of the Client under any of the Facility Documents or otherwise and shall give rise to a separate and independent cause of action;
- (b) shall apply irrespective of any indulgence granted by the Bank; and
- (c) shall continue in full force and effect despite any judgment, order, claim or proof for a liquidated amount in respect of any sum due hereunder or under any judgment or order.

## **11. Prepayment of Facilities**

11.1 Any prepayment of the principal amount of a utilization made under a Facility shall require the Bank's express prior approval. If the Bank permits a prepayment, the Client shall on the date of such prepayment pay to the Bank the outstanding principal (including any arrears) together with all accrued interest, fees and other sums then due and payable in respect of the Facility and, promptly on the Bank's demand, such amount as the Bank may conclusively certify to be necessary to compensate it for any loss or expense incurred as a consequence of such prepayment (including any loss incurred in liquidating or redeploying funds required to maintain the relevant utilization). The outstanding loan principal and interest shall be calculated by the Bank in such manner as it may in its absolute discretion determine.

11.2 The Bank may charge a prepayment fee to cover the Bank's administration cost. Unless otherwise stated in the relevant Facility Documents, the prepayment fee will not exceed one percent (1%) of the principal prepayment amount.

## **12. Application of Monies**

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

## **13. Events of Default and Termination**

13.1 **Each of the following events is an Event of Default:**

- (a) the Client and/or any Collateral Provider does not pay in the manner provided in any Facility Document and/or Transaction Confirmation to which it is a party, any sum payable under that Facility Document and/or Transaction Confirmation when due or on demand;
- (b) the Client and/or any Collateral Provider defaults in the due performance of or compliance with, or breaches, any undertaking, condition or obligation to be performed and observed by it under any Facility Document and/or Transaction Confirmation to which it is party (other than payment of any sum due as described in Clause 13.1(a));
- (c) any representation or warranty made or deemed to be made to the Bank at any time by the Client or any Collateral Provider whether in or in relation to any Facility Document, Transaction Confirmation, Account or otherwise is or becomes incorrect and/or misleading in any respect considered by the Bank to be material;
- (d) any consent, authorisation or approval required in or in relation to the Facility Document(s) or any Transaction Confirmation: (i) is modified in a manner unacceptable to the Bank; (ii) is wholly or partly revoked, withdrawn, suspended or terminated; (iii) expires and is not renewed; or (iv) otherwise fails to remain in full force and effect, and such circumstances may have a material adverse effect on the ability of the Client and/or any Collateral Provider to perform its obligations under any Facility Document and/or Transaction Confirmation to which it is a party or on the ability of the Bank to exercise or enforce any of its rights thereunder;



- (e) any other indebtedness of any nature (whether owed to the Bank or not) in respect of borrowed money of the Client and/or any Collateral Provider is not paid when due or becomes payable or capable of being declared payable before its normal maturity or any Collateral now or hereafter created by the Client and/or any other Collateral Provider becomes enforceable;
- (f) any default or event of default, however described, occurs under any Facility Document, Transaction Confirmation or other document executed pursuant thereto;
- (g) a creditor takes possession of all or any part of the business or assets, or any distress, execution, sequestration, attachment or seizure (or any analogous process in any jurisdiction) is levied or enforced upon or threatened against any of the property or assets, of the Client and/or any Collateral Provider;
- (h) any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes of any kind whatsoever (whether criminal or civil) are commenced or threatened against the Client and/or any Collateral Provider and/or its or their respective assets, whether in Hong Kong or elsewhere, which the Bank determines would materially and adversely affect the Client's or that Collateral Provider's ability to perform and observe its obligations to the Bank to which it is a party;
- (i) the Client and/or any Collateral Provider: (A) is or is presumed or deemed to be unable, or admits its inability, to pay its debts (or any class of them) as they fall due; or (B) stops, suspends or threatens to stop or suspend payment of all or substantially all of its debts or commences negotiations with one or more of its creditors (or any class of them) or takes proceedings or any other steps with a view to rescheduling or deferring any of its indebtedness; (B) the value of the Client's and/or any Collateral Provider's assets is less than its liabilities (taking into account contingent and prospective liabilities); or (C) any moratorium is declared in respect of any indebtedness of the Client and/or any Collateral Provider;
- (j) any corporate action, legal proceedings or other procedure or step (other than one which is, in the Bank's opinion, frivolous or vexatious) is taken by any person in relation to (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, liquidation or bankruptcy of the Client and/or any Collateral Provider (or where the Client or any Collateral Provider is a partnership, any partner of it); (ii) a composition, compromise or arrangement with any creditor of the Client and/or any Collateral Provider or an assignment for the benefit of creditors generally of the Client and/or any Collateral Provider (or where the Client or any Collateral Provider is a partnership, any partner of it), (iii) the appointment of a liquidator, receiver, receiver and manager, judicial manager, trustee, administrator or similar officer of the Client and/or any Collateral Provider or over any of its respective assets (or where the Client or any Collateral Provider is a partnership, any partner of it), (iv) enforcement of any encumbrance or other security interest over any assets of the Client and/or any Collateral Provider (or where the Client or any Collateral Provider is a partnership, any partner of it), or (v) any procedure or steps analogous to those set out in paragraphs (i) to (iv) is taken, in each case whether in Hong Kong or elsewhere;
- (k) (if the Client or any Collateral Provider is an individual), the Client or that Collateral Provider dies, becomes of unsound mind, or suffers from any legal disability, is placed under custody or otherwise becomes incapable of managing its affairs;
- (l) the Client and/or any Collateral Provider suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business or disposes of all or a substantial part of its business or assets, or proposes to do any of the foregoing without the Bank's prior written consent;
- (m) any event occurs or circumstances arise which, in the Bank's opinion, would materially affect the ability of the Client or any Collateral Provider to perform or comply with any one or more of its obligations to the Bank, including its obligations under any Facility Document or Transaction Confirmation to which it is a party (including changes in the Client's or any Collateral Provider's financial condition, operating environment or (where the Client or any Collateral Provider is a corporation or partnership) management, directorship or partners (as the case may be));
- (n) any governmental or other authority (whether de jure or de facto) seizes, confiscates or compulsorily acquires (whether temporarily or permanently) any part of the margin or Collateral provided to the Bank or nationalises, compulsorily acquires, expropriates or seizes all or a material part of the business or assets of the Client or any Collateral Provider;
- (o) any Collateral provided to secure any of the Client's or Collateral Provider's obligations or liabilities to the Bank (i) expires or ceases to be in full force and effect with the ranking and priority it is expressed to have without the Bank's prior written consent, (ii) is or becomes invalid or unenforceable in any respect or (iii) in the Bank's opinion is in jeopardy;
- (p) the Client or any Collateral Provider creates or permits or suffers to exist, without the Bank's prior

written consent, any encumbrance or similar right over any of the Collateral or margin provided to the Bank;

- (q) in the Bank's reasonable opinion, some or all of the margin or Collateral is at risk of forfeiture, loss or cancellation for any reason, and in the Bank's reasonable opinion it may become impossible or unlawful for the ownership of the margin or Collateral to be transferred;
- (r) it is or will become unlawful or impractical or is asserted by any central bank (or similar authority) or other governmental authority to be unlawful or impractical for the Client and/or any Collateral Provider or the Bank to perform or comply with any one or more of its obligations under any Facility Document or other agreement between the Bank and the Client and/or such Collateral Provider to which it is a party or for the Bank to exercise all or any of its rights and remedies under any such Facility Documents or other agreements;
- (s) any situation arises (including any political, financial or economic condition in or in respect of Hong Kong or any other country in which any asset subject to Collateral under any Collateral Document is located or traded) which in the Bank's opinion gives grounds for believing that the ability of the Client and/or any Collateral Provider to perform or comply with its obligations under any Facility Document or Transaction Confirmation to which it is a party could be materially and adversely affected, or that their respective businesses could (in the Bank's opinion) be in jeopardy if there is any other material adverse change in the operations or financial condition or business of the Client and/or that Collateral Provider other Security Party and/or any material adverse change in the international capital and/or money markets;
- (t) the Client and/or any Collateral Provider rescinds or repudiates any Facility Document or Transaction Confirmation to which it is a party (or purports or evidences an intention to do so);
- (u) all or any material part of the Agreement, any Collateral Document, any Transaction Confirmation or any other agreement between the Bank and the Client and/or any Collateral Provider becomes wholly or partly void, voidable or unenforceable, or is claimed to be so by the Client or any Collateral Provider;
- (v) the Client and/or any Collateral Provider is in default under any instrument or contract binding on it or any of its assets which (in the Bank's opinion) might have a material adverse effect on the Client's or Collateral Provider's business, assets or condition or its ability to perform any obligations to the Bank;
- (w) any event or circumstance occurs which the Bank reasonably believes has or is reasonably likely to have a material adverse effect on the validity or enforceability of, or the effectiveness or ranking of, any Collateral granted or purporting to be granted pursuant to any Facility Document or Transaction Confirmation or the rights or remedies of the Bank thereunder;
- (x) any of the Collateral coverage or other Collateral maintenance obligations contained in any Facility Document falls below the level described there or is breached and/or the Client or any Collateral Provider fails or refuses to rectify the same within any time period specified by the Bank;
- (y) the Bank reasonably believing that the Client and/or any Collateral Provider is using any Account(s) illegally;
- (z) an Adjustment Event or Market Disruption Event occurs and in the Bank's opinion it is not possible and/or desirable to deal with the occurrence of that event as an Adjustment Event or Market Disruption Event in accordance with Clause 11 of Part C;
- (za) the occurrence of a Close-Out Event;
- (zb) the Bank in its absolute discretion otherwise considers it prudent, advisable or necessary to safeguard its interest for whatever reason; and
- (zc) any Applicable Laws, or any change in Applicable Laws, does or purports to vary, suspend, terminate, or excuse performance by the Client or any Collateral Provider of any of its obligations under any Facility Document to which it is a party.

**13.2 Upon the occurrence of an Event of Default, without prejudice to its right to (in its absolute discretion) terminate all or any part of the Facilities at any time, the Bank may by notice (whether written or otherwise) to the Client:**

- (a) **declare the whole or any part of the Total Liabilities, whether accrued or contingent, to be immediately due and payable whereupon they shall become immediately due and payable;**
- (b) **declare the Bank's obligations under all or any of the Facilities (if any) to be terminated**

whereupon they shall forthwith terminate; and/or

- (c) require the Client to procure the release and discharge of the Bank from all Bank Guarantees and other contingent and/or unmatured liabilities owing, sustained or incurred by the Bank pursuant to the utilisation by the Client of any of the Facilities, whereupon the Client shall be obliged to immediately do so and, pending such release or discharge, shall provide cash collateral to the Bank in such amounts as shall be sufficient to fully satisfy all such liabilities and any costs and expenses in relation thereto and/or place the Bank in funds by paying to the Bank, for credit to a suspense or other account or accounts as the Bank may decide, such amounts as shall be sufficient to fully satisfy all such liabilities and any costs and expenses in relation thereto (which cash collateral and/or amounts shall only be released to the Client if and to the extent that all such liabilities of the Bank are fully and irrevocably released and discharged and all such costs and expenses are paid in full).

13.3 Upon the giving of any notice under Clauses 13.2(a), (b) and/or (c), the Bank shall, in addition to all its other rights and remedies, and without reference to the Client, any Collateral Provider or any other person, be entitled to:

- (a) exercise all its rights, powers and remedies under any of the Collateral Documents or other Facility Documents, in such manner and order as the Bank may, in its absolute discretion, deem fit;
- (b) enforce its security interest in or in relation to, or realise its security in, the Collateral or any part thereof, in such manner as the Bank may, in its absolute discretion, deem fit and apply all proceeds from such enforcement and realisation in such manner and order as the Bank may, in its absolute discretion, deem fit towards the full or partial discharge of the Total Liabilities and all other liabilities of the Client under the Facility Documents; and
- (c) combine or consolidate the Client's Accounts or accounts and liabilities with the Bank and its other branches or offices anywhere in the world or transfer any sum or sums standing to the credit of one or more of such Accounts or accounts in or towards satisfaction of any of the liabilities of the Client to the Bank or any of its other branches or offices on any other Account or account anywhere in the world or in any other respect whether such liabilities be actual or contingent, primary or collateral, several or joint, notwithstanding that the credit balances on such Accounts or accounts and liabilities on any Accounts or accounts may not be expressed in the same Currency and the Bank is hereby authorised to effect any conversions at the Bank's then prevailing exchange rate.

#### 14. Representations and Warranties

The Client represents and warrants on behalf of itself and every Collateral Provider, at all times during the availability of the Facilities and so long as any sum remains payable by the Client under or in connection with any Facility Document or by the Bank under any Bank Guarantee or any contingent and/or unmatured liability, by reference to the facts then existing, that:

- (a) (where it is a corporation) it is a limited liability corporation, duly incorporated and validly existing under the laws of its country of incorporation and has the power to own its assets and carry on its business as it is being conducted and to enter into and deliver, and perform the transactions contemplated by, each Facility Document to which it is a party;
- (b) its obligations in each Facility Document are legal, valid, binding and enforceable and all acts, conditions and things (including the obtaining of all consents, licences, registrations or filings and the taking of all corporate action) required or desirable to enable it lawfully to enter into, exercise its rights and comply with its obligations under, each Facility Document, make each Facility Document admissible in evidence in its country of incorporation and in Hong Kong, enable it to create the security under each Collateral Document to which it is a party and ensure that the relevant security has and will have the priority and ranking which it is expressed to have in the relevant Collateral Document, have been taken, obtained, fulfilled and done and are in full force and effect;
- (c) its execution and delivery of, and performance of the transactions contemplated by, the Facility Documents do not and will not conflict with or constitute a default or exceed any limitation under any Applicable Laws, judgment, order, licence, concession, permit, consent or regulation applicable to it, any provision or any powers granted under its constitutive documents or any agreement or instrument binding upon it or any of its assets, nor (except for any security created under any of the Collateral Documents) result in the existence of, or oblige it to create, any security over any of its assets;
- (d) there are no charges, mortgages, pledges or liens in respect of any of its property(ies) or assets except those which have been previously disclosed to the Bank in writing prior to its entry into the Facility Documents or for which the prior written consent of the Bank has been obtained;

- (e) no litigation, arbitration or administrative proceedings of or before any court, tribunal, arbitral or administrative body or government agency has been commenced or threatened against or otherwise affecting it;
- (f) no legal or other proceedings have been initiated or threatened and no meeting has been convened for the bankruptcy, dissolution, winding-up, liquidation, termination of existence or reorganisation of, or for the appointment of a receiver, manager (judicial or otherwise), trustee or similar officer of, it or in respect of any or all of its assets; and
- (g) any factual information provided by it or on its behalf in connection with any Facility Document is true and accurate in all material respects (as applicable) as at the date it was provided or as the date as which it is stated.

## 15. Undertakings

The Client undertakes that, at all times during the availability of the Facilities and so long as any sum remains payable by the Client under or in connection with any Facility Document or by the Bank under any Bank Guarantee or contingent and/or unmatured liability, it shall, and shall procure that every Collateral Provider shall:

- (a) conduct its business in accordance with all Applicable Laws binding upon it and its operations or assets and shall promptly pay all taxes assessed against it or any of its assets;
- (b) provide the Bank with its financial statements (including its last audited balance sheet and profit and loss account) and all other information and documents as may reasonably be required by the Bank promptly after any request by the Bank for the same;
- (c) immediately notify the Bank of any material change in any information provided by the Client to the Bank in connection with any Facility;
- (d) promptly give notice to the Bank of the occurrence of any Event of Default or any event which may potentially constitute an Event of Default;
- (e) promptly, upon the request of the Bank, execute, acknowledge, deliver and register at the Client's own expense all such additional documents and perform such other acts as shall be necessary or appropriate in connection with any Facility; and
- (f) comply, at the Client's own cost, with all Applicable Laws relating to all transactions contemplated under or in connection with the Facilities, whether in Hong Kong or any other jurisdiction.

## 16. Costs, Expenses and Taxes

- 16.1 Without prejudice to the generality of any other provision in the Agreement, all costs and expenses incurred by the Bank (including fees and expenses of the Bank's legal and other professional advisers) and any taxes arising in relation to any Facility granted or extended to the Client (whether or not such Facility is cancelled prior to drawing or utilisation thereof), and all charges, costs and expenses, including legal costs (on a full indemnity basis) incurred or paid by the Bank (i) in connection with the negotiation, preparation, execution and (where relevant) registration of the Facility Documents and any other documentation required thereunder, (ii) in connection with the arrangement of any Facilities, (iii) in connection with any amendment to the Facility Documents, (iv) in connection with any inspection, calculation, approval, consent or waiver to be conducted, made or given by the Bank pursuant to any Facility Document and (v) in investigating any event which the Bank reasonably believes is an Event of Default or potential Event of Default or in exercising any of its rights or powers under any of the Facility Documents or in suing for or seeking to recover any sums due under any Facility Documents or otherwise preserving, protecting, exercising or enforcing any Collateral furnished to secure any part of the Total Liabilities or any right, power or remedy of the Bank for the recovery of any sum due or owed by the Client to the Bank or by any Collateral Provider to the Bank, shall be paid forthwith on demand to the Bank by the Client and until payment in full shall bear interest at such rate and on such basis as the Bank may stipulate from time to time.**
- 16.2 In addition, where the Client is in default of payment of taxes, duties, levies, charges or obligations whatsoever charged or falling due, or is in default of payment of any insurance premium, legal or inspection or valuation fees, stamp duties or their out-of-pocket expenses of any kind whatsoever, the Bank may in its discretion meet such expenses and shall be reimbursed by the Client in accordance with Clause 16.1.**
- 16.3 If (and only if) a Client is a private individual to whom the Banking Code applies, any indemnity for costs and expenses in any Facility Document shall be construed so as to be limited to the recovery of costs and expenses of a reasonable amount and reasonably incurred.

## 17. Increased Costs

If the Bank determines that the introduction of, or any change in, any Applicable Laws (or in the interpretation or application thereof or compliance by the Bank therewith) (including any applicable capital or reserve requirements) does or will:

- (a) subject the Bank to any tax or other payment in respect of sums advanced or to be advanced by the Bank or payable by the Client under the Agreement or any other Facility Document (other than tax on the Bank's overall net income); or
- (b) impose on the Bank any other condition the effect of which is to (i) increase the Bank's cost of making available or maintaining any Facility or (ii) reduce the amount of any payment receivable by, or the effective return to, the Bank in respect of any Facility,

then the Client will pay to the Bank on demand all amounts needed to compensate the Bank therefor.

## 18. Indemnity

**Without prejudice to the Bank's other rights and remedies under the General Conditions, to the maximum extent permitted by and not inconsistent with any Applicable Laws, the Client shall keep each Indemnitee harmless and indemnify each of them promptly on demand against any Claims (including legal costs on a full indemnity) (except any tax imposed on and calculated by reference to the Bank's net income) which any of them may incur as a consequence of any information produced or approved by the Client being or being alleged to be misleading or deceptive in any respect or any Event of Default or any other breach by the Client of any of its obligations under any Facility Document to which it is a party or otherwise in connection with the Facility Documents (including any loss or expense ("breakage costs") incurred in liquidating or redeploying funds acquired or arranged for the purposes of a proposed utilization or to maintain any Facility) or any unpaid sum or in terminating any such arrangement or any related hedging arrangement and any interest or fees incurred in funding any unpaid sum, but taking into account any default interest paid by the Client in respect of such unpaid sum). Negative breakage costs will not be refunded to the Client.**

## 19. General Security

- 19.1 Without prejudice to the Bank's other rights and remedies under the General Conditions, where Facilities are required to be secured by mortgage(s) or property(ies) or by debentures or other securities or by Surety Instruments, the Client agrees to execute, or to procure that the owner(s) of the property(ies) or the appropriate parties execute and deliver, the mortgage(s), debentures, securities and/or Surety Instruments in form containing such terms, covenants and conditions as may be required by the Bank. If required by the Bank, the Client shall deliver legal opinions and supporting documents certifying the legality and enforceability of any such mortgage, debenture, security or Surety Instrument, together with any necessary consents, registrations, licences, approvals or authorisations, in form and substance satisfactory to the Bank. The title of mortgages or property must be good and in order and the acceptability of any shares or marketable securities offered as security shall be determined by the Bank in its absolute discretion.
- 19.2 Any Collateral (including any Surety Instrument) taken by or given to the Bank or money deposited at the Bank shall continue to be held by the Bank and not released or withdrawn until the Total Liabilities have been fully repaid to the Bank and any expired Bank Guarantees or any instruments whatsoever from time to time issued by the Bank for the Client's account have been returned to the Bank for cancellation.
- 19.3 **The Client shall (and, where applicable or if required by the Bank, shall procure that) every Collateral Provider does, furnish upon demand such assets or additional assets in such form and value (including cash collateral) as may be required by the Bank from time to time in amounts and/or values sufficient at all times in the Bank's opinion to secure all or any part of the Total Liabilities whether contingent, future or otherwise and, if required by the Bank, shall (and, where applicable, shall procure that every Collateral Provider does) register or procure the registration thereof with the appropriate authority at the Client's expense, and the Client shall pay to the Bank all costs, charges and expenses incurred by or on behalf of the Bank relating to or arising out of such Collateral or additional Collateral, including (where applicable) its registration and/or realization. The Bank shall not be responsible for the loss, damage or diminution in value of any of such Collateral or additional Collateral (including whilst the same are in the Bank's possession, custody or control), except to the extent caused directly by the Bank's wilful default or negligence.**
- 19.4 If the Bank is of the view that the value of any Collateral (as determined by the Bank in its absolute discretion) falls below what the Bank considers to be adequate, the Bank may (in its absolute discretion and without limiting any of its other rights and remedies) require the Client or, if applicable, the relevant Collateral Provider, to furnish the Bank with additional assets as Collateral acceptable to

it and subject to such terms and conditions as the Bank may stipulate, and/or to reduce or prepay part of the Total Liabilities within such time limit as the Bank may specify to the Client in its notification of such requirement. All expenses and charges incurred thereby (including those incurred as a result of the prepayment of any part of the Total Liabilities and those incurred in any currency conversions) shall be borne by the Client on a full indemnity basis.

- 19.5 The Bank's determination under this Clause 19 (including its valuation of the Collateral or any other asset furnished as security) at any time shall be final and conclusive on the Client. The Bank may at any time and from time to time conduct a valuation or assessment of any Collateral and all valuation and assessment costs shall be borne by the Client.
- 19.6 The Collateral shall not be considered as satisfied by any intermediate payment or satisfaction of the whole or part of any sum or sums of money but shall be a continuing security for the repayment to the Bank upon any account or in any manner whatsoever and shall continue to be valid and binding for all purposes notwithstanding any Account ceasing to be current or any settlement of account or fluctuations in the amount for the time being owing to the Bank or the existence of any credit balance at any time and also notwithstanding the bankruptcy, liquidation, judicial management, insolvency or any similar proceedings in respect of the Client (whether voluntary, compulsory or otherwise), incapacity (including death and legal disability) of the Client or any change by amalgamation, consolidation or otherwise which may be made in the Client's constitution by which the Client's business for the time being is carried or any change in the name of the Client or any other matter or things whatsoever.

## **20. Collateral Lending Values/Ratios, Top-Up and Close-Out**

- 20.1 The Client shall at all times comply with any collateral lending value and/or collateral-to-loan ratio ("**Collateral Lending Value**") requirement specified in the relevant Facility Documents for a Facility (if any).
- 20.2 **Without prejudice to any provision in the General Conditions requiring the Client to provide Collateral or additional Collateral to the Bank, if at any time the Bank determines (which determination shall be conclusive) that the Collateral Lending Value requirement for any category or class of Collateral (due to revaluation or any other reason) is not complied with, the Bank is entitled (but not obliged) to notify the Client (whether verbally or in writing) of such determination. Upon such notification, the Client shall immediately:**
- (a) provide, or procure that any Collateral Provider (or other person) acceptable to the Bank provides, additional Collateral (cash, cash equivalent assets or other assets acceptable to the Bank) in such form and of such value as may be acceptable to the Bank (and do or procure the doing of such acts and execute or procure the execution of such Collateral Documents and other documents as the Bank may require to give full effect to such additional Collateral); and/or
  - (b) by way of cash or cash equivalents, repay or reduce the Total Liabilities by such amount as may be required by the Bank,

so that after the provision of such additional Collateral and/or such repayment or reduction of the Total Liabilities, the relevant Collateral Lending Value is complied with.

Any additional Collateral referred to above shall constitute and form part of the continuing security for the Client's obligations to the Bank and shall not subsequently be withdrawn without the Bank's prior written consent. All costs, expenses and charges incurred in connection with the provision of such additional Collateral and/or repayment or reduction (including as a result of prepayment and/or any currency conversion) shall be borne by the Client on a full indemnity basis and may be deducted from such additional Collateral, repayment or reduction immediately on receipt and before debiting any Account.

- 20.3 If at any time the Bank determines that the Client has failed to comply with a requirement under Clause 19.4 or to rectify the breach of any Collateral Lending Value in accordance with Clause 20.2 (a "Close-Out Event"), the Bank may (but shall not be obliged to) take such action as it shall in its sole discretion deem fit in accordance with any Facility Document to rectify such breach, including (without limiting any of the Bank's other rights under any Facility Document or at law), placing loss-stop orders, closing out part or all of any outstanding transactions or liquidating, selling or otherwise disposing of all or any of the Collateral to any interested party, without further formalities and without further notice to or consent from the Client, any Collateral Provider or any other party (if any). The Bank will not under any circumstances incur any responsibility or liability if it declines or delays to exercise any such right on any one or more occasions when such right arises. If the proceeds from the liquidation or any other realization of the Collateral are insufficient to discharge the Total Liabilities in full, the Client shall be liable for any shortfall thereof.

20.4 The Bank may monitor the compliance with any Collateral Lending Value requirement at such intervals as it sees fit at its absolute discretion. The Bank's determination of the Collateral Lending Value (including its valuation of the Collateral) at any time shall be final and conclusive on the Client. All costs incurred in valuing the Collateral shall be borne by the Client and shall be paid immediately on demand or, in the absence of such demand, the Bank may deduct them from any amount held by the Client with the Bank.

**21. Assignment, Change of Lending Office, etc.**

21.1 The Client shall not in any way assign, transfer (whether by novation or otherwise), declare a trust over, encumber, charge or otherwise dispose of any of its rights and/or obligations under the Facility Documents.

**21.2 Each Facility Document and any other documents entered into from time to time in connection with it (including any documents relating to the provision of any Collateral to the Bank) shall operate for the benefit of the Bank (including, for the avoidance of doubt, its successors, permitted assigns, permitted transferees and any persons deriving title under any of them), notwithstanding any change by way of amalgamation, consolidation or otherwise in the constitution of the Bank or any such successor, permitted assign, permitted transferee or any person deriving title under any of them. The Bank may at any time and without the need for the consent of the Client or any Collateral Provider, assign or otherwise transfer (including by novation), dispose of or deal with any or all the Bank's rights and/or obligations under the Facility Documents, or any instrument in connection therewith to any party and may deliver any or all Collateral to such party, who shall thereupon assume all obligations of the Bank, and become vested with all the powers and rights given to the Bank, under the Facility Documents or in the instrument(s) transferred, and the Bank shall thereafter be relieved and fully discharged from any liability or responsibility with respect thereto, but, for the avoidance of doubt, the Bank shall retain all rights and powers hereby given with respect to any and all instrument(s), rights or Collateral not so transferred.**

21.3 The Bank may at any time and from time to time change the office from or through which any Facility is provided or made available or at which any transaction relating to a Facility is booked, recorded or affected, or through which it makes or receives payments or deliveries for the purpose of any Facility or Transaction.

21.4 The Client undertakes to execute (and shall procure that every Collateral Provider executes) all such instruments or documents and do all such acts or deeds (at the Client's own cost) as may be required by the Bank in connection with any assignment, transfer or change referred to in Clauses 21.2 or 21.3 above.

**22. Disclosure of Information**

**22.1 The Bank may disclose Confidential Information regarding the Client, any of the Facilities and any of the Facility Documents in accordance with the provisions of Clause 16 of Section 1 of Part B of the General Conditions.**

**22.2 Without limiting Clause 22.1, the Client authorises the Bank to provide to any third party Collateral Provider the following information:**

- (a) a copy of the document(s) evidencing the obligations guaranteed and/or secured or to be guaranteed and/or secured by the Collateral Provider or a summary thereof;**
- (b) a copy of any formal demand for overdue payment that is sent to the Client if the Client has failed to settle the overdue amount following a customary reminder; and**
- (c) from time to time on the Collateral Provider's request, a copy of the latest statement of account provided to the Client, if any.**

**23. General**

23.1 All the rights, powers and remedies under the Agreement shall apply to all the Client's past, present, future and contingent obligations and liabilities owed to the Bank, including those arising under successive transactions which shall either continue existing obligations and liabilities, increase or decrease them at any time or from time to time or create new obligations or liabilities after any or all prior obligations and liabilities have been satisfied, and notwithstanding the incapacity, bankruptcy, winding-up, liquidation or any other event or proceeding affecting the Client.

23.2 Each of the rights, powers, and remedies conferred on the Bank by the Agreement shall be in addition to and not in derogation of all other rights, powers and remedies conferred on the Bank by virtue of any agreement, security, statute or rule of law or equity.

23.3 Time shall in all respects be of the essence in the performance of all of the Client's obligations.

23.4 A certificate signed by any of the Bank's officers as to any amount at any time payable by the Client to the Bank on any Account or in respect of any Facility and any other certificate, determination, notification or

opinion of the Bank shall be conclusive and binding on the Client and every Collateral Provider save for manifest errors.



## PART F: RISK DISCLOSURE STATEMENTS

References to the term "**Clause**" in this Part F of the General Conditions shall mean a "**Clause**" in this Section.

### IMPORTANT RISK WARNINGS

#### 1. General

- 1.1 In this Risk Disclosure Statement, which applies to any Transactions which the Client may enter into with or through the Bank, words defined in the General Conditions shall have the same meanings wherever the context permits.
- 1.2 Due to the volatile nature of the Transactions and the underlying assets upon which such Transactions are based, participation in a Transaction involves a certain degree of risk (which can be substantial). The Client's attention is hereby drawn to such risks and the Client should consult its advisors on the nature of such Transactions and carefully consider whether the kind of Transactions is appropriate for it in the light of its experience, financial circumstances, investment objectives and other relevant circumstances. The Client carries the burden of all risks involved in such Transactions and the Bank is not responsible for any losses whatsoever and howsoever arising from the Transactions to the extent permitted by Applicable Laws. By giving Instructions to enter into any Transaction with or through the Bank, the Client acknowledges that it makes its own assessment and relies on its own judgment in relation to any and all investment or trading or other decisions in respect of such Transaction and accepts any and all risks associated therewith and any losses suffered as a result of entering into any Transaction.
- 1.3 The Client is reminded that it should understand the terms and conditions of the specific Traded Asset and the associated obligations and also all commission, fees and charges for which it will be liable (as these charges will affect the net return of investments).

#### 2. Margin Transactions

- 2.1 Where the Client deals with the Bank on a margin basis the required amount of initial margin may vary with each type of Transaction and the amount of margin may be determined by the Bank and changed at any time. The Bank has complete discretion in this and will exercise its discretion in order to protect its interests.
- 2.2 The margin cover provided by the Client may fall below the amount required by the Bank due to various reasons such as (but not necessarily limited to) book losses arising from mark-to-market valuation of outstanding Transactions or losses arising from Closed-Out Transactions or a fall in the value of the Collateral. If the Bank considers that the margin cover is inadequate at any time, the Bank may take such action as it deems fit. Such action may include:
- (a) calling for additional Collateral. This amount may be substantial and may exceed the amount originally committed as initial margin, and be called at short notice;
  - (b) realising all or any part of the Collateral as the Bank deems necessary to satisfy the liabilities of the Client. This may be done without notice to or consent from the Client or the person providing the Collateral (if different);
  - (c) closing out, liquidating, setting off (notwithstanding that any of the same has not yet matured), realising or otherwise dealing with any or all outstanding Transactions (whether or not any additional loss may thereby arise) at such time and in such manner as the Bank thinks appropriate without notice to or consent from the Client. In the event the Transactions are liquidated at a loss and the loss exceeds the aggregate margin deposited, the Client will be liable for any shortfall; and
  - (d) in the course of closing out or otherwise terminating any Transaction or series of Transactions, converting any currency to any other currency in such manner and on such terms as the Bank may think fit. Any such conversion may give rise to further losses, for which the Client will be liable.
- 2.3 The risk of loss in financing a Transaction by deposit of collateral is significant. The Client may sustain losses in excess of the Client's cash and any other assets deposited as collateral with the Bank. Market conditions may make it impossible to execute contingent orders, such as "stop-loss" or "stop-limit" orders. The Client may be called upon at short notice to make additional margin deposits or interest payments. **If the required margin deposits or interest payments are not made within the prescribed time, the Client's collateral may be liquidated without the Client's consent. Moreover, the Client will remain liable for any resulting deficit in the Client's Account with the Bank and interest charged on the Client's Account.** In addition, although liquidation normally occurs when the market condition moves against the Client, it is possible that after the liquidation, the market condition could move in favour of the Client, even significantly, **and such subsequent movement would not affect the Client's liabilities incurred. The Client should therefore**

**carefully consider whether such a financing arrangement is suitable in light of the Client's own financial position and investment objectives. The Client is strongly advised to obtain independent professional or legal advice.**

### **3. Risks of Leveraging**

- 3.1 The degree of leverage and/or arbitrage which is obtained in connection with the Transactions, and in particular the high degree of leverage resulting from a relatively small margin requirement, can work against as well as for the Client. A relatively small market movement will have a proportionately larger impact and the use of leverage and/or arbitrage can lead to large losses as well as gains. Such leveraging may be by way of a loan, trading on a margin, or embedded within an instrument such as a structured note.
- 3.2 **The Client may sustain losses in excess of the value of the margin funds and/or Collateral provided and may lose all or a significant part of the principal invested, and the Client remains liable for the full amount of any deficit in the Client's Account(s).**
- 3.3 The use of leverage may not be suitable to the Client in light of the Client's investment experience, objectives financial resources, risk profile and other relevant circumstances.
- 3.4 The Bank has no obligation to liquidate the Client's positions with the Bank to limit the losses under the Client's Account(s) to the value of the margin deposit and/or Collateral provided.
- 3.5 A demand by the Bank for additional deposit and/or Collateral is not a precondition to and does not limit the Bank's right in any way to liquidate the Client's open positions should the Bank consider that unfavourable exchange rate(s) or market movements make it necessary or appropriate at any time. In addition, although liquidation normally occurs when the exchange rate(s) or market movements move against the Client's position, it is possible that after the liquidation, the exchange rate(s) or market movements could move in favour of the Client, even significantly, **and such subsequent movement would not affect the Client's liabilities incurred.**

### **4. Risk of Trading in Traded Asset**

The prices of Traded Asset (including Securities) fluctuate, sometimes dramatically. The price of a Traded Asset 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 Traded Asset. Past performance is not necessarily indicative of future performance.

### **5. Issuer, Counterparty and Legal Risks**

- 5.1 If the issuer of a particular Traded Asset (including Security) or instrument or the counterparty to the Transaction which the Client is entering into is not the Bank, the Client should satisfy itself that the credit risk of such issuer or counterparty is acceptable to it since if the issuer of any Security or other instrument or a counterparty becomes unable to meet its obligations then such investments may become worthless and any trading costs and profits irrecoverable. The Bank will not be liable in the event of a default by such issuer or counterparty.
- 5.2 The Client should also familiarise itself with the protections accorded to money or other property which the Client deposits for domestic and foreign Transactions, particularly in the event of an insolvency or bankruptcy of the issuer, custodian or intermediary. The extent to which the Client may recover its money or property may be governed by local rules and regulations. In some jurisdictions, property which had been specifically identifiable as the Client's own will be pro-rated in the same manner as cash for the purposes of distribution in the event of a shortfall.

### **6. Investment / Structured Products**

- 6.1 In regard to Transactions in investment products, including structured products involving derivatives except where the Bank makes investment decisions on behalf of the Client under a Discretionary Management Mandate, the investment decision is that of the Client and the Client should not invest in such products unless the intermediary who sells it has explained to the Client that the product is suitable for the Client having regard to the Client's financial situation, investment experience and investment objectives.
- 6.2 It is the Client's responsibility to fully understand the terms and conditions of the structured product Transactions to be undertaken, including:-
- (a) the terms as to price, term, expiration/maturity dates, restrictions and other terms material to the structured product Transactions;
  - (b) any terms describing risk factors, such as volatility, liquidity etc. In particular, structured products may be inherently illiquid and there is a risk that they will be difficult to sell before maturity. Further, selling the structured product prior to maturity or call date may result in a potential loss of principal and

accordingly the structured product Transaction is suitable only for an investor who has no need for liquidity and understands and can afford the financial and other risks of the structured product Transaction;

- (c) the circumstances under which the Client may become obliged to make or take delivery of the underlying interest of a structured product Transaction;
- (d) the legal risks surrounding the structured product Transaction, including the circumstances under which the structured product Transaction may be illegal, resulting in it being void and unenforceable. The Bank may expect the Client to bear such risks unless the loss resulting from such risks is due to the negligence, wilful default or fraud of the Bank;
- (e) the degree of leverage to which the structured product is subject, the effect of which may be to multiply losses;
- (f) the risk associated with each instrument evaluated separately and the risk of the structured product Transaction evaluated as a whole; and
- (g) the performance of underlying reference obligations, assets and/or certain other financial instruments or indices (the "**Underlying Indicator**"), whether the Underlying Indicator forms part of the security under the structured product Transaction or not. The Client should therefore ensure that it fully understands the risks involved in the Underlying Indicator and satisfies itself that it is willing to accept such risks.

6.3 *Market Forces:* The Client should note that investments can involve significant risks and the value of an investment may go down as well as up. The prices of futures, options and other instruments in which the products may invest may fall in value as rapidly as they may rise and it may not be possible to liquidate the positions in the relevant markets before a loss is sustained. Price fluctuations may be substantial because of leverage. No assurance can be given that the investment objective of any product will be achieved or that substantial loss will not be suffered. There is no guarantee of trading performance and past or projected performance is not necessarily a guide to future results.

6.4 *Credit Risks:* The Bank may not always be the contractual counterparty or the issuer under certain structured product Transactions. Where the Bank is not the Client's contractual counterparty or the issuer, the Client's contractual counterparty or third party issuer, and not the Bank, will be liable to the Client under the structured product Transaction or otherwise in respect of a product purchased by the Client. Accordingly, in considering whether to enter into such structured product Transaction, the Client should take into account all risks associated with such counterparty or third party issuer, including the counterparty's or issuer's financial standing.

Certain structured product Transactions also involve the assumption by the Client of credit risks which the Client should ensure that it is able to evaluate. The credit rating of the issuer pertains to the ability of the issuer to meet its obligations under the terms of the structured product and is not indicative of market risk associated with the structured product or the reference security, the safety of the principal invested or the likely investment returns. The creditworthiness of the issuer does not affect or enhance the likely performance of the investment other than the ability of the issuer to meet its obligations.

6.5 *Counterparty Risks:* The Client should ensure that it is aware of the identity of the contractual counterparty it is or may be matched with. Often, the Client will be purchasing an unsecured obligation of such counterparty (as opposed to an obligation of a central clearing corporation as would be the case with exchange traded products) and the Client should evaluate the comparative credit risk.

If the counterparty is the Bank, the Client must note that the Bank deals with it at arm's length as its counterparty. Unless the Bank agrees in writing or otherwise required by Applicable Laws, the Bank is not acting as a fiduciary, nor is it willing to accept any fiduciary obligations to the Client. Any dealing, trading or engagement or structured product Transaction with the Bank by the Client could result in a loss to the Client and a gain to the Bank. Unless the Bank specifically agrees, the Bank does not and will not give the Client any advice, whether written or oral, other than representations which will be expressly set forth in the relevant agreement, and any confirmation which may be signed or executed by the Client after negotiations with the Bank as the Client's counterparty.

The Client should be aware that the Bank is engaged in certain customer driven and proprietary activities in many markets. These general activities, as well as the Bank's hedging activities which are related to certain structured product Transactions entered into with the Client, may adversely affect the value of such structured product Transactions.

6.6 *Currency Risks:* The fluctuations in foreign currency rates have an impact on the profit/loss and the financial investment where the structured product Transaction is denominated or settled in a different currency from the currency where the Client carries on business or keeps its Accounts.

- 6.7 *Tax Risks:* Before entering into any structured product Transactions the Client should understand the tax implications of doing so e.g. income tax. Different structured product Transactions may have different tax implications. The Client should consult its tax advisor to understand the relevant tax considerations. As in the case with any investment, there can be no guarantee with respect to the tax treatment over time. This is a particularly important consideration with respect to investments held for one or more years.

## 7. Value Changes

Market movements, e.g. fluctuations in foreign exchange rates, interest rates, movements in commodities prices and Securities prices and indices etc., frequently cannot be predicted, and if adverse may cause the Client to sustain a total loss in excess of the committed amount and any margin or additional margin deposited with the Bank.

## 8. "Stop-Loss" Limits and Orders and other Limitation Strategies

**The Client may place a "stop-loss" order with the Bank, whereby the Bank is instructed and authorised to close out the relevant open positions of the Client without further notice as and when the mark-to-market loss on such open positions exceeds the pre-agreed levels (the "stop-loss" limit). However, placing "stop-loss" orders will not necessarily limit the Client's losses to the intended amounts as market conditions may make it difficult or even impossible to execute such order at the "stop-loss" limit or at all. Strategies using combinations of positions, such as "spread" and "straddle" positions may be as risky as taking simple "long" or "short" positions. In addition, although close out normally occurs when prices drop, it is possible that after the close out, the prices could rise, even significantly, afterwards.**

## 9. Risks of Derivative Transactions

- 9.1 Many of the risks described in regard to investment/structured products above apply equally to derivative products, where the Transaction is based on price movements in one or more underlying financial assets or indices, and the Client should note and assess these before entering into any Transaction involving derivatives, as well other risks which may arise from the nature of the derivative in question. The Client should carefully inform itself of the nature and scope of the Transaction and take independent advice to satisfy itself that the product is suitable for the Client having regard to the Client's financial situation, investment experience and investment objectives.

- 9.2 Certain aspects of individual derivative products may rise to specific risks, and the following details some, but not necessarily all of the risks which may apply to individual Transactions in derivatives:

- (a) Options may be "Call Options" or "Put Options" under which the buyer of the option - against payment of the option price (in this Clause 9.2, the "**premium**") - is granted the right either (in the case of a "**Call Option**") to purchase from or, (in the case of a "**Put Option**") to sell to, the seller of the option (the "**writer**") the underlying instrument at the specified price (the "**exercise price**") in a quantity predetermined by the option Transaction concerned. Should the buyer exercise its option, the writer of a Call Option must deliver the underlying instrument to the buyer or the writer of a Put Option must purchase the underlying instrument from the buyer, in either case at the specified exercise price, irrespective of its prevailing market value. The risk of loss in trading options is substantial. In some circumstances, the Client may sustain losses in excess of its initial margin funds. Placing contingent orders, such as "stop-loss" or "stop-limit" orders, will not necessarily avoid loss. Market conditions may make it impossible to execute such orders. Strategies using combinations of positions, such as "spread" and "straddle" positions may be as risky as taking simple "long" or "short" positions. **The Client may be called upon at short notice to deposit additional margin funds. If the required funds are not provided within the prescribed time, the Client's position may be liquidated. The Client will remain liable for any resulting deficit in its Account.** In addition, although liquidation normally occurs when the market condition is against the Client's position, it is possible that after the liquidation, the market condition could move in favour of the Client, even significantly, **and such subsequent movement would not affect the Client's liabilities incurred. The Client should therefore study and understand options before it trades and carefully consider whether such trading is suitable in the light of its own financial position and investment objectives. If the Client trades options it should inform itself of exercise and expiration procedures and its rights and obligations upon exercise or expiry.**
- (b) In the case of an American option, it may be exercised at any time during a specified period, and in the case of a European option, it may only be exercised at the end of that period.
- (c) Transactions involving options carry a high degree of risk and should not be entered into unless the Client is familiar with the risks involved. Writing an option generally entails considerably greater risk than purchasing one. Purchasers and sellers of options should familiarise themselves with the type of option (i.e. put or call) which they contemplate trading and the associated risks. The Client should

calculate the extent to which the value of the options must increase for its position to become profitable, taking into account the premium and all transaction costs. Although the premium received by the writer is fixed, the writer may sustain a loss well in excess of that amount.

The following sets out some of the principal risks, but not necessarily all of them.

- (i) *Buying options:* The purchaser of options may offset or exercise the options or allow the options to expire. The exercise of an option results either in a cash settlement or in the purchaser acquiring or delivering the underlying interest. The buyer of any option risks losing some or all of the amount paid or payable as premium for the option plus transaction costs. This could occur due to unfavourable price performance of the underlying instrument, or due to expiry of the option without the buyer giving any instructions to the Bank in respect of the exercise of the option. As the value of an option is partly dependent on the remaining tenor of the option prior to expiry date (time value), an option may decline in value over time even if the value of the underlying instrument remains constant or performs favourably. The shorter the time remaining until the date of expiration, and the larger the unfavourable price difference between the exercise price and the market price, the greater is the option buyer's risk of losing the premium paid. If the Client is contemplating purchasing deep-out-of-the-money options, it should be aware that the chance of such options becoming profitable ordinarily is remote.

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

- (ii) *Writing covered Call Options:* The writer of a covered Call Option writes the Call Option in respect of an underlying instrument which it already has available. If the option is exercised by the buyer, the writer does not profit from the price growth of the underlying instrument in excess of the exercise price. Thus a profit is missed by the writer of a covered Call Option. The profit missed is reduced only by the premium received. If the Call Option is not exercised by the buyer, the writer bears the full risk of a decline in the price of the underlying instrument. The decline in the price of the underlying instrument is reduced only by the amount of the premium received.
- (iii) *Writing uncovered Call Options:* The writer of an uncovered Call Option writes the Call Option without already having the underlying instrument available in the event it has to be delivered. The writer of an uncovered Call Option is required to deposit a security margin. If the price of the underlying instrument rises the security margin increases. The writer firstly bears the risk of having to provide additional collateral to the Bank at any time in order to meet the higher margin demands. If the Call Option is exercised by the buyer, the writer bears the risk of having to buy the underlying instrument to be delivered at a market price, which is higher than the exercise price. Since there is no limit to the amount by which the market price of the underlying instrument may exceed the exercise price, the writer of an uncovered Call Option runs the risk of incurring an unlimited loss. The loss thus arising is reduced only by the amount of the premium received.
- (iv) *Writing Put Options:* The writer of a Put Option is required to deposit a security margin. If the price of the underlying instrument falls, then the security margin to be provided will increase. The writer runs the risk of being called upon at any time by the Bank to furnish additional collateral to satisfy the increased margin requirements. If the buyer exercises the Put Option, the writer runs the risk of having to purchase the underlying instrument offered to the writer at the exercise price, which is higher than the market price of the underlying instrument. The exercise price may be considerably higher than the market price of the underlying instrument. The risk to the writer of a Put Option lies in the difference between the exercise price of the Put Option and the market price of the underlying instrument and is therefore limited to the amount of the exercise price. Any loss thus arising is reduced only by the amount of the premium received.

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

- (d) *Derivative pricing:* For financial derivative transactions, e.g. futures and options, the normal pricing relationships between the underlying instruments and the financial derivatives may not exist in certain circumstances, and market disruptions may affect the pricing relationship. The absence of a common or market reference price may make it difficult, if not impossible, for the fair value of the Transaction to be assessed independently, and the Bank does not warrant that the price offered will be the best price available in the market.

- (e) *Multiple derivatives*: Some transactions may be made up of several derivative instruments and it is necessary to assess the risks associated with each of them individually as well as the transaction as a whole. Failure of a single component part of a Transaction may cause loss of all or part of the principal even if each of the other components perform satisfactorily.
- (f) *Illiquidity*: It may be impossible to close out derivative Transactions or to transfer or sell them, and it is likely that they will have to be held to maturity.
- (g) *Underlying risks*: Where the Transaction is based on price movements in one or more underlying financial assets or indices, the risks associated with those assets or indices should be investigated and understood, and the Client must be willing to accept such risks.
- (h) *Other risks*: In respect of derivative products the Transaction may also be subject to market risks, credit risks, counterparty risks, currency risks and tax risks of the type described above in regard to structured product Transactions, each of which should be carefully assessed before entering into any Transaction.

9.3 *Accumulators*. The Client should be aware that accumulators are high risk investment products with embedded derivatives. Accumulators generally allow Clients to buy an agreed number of contract units of the underlying asset, such as a stock or a foreign currency, at a "discount" to the prevailing market price of the underlying asset at the date of the contract. This is because accumulators involve a series of options. The "discount" in fact comes from the premium the Client receives from selling the options to the counterparty of the accumulator contract and, as a result, the Client is obliged to purchase (from the counterparty) an agreed amount of the underlying asset at the strike price. Therefore, the more options sold, the larger the "discount" but the risks also rise accordingly for the Client. Nevertheless, the upside is usually capped, for example, by a knock-out clause which provides that if the market price of the underlying asset is at or above the knock-out price, the accumulator contract will be terminated. The Client should note that accumulators with knock-out clauses or other features to cap the upside may not serve its intended hedging purposes, if applicable. The Client should note that if the maximum exposure associated with the accumulator contracts are materially larger than its position or inflows or outflows in the underlying assets, the Client will be over exposed instead of hedged. The Client should not treat accumulators as a hedging tool for decumulators or vice versa. The Client should also note that it may be bound by the contract to take up the daily contract units of the underlying asset (at the strike price) when the market acts against it. The downside risk is magnified when the contract includes a "multiplier" condition. The Client may be obliged to take up multiple times of the daily contract units of the underlying asset when the market turns against it. Furthermore, the longer the contract period, the larger the number of contract units of the underlying asset the Client may be obliged to purchase during the whole contract period. In these circumstances, the Client may suffer even greater losses.

9.4 *Decumulators*. Decumulators involve the Client writing a call option to the counterparty, but the mechanism works in the opposite direction to accumulators. In the case of decumulators, the Client agrees to sell a fixed number of underlying assets on a regular basis at the strike price. As the price of the underlying assets may rise higher and higher, the downside risk is theoretically unlimited and the risk to the Client may be great. The Client should understand the features and risks associated with accumulators and decumulators thoroughly, and ensure that it has the ability to honour all contracts, taking into account the "multiplier" effect, if applicable, before deciding to invest in these products. If the Client enters into any accumulators or decumulators on a margin basis, they should also beware of the additional risks associated with leveraged trading.

## 10. Precious Metals

10.1 The market in Precious Metals is volatile and their value may go down as well as up. Trading in Precious Metals does not represent a purchase of a physical commodity and the Client will not be entitled to receive physical delivery of any Precious Metals, nor will it have any interest in any Precious Metals owned or held by the Bank. It is also not a deposit of money, and in consequence does not bear interest and the investment return relies solely on the prospect of positive fluctuations in the market value of the Precious Metals. There is a risk that the Client may suffer a loss of part or all of the principal invested if the Client is obliged to realise the investment in an adverse market. Currency fluctuations may exaggerate this loss.

10.2 For Foreign Exchange Transactions and Precious Metal Transaction, the Client may request that the Transaction is rolled over prior to the Value Date. However, even if the Client does not request the roll over of a Transaction, the Bank may in its absolute discretion for the protection of the Client, (i) roll over a transaction for such amount, duration and costs and on such terms and conditions as the Bank deems fit, and debit or credit the Client's Account accordingly, (ii) deem the Client has entered into an offsetting spot contract with the Bank immediately prior to maturity of the Transaction; or (iii) treat each Transaction and deal with the matter as the Bank sees fit without being liable to the Client for any loss suffered, except where such loss results directly from the fraud, negligence or wilful misconduct of the Bank or its employees, agents or servants. This gives the Bank a very broad discretion to deal with the Transaction and in some cases means that even though the Client has not given direct Instructions, additional Transactions could be entered into on its behalf by the Bank exercising its discretion, and the Client will be liable for those Transactions. Note that the Bank is not bound to exercise its discretion in this manner.

## 11. Risks of Forward Contracts

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

## 12. Risks of Swaps

Different instruments may be swapped, resulting in an exchange of the source of future payment streams, and occasionally also an exchange of principal on commencement and/or maturity date (more frequently if the Transaction is an amortising swap). The risk that one of the parties to the swap will default or otherwise fail to perform its obligations is typically greater in swaps where both principal and income streams are exchanged.

For uncovered contracts, there is risk, which is directly related to the risks of the different instruments swapped. It is important to note that these risks may not be offsetting in effect, and should be viewed instead in aggregate.

## 13. Other Transactions and Combinations

Combinations are referred to when at least two different instruments - either in identical or different classes - are bought and/or sold (written) at the same time. By closing or exercising individual parts of a combination Transaction, the risks involved can materially change.

On account of the broad range of possible Transactions and combinations thereof, before executing such Transactions or putting combination strategies into operation, the Client should ensure that it obtains and becomes thoroughly familiar with the product term sheets, annexures and supplements pertaining to such Transactions or combinations thereof and the specific risks involved.

## 14. Exchange Traded Instruments and the Impact of Electronic Trading

For Transactions involving underlying contracts or instruments which are traded on stock or futures exchanges, disruption of the normal market operation or conditions of such exchanges and/or the operation of such exchanges (e.g. discretion on the part of the exchange to suspend or limit trading of certain contracts or instruments under certain market conditions) may increase the risk of loss by making it difficult or impossible to close out the Transactions or liquidate positions. If the Client has sold options, this may increase the risk of loss.

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

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

## 15. Risks of Trading in Foreign Exchange

Trading in foreign exchange shall be subject to Clauses 2, 3 and 16. The risk of loss in foreign exchange can be substantial. The Client may sustain losses in excess of its initial margin funds. Placing contingent orders, such as "stop-loss" or "stop-limit" orders, will not necessarily limit losses to the intended amounts. Market conditions may make it impossible to execute such orders. The Client may be called upon at short notice to deposit additional margin funds. If the required funds are not provided within the prescribed time, the Client's position may be liquidated. The Client will remain liable for any resulting deficit in its account. In addition, although liquidation normally occurs when market conditions move against the Client's position, it is possible that after the liquidation, the market conditions could move in favour of the Client, even significantly, **and such subsequent movement would not affect the Client's liabilities incurred**. The Client should therefore carefully consider whether such trading is suitable in light of its own financial position and investment objectives.

## 16. Currency Risks

Where the Client engages in a Transaction involving one currency to hedge an original investment in another currency or where the Transaction entered into by the Client references two different currencies, the Client

should be aware that fluctuations of the currencies against each other or against the other underlying elements of the Transaction may affect the Client's net profit on the transaction or increase the Client's loss.

In particular in the case of leveraged currency Transactions, which are based on different currencies, the borrowed currency or currencies will be converted at the prevailing spot rate into the relevant currency of the Transaction and the resultant amount or amounts placed on deposit. During the life of the loan or loans the currency risk may be reduced or eliminated by liquidating some or all of the deposits made with the borrowed funds and converting the proceeds of liquidation into the currency of the loan.

However whilst there remains a currency differential the risks of leverage referred to above may be increased by the additional currency risk and can lead to greater losses as well as increased gains. The Bank retains the unilateral discretion to reduce or eliminate the risks should it deem appropriate to do so in the light of unfavourable exchange rates or market movements at any time, but the Bank has no obligation to do so, or may find it impossible or impracticable to do so.

## **17. RMB Risks**

Dealings in RMB may carry additional risks, and the following is a general statement of some of the risks which may apply, depending on the nature of the product concerned:

- 17.1 *RMB is not freely convertible:* RMB is currently not freely convertible and conversion of RMB is subject to certain restrictions. The exchange rate may not be fully governed by market forces and may be subject to regulation.
- 17.2 *Multiple currency risks:* For RMB products which are not denominated in RMB or with underlying investments which are not RMB-denominated, such products will be subject to multiple currency conversion costs involved in making investments and liquidating investments, as well as the RMB exchange rate fluctuations and bid/offer spreads when assets are sold to meet redemption requests and other capital requirements (e.g. settling operating expenses).
- 17.3 *Limited availability of underlying investments denominated in RMB:* For RMB products that do not have access to invest directly in the PRC, their available choice of underlying investments denominated in RMB outside the PRC may be limited. This limitation may adversely affect the return and performance of the RMB products concerned.
- 17.4 *Long term commitment:* Where RMB products involve a long period of investment, if the Client redeems the investment before the maturity date or during the lock-up period (if applicable), the Client may incur a significant loss of principal where the proceeds may be substantially lower than their invested amount. Early surrender/withdrawal fees and charges as well as the loss of bonuses (where applicable) are likely to be incurred as a result of redemption before the maturity date or during any applicable the lock-up period.
- 17.5 *Counterparty credit risk:* To the extent that the RMB products may invest in RMB debt instruments not supported by any collateral, such products are fully exposed to the credit risk of the relevant counterparties. Where a RMB product may invest in derivative instruments, counterparty risk may also arise as the default by the derivative issuers may adversely affect the performance of the RMB product. In either case substantial or even complete loss may be suffered.
- 17.6 *Interest rate risk:* For RMB products which are, or may invest in, RMB debt instruments, such instruments are susceptible to interest rate fluctuations, which may adversely affect the return and performance of the RMB products.
- 17.7 *Liquidity risk:* There may be no market in RMB products, or in some cases it is possible that the RMB products may suffer significant losses in liquidating the underlying investments, or be unable to do so in the time frame envisaged by the product documentation, especially if such investments do not have an active secondary market and their prices have large bid/offer spreads. As a result the Client may be unable to realise the investments before maturity, or to recover the full amount of the investment at maturity.
- 17.8 *Possibility of not receiving RMB upon redemption:* For RMB products with a significant portion of non-RMB denominated underlying investments, there is a possibility of not receiving the full amount in RMB upon redemption. This may be the case if the issuer is not able to obtain sufficient amount of RMB in a timely manner due to the exchange controls and restrictions applicable to the currency.
- 17.9 *Deposit protection:* RMB deposits placed outside Hong Kong are not covered by the Hong Kong Deposit Protection Scheme.

## **18. Liquidity Risks**

At certain times or under certain market conditions, the Client may find it difficult or impossible to liquidate a position, to assess the value or to determine a fair price. Certain equity or debt securities and money market instruments and, in particular, structured notes or customised products may not be readily realisable. There



can be no certainty that market traders will be prepared to deal in them, and proper information for determining their current value may not be available.

## **19. Off-exchange Transactions**

In some jurisdictions, and only then in restricted circumstances, off-exchange Transactions may be effected in respect of certain instruments. 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. The Bank or its Associate may act as counterparties. For these reasons, off-exchange Transactions may involve increased risks. Off-exchange Transactions may be less regulated or subject to a separate regulatory regime. Before the Client undertakes such Transactions, the Client should familiarise itself with Applicable Laws and attendant risks.

## **20. Emerging Markets and Country Risk**

- 20.1 Emerging markets are markets in countries with moderate to low per capita national income, according to the World Bank's definition. This applies, for example, to some Asian countries.
- 20.2 Experience has shown that political changes in emerging markets countries affect the capital markets more profoundly than the case in industrialised countries. Economic policy measures such as nationalisation, government intervention in industry and trade, or limits on ownership rights may dramatically change corporate earnings outlook for foreign investors in emerging markets. The influences of higher interest rates or a high inflation rate can have much more serious consequences for emerging markets than would be the case in more mature markets. The dependence on price trends of commodities also represents an additional risk.
- 20.3 Natural disasters or armed conflicts can occur anywhere. Such incidents usually result in considerable market volatility. In mature markets, setbacks are digested relatively rapidly. In contrast, financial conditions in emerging markets are generally more profoundly affected and over a longer period of time.
- 20.4 Currency fluctuations may be sudden and extreme, producing a disproportionate impact on the value of investments, which are usually denominated in or linked to the movements of local currency.
- 20.5 Foreign exchange regulations in some countries may also impose restrictions on the exchange and transfer of invested funds, and may be imposed without warning, resulting in investments becoming incapable of immediate realisation or the proceeds of realisation being prevented from being exchanged or transferred except at a substantial loss or at total loss. The settlement of stock market Transactions in emerging markets may not meet the norms of the established financial centres. Due to the lack of clear, standardised regulations for settling or clearing, delays in booking or failed trades with corresponding losses may occur.
- 20.6 The reform or regulatory supervision and legislation in emerging markets may not always keep pace with developments in mature markets. Independent supervision of business practices, stock market dealings and issuers, may not be as developed as in more mature markets. Insufficient transparency means a greater likelihood of market-distorting influences. Moreover, not all countries have a mature legal system with transparent standards and precedents. Investors in such instances may have no guarantee that they will be able to assert their rights before local courts.

## **21. Hedge Fund Risks**

- 21.1 Some hedge funds often engage in leveraging, short-selling and other speculative investment practices that involve a high degree of risk, can be illiquid, are not required to provide periodic pricing or valuation to investors, are not subject to the same regulatory requirements as other mutual funds or collective investment schemes, often charge high fees, and in many cases the underlying investments are not transparent and are known only to the investment manager.
- 21.2 Past performance of any fund is not necessarily indicative of future results. The Client should only commit risk capital to a fund investment. Hedge funds are alternative investment products and are not for everyone as they entail risks that are different from more traditional investments. An investment in such a fund is not intended to be a complete investment programme for any investor and the Client should carefully consider whether an investment in the hedge fund is suitable in the light of the Client's own circumstances, financial resources and entire investment programme.
- 21.3 A Client who wishes to invest in such funds should be aware that:
  - (a) Funds are speculative and may use leverage and as a result the Client's returns may be volatile.
  - (b) With respect to single manager funds the fund's manager has total trading authority. The use of a single manager could mean a lack of diversification and higher risk. With respect to fund of funds, the fund's manager has complete discretion to invest in various sub-funds without disclosure thereof to the Client. Because of this lack of transparency, there is no way for the Client to monitor the specific investments made by the fund or to know whether the sub-fund investments are consistent with the fund's historic investment philosophy or risk levels. Investors are not always informed about planned

strategies, and changes to them, or of changes to portfolio managers. Hedge funds are not subject to any disclosure requirements.

- (c) Unlike traditional collective investments, hedge funds have limited liquidity and may generally only be redeemed at restricted times, such as once a month, quarterly or even only annually. Similarly, investors can normally only invest in a hedge fund at specific times. There are generally long notice periods for redemptions and long lock-up periods (during which investors are obliged to leave their capital in the fund).
- (d) There is no secondary market for the interests. Transfers of interests are subject to limitations. The fund's manager may deny a request to transfer if it determines that the transfer may result in adverse legal or tax consequences for the fund.
- (e) Delays may occur, and unfavourable prices may result, when settling buy and sell orders for hedge fund units. There is no guarantee that investors will be able to enforce their rights.
- (f) Hedge fund managers are not generally required to be licensed by any authority and are largely unregulated. In particular, hedge funds are not subject to the numerous investor protection regulations that apply to authorised collective investments. These include rules on liquidity, redemption of fund units at any time, avoiding conflicts of interest, fair prices for fund units, disclosure and limitations on borrowing.

Since these rules do not apply to hedge funds, they can use much more leverage than traditional authorised funds, and engage in complex investment transactions that are not permitted for traditional collective investments. A hedge fund is allowed to adopt aggressive strategies, including the widespread use of short selling, leverage, swaps, arbitrage, derivatives and programme trading. Their investment strategies are often highly complex and very lacking in transparency. The investor will often receive little or no information about changes of strategy that may lead to a significant increase in risk, or receive such information only at a late stage.

As part of their investment strategy, hedge funds can also use derivatives such as futures, options and swaps that may be listed on an exchange but do not have to be. These instruments may be subject to significant price volatility, resulting in a high risk of loss for the fund. The low margins typically required to build up a position in such instruments mean that high levels of borrowing can be used. Depending on the instrument, a relatively small change in the price of the contract can therefore lead to a large profit or loss in comparison with the capital lodged as collateral and hence to further, unforeseeable losses that can exceed any margin cover.

## **22. Synthetic Exchange-Traded Funds (ETFs) and Related Products**

The principal objectives of ETFs are to track the performance of an underlying index or group of assets. ETFs may carry additional risks which derive from the nature of the product and which may not be immediately obvious to the investor. In particular, although this is not intended to be a definitive disclosure of all possible risks, the Client should consider the following risks which may be inherent in the nature of ETFs:

- 22.1 *Market risk:* Investors are exposed to the political, economic, currency and other risks related to the synthetic ETF's underlying index.
- 22.2 *Counterparty risk:* Where a synthetic ETF invests in derivatives to replicate the index performance, investors are exposed to the credit risk of the counterparties who issued the derivatives, in addition to the risks relating to the index. Further, potential contagion and concentration risks of the derivative issuers should be taken into account (e.g. since derivative issuers are predominantly international financial institutions, the failure of one derivative counterparty of a synthetic ETF may have a "knock-on" effect on other derivative counterparties of the synthetic ETF). Some synthetic ETFs have collateral to reduce the counterparty risk, but there may be a risk that the market value of the collateral has fallen substantially when the synthetic ETF seeks to realise the collateral.
- 22.3 *Liquidity risk:* A higher liquidity risk is involved if a synthetic ETF involves derivatives which do not have an active secondary market. Wider bid-offer spreads in the price of the derivatives may result in losses.
- 22.4 *Tracking error:* There may be disparity between the performance of the synthetic ETF and the performance of the underlying index due to, for instance, failure of the tracking strategy, currency differences, fees and expenses.
- 22.5 *Trading at a discount or premium:* Where the index/market that the synthetic ETF tracks is subject to restricted access, the efficiency in unit creation or redemption to keep the price of the synthetic ETF in line with its net asset value (NAV) may be disrupted, causing the synthetic ETF to trade at a higher premium or discount to its NAV. Investors who buy a synthetic ETF at a premium may not be able to recover the premium in the event of termination.

## **23. Growth Enterprise Market of Hong Kong**

- 23.1 The Growth Enterprise Market has been established in Hong Kong as a market designed to accommodate companies to which a high investment risk may be attached. In particular, companies may list on the Growth Enterprise Market with neither a track record of profitability nor any obligation to forecast future profitability. There may be risks arising out of the emerging nature of companies listed on the Growth Enterprise Market and the business sectors or countries in which the companies operate. Growth Enterprise Market stock may be very volatile and illiquid.
- 23.2 There are potential risks of investing in such companies and the Client should make the decision to invest only after due and careful consideration. The greater risk profile and other characteristics of the Growth Enterprise Market mean that it is a market more suited to professional and other sophisticated investors.
- 23.3 Given the emerging nature of companies listed on the Growth Enterprise Market, there is a risk that Securities traded on the Growth Enterprise Market may be susceptible to higher market volatility compared to Securities traded on the Main Board and no assurance is given that there will be a liquid market in the Securities traded on the Growth Enterprise Market.
- 23.4 The principal means of information dissemination on the Growth Enterprise Market is publication on the internet website operated by the SEHK. Companies listed on the Growth Enterprise Market are not generally required to issue paid announcements in gazetted newspapers. Accordingly, the Client needs to have access to up-to-date information on the Growth Enterprise Market-listed companies as published on the Growth Enterprise Market website.
- 23.5 The Client should seek independent professional advice if the Client is uncertain of or has not understood any aspects of this risk disclosure statement or the nature and risks involved in trading of Growth Enterprise Market stocks.

## **24. Risk of Trading Nasdaq-Amex Securities at the SEHK**

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

## **25. Risk of transactions outside Hong Kong and Client Assets received or held outside Hong Kong**

- 25.1 Transactions on markets in other jurisdictions, including markets formally linked to a domestic market, may expose the Client to additional risk. Such markets may be subject to regulation which may offer different or diminished investor protection. Before the Client trades it should enquire about any rules relevant to its particular Transactions. The Hong Kong 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. The Client should understand for details about the types of redress available in both Hong Kong and other relevant jurisdictions before it starts to trade.
- 25.2 The Bank may receive or hold client assets in custody accounts with the Bank's Head Office in Switzerland or place them with custodians or brokers in other jurisdictions according to the nature of the assets and the markets in which they are traded or located. Client assets received or held by the Bank outside Hong Kong are subject to the Applicable Laws of the relevant overseas jurisdictions, which may be different from the SFO and the rules made thereunder. Consequently, such client assets may not enjoy the same protection as that conferred on client assets received or held in Hong Kong.

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

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

## **27. Communications Risk – Email**

Email communications entail greater risk. Email is not a secure means of communication and is susceptible to interception, non-delivery or mis-delivery. It therefore gives rise to an enhanced risk of loss of confidentiality, forgery and fraud. If a Client elects to request the Bank to accept Email Instructions the Bank cannot exercise the same level of diligence in its normal verification procedures. In particular the Bank may not be able to verify the source of any Email or may be led to believe in good faith that an Email has been sent from an address specified by the Client which has in fact been sent from a different address or mail server. The Bank is also unable to compare a physical signature with that authorised by the Client in the Account Opening Booklet or Account Mandate. Email communications which are misdirected or received outside normal office hours may not be acted upon in a timely manner, or at all.

## **28. Other Related Documentation**

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

## **29. Electronic Trading**

- 29.1 Electronic trading facilities are supported by computer-based component systems for the order-routing, execution, matching, registration or clearing of trades. As with all facilities and systems, they are vulnerable to temporary disruption or failure. The Client's ability to recover certain losses may be subject to limits on liability imposed by the system provider, the market, the clearing house and/or participant firms. Such limits may vary: the Client should ask for details in this respect.
- 29.2 Trading on an electronic trading system may differ from trading on other electronic trading systems. If the Client undertakes transactions on an electronic trading system, it 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 its order is either not executed according to its instructions or is not executed at all.

## **30. Adjustment Events and Market Disruption Events**

- 30.1 Changes may be made to terms of a Transaction, Service or Account due to Adjustment Events. Each Adjustment Event is likely to have a different impact and result in a different Adjustment Event Action. Adjustment Events are set out in Clause 11 of Part C above.
- 30.2 If an Adjustment Event occurs, the Bank may take one or more Adjustment Event Actions including to direct the Client to deal with margin or Collateral in a particular way including to sell, dispose, redeem, exchange or otherwise deal with the margin or Collateral and apply the proceeds as directed by the Bank.
- 30.3 The Bank may adjust the definition of a Traded Asset or of the terms of the Transaction, Service or Account and any terms of any agreement between the parties and/or any other term of a Transaction, Service or Account as it reasonably believes appropriate to put the parties in substantially the same economic position as the parties would have been in had the Adjustment Event not occurred, and may take into account the Bank's hedging arrangement prior to the occurrence of the Adjustment Event. If, in the reasonable opinion of the Bank, it is not possible or desirable to deal with the occurrence of the Adjustment Event by taking an Adjustment Event Action, it will be an Event of Default, and the Bank may make a Termination Election. The Bank will notify the Client of any adjustment that it proposes to make before the adjustment occurs or as soon as reasonably practicable after the adjustment occurs.
- 30.4 In addition, if a Market Disruption Event has occurred or is continuing on a relevant date for making a determination, payment, adjustment, amendment or calculation for a Transaction, Account or Service or on the Maturity Date then the Bank may reasonably determine in its discretion either to take action required to reflect any adjustment, change, substitution, delay, suspension, or other action taken in relation to its or its Associate's hedging arrangements or to delay the relevant date to the next scheduled trading day. If the Market Disruption Event continues for 8 scheduled trading days then that 8th day will be the date for making the relevant payment, adjustment, amendment or calculation, and the Bank will make any relevant calculation, observation or determination for that date.

**THIS STATEMENT DOES NOT NECESSARILY DISCLOSE ALL THE RISKS AND SIGNIFICANT ASPECTS OF THE TRANSACTIONS. THE CLIENT IS ADVISED TO CAREFULLY STUDY THE TERMS AND CONDITIONS OF THE RELEVANT TRANSACTION AND SEEK INDEPENDENT FINANCIAL, TAX, LEGAL OR OTHER ADVICE, AS APPROPRIATE IF NECESSARY, BEFORE ENTERING INTO ANY TRANSACTION. THE CLIENT IS RESPONSIBLE FOR THE INDEPENDENT ANALYSIS OF AND DECISION REGARDING ALL MATTERS RELATING TO THE TRANSACTION AND ANY APPLICABLE LAWS AND THE RISKS INVOLVED IN ENTERING INTO EACH TRANSACTION AS THEY RELATE TO THE CLIENT'S OWN CIRCUMSTANCES. PRIOR TO MAKING ANY INVESTMENT DECISION THE CLIENT SHOULD FULLY UNDERSTAND THE ECONOMIC RISKS AND MERITS AS WELL AS THE LEGAL, TAX, ACCOUNTING CHARACTERISTICS, CONSEQUENCES OF THE TRANSACTION AND MAKE THE CLIENT'S OWN DETERMINATION THAT THE INVESTMENT IS CONSISTENT WITH ITS OBJECTIVES AND THAT IT IS ABLE TO ASSUME THE RISKS.**

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