

# BANK ACCOUNTS AND SERVICES TERMS AND CONDITIONS

(formerly known as Packaged Account  
Terms & Conditions)

星展銀行(香港)有限公司  
DBS BANK (HONG KONG) LIMITED

DBS BANK LTD., HONG KONG BRANCH

**DBS Bank (Hong Kong) Limited**, 11/F, The Center, 99 Queen's Road Central, Hong Kong, is a bank licensed under the Banking Ordinance and a registered institution under the Securities and Futures Ordinance. CE Number AAL664

**DBS Bank Ltd., Hong Kong Branch**, 18<sup>th</sup> Floor, The Center, 99 Queen's Road Central, Hong Kong, is a bank licensed under the Banking Ordinance and a registered institution under the Securities and Futures Ordinance. CE Number AAC212

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## **PART I - STANDARD TERMS AND CONDITIONS**

### **A. Introduction**

**This booklet contains the Bank Accounts and Services Terms and Conditions governing the Accounts, Transactions and Services, subject to any other applicable terms and conditions and other requirements of the Bank (the “Additional Terms and Conditions”).**

If there is any inconsistency between these Terms and Conditions, the Account Opening Documentation and/or the Additional Terms and Conditions, preference should be given in the following order, subject always to mandatory provisions of applicable Laws:

- (a) Account Opening Documentation;
- (b) Additional Terms and Conditions; and
- (c) these Terms and Conditions.

## B. General Terms and Conditions

### 1. Definitions and interpretation

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

**“Account Opening Documentation”** means the account opening document(s) signed by the Customer for the purpose of opening any Account.

**“Accounts”** means any account opened and maintained by the Customer with the Bank from time to time (whether singly, in joint name or in trust) and **“Account”** means any one of such Accounts.

**“Affiliates”** means, in relation to the Bank, (i) any entity controlled, directly or indirectly, by the Bank; (ii) any entity that directly or indirectly controls the Bank or (iii) any entity directly or indirectly under common control with the Bank; and “control” of any entity or person means beneficial ownership directly or indirectly, of more than 50% of the issued ordinary or common share capital (or the like) of the entity or person and **“Affiliate”** shall be construed accordingly.

**“Agent”** means any agent, correspondent, broker, dealer, counterparty, adviser, manager, bank, attorney or Nominee used by the Bank, whether in Hong Kong or elsewhere, and may include Affiliates.

**“Agreement”** means the Account Opening Documentation, these Terms and Conditions, Facility Documents and all other agreements or terms and conditions or documents signed and/or accepted by the Customer or specified by the Bank from time to time, which together constitute the agreement between the Bank and the Customer.

**“Assets”** means cash, Investments and any other assets or property of the Customer, as may be delivered and transferred to the Bank or to the Bank’s order whether by way of security or for management, safe-custody or any purpose whatsoever. Where the Customer is a trustee opening and maintaining the Account for the purposes of a trust, as expressly made known to and acknowledged by the Bank, references to Assets shall be construed to include references to the Assets of such trust, notwithstanding that beneficial ownership of those Assets may vest in persons other than the trustees.

**“ATM”** means Automatic Teller Machine.

**“Authorised Signatory(ies)”** means any person appointed by the Customer and agreed to by the Bank, to give Instructions in relation to any matter regarding any Account and its operation.

**“Bank”** means either (i) DBS HK Limited; or (ii) DBS HK Branch with which the Customer opens an Account or which provides the Customer with a Service.

**“Bank Business Day”** means a day (other than Saturday, Sunday or public holiday) on which commercial banks are open for general business in Hong Kong.

**“Bank Charges Schedule”** means the applicable schedule of fees, interest rates and other charges of the Bank, as determined from time to time by the Bank.

**“Bank Personnel”** means the directors, managers, officers and employees of the Bank.

**“Branch”** refers to any branch of the Bank in Hong Kong.

**“Card”** refers to (a) an ATM card with ATM functions by which the Customer can access such Accounts as the Bank may determine; or (b) a DBS Octopus ATM Card, being an ATM card with ATM functions by which the Customer can access such Accounts as the Bank may determine and Octopus functions by which the card can function as a stored value card issued by Octopus Cards Limited.

**“Clearing House”** means the entity that provides for the clearing and settlement of trades and transactions effected on, or subject to the rules of the Exchange.

**“Confirmation”** means a written confirmation, advice or contract note issued by the Bank confirming the final terms of a Transaction.

**“Customer”** means the person(s) in whose name(s) the Account is opened and held, and, where there are two or more such persons, means each and all of them jointly and severally, and any reference to **“Customer”** shall, where the context requires, read as **“Customers”**.

**“Customer Segment”** means DBS Account, DBS Treasures, DBS Treasures Private Client, DBS Private Bank and any other segment made available by the Bank from time to time.

**“Customer Service Hotline”** means the telephone service facility made available by the Bank to Customers for the provision of Services and related information.

**“Data Policy Notice”** means the Bank's general policy on disclosing customer information (including any personal data) as set out in any statements, circulars, notice or other communications or terms and conditions the Bank has provided to the Customer from time to time.

**“DBS HK Limited”** means DBS Bank (Hong Kong) Limited, a bank incorporated in Hong Kong with limited liability and licensed under the Banking Ordinance (Cap 155 of the Laws of Hong Kong) and a registered institution (CE Number: AAL664) registered to conduct Type 1 (dealing in securities), Type 4 (advising on securities), Type 6 (advising on corporate finance) and Type 9 (asset management) regulated activities under the SFO and whose registered office is situated at 11/F, The Center, 99 Queen's Road Central, Hong Kong, including its successors or assignees.

**“DBS HK Branch”** means DBS Bank Ltd., Hong Kong Branch, a bank incorporated in Singapore with limited liability under the Companies Act, licensed under the Banking Ordinance (Cap 155 of the Laws of Hong Kong), a registered institution (CE Number: AAC212) registered to conduct Type 1 (dealing in securities), Type 4 (advising on securities) and Type 6 (advising on corporate finance) regulated activities under the SFO and having a principal place of business in Hong Kong at 18th Floor, The Center, 99 Queen's Road Central, Hong Kong, including its successors or assignees.

**“Depository”** means any central depository, settlement system, Clearing House or clearing system (or its nominee company), participant in any clearing system or central depository system in relation to any Asset or any agent, sub-delegate, share registrar or other institution or body authorised by any relevant Exchange including but not limited to the Central Clearing and Settlement System and the Hong Kong Securities Clearing Company Limited.

**“EPS”** means the Easy Pay System Service.

**“Exchange”** means any stock exchange, recognised exchange or quotation system on which the Bank may conduct dealings on the Customer's behalf, including the HKEx.

**“Event of Force Majeure”** means events beyond the reasonable control of the affected party, including but not limited to any one or more of the following:

- (a) any act of God or sovereign;
- (b) acts, restrictions, Regulations, edicts, mandates, refusals to grant any licenses or permissions, changes in policy or prohibitions or measures of any kind on the part of any government or regulatory authority or the exercise of military or usurped powers;
- (c) interruptions, calamity, war, invasion, riots, hostilities, terrorism, sabotage or other blockade or embargo, insurrection, natural disasters, adverse weather conditions, strikes, industrial actions;
- (d) breakdown, malfunction or failure of transmission or power, communication or computer facilities or systems;
- (e) infection or disease epidemic(s) or contamination; and

- (f) a material change in the monetary, political, financial or economic conditions or exchange or capital controls or other moratorium or restrictions on currency exchange or remittance, whether in Hong Kong or elsewhere.

**“Facilities”** includes an overdraft or such credit or other facilities (including but not limited to those described in Section F) and **“Facility”** means any one of such Facilities.

**“Facility Documents”** means any Facility letter, guarantee, security or any other agreement, document or instrument or arrangement between the Bank and the Customer or any security provider or any other person relating to the Facilities (as from time to time amended, supplemented, or replaced and includes any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any such Facility Document) or any one or more of them as the context may require.

**“FX Orders”** has the meaning specified in Clause B19.4.

**“Government Authority”** means any nation, state, government (in fact or according to the law), any province or other political subdivision thereof, any body, agency, department or ministry, any taxing, monetary, foreign exchange or other authority, court, tribunal, administrative, instrumentality or other governmental authority or any other entity (private or public) charged with the regulation of the financial markets (including the central bank) and any other entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

**“HIBOR”** means the Hong Kong Dollar Interbank Offered Rate administered by the Hong Kong Association of Banks (or any other person which takes over the administration of that rate) for the relevant period displayed on such information service which publishes that rate from time to time.

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

**“HKEx”** means Hong Kong Exchange and Clearing Limited and any replacement or successor exchange.

**“HKICL”** means Hong Kong Interbank Clearing Limited and its successors and assigns.

**“Indebtedness”** means (a) all sums owing by the Customer to the Bank or that the Customer has covenanted to pay or discharge, whether owing individually, jointly or jointly and severally, including all interest (both before and after any demand or judgement), bank charges, commissions, fees (including legal fees on a full indemnity basis) and any other reasonable cost and expenses charged or incurred by the Bank, in whatever currency the same shall be denominated or owing, whether current or otherwise and whether present, future, actual or contingent, primary or collateral, secured or unsecured and (b) any amount wrongly credited to any Account or to any other Customer account with any other bank and which amount the Customer has failed to return to the Bank.

**“Instructions”** means any request, application, authorisation, order or instructions given or deemed given to the Bank by the Customer (including any Authorised Signatory(ies)) through any communication method as the Bank may from time to time offer and includes instructions given with the affixing of the Customer’s seal, mark, thumbprint or chop and Remote Instructions.

**“Investment”** means such investments (exchange traded or over the counter) as the Bank may specify from time to time as acceptable to be transacted through the Accounts.

**“Law”** means all relevant laws (including statutory enactments, common law and principles of equity), Regulations or other instruments (whether or not having the force of law) of any Relevant Authority (whether in Hong Kong or elsewhere) and any consolidations, amendments, re-enactments or replacements of any of them from time to time.

**“LIBOR”** means the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for the relevant period displayed on such information service which publishes that rate from time to time.

**“Losses”** means all and any losses, whether direct or consequential, damages, reasonable costs and expenses (including Taxes and legal fees on a full indemnity basis), penalties, actions, proceedings, suits, claims, demands and all other liabilities of whatsoever nature or description howsoever arising and **“Loss”** shall be construed accordingly.

**“Member Bank”** means any member banks of the JETCO ATM network, (if applicable) PLUS ATM network and/or (if applicable) China UnionPay ATM network.

**“Minimum Balance Requirement”** means such sum as the Bank sets from time to time as the minimum balance for an Account as shown in the Bank Charges Schedule.

**“Minimum Total Relationship Balance Requirement”** means such sum as the Bank sets from time to time as the minimum balance for a Customer Segment as shown in the Bank Charges Schedule.

**“Nominee”** means any nominee or custodian appointed by the Bank from time to time.

**“Order”** means all cheques, bills of exchange, notes, drafts, promissory notes, negotiable instruments and any other payment orders.

**“Overdraft Application”** means an application for an overdraft facility.

**“Phone Banking Services”** means the phone banking services described in Section H.

**“PIN”** means the Personal Identification Number or Telephone Identification Number or password which is the security code for accessing the service channels described in Part IV.

**“PPS”** means the Payment by Phone Service from time to time offered by the Bank.

**“Prime Rate”** means the Hong Kong Dollar Prime Rate from time to time quoted by the Bank.

**“Regulation”** includes any bye-laws, regulation, rule, decree, directive, notice, order, judgment, request, practice note, policy, interpretation standard, code or guideline (whether or not having the force of law) of any Relevant Authority (whether in Hong Kong or elsewhere) as amended, re-enacted or replaced from time to time.

**“Relevant Authority”** means any relevant Government Authority, statutory, revenue or other regulatory body, Exchange (including any market operated by such Exchange) or Depository whether in Hong Kong or any other jurisdiction.

**“Remote Instructions”** means any Telephone Instruction or Instruction given by facsimile, electronic mail or other electronic means through the use of any username, password (including any password that may be used one time or any other limited period), PIN, secure device or card, code, biometric identifier, which the Bank may allow or through such other communication channels or device as the Bank may from time to time approve.

**“Secured Assets”** has the meaning specified in Clause F3.

**“Services”** means any products, services and facilities from time to time offered by the Bank.

**“SFC”** means the Securities and Futures Commission of Hong Kong and/or any successor or other agency or authority performing or assuming its functions or substantially similar functions.

**“SFO”** means the Securities and Futures Ordinance (Cap. 571 of the Laws of Hong Kong) as amended, re-acted or supplemented from time to time.

**“sign”** means the placing of a handwritten signature or, in the case of a person unable to write, includes the affixing or making of a seal, mark, thumbprint or chop or through other means as

the Bank may from time to time agree.

“**Specified Rate**” has the meaning specified in Clause B19.4.

“**Taxes**” includes all present or future taxes (including goods and services tax, value added tax or financial transaction tax), levies, imposts, duties, withholdings or other fees or charges of whatever nature imposed by any authority together with interest thereon and penalties in respect thereof.

“**Telephone Instructions**” means Instructions that are given to the Bank by telephone facilities (operated by voice or other means) whether in accordance with such identity verification or other requirements that the Bank may determine from time to time.

“**Terms and Conditions**” means the Bank Accounts and Services Terms and Conditions as supplemented, revised or replaced from time to time.

“**Transaction Records**” means any contract notes, receipts, confirmations, reports, advices or any other written document or notice containing the specific terms and conditions of any Investment or Transaction, including Confirmation.

“**Transactions**” means such transactions as the Bank may from time to time permit the Customer to carry out pursuant to or in connection with the Accounts and/or Services including Investments.

“**Unincorporated Entity**” means a sole proprietor, partnership or an unincorporated association, club or society.

“**Wealth Management Account**” means the account in the name of the Customer opened and maintained with the Bank subject to the Terms and Conditions for Accounts under Wealth Management Investment Portfolio (Wealth Management Accounts).

(b) In the Agreement, unless the context requires otherwise:

- (i) where the Bank has any right to make any determination or to exercise discretion as regards any matter, such right or discretion may be exercised by the Bank in such manner as the Bank shall reasonably decide in its sole discretion;
- (ii) words suggesting the singular include the plural and vice versa and words importing a gender include every gender;
- (iii) headings are inserted for ease of reference only and do not affect the interpretation of any provision; and
- (iv) references to:
  - a. “**Customer**” or “**Customers**” include, where the context permits, the Authorised Signatory(ies), executors, personal representatives, administrators, successors and permitted assigns and, in the case of a partnership, means each of the present and future partners of the partnership;
  - b. “**person**” or “**party**” include, any individual, company, body corporate, firm, partnership, limited liability partnership, and any other business concern, statutory body and agency and Government Authority, whether local or foreign;
  - c. any Account name is a reference to the Account product as identified in the Account Opening Documentation or otherwise identified in correspondence with the Customer;
  - d. the description or marketing name of the Accounts, products and/or Services include a reference to any subsequent changes in the description or marketing name of such Accounts, products and/or Services;
  - e. “**include**”, “**includes**”, “**including**”, “**such as**” or “**for example**” when introducing an example do not limit the meaning of words to which the example relates to that example or examples of a similar kind and are deemed in each instance to be followed by the words “**without limitation**” or “**but not limited to**”;



- f. a document includes any variations, modifications, and/or replacement thereof and supplements thereto;
- g. a statute and other legislation shall be construed as a reference to such statute or legislation in force and as amended, re-enacted or replaced from time to time and any Regulation promulgated or issued thereunder;
- h. all time deadlines are with reference to Hong Kong time; and
- i. a “day” are to a “calendar day”.

## **2. Eligibility and Conditions for Operation**

- 2.1 The Bank may refuse an application for an Account for any reason without any explanation.
- 2.2 The Bank may prescribe conditions and/or procedures for the opening and operation of the Account and Services from time to time.

## **3. Customer Segment**

- 3.1 Each Customer Segment shall be subject to its corresponding fees and charges.
- 3.2 The applicable fees and charges of a joint account shall be determined by the Customer Segment of the primary account holder unless otherwise specified by the Bank.

## **4. Signature**

- 4.1 When signing Orders, Instructions and any other documentation, the Customer shall use the same signature as the Customer’s specimen signature on the Bank’s records.
- 4.2 The Customer must notify the Bank of any change to the specimen signature in writing or by such other method as the Bank may from time to time permit.

## **5. Authorised Signatory(ies)**

- 5.1 The Customer may appoint one or more Authorised Signatory(ies) to give Instructions to the Bank. The Bank is authorised, until it is notified in writing by the Customer that such appointment is varied or revoked, to accept and act in accordance with such Instructions as if they were issued by the Customer, even if such Instructions would be inconsistent with the Customer's earlier Instructions.
- 5.2 Authorised Signatory(ies) may only give Instructions in respect of Current Account, Savings Account, Time Deposit Account and Wealth Management Account. Any Instructions in respect of any other type of Account shall only be acted upon subject to the conditions and/procedures of the Bank.
- 5.3 All appointments, variations and revocations of appointment of Authorised Signatory(ies) must be delivered to the Bank in writing and, where applicable, by using the form prescribed by the Bank. Such appointment, variation and revocation shall only be effective after it is received by the Bank and 7 Bank Business Days or sufficient time has elapsed to allow the Bank to record the appointment, variation or revocation on its operating system.

## **6. Joint Account**

- 6.1 If any Account is a joint account:
  - (a) the Agreement is binding on each joint account holder jointly and severally;
  - (b) the obligations and liabilities of the joint account holders are joint and several;
  - (c) unless otherwise agreed by the Bank in writing, each joint account holder is separately and independently entitled to exercise all rights in respect of the Account including to open, operate and close the Account and any Instruction given in accordance with the signing arrangement will be accepted and binding on each and every joint account holder. The Bank need not enquire into the circumstances of any Instructions any joint account holder may give nor be under any duty to notify or to consult any other joint account holder;

- (d) notwithstanding that another joint account arrangement will apply, the Bank is entitled (but not obliged) to act on any Remote Instruction given by any joint account holder singly and all joint account holders shall be liable for any such Instruction as if such Instruction was given in accordance with the joint account arrangement;
- (e) if prior to acting on any Instructions, the Bank receives contradictory Instructions, the Bank may, at its discretion, refuse to act unless all joint account holders give consistent Instructions;
- (f) notwithstanding anything to the contrary in Clause B39.1 and subject to any applicable Laws, upon receipt of notice of the death of any joint account holder, the Assets shall accrue to and be held by the Bank to the order of the surviving account holder(s) without prejudice to any right the Bank may have in respect of, or arising out of any lien, charge, pledge, set-off, counter-claim or otherwise or to any step or legal proceedings which the Bank may at its discretion choose to take in respect of the Account;
- (g) the Bank may deal separately with any of the joint account holders on any matter, including the full or partial discharge of liability of any of the joint account holders, without affecting the liability of any other joint account holder(s);
- (h) rights of set-off under Clause B38 apply to all Accounts of each of the joint account holders (whether in single name or in joint names with any other person);
- (i) no joint account holder is entitled to enforce any rights or remedies under the Account until all Indebtedness of all joint account holders to the Bank have been fully satisfied;
- (j) any obligation to notify the joint account holders is discharged if the Bank notifies any of them; and
- (k) the Agreement governs the legal relationship between Customers as joint account holders and the Bank exclusively, irrespective of the internal relationship between the joint account holders themselves.

## **7. Ultimate beneficiary and trust account**

- 7.1 Unless expressly notified in writing to the Bank, the Customer is deemed to be the principal and ultimate beneficiary of the Account and not acting as agent or trustee of any other person.
- 7.2 The Bank is not required to recognise any person other than the Customer as having any interest in the Account. If the Bank agrees to open the Account in the Customer's name "in trust" or "as nominee" or using some other similar designation, whether or not for a named third party, the Bank will accept Orders and other Instructions relating to the Account from the Customer only and will not be required to obtain any consent from or see to the execution of any trust for any person, unless agreed otherwise by the Bank in writing.
- 7.3 If the Bank agrees to open an Account "in trust" for a beneficiary, the Customer undertakes to operate such Account solely for the beneficiary, and the Bank has no obligation to monitor this. The Customer agrees to indemnify the Bank against any Losses in respect of or relating to or in connection with the operation or closure of the Account, and any dispute between the beneficiary and the Customer except in the case of fraud, negligence or wilful default of the Bank and only to the extent of direct and reasonably foreseeable Loss (if any).
- 7.4 If the beneficiary dies, the Bank may close the Account and at its discretion:
  - (a) open a new in-trust Account, which will be operated by the Customer as trustee for the benefit of the deceased beneficiary's estate; or
  - (b) pay to the trustee the balance standing to the credit of the Account together with any interest payable thereon and such payment shall be treated as a full discharge of the Bank's obligation under the Account.
- 7.5 Upon the death of the Customer, the Bank may do any of the following:

- (a) if the Account has more than one trustee, the Bank is authorised to hold any Assets for the surviving trustee; or
- (b) if the Account has no surviving trustee:
  - (i) if the beneficiary (being an individual) is 21 years old or older, the Bank will close the Account and release the Assets to the beneficiary; or
  - (ii) if the beneficiary (being an individual) is below 21 years old, the Bank will close the Account, release the Assets to the personal representative(s) of the Customer in accordance with the written Instructions of the personal representative(s) to be held in trust for the beneficiary.

Before the Bank agrees to take any of the actions referred to in this Clause B7.5, the Bank may require the Customer's personal representative(s) to produce certain documents (including the death certificate) as stipulated by the Bank.

## **8. Account statement and Transaction Records**

- 8.1 Unless the Bank is not required by Law to do so or otherwise requested by the Customer, a monthly statement for the Accounts and Transaction Records will be sent to the Customer's relevant correspondence address as recorded by the Bank.
- 8.2 The Customer must examine each statement and Transaction Record received and notify the Bank of any error or discrepancy within the timeframe stipulated or if not expressly stipulated, promptly and in the case of monthly statement, within 90 days of delivery. Unless any errors or discrepancies are so notified within such period, the statement and Transaction Record shall be deemed correct and shall be conclusive and binding upon the Customer (save for manifest error, fraud, or negligence on the part of the Bank or Bank Personnel).
- 8.3 The Bank may decide not to issue any statement if an Account is inactive or there have been no transactions since the previous statement.
- 8.4 Hold statements, hold mail and correspondence services are not available.

## **9. Responsibilities for security**

- 9.1 The Customer must exercise reasonable care, take reasonable precaution and establish adequate controls and security arrangements including with Authorised Signatory(ies) to prevent unauthorised fund withdrawal or other misuse or forgery in relation to all Accounts and Services.
- 9.2 The Customer must notify the Bank immediately upon becoming aware of any actual or possible unauthorised use, misuse or forgery. The Bank does not assume any liability or responsibility to the Customer or any third party for the consequences arising out of or in connection with such actual or possible unauthorised use, misuse, or forgery save only for reasonably foreseeable Losses resulting directly from the fraud, negligence or wilful default of the Bank or Bank Personnel.
- 9.3 The Bank will never request Account details, PINs or other security codes. The Customer and the Authorised Signatory(ies) must not disclose the Account details, PIN or other security code if it receives such a request from anyone (even if that person is using the Bank's name and logo which appear to be genuine). The Customer and/or the Authorised Signatory(ies) must notify the Bank as soon as possible upon receipt of such request.

## **10. Deposits**

- 10.1 Deposits of cash or cheques may be made:
  - (a) at any Branch, together with a completed deposit form which will be acknowledged, with a transaction advice bearing terminal validation or authorisation by the relevant Bank Personnel; or

- (b) via ATM, by drop-in boxes at any Branch subject to any applicable requirements of the Bank.
- 10.2 Cheques may also be deposited by post, provided that it is properly crossed with the account number written on the reverse side. Cash should never be sent by post. The Customer agrees to bear all consequences of cash or any cheque being lost or delayed in transit.
- 10.3 Deposit slips are not valid receipts unless validated by the Bank's machine print or by the stamp and initial of the relevant Bank Personnel. If the amount indicated on the deposit slip differs from the Bank's cash count or actual amount of a cheque, in the absence of manifest error, the Bank's cash count or the cheque amount cleared is final and conclusive. Deposit slips are not documents of title.
- 10.4 The Bank reserves the right at its discretion to set a minimum or limit the deposit amount, or reject or return a deposit to the Customer. Dishonoured cheques may be returned by post to the Customer's last known address, at the Customer's own risk and expense.
- 10.5 All cheques or drafts accepted for deposit are subject to collection from the drawer, at the Bank's discretion. Drawings on such deposits may only be permitted following collection from the drawer, at the Bank's discretion.
- 10.6 Any cheques, drafts or Orders which are deposited and returned unpaid are null and void. The Customer is not entitled to interest on that deposit. The Bank may debit the Account in respect of such deposit, together with all applicable interest charges, any foreign exchange loss and other charges and expenses as described in the Bank Charges Schedule. For foreign currency cheques, interest will only accrue upon collection.
- 10.7 The Bank is entitled to debit from the Account any sum wrongly credited into that Account.
- 10.8 The Customer acknowledges that for deposit of a cheque or Order drawn on a financial institution outside of Hong Kong:
  - (a) clearance of that cheque or Order will depend on the Laws of the relevant jurisdiction; and
  - (b) the Bank is not responsible for the value given to that cheque or Order by the financial institution or any other Loss incurred by the Customer in connection with that cheque or Order.

## **11. Withdrawals**

- 11.1 Withdrawals can be made at any Branch or through designated ATMs. Withdrawals will be in the currency of the Account or at the discretion of the Bank, in Hong Kong Dollar equivalent converted at such exchange rate as shall be determined by the Bank.
- 11.2 Any payments made by the Bank to a person producing a withdrawal or transfer form purporting to be duly signed by or on behalf of the Customer has the same effect as if made by the Customer personally, provided the Bank has acted in good faith.
- 11.3 The Bank reserves the right (at its discretion) to:
  - (a) impose a limit on the amounts that may be withdrawn;
  - (b) decline to act on any payment or withdrawal request even if there are sufficient funds in the Account, if:
    - (i) the signature on the Instruction is different from the specimen on the Bank's record or not drawn in accordance with the signature requirements prevailing at the time of presentation;
    - (ii) the cheque or Order is presented more than 6 months after date of issuance;
    - (iii) the Bank is obliged to comply with any applicable Laws or the Bank is served with a court order or other form of legal process requiring the Bank to freeze the Account

or to disallow withdrawals; or

(iv) funds in the Account have been earmarked by the Bank for any reason;

(c) pay to the Customer any amount withdrawn by any of the following methods:

(i) cash payment;

(ii) a cheque or cashier's order drawn on the Bank;

(iii) a demand draft drawn on the Bank's correspondent;

(iv) a transfer to an account with any other financial institutions(s); or

(v) by such other means as the Bank thinks fit;

(d) permit the Customer to draw against funds due to be credited to the Account and should the Account become overdrawn, the Customer must upon demand pay the overdrawn amount (including all charges and overdraft interest); and

(e) decide on the order of payment if several Instructions are presented to the Bank for withdrawal simultaneously.

11.4 The Bank may approve or reject any payment Instructions or cheques drawn, by reference to the actual or projected account balance as at the transaction date.

## **12. Fund transfer and bill payment services**

12.1 Transactions involving transfer of funds between Accounts and/or third parties (whether or not held by the Bank) can only be accepted if the necessary arrangements have been established by the Bank. Such fund transfer transactions, wherever practicable, will be processed on the same day, the next Bank Business Day or on another date as specified by the Customer subject to the consent of the Bank, which shall not be unreasonably withheld.

12.2 The Bank may set limitations on the transaction amount, payment recipient, frequency of use or other features for use of the fund transfer or bill payment services.

## **13. Over the counter transactions**

The Customer is responsible for examining the transaction advice before leaving the counter to ensure that the transaction has been carried out correctly. Subsequent rectification of any error may not be possible and is subject to the Bank's discretion.

## **14. Instructions**

14.1 The Customer or any Authorised Signatory may give Instructions to the Bank in English or Chinese and the Bank may accept any Instructions given:

(a) in writing and delivered in person or by post, courier, electronic mail or facsimile and, if a specimen chop was provided to the Bank, with the affixation of a chop which resembles the specimen chop provided to the Bank;

(b) orally through Phone Banking Services with the Customer's PIN or otherwise over the telephone or in person;

(c) electronically through any internet banking service made available by the Bank from time to time or otherwise via the internet; or

(d) through any other channel as prescribed by the Bank from time to time.

14.2 All Instructions as understood and acted on by the Bank, shall be binding on the Customer whether given by the Customer or Authorised Signatory(ies) or by any other person purporting to be the Customer or Authorised Signatory(ies). Any Transaction effected pursuant to or as a result of an Instruction shall be binding on the Customer whether or not made by the Customer or with the Customer's authority, knowledge or consent.

14.3 Where Authorised Signatory(ies) are required to give Instructions jointly, the Bank is

authorised (but not obliged) to accept and act, on Instructions given or purportedly given by any one of the Authorised Signatory(ies) even if the signing conditions require more than one person to give Instructions.

- 14.4 The Bank shall have no responsibility to assess the prudence or otherwise of any Instruction or to determine the authenticity of any Instruction or to verify the identity or authority of the person giving or purporting to give the Instruction.
- 14.5 All Instructions must comply with any pre-transaction, daily or other monetary limits, or such operating, procedural or other limits or requirements from time to time required by the Bank.
- 14.6 The Bank shall be entitled to act in accordance with its regular business practice and procedures and will only accept Instructions insofar as it considers practicable and reasonable to do so. The Bank may prescribe from time to time the telephone number through which any Telephone Instruction must be given or may require a PIN or such other details or security measures before the Customer can give any Remote Instruction.
- 14.7 The Bank shall be entitled at any time, at its discretion, to refuse to carry out any Instruction. The Bank in so refusing is not obliged to give any reason nor be held responsible for refusing to act on any Instructions. For the avoidance of doubt, for so long as any of the Customer's liabilities remain outstanding, the Bank reserves the right to decline any request by the Customer to withdraw any of the Customer's property which is held by the Customer or effect any Instruction.
- 14.8 Without limiting the generality of the Bank's right to refuse to carry out any Instruction, if the Bank is of the opinion that there are errors, ambiguities or conflict in the Instruction, the Bank shall be entitled to refuse to execute the Instruction until clarification is obtained or to construe and execute the Instruction in the manner in which it is perceived by the Bank, and the Bank may refuse to act on any Instruction that is inconsistent with any applicable Law to which the Bank is subject, and in doing so the Bank shall not be liable or have any responsibility of any kind for any Losses thereby incurred or suffered by the Customer.
- 14.9 If the Bank determines that any Instruction or other circumstances may expose or lead it (whether directly or indirectly) to suffer Loss or incur expense or prejudice the Bank's rights or interest, or damage or prejudice the Bank's credibility, reputation or standing, it has the right to refuse to carry out the Instruction, suspend the operation of any of the Accounts without notice to the Customer and without giving any reasons for so doing, and to require an indemnity from the Customer or any third party before allowing continued operation of the Accounts or complying with the Instruction, and in doing so the Bank shall not be liable or have any responsibility of any kind for any Losses thereby incurred or suffered by the Customer.
- 14.10 The Bank may set cut-off times (details are available on request) by which Instructions must be received in order for the Bank to process on the same day. If Instructions are received after the cut-off times or on a non Bank Business Day, the Instruction will be processed on the next Bank Business Day. If the Bank is to act on an Instruction before a deadline, the Customer must ensure that the Instructions are given before any cut-off times or if none are specified, reasonable time is given to the Bank to process the Instruction and to communicate to any relevant third parties. The Bank will not be liable for any failure by the Customer to meet the cut-off time or if the Instructions are not received within a reasonable time before the deadline.
- 14.11 Notwithstanding Clause B17.2, the Bank may at its discretion act on an Instruction notwithstanding insufficiency of funds or lack of credit without prior notice to or approval of the Customer and the Customer shall be responsible for repaying any debit to the relevant Account (including any interest, fees and charges charged thereon by the Bank) as a result.
- 14.12 The Customer agrees that the Bank shall have no obligation or liability for carrying out Instructions if (despite reasonable efforts), the Instructions cannot reasonably be performed or

completed by the Bank in full and on a timely basis. The Bank is entitled to effect partial performance of an Instruction without prior notice to or confirmation from the Customer.

14.13 The Customer acknowledges, accepts and agrees that (i) Remote Instructions are not secure communication channels and may be given by unauthorised persons and/or for dishonest purposes and (ii) giving Remote Instructions increases the risks of error, misunderstanding and/or conflict arising. The Customer is willing to accept such risks and agrees to be bound by the resulting Transaction, as understood and carried out by the Bank in good faith. The Customer acknowledges, agrees and/or undertakes that:

- (a) the Bank shall have no liability or responsibility for errors or omission contained in any Remote Instruction, or any delay in receipt or execution or any non-receipt of a Remote Instruction, provided that the Bank has acted in good faith;
- (b) the Bank shall not be liable for any Losses which the Customer may suffer in connection with the Bank acting in accordance with the Remote Instruction including any oral instruction of a person who is not the Customer or the Authorized Signatory(ies), or any facsimile instruction upon which one or more of the signatures may be forged or is otherwise unauthorised;
- (c) the Bank shall be entitled at any time, at its absolute discretion, to require confirmation of Remote Instructions before carrying them out, or refuse to carry out any Remote Instruction;
- (d) if the Bank gives a confirmation of any Remote Instruction (not being a Confirmation), the Customer must examine such confirmation and notify the Bank as soon as practicable but no later than within 1 Bank Business Day of its receipt of any error or discrepancy or unauthorized transaction. Unless notified within such period or there is manifest error, fraud or negligence by the Bank or Bank Personnel, such confirmation shall be deemed correct and conclusive evidence that the Transaction is authorised;
- (e) a note made by any Bank Personnel of any oral Instruction shall be conclusive and binding evidence of such Instruction, provided that the Bank shall not be obliged to cause any Bank Personnel to make any note of any Instruction and the failure to make such note shall not affect the acceptance by the Bank of the oral Instruction;
- (f) If any written confirmation of any Remote Instruction is given by the Customer to the Bank, it must be clearly marked: "Confirmation only-do not duplicate". If any confirmation is not clearly marked in this way, the Bank will not be liable for any consequences, including for any Losses if an Instruction is executed more than once; and
- (g) the Customer should ensure that any facsimile is sent to the correct facsimile number of the Bank as advised by the Bank from time to time and the Bank shall have no liability for any claim or Loss in relation to any failure on the Customer's part to do so.

## **15 Value date**

The Bank may, at its discretion, determine the effective value date in respect of every Transaction.

## **16 Payment of interest and interest rates**

16.1 **Interest (which will be rounded up to the nearest currency unit or fractional unit, at the Bank's discretion) accrues daily on the balance of all interest bearing Accounts. The rate and basis of calculation is at the Bank's discretion. Details are available by enquiry at Branches or via the Customer Service Hotline. Interest will only accrue on funds which have been successfully credited for value to an Account. Interest due shall be credited to the relevant Account at intervals determined by the Bank from time to time. If an interest bearing Account is closed during an interest period, interest will be paid up to but excluding the day of account closure.**

- 16.2 The Bank reserves the right to (at its discretion) pay a lower rate of interest or no interest in respect of an interest bearing Account in circumstances prescribed by the Bank from time to time.

## **17 Insufficient funds**

- 17.1 The Customer must ensure an Account has funds sufficient for the Customer to perform its obligations and for the purpose of giving and receiving Instructions and Orders.
- 17.2 Unless the Bank has approved Facilities or otherwise permits an overdraft at its discretion, no Transaction will be carried out if the funds held in the Account (together with any available credit facilities) are insufficient and the Bank shall not be liable for any consequences resulting from delay in or non-implementation thereof.
- 17.3 Cheques and auto-debits drawn on the Account may at the Bank's discretion be paid notwithstanding that there may be insufficient funds in the Account.

## **18 Overdrawn Accounts**

- 18.1 The Bank will consider an Account overdrawn if it is overdrawn at the end of a Bank Business Day. Interest and charges in accordance with the Bank Charges Schedule shall be payable unless otherwise stipulated by the Bank.
- 18.2 Overdrafts are not allowed on Savings Accounts.
- 18.3 The Bank is not under any obligation to transfer funds from any other Account to the overdrawn Account in order to repay the overdrawn amount or to effect a Transaction on the Account.
- 18.4 The Customer shall repay the Bank upon demand any overdraft on any Account, including any overdraft approved or permitted under Clauses B17.2 and B17.3, and all advances, loans or other financial accommodation, together with interest and charges thereon.

## **19 Foreign exchange transactions**

- 19.1 The Bank shall only accept Instructions for currency exchange transactions for such currencies as the Bank may specify from time to time.
- 19.2 The actual exchange rates for currency exchange transactions will be determined by the Bank at the time such transactions are effected. Exchange rates are available by enquiry at Branches or via the Customer Service Hotline.
- 19.3 Foreign exchange involves risk. For dealings in Investments and for cash settlement in currencies other than the base currencies of any Account, the Customer acknowledges that there may be profits or losses arising as a result of exchange rate fluctuations which shall be entirely for the Customer's account and risk.
- 19.4 The Customer acknowledges that, in relation to any order watching services on foreign exchange transactions:
- (a) the Customer may from time to time provide the Bank with any Instruction for any foreign exchange transaction (on a spot basis) to be concluded at a certain currency exchange rate set by the Customer (the "**Specified Rate**"). Unless otherwise agreed, each such Instruction received by the Bank will only be available for execution after it has been accepted by the Bank as a foreign exchange order for such purpose (the "**FX Order**"). Such FX Order will remain open for execution unless and until (i) the expiry of the FX Order Good-Till-date or (ii) the Bank receives the Customer's Instruction for its amendment or cancellation and informs the Customer of its due amendment or cancellation, whichever is earlier;
  - (b) the FX Order will be conclusive and binding on the Customer upon the Customer's placement of the FX Order (whether in writing or over the phone) but is subject to final execution and acceptance by the Bank as confirmed orally or in writing;



- (c) execution of any FX Order at the Specified Rate cannot be guaranteed due to the possibility of unexpected market fluctuations. The Bank shall not be liable for any unsuccessful execution or any delay in the execution of the FX Order by the Bank. Executed FX Orders will be settled on no later than the next Bank Business Day following the FX Order execution day. Settlement risk involved as a result of cross-border and/or cross-time zone nature of foreign exchange transactions and other circumstances is beyond the Bank's control;
- (d) unless the Customer submits a cancellation / amendment request (written or by phone) which is validly accepted by the Bank (as confirmed orally or in writing), the Customer cannot cancel / amend any FX Order placed. The Customer shall indemnify the Bank on demand for all costs, charges, loss and damages incurred by the Bank in unwinding any valid FX Order placed;
- (e) charges specified in the FX Order Watching Service Form by reference to basis points will be incurred and paid to the Bank for each executed FX Order. This will be charged against the FX Order executed price;
- (f) upon acceptance of a FX Order and while it is outstanding, the Bank is authorised to hold sufficient funds from any of the Accounts equivalent to 100% of the transaction amount plus all the applicable fees and charges which would be required to settle the FX Order. If the FX Order is executed, the Bank may apply such amount in satisfaction of the transaction amount plus all the applicable fees and charges on the settlement date. Funds will be released 2 Bank Business Days after (i) the order Good-Till-date or (ii) the Bank receives the Customer's Instruction for amendment or cancellation of FX Order and informs the Customer of its due amendment or cancellation, whichever is earlier. In the event of insufficient funds in the Account to cover the full amount of any executed transaction due to any reason whatsoever, the Bank may at any time and without prior notice to the Customer reject the FX Order or reverse the transaction so executed. If the Bank acts on the FX Order, the Customer agrees to fully indemnify the Bank against all costs, charges, loss and damages incurred by the Bank as a result of acting on the FX Order;
- (g) Notwithstanding Clauses B19.4 (a) to (c) above, the Bank may follow market practice and conditions and conduct transactions with or for the Customer on any FX Order in any foreign exchange market and in a manner acceptable to the Bank;
- (h) The Bank or any financial institution in the group to which the Bank belongs or any of their employees or representatives may trade in foreign exchange on its or his own account or take the opposite position or be the counterparty to any of the Customer's FX Orders or foreign exchange contracts;
- (i) the Bank is acting as principal and not as the Customer's advisor or agent. The Bank does not give to the Customer any investment advice, assurance or guarantee regarding any expected outcome of any FX Order; and
- (j) the judgment and decision with respect to any FX Order is made by the Customer independently. The Customer has not received and/or relied on any representation, warranty, undertaking or information from the Bank and/ or any of the Bank's Personnel in respect of any foreign currency transaction risks.

## **20 Issue of demand drafts or cashier's orders**

- 20.1 Any demand draft or cashier's order requested by the Customer may be collected personally by the Customer or a person authorised by the Customer under the specified application form or an authorisation letter duly signed by the Customer.
- 20.2 Any request for amendment, stop payment, cancellation or refund of a demand draft or cashier's order is subject to the Bank's discretion and to such conditions and fees as the Bank

may determine.

## **21 Bank charges and fees**

- 21.1 The Customer shall pay to the Bank all fees, applicable charges, commissions, brokerage and any other service charges (including related custodian charges or negative interest) as shown in the Bank Charges Schedule (or as notified by the Bank from time to time) and any reasonable expenses incurred by the Bank in connection with the Accounts, Transactions, Services and/or the Agreement.
- 21.2 In the event that there is any Tax, fee (including transaction fees imposed by the Exchange or regulatory bodies), stamp duty, charge or cost to be paid, withheld or deducted in respect of a Transaction (for entering into the Transaction or as a result of any payment or delivery made under the Transaction) as required by applicable Laws, such amounts will be withheld or deducted from, or charged to, the Customer and the Bank shall have the right to withhold or deduct the same from any amount payable under the Transaction.
- 21.3 The Bank is entitled at any time and without prior notice to the Customer to debit the Account with all sums payable by the Customer (including those under Clauses B21.1 and B21.2). Any delay in debiting the Account due to insufficient funds does not constitute a waiver or otherwise affect the Bank's rights under the Agreement. If the debiting of the Account results in the Account becoming overdrawn, interest and charges thereon in accordance with the Bank Charges Schedule shall be payable unless otherwise stipulated by the Bank.
- 21.4 Under insolvency Law, a person may demand the refund of a payment the Bank has received. To the extent the Bank is obliged to do so or it agrees to make a refund, the Bank may treat the original payment as if it had not been made. The Bank is then entitled to its rights against the Customer as if the payment had never been made.

## **22 Collection costs**

The Bank may take reasonable actions to enforce any provision of the Agreement including employing lawyers and/or third party debt collection agents to collect any sums the Customer owes the Bank with advance written notice to the Customer. The Customer shall indemnify the Bank on demand for all reasonable legal and other costs and expenses reasonably incurred.

## **23 Rebate and commission**

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

## **24 Right to withhold payments**

- 24.1 Any sum payable by the Bank to the Customer is subject to all applicable Law, including any Tax requirement, foreign exchange restriction or control.
- 24.2 The Customer agrees and acknowledges that the Bank:
- (a) may perform, or cause to be performed, withholding of any monies payable to the Customer, deposit any such monies into a sundry or other account and/or retain such monies pending determination of the applicability of such Tax requirement, foreign exchange restriction or control; and
  - (b) shall not be liable for any Tax, gross-up or similar charges payable in connection with any Transaction and the Bank is authorised to deduct or withhold, without notice to the Customer, any amount of Tax deducted from any payments, interest, dividends or any other amounts whatsoever payable to the Customer and pay such amounts to the relevant tax authorities.
- 24.3 The Bank is not liable for any Losses that may be incurred by reason of such withholding, retention or deposit.

## **25 Recording and document retention**

- 25.1 Further to the Data Policy Notice, and subject to any applicable Law, the Customer consents to the Bank:
- (a) recording all telephone calls, oral Instructions and electronic mail communication from the Customer and any Authorised Signatory to the Bank; and
  - (b) videotaping or recording them on camera at terminals or other facilities through which Instructions are given.
- 25.2 The Bank may, but is not required to, inform the Customer or any Authorised Signatory on each occasion that it makes such a recording. All such recordings are the property of the Bank and are collected for the purpose of being, and are agreed by the Customer to be, conclusive evidence of the Instructions, information and/or content. The Customer undertakes, represents and warrants that the Customer has notified, and obtained the consent of its Authorised Signatory(ies) to the recording process described at Clause B25.1 above. All such recordings shall be admissible in evidence in any proceedings and the Customer agrees not to challenge or dispute the admissibility, reliability, accuracy or authenticity of the contents merely on the basis that such recordings were incorporated and/or set out in electronic form or are produced or were the output of a computer system, and the Customer waives any right (if any) to so object.
- 25.3 The Bank may set retention periods after which originals may be destroyed. Microfilm or other imaged copies may be taken and retained in place of the original documents and such imaged versions are regarded as of equivalent authenticity and effect as the originals. Consistent with the Data Policy Notice, the Bank will only keep data for as long as is reasonably required for the purpose for which it was collected.

## **26 Suggestions and complaints**

The Customer can call the Customer Service Hotline or write to the Bank regarding any suggestions or complaints. Complaints will be dealt with according to the Bank's complaint handling procedure.

## **27 Communication to Customers**

- 27.1 Any notice or communication to the Customer may be given in writing or orally. If in writing, it may be delivered personally, or by post, courier, facsimile, SMS or electronic mail to the last known address, number or electronic mail details or to such other address, number or electronic mail details as the Customer may have notified the Bank in writing or by other

electronic means or by publication in daily newspapers, or posted at any Branch, ATM or on the Bank's website and will be deemed to be given or made or received:

- (a) if sent by facsimile, at the time shown on the transmission report as being successfully sent;
- (b) if delivered personally, at the time left at the relevant address;
- (c) if sent by post in Hong Kong, 2 days after posting (notwithstanding that it may be returned through the post office undelivered);
- (d) if sent by post outside Hong Kong, 7 days after posting (notwithstanding that it may be returned through the post office undelivered);
- (e) if sent by registered mail or courier, on the date it is delivered or delivery is attempted (notwithstanding that it is undelivered or returned undelivered);
- (f) if sent by electronic mail or SMS, at the time of delivery from the Bank's electronic messaging system (notwithstanding that it was not successfully delivered);
- (g) if delivered via other electronic means, 24 hours after the Bank sends it (notwithstanding that it was not successfully delivered);
- (h) if published in daily newspapers, posted at any Branch, ATM or on the Bank's website, at the time of publication or posting; and
- (i) If orally, when given to the Customer or person authorised to accept such notice or communication.

27.2 If any communication sent to the Customer is returned to the Bank or if the Bank is otherwise notified that any particular means of communication is no longer effective, subject to applicable Laws, the Bank may at its sole discretion cease to use such means of communication until the Customer has updated the relevant contact information. In particular, the Bank may cease to send any statement to any address of the Customer upon receiving any returned mail from such address.

## **28 Communication to the Bank**

Any notice or communication to the Bank must be in English or Chinese and may only be given in writing at its address notified to the Customer and shall be deemed to be given or made or received only on the day of actual receipt by the Bank, and the burden of proving receipt will be on the Customer.

## **29 Notifications**

29.1 The Customer undertakes to promptly notify the Bank in writing:

- (a) if any of the representations and warranties in clause B43 are no longer accurate or complete;
- (b) of any change to the information provided to the Bank including:
  - (i) the beneficial ownership of the Assets;
  - (ii) change in citizenship, residency, tax residency, address(es) on record, telephone, facsimile or mobile number, electronic mail addresses or marital status;
  - (iii) renewal of passport or change in other identity document (such as the Hong Kong identity card) including any change in passport or identity document number or name;
  - (iv) the Authorised Signatory(ies) or signing requirements in respect of the Account;

- (v) (if the Customer is acting as trustee) change of trustee(s), settlor(s), grantor(s), protector(s), enforcer(s) or beneficiary(ies) of the trust; and
- (vi) (if the Customer is a corporate or Unincorporated Entity) change in its constitutional documents, shareholder(s), partner(s), director(s), company secretary or nature of business;
- (c) in the event any order or warrant is issued against the Customer or any of the Customer's assets under any applicable anti-money laundering Laws and counter-terrorist financing Laws, including Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405 of the Laws of Hong Kong), Organised and Serious Crimes Ordinance (Cap. 455 of the Laws of Hong Kong) or the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575 of the Laws of Hong Kong).

29.2 The Bank undertakes to notify the Customer in writing in the event of any material change to its name, address, licensing status with the SFC (including the types of regulated activities for which it is licensed and its CE number), the nature of services provided or available to the Customer under the Agreement, or the remuneration to be paid (and the basis for payment) by the Customer to the Bank under the Agreement.

### **30 Change in status**

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

- (a) (in the case of individuals) the Customer's death, incapacity (whether mental incapacity or otherwise), bankruptcy or other legal disability;
- (b) (in the case of a corporation) the Customer's winding up, insolvency, dissolution or other legal disability or any change by amalgamation, reconstruction or otherwise which may be made to the Customer's constitution;
- (c) (in the case of Unincorporated Entity) any change in the partnership's name, structure, membership, partnership deed (or other constitutional documents) or in the partners, in each case whether due to death, bankruptcy, retirement, expulsion, admission of new partners, cessation of business or otherwise; and
- (d) any change by amalgamation, reconstruction or otherwise which may be made to the constitution of the Bank and any sale of all or any part of the Bank's undertaking and assets to another person.

### **31 Loss of seal / chop**

If a seal or chop used for operating any Account is lost or stolen, the Customer must immediately notify the Bank in writing or through such other channel as the Bank may prescribe from time to time. The Bank is not liable for any Losses suffered by the Customer arising from a payment or Transaction effected prior to receiving such notification.

### **32 Anti-money laundering and sanctions**

32.1 Notwithstanding any other provision of the Agreement to the contrary, the Bank is not obliged to do or omit to do anything if it would, or might in the Bank's reasonable opinion, constitute a breach of any anti-money laundering, counter-terrorist financing or economic or trade sanctions Laws applicable to the Bank.

32.2 The Customer must provide the Bank upon request with all documents and information as reasonably required by the Bank from time to time in order for the Bank to comply with any anti-money laundering, counter-terrorist financing or economic or trade sanctions Laws or other laws, Regulations and policies or ongoing customer due diligence requirements, policies or regulations applicable to the Bank.

- 32.3 The Bank reserves the right (at its discretion) to request the Customer to produce identification documents, such as Hong Kong Identity Card, for the purpose of identity verification before processing any Instruction.
- 32.4 The Customer will cooperate fully in respect of any enquiry that the Bank may make for the purposes of compliance with any applicable Law and/or any other reporting and/or withholding requirements including promptly providing all relevant information, details and/or documents as may be necessary.
- 32.5 The Customer agrees:
- (a) to exercise its rights and perform its obligations under the Agreement in accordance with all applicable anti-money laundering, counter-terrorism financing and economic and trade sanctions Laws; and
  - (b) that the Bank may block a Transaction, if the Customer or any other person or entity in connection with the Transaction becomes a sanctioned person or entity, or upon the occurrence of a match on the Bank's sanction filters and that this may cause a Transaction to be delayed or cancelled.

### **33 Reliability of information**

Information including but not limited to interest rate, exchange rate, stock price and product information quoted by the Bank through any channels is indicative and for reference only. The actual rate or price applicable shall be as determined or quoted at the time the Transaction is entered into.

### **34 Bank's records conclusive**

Subject to Clause B8.2, a statement or certificate in writing signed by the Bank or any person nominated by the Bank or any computer generated statement of the Bank (in the absence of manifest error) is final and conclusive as to the status of the Account, including any amount due to the Bank.

### **35 Dormant Accounts**

- 35.1 The Bank may consider an Account to be dormant if no transaction is initiated by the Customer for such period as determined by the Bank from time to time.
- 35.2 The Bank may cease to pay interest and/or impose a charge on dormant Accounts. The Bank will give 14 days' prior notice to the Customer when a charge accrues on a dormant Account for the first time, and advise the Customer of the amount of such charges and what can be done to avoid such charges or where the Customer can obtain such information.

### **36 Tax**

The Customer agrees to be bound by the terms relating to tax reporting, withholding and associated requirements specified in the "Tax Requirements Notice" from time to time issued by the Bank, which are incorporated by reference into and shall form part of the Agreement. A copy of the "Tax Requirements Notice" is available on request at any Branch or from the Bank's website ([www.dbs.com.hk](http://www.dbs.com.hk)).

### **37 Delegation**

- 37.1 The Bank reserves the right to appoint any other person(s) (whether in Hong Kong or elsewhere) as its Nominee, broker or Agent to perform any Services. The Bank may delegate any of its powers under the Agreement to such person to be carried out in accordance with market practice and the normal dealing and operational practices of such person. The Bank will exercise reasonable care in the selection of such person. The Bank assumes no liability or responsibility to the Customer or any third party for the acts or omissions of such person except for any Losses that are reasonably foreseeable and a direct result of the fraud, negligence or wilful default of the Bank or Bank Personnel.

- 37.2 In connection with the provision of Services to the Customer, the Bank is authorised to disclose information about the Customer or any Account to any person to whom it delegates its powers to.

### **38 Set-off right and lien**

- 38.1 In addition to all other rights and remedies available to the Bank and without prejudice to any lien, guarantee, mortgage or other security (now existing or established at a later date), the Bank may at any time without notice (whether before or after demand), liquidate any of the Customer's Assets and set-off, combine, consolidate or merge any balances standing to the credit of any Account (whether subject to notice or not and whether matured or not) and any other obligation of the Bank owed to the Customer towards the reduction and/or satisfaction of of any liability owed by or on behalf of the Customer (whether or not monetary or financial value can be attributed to such liability at the relevant time), including (without limitation) any of any Indebtedness whether such Indebtedness be present or future, actual or contingent, joint or several, primary or collateral, accrued or not and notwithstanding whether or not the credit balances and the Indebtedness are in the same currency and the Bank is authorised to effect (or request the effecting of) any necessary transfers and currency exchanges at such exchange rate as shall be determined by the Bank.
- 38.2 The Bank will notify the Customer promptly of any such set-off, combination, consolidation or merger where practicable, but failure to do so or any delay in doing so does not invalidate the Bank's exercise of such right.
- 38.3 In consideration of the Bank agreeing to or continuing to:
- (a) open and operate the Account and make available other Services or accommodation whatsoever, including to giving time and indulgence, to the Customer; and/or
  - (b) enter into Transactions with the Customer,
- the Customer hereby charges, pledges, mortgages, assigns and otherwise creates a first fixed charge to and in favour of the Bank over all the Customer's Assets as a continuing security for the payment and discharge of the Customer's liabilities.
- 38.4 The charge created hereunder is in addition to, and independent of, any charge, guarantee or other security or right or remedy now or at any time hereafter held by or available to the Bank.
- 38.5 Without prejudice to any provision in these Terms and Conditions, the Customer agrees to perform all such acts and/or execute all such documents as may be necessary for the purpose of perfecting the charge created under this clause B38.

### **39 Death**

- 39.1 Subject to Clause B6.1(f), upon the death of the Customer, all rights in and to the Account and Assets shall automatically pass and be vested in the Customer's personal representative(s) who shall be liable to the Bank for all charges, obligations and liabilities of all Accounts and Assets. Subject to any applicable legal obligations, the Bank shall hold any Assets for the Customer's personal representative(s) and may release the same (without any liability or obligations) in accordance with the written Instructions of any such personal representative(s).
- 39.2 The Agreement shall be binding on and enforceable against the heirs, personal representatives and successors in title of the Customer and binding on and enforceable by the successors in title and assigns of the Bank.**

### **40 Termination and Suspension**

- 40.1 All Accounts must be operated in accordance with the Agreement and any other applicable requirements of the Bank.

- 40.2 The Bank may terminate the business relationship between the Bank and the Customer and/or the provision of any Service and close or suspend any Account or Service without obligation to provide any reason, by giving not less than 30 days' prior written notice to the Customer (or, in exceptional circumstances, without notice).
- 40.3 The Bank also reserves the right to suspend or terminate any Account at any time without giving any notice or reason if:
- (a) any legal or regulatory requirement prohibits or renders illegal the maintenance or operation of the Account;
  - (b) the Customer commits any breach of the Agreement which, in the Bank's opinion is a material default;
  - (c) the Bank determines that the Customer may refuse to or is unable or unwilling to comply with any of the Customer's obligations to the Bank or that there has been a material adverse change in the circumstances relating to the Customer, including the Customer's legal status, capacity, financial condition or business;
  - (d) a receiver, administrator, liquidator, trustee or analogous office is appointed over all or a material part of the Customer's property;
  - (e) a petition is presented or filed in respect of the Customer in any court of law or before any agency seeking any reorganization, arrangement, composition, readjustment, administration, liquidation, dissolution, bankruptcy or analogous or similar relief under any applicable Law; or
  - (f) the Account is being used or is suspected of being used for unlawful activities such as illegal gambling, money laundering and terrorist financing.
- 40.4 Upon termination of the business relationship between the Bank and the Customer:
- (a) any Indebtedness shall immediately become due and payable to the Bank;
  - (b) if any Transaction is likely to extend beyond the date of termination, the Bank shall at its discretion either close out or complete such Transaction and shall be entitled to require funds to be paid and/or to retain funds in a sufficient amount, as determined by the Bank, for this purpose, provided that the outstanding transactions will continue to be governed by the provisions of the applicable Agreement; and
  - (c) all acts performed by the Bank prior to receipt of any notice resulting in termination will be valid and binding upon the Customer.
- 40.5 Upon Termination of any Account, the Bank:
- (a) has no further obligation to accept or honour any Instructions or Orders in respect of such Account which may be presented to the Bank, whether such Instruction or Order is dated before or after the Account termination date;
  - (b) may transfer by any means of remittance to such account (including another Account with the Bank) as it deems fit or post to the Customer at the Customer's last notified mailing address or in any other manner the Bank deems fit a cashier's order or other negotiable instrument (at its discretion) for the net balance less all charges and Indebtedness and in this regard to convert from one currency to another at the rate of exchange determined by the Bank to be prevailing in the relevant foreign exchange market at the relevant time and the Bank shall not be liable to the Customer for any interest on any unclaimed balance on the terminated Account;



- (c) may take any other action it considers appropriate to mitigate or limit its potential loss;
- (d) may open an account in the Customer's name and allocate any of the Customer's Assets to such account, to be held until such time as the Bank shall (in its sole and absolute discretion) be satisfied that none of the Customer's liabilities to the Bank remain outstanding or it is properly and lawfully instructed, approved or authorised, by any appropriate party or authority, to release or otherwise deal with the Assets, provided that pending such satisfaction the Bank may, in its sole and absolute discretion and on such terms as the Bank may require, continue to accept Instructions on the Assets in such account;
- (e) the Customer shall be responsible for all costs and expenses of reasonable amount and reasonably incurred by the Bank by reason of the exercise by the Bank of any of its rights under this Clause B40; and
- (f) the Bank shall not be liable for (and the Customer shall not hold the Bank responsible for) any loss, expense, damage, liability or other consequence which the Customer may suffer or incur by reason of the exercise by the Bank of any of its rights under this Clause B40.

40.6 The Bank reserves the right to charge and debit an early closing fee for Accounts closed within 3 months after first being opened.

40.7 Any closure or suspension of an Account or termination of all or any Services shall be without prejudice to the rights or remedies which may then have accrued or still be accruing to the Bank in respect of any outstanding payments to it.

40.8 Without limiting the generality of the Bank's rights under the Agreement, where in the Bank's opinion it is required by, or failure to do so would be inconsistent with, any applicable Law to which the Bank or the Customer is subject, the Bank may sell any of the Assets or liquidate any position or unwind any Transaction without prior notice or consent of the Customer.

40.9 All exclusions and indemnities given by the Customer under the Agreement and the provisions in Clauses B25, B38, B40, B41, B42, B46, B47, B48, B49, B50 and B52 of these Terms and Conditions shall survive termination.

## **41 Limitation of liability**

41.1 Other than where: (i) a Law prohibits the Bank from excluding; or (ii) there is fraud, negligence or wilful default on the Bank's part, neither the Bank nor any Bank Personnel shall have any liability or obligation to the Customer or any third party in respect of:

- (a) any Event of Force Majeure;
- (b) any interruption, delay, corruption, loss or interception of Instructions or other information;
- (c) the Bank's execution of, or any delay or omission in acting on any Instruction, or any partial completion of or any failure, inability or decision of the Bank not to execute any Instruction, or inability to effect Transactions at the prices or rates quoted at any specific time;
- (d) loss of business, goodwill, opportunity or profit;
- (e) loss of or diminution in the value of Investments;
- (f) imposition or change of any applicable Law, market disruption or fluctuation,

restrictions or suspension of trading imposed by any Relevant Authorities;

- (g) any Losses suffered by the Customer in any way in connection with the Agreement including the provision of Accounts and Services;
- (h) acts or omissions or the bankruptcy or insolvency of any Agent, Relevant Authority, fund manager or issuer of Investments;
- (i) any delay in presentation of cheques caused by or any loss or destruction of cheques while the cheques are in the custody of any authorised third party through whom such cheques are presented for collection; and
- (j) any delay in updating the valuation of Assets provided by the Bank.

41.2 This Clause B41 applies where the Loss arises for any reason and even if the Loss was reasonably foreseeable or the Bank had been advised of the possibility of the Loss.

## **42 Indemnity**

42.1 In addition to any other indemnity set out in the Agreement and to the fullest extent permitted by Law, the Customer shall on demand indemnify the Bank and the Bank Personnel against all Losses of any kind and howsoever arising, including legal fees and other expenses (on a full indemnity basis) of any kind sustained or incurred as a direct or indirect result of the Bank:

- (a) accepting or acting on any Instruction or Order or other communication given in accordance with the Agreement;
- (b) the Customer's breach of the Agreement; or
- (c) the provision of any Services, the maintenance of any Account, the execution of any Transaction or the exercise or preservation of the Bank's powers and rights under the Agreement by the Bank.

except in the case of fraud, negligence or wilful default of the Bank and any Bank Personnel.

42.2 The Bank is entitled to withhold, retain or deduct such portion from the Assets or such amount(s) from the Accounts to cover any amount which may be owed by the Customer under Clause B42.1.

## **43 Undertakings, Representations and Warranties**

43.1 The Customer undertakes, represents and warrants to the Bank, as of the date of accepting these Terms and Conditions and as of each time an Instruction is given to the Bank or a Transaction is entered into that:

- (a) Where it is a corporation or Unincorporated Entity, the Customer is duly incorporated or otherwise properly constituted and validly existing under the laws of its place of incorporation/constitution and where he or she is an individual, the Customer is of full age and capacity;
- (b) the Customer has full capacity, power and authority to execute, deliver, exercise its rights, perform and comply with its obligations under the Agreement;
- (c) the opening and maintenance of the Account, the giving of Instructions, entering into of Transactions and the Customer's execution and delivery of and performance of its obligations under the Agreement does not and will not violate or conflict with or constitute a default or exceed any limitation under any provision of the constitutional documents (where it is a corporation or Unincorporated Entity) or the constitutive documents of the trust (where it is acting as trustee) or any instrument or agreement with any other party or of any judgment, order, injunction, decree, determination or award of any courts or any judicial, administrative or governmental authority or organisation presently applicable to it or any Laws or Regulations;

- (d) the Agreement constitutes the Customer's legal, valid and binding obligations enforceable against it in accordance with its terms;
- (e) no action, suit or proceedings at Law or in equity (whether in Hong Kong or elsewhere) before any court, tribunal, arbitral or administrative body or government agency that is likely to affect the legality, validity or enforceability against the Customer of the Agreement or of the Customer's ability to perform the obligations under the Agreement is pending or, to the Customer's knowledge, threatened;
- (f) no legal or other proceedings have been initiated or threatened and no meeting has been convened for the bankruptcy, dissolution, liquidation, winding-up, judicial management, termination of existence or reorganisation of the Customer or for the appointment of a receiver, manager (judicial or otherwise) trustee or similar officer and no arrangement, composition with, or any assignment for the benefit of creditors have been made or proposed to be made against the Customer;
- (g) except as otherwise notified, the Account(s) is opened, maintained and operated for the Customer's own benefit and all Assets held under the Account(s) are and will continue to be beneficially owned by the Customer free from any lien, charge or other encumbrance and/or restriction other than created in favour of the Bank;
- (h) all information in the Account Opening Documentation or other supporting documents delivered to the Bank to facilitate the provision or maintenance of any Services or for the execution of any Transaction is true, complete and accurate;
- (i) the Customer has not been committed or convicted of any serious tax crimes or been subject to any investigation or criminal proceedings, whether in Hong Kong or elsewhere, in relation to tax matters nor does the Customer have knowledge of such investigations or proceedings being taken against the Customer;
- (j) the purpose of opening of the Account and effecting Transactions is not illegitimate and the Customer will not use the Account as a platform for illegal tax activities and is aware of Hong Kong and the Bank's firm stance against illegal or illicit tax activities;
- (k) none of the Assets are proceeds of organised crime of the specified offence of a person;
- (l) the Customer will maintain, and, where necessary, obtain in the future at the Customer's own cost, all consents, licenses, approvals required by the Customer to perform and comply with its obligations under the Agreement including requisite exchange control approvals;
- (m) the Customer shall conduct such investigation and analysis of the terms and conditions, risk and merits of each Transaction in light of its own circumstances, financial condition and objective and to the extent the Customer deems necessary, obtain independent advice from competent legal, financial, tax, accounting and other professional advisers;
- (n) the Customer understands the mechanics of the Transaction and the legal, financial, tax and other risks arising in respect of the Transaction and is able to bear any such risk involved (including a total loss) of the investment;
- (o) the Customer shall consult the Customer's own tax advisors and experts to determine the Customer's tax reporting obligations and shall be responsible for all tax filings and tax duties and obligations; and
- (p) the Customer shall ensure that all applicable Laws (including any reporting and disclosure requirement and shareholding restriction) are strictly adhered to and complied with at all times.

#### **44 Further assurance**

- 44.1 The Customer shall at the request of the Bank, promptly execute and deliver such documents and perform such acts as the Bank (or its Agent) may request from time to time to allow the Bank to provide the Services, operate the Account or execute the Transactions.
- 44.2 Failure to comply may result in discontinuance of Services, non-execution of Transactions, delay, additional costs or requirements and/or other consequences in relation to the provision of such Services or execution of the Transactions.

#### **45 Amendments**

**The Bank reserves the right at its discretion to review, amend, delete, modify or substitute the Bank Charges Schedule, these Terms and Conditions and/or any other terms and conditions which are supplemental to these Terms and Conditions or otherwise change any of the Services (as well as related operating and other requirements) from time to time.** For changes which shall result in an increase in the fees or charges payable by the Customer and/or affect the liabilities and obligations of the Customer, the Bank shall give at least 30 days' notice to the Customer unless such changes are not within the Bank's control. In other cases, reasonable notice shall be given. Such notice may be given by such means as the Bank at its discretion sees fit. **Any Customer who does not close the relevant Account(s) prior to the effective date of any changes is deemed to have agreed to such changes.**

#### **46 Illegality and severance**

- 46.1 Notwithstanding any provision to the contrary in the Agreement, if it shall become (or it shall appear to the Bank that it has or will become) unlawful or otherwise prohibited for the Bank to maintain or give effect to any of the Bank's obligations in the Agreement, the Bank shall thereupon notify the Customer to that effect and the Bank shall be entitled to close any of the Accounts and/or terminate any Service.
- 46.2 If at any time any provisions or any part of any provisions of the Agreement is or becomes illegal, invalid or unenforceable in any respect under Hong Kong Law, the legality, validity or enforceability of the remaining provisions are not affected or impaired thereby.

#### **47 Assignment**

- 47.1 The Agreement is for the benefit of the Bank and its successor, assignee or transferee notwithstanding the Bank's absorption by or amalgamation with another person.
- 47.2 The Bank may, at any time, assign, novate or transfer any of its rights and/or obligations under the Agreement and deliver all or any of the Assets held by the Bank to the successor, assignee or transferee, who shall then be vested with all the rights and/or obligations formerly vested in the Bank and the Bank shall thereafter be relieved and fully discharged from any liability or responsibility thereto.
- 47.3 The Agreement shall be binding on the Customer and the Customer's successors and personal representatives. The Customer may not charge, assign or transfer any right, benefit or obligation under the Agreement to any third party (whether by security or otherwise) without the Bank's prior consent in writing.

#### **48 No waiver**

- 48.1 No failure or delay by the Bank in exercising or enforcing any right or remedy shall constitute a waiver of such right or remedy or limit, prejudice or impair the Bank's right to take any action or to exercise any right or remedy against the Customer without notice or demand, or render the Bank responsible for any Losses arising therefrom nor shall any single or partial exercise by the Bank of its rights preclude any other or further exercise thereof or the exercise of any other rights or remedies. The rights of the Bank are cumulative and not exclusive of any other rights, power, privilege, claim or remedy available at Law or otherwise.

- 48.2 Without limiting the foregoing, no waiver by the Bank of any breach of the Agreement shall be deemed to be waiver of any subsequent breach of the Agreement by the Customer.
- 48.3 Time shall be of the essence but the Bank may grant time or other indulgence to the Customer or any other person, without in any way impairing or affecting any of the Bank's rights as against the Customer or any such other persons.
- 48.4 The Bank may accept late payment or partial payment in respect of amounts due to the Bank or as being settlement of any matters in dispute, without prejudice to any of the Bank's rights under the Agreement or at Law, and it shall not be treated as an amendment to the Agreement nor waiver thereof.

## **49 Governing law and jurisdiction**

- 49.1 These Terms and Conditions **and/or any other terms and conditions which are supplemental to these Terms and Conditions** shall be governed by and construed in accordance with the Laws of Hong Kong and the Customer irrevocably submits to the non-exclusive jurisdiction of the Hong Kong courts or of any court elsewhere as the Bank may elect, whether concurrent or not and the Customer waives any objections on the ground of venue or any similar grounds.
- 49.2 The Customer agrees (but without limiting the Bank's rights) to services of legal process by registered mail of copies thereof to the Customer's address and/or the address of the Customer's process agent shown in the Bank's records and such service to become effective on the date it is delivered or its delivery is attempted (notwithstanding that it is undelivered or returned undelivered).

## **50 Third parties rights**

A person who is not a party to the Agreement may not enforce any of its terms under the Contracts (Rights of Third Parties) Ordinance (Cap 623 of the Laws of Hong Kong).

## **51 Relationship with directors/employees etc.**

- 51.1 As a licensed bank, the Bank is subject to certain limitations on advances to persons related to the directors, employees, controllers or minority shareholder controllers of the Bank, its subsidiaries or Affiliates ("**Connected Persons**"). Unless otherwise declared or disclosed to the Bank, the Customer hereby confirms to the Bank that it is not a Connected Person. The Customer undertakes to immediately advise the Bank in writing upon becoming a Connected Person at any time while the loan or other Indebtedness to the Bank is outstanding.
- 51.2 For the purpose of this Clause B51, the following terms shall have the following definition:-
- "controllers" and "minority shareholder controllers" shall have the meanings used within section 83 of the Banking Ordinance (Cap 155 of the Laws of Hong Kong);
- "subsidiary" shall have the meaning ascribed to it in the Companies Ordinance (Cap 622 of the Laws of Hong Kong); and
- "Affiliates" in respect of a party, means any other legal entity, directly or indirectly controlling or controlled by or under the direct or indirect common control with that party and "control" in this definition means (i) the direct or indirect ownership of 50% or more of the voting share capital of a party; or (ii) the entitlement to exercise, or control the exercise of 50% or more of the voting power of a party; or (iii) the ability of a party (whether directly or indirectly and whether by ownership of share capital, possession of voting power, contract or otherwise) to direct the management and policies of another party or to control the composition of the other party's board of directors or equivalent body.

## **52 Disclosure of Information**

- 52.1 The Customer permits the Bank to disclose and/or transfer (whether with or without notice to

the Customer and whether orally or in writing) to the extent not prohibited by applicable Laws, any information relating to the Customer, Account, Assets and/or any transactions or dealings between the Bank and the Customer (including details of Transactions) in accordance with the Data Policy Notice. In addition to the list set out in paragraph (e) of the Data Policy Notice, the Bank may transfer such information to:

- (a) any Affiliates and their respective employees, directors and officers;
- (b) any Agent, contractor or third party service provider (or a subsidiary, holding company or related company thereof) that provide financial, administrative, data management or archiving, telecommunications, computer, payment or securities clearing, data processing, market research or other services to the Bank or any of the Affiliates in connection with the operation of its business (including their employees, directors and officers);
- (c) any person providing a guarantee or security in favour of the Bank to guarantee or secure the Customer's obligations to the Bank or to any professional adviser of such person;
- (d) any person who has or will incur obligations to the Bank pursuant to which the Customer is providing a guarantee or security in favour of the Bank or to any professional adviser of such person;
- (e) any professional advisers acting for the Bank or the Customer;
- (f) such Relevant Authorities to whom the Bank deems fit to disclose information, for purposes in connection with the Account, Services or Transactions;
- (g) any person to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
- (h) the insurer, valuer or proposed insurer or valuer of the Asset;
- (i) credit or charge card companies in credit or charge card enquiries;
- (j) any person with the consent of the Customer; and
- (k) pursuant to any contractual or other commitment (which may be within or outside Hong Kong).

Use of any personal data shall be in accordance with the Bank's Data Policy Notice.

52.2 If the Customer provides any personal data of another individual (including the Authorised Signatory(ies)) to the Bank, the Customer undertakes, represents and warrants that the individual has been notified of, and the consent of the individual has been obtained (if required by Law), for the collection, processing, use and disclosure of the individual's personal data in accordance with the terms of the Data Policy Notice.

52.3 The Customer further agrees that the Bank may, subject to the terms of the Data Policy Notice and any applicable Laws:

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

52.4 The Bank's rights under this Clause B52 shall be in addition and without prejudice to any other rights or obligations of disclosure which the Bank may have under any Laws and nothing herein is to be construed as limiting any of those other rights.

**53 Compliance with Laws**

The Bank may take or omit to take any action which it determines to be necessary in order to ensure compliance with the Laws, which shall bind the Customer, who shall at all times ensure compliance with the same.

**54 Governing version**

**Wherever there is a discrepancy between the English and Chinese version of the Agreement, the English version prevails.**

## PART II - ACCOUNT RELATED TERMS AND CONDITIONS

### C. Current Account

Section C of Part II is applicable to Hong Kong Dollar Current Account, Hong Kong Dollar Save & Cheque Account, US Dollar Current Account and Renminbi Current Account.

#### 1. Cash withdrawals

Cash withdrawals can be made by presenting the Customer's cheque or a withdrawal or transfer slip in such form as the Bank may prescribe.

#### 2. Manner of using cheques

- 2.1 Cheque books must be kept in a safe place and all necessary precautions must be taken to prevent loss and possible fraudulent or unauthorised use. Before using a new cheque book, the Customer should count the number of cheques and confirm that the account name (if any) and account number is correct. Any irregularities should be immediately reported to the Bank.
- 2.2 When drawing cheques, the words and figures must be written distinctly, in permanent ink and in such manner to prevent unauthorised alteration. The word "only" should be added after the amount stated in words. Only Arabic numerals should be used for figures.
- 2.3 All alterations must be confirmed with full signature of the drawer(s) near the alteration. As cheques using initials or abbreviations can be easily altered, the Bank may not accept such cheques unless specific previous written arrangements have been made. **The Bank will not be responsible or liable for any Losses arising from alterations which cannot be easily detected.**
- 2.4 To prevent fraud, the Customer should never issue signed but incomplete cheques to any person. Cheques should be crossed and not made out to bearer.
- 2.5 When a cheque book or cheque is lost or stolen or any suspicion that there is or may be any fraudulent or unauthorised use, the Customer must report to the Bank immediately. **The Bank has no liability for any payment made prior to receiving such written notice and having reasonable time to act on it.**

#### 3. Stop payment

- 3.1 The Customer may instruct the Bank to stop payment of a cheque in writing or by telephone or by such other means as acceptable to the Bank, provided that the cheque has not already been paid on. The Bank shall not be liable for clearing of cheques if the Bank is unable to effect the stop payment for whatsoever reason.
- 3.2 In acting on any stop payment Instruction, the Bank:
  - (a) has no obligation to verify the status of the cheque; and
  - (b) shall not be liable for any Losses howsoever arising as a consequence of exercising the Instructions in good faith; and
  - (c) the Customer agrees to indemnify the Bank for any Losses suffered or incurred by the Bank as a result of so acting.
- 3.3 Charges for stop payment are set out in the Bank Charges Schedule.

#### 4. Request for cheque books

- 4.1 The Customer may only request a new cheque book by means acceptable to the Bank. The Bank may, at its discretion, refuse the issue of a cheque book.
- 4.2 The Bank may deliver new cheque books by post to the Customer's last known address at the cost and risk of the Customer. If the Customer does not inform the Bank of any non-receipt within a reasonable period from the date of application, the Bank will assume that the cheque



book has been received by the Customer.

**5. Validity of a cheque**

The Bank can dishonour and/or return cheques unpaid which are post-dated, altered without authorisation, incomplete or incorrectly completed or if presented more than 6 months after the date it is drawn or if there is insufficient funds in the Account and the Bank may impose a charge in accordance with the Bank Charges Schedule.

**6. Recording of cheques**

Cheques drawn by the Customer which have been paid may, once recorded in electronic form, be retained by the collecting bank or HKICL for such period as is required by Law and then either the collecting bank or HKICL may destroy them.

**7. Ownership of cheque books**

Cheque books remain the Bank's property and must be returned immediately upon request. The Bank may at its discretion destroy any cheque books.

**8. Overdraft facility**

- 8.1 At the request of the Customer, the Bank may, at its discretion, grant an overdraft facility either secured against Assets or on an unsecured basis. Where the overdraft is secured against Assets, the overdraft limit may be adjusted at the Bank's discretion, upon changes in the valuation of such Assets.
- 8.2 Any overdraft is subject to the Bank's overriding right of repayment on demand in accordance with Clause B18.

## **D. Savings Account**

**Except as otherwise stated, this section D of Part II is applicable to Statement Savings Account and Hong Kong Dollar/Multi-Currency Savings Account.**

### **1. Account statements – Statement Savings Accounts**

All transaction details of Statement Savings Accounts will be included in the monthly statement as described in Clause B8.

The remainder of this Section D does not apply to Statement Savings Accounts.

### **2. Passbook**

The Customer may be provided with a passbook which must be presented for every withdrawal and updates. The passbook should only be used by the Customer as the person to whom the passbook is issued. It is not transferable and the Customer is not permitted to pledge it as security. Entries may only be made in the passbook by the Bank. The Bank shall have the sole discretion to stop issuance of passbook and issue account statements instead.

### **3. Passbook updating and examination**

3.1 The passbook must be presented to the Bank for regular updating of any unposted transactions. The Customer may ask a third party to present the passbook solely for the purpose of updating unposted transactions. Unless the Bank has notice of fraudulent activities or has been given notice in accordance with Clause D6 below, the Bank is entitled to deem any third party presenting the passbook for updating as duly authorised by the Customer for that purpose. Nonetheless, the Bank may, at its sole discretion, decide not to accept instruction from any third party to update the passbook.

3.2 The passbook is for the Customer's reference. It does not necessarily indicate the most up-to-date balance, as deposits may have been made or fees and/or charges deducted since the passbook was last updated by the Customer.

3.3 The Customer must examine the updated passbook and any consolidated entry in the passbook (as referred to in Clause D4 below) and notify the Bank of any error or discrepancy within 90 days of the date of the relevant transaction, failing which the passbook record of the Bank shall be conclusive and binding upon the Customer.

### **4. Presentation of unposted transactions**

4.1 When the number of unposted transactions exceeds any threshold set by the Bank at its discretion from time to time, all such unposted transactions will be consolidated as one single entry, which will be shown on the passbook when presented to the Bank. Individual items will not be updated.

4.2 The Customer may request a statement detailing each unposted entry within a particular period in writing and upon payment of the Bank's handling charge.

### **5. Deposits and withdrawals**

5.1 Cash withdrawal requests must be made at a Branch upon production of the passbook and by presenting a completed Branch withdrawal slip, signed with a signature corresponding to the specimen signature of the Customer. The Bank may, at its discretion, but is not obliged to, accept any cash withdrawal requests made without production of the passbook. Withdrawal may not be made by cheque or other negotiable instrument.

5.2 Any payments made by the Bank to any person producing a Branch withdrawal slip purporting to be signed by the Customer has the same effect as if made by the Customer personally and discharges the Bank from all liabilities to the Customer or to any other person. The Bank may, but is not obliged to, refuse such third party payment at its discretion.

## **6. Notification of passbook loss**

**The Customer must give immediate notice in writing to the Bank of any theft, loss or destruction of the passbook. The Bank has no liability for any payment made prior to receiving such written notice and having reasonable time to act on it.** The Bank will only issue a new passbook with a new account number upon receipt of a signed indemnity and provided a full search and inquiry has taken place, to the satisfaction of the Bank. A charge for issuing a replacement passbook as shown in the Bank Charges Schedule may be levied.

## **E. Time/Call Deposit Account**

**This Section E of Part II is applicable to Time/Call Deposit Account in such currencies as the Bank may permit.**

### **1. Deposit period and maturity date**

- 1.1 The deposit period is the duration of the deposit agreed with the Bank prior to or at the time of making the deposit. The deposit may not be withdrawn prior to the maturity date without the Bank's consent.
- 1.2 If the maturity date for a time deposit (irrespective of the currency) falls on a day other than a Bank Business Day, it will be postponed to the next Bank Business Day and interest shall accrue accordingly.

### **2. Interest rate**

The interest rate throughout the deposit period will be simple interest at the rate determined by the Bank on the first day of the deposit period. Interest is calculated up to but excluding the maturity date.

### **3. Payment on maturity**

On maturity, the proceeds of the deposit (including any accrued interest) will be dealt with in accordance with Instructions held by the Bank, requesting that the proceeds be:

- (a) renewed, either principal plus any interest or principal only, for the same deposit period or for a different period;
- (b) credited, in whole or in part, to one or more Savings or Current Accounts with the Bank;  
or
- (c) disposed of in other ways as agreed by the Bank.

### **4. Automatic renewal**

Unless the Bank receives a valid Instruction on or before maturity date, the Bank reserves the right (but has no obligation) to re-deposit the total deposit (principal plus interest) for the same deposit period at the then applicable interest rate.

### **5. Premature withdrawal**

If a Customer requests withdrawal of a deposit prior to its maturity date, the Bank may at its discretion permit such early withdrawal. No interest shall accrue in respect of any such deposit and the Bank will charge a fee as set out in the Bank Charges Schedule for such premature withdrawal. The Bank will deduct such fee from the principal.

### **6. Overdue deposits**

If the Bank receives no Instructions by the maturity date on a deposit which is not to be renewed automatically, the Bank will hold the deposit, and interest on the maturity date and thereafter will accrue on the principal amount only, as follows:

- (a) for Hong Kong Dollar deposits, at the Bank's prevailing standard savings rate; and
- (b) for foreign currency deposits:
  - (i) at the Bank's prevailing foreign currency savings interest rate for the relevant currency provided that the Bank reserves the right not to pay such interest if the Bank is unable to quote a 24-hour call deposit rate for the currency concerned; and

(ii) the interest accrued will be credited into such Account the Customer may instruct.

## **7. Advice**

The Bank will provide an advice for all deposits. The advice is only evidence of the deposit and not a document of title and must not be pledged as security.

## PART III - LOANS RELATED TERMS AND CONDITIONS

### F. Secured Loan Facilities

**This Section F of Part III is applicable to Treasures Secured Line of Credit, Secured Line of Credit, Mortgage Overdraft Facilities, Automatic Secured Line of Credit and/or other overdraft facilities.**

#### 1. Interest calculation and payment method

- 1.1 Except for Treasures Secured Line of Credit, Secured Line of Credit, Mortgage Overdraft Facilities and Automatic Secured Line of Credit, for which interest is calculated and charged on a 365 days per year basis, the Bank will calculate and charge interest based on the outstanding amount of the Facilities and on a 365/360 days per year basis depending on the currency of the Facilities. The interest is accrued daily and charged to the Facilities account monthly in arrears. Interest charged can be settled by cash on the date specified by the Bank or rolled over to the outstanding balance.
- 1.2 In relation to Automatic Secured Line of Credit, the Bank will charge interest on the outstanding debit balance to the Facility which is secured by Hong Kong Dollar deposits at a deposit rate of the secured deposit plus 2% per annum or at Prime Rate whichever is higher. For automatic overdraft secured by foreign currency deposit, the Bank will charge interest at Prime Rate plus 2% per annum.

#### 2. Excess overdraft interest

The Bank will calculate and charge a default interest rate at the Bank's prevailing Prime Rate plus 9% per annum:

- (a) on any outstanding amount of Facilities which exceeds the applicable overdraft limit, from the date on which such excess was incurred up to the date of actual payment of such excess; and
- (b) if the Facilities expire or are not renewed, on the amount of the utilised facilities, from the date of such expiry or non-renewal up to the date of repayment.

The Bank shall inform the Customer if such default rate is applied.

#### 3. Security

If the Customer is granted any Facilities, the Customer shall provide security acceptable to the Bank ("**Secured Assets**"). Subject to the terms and conditions of the Facility Documents and the Bank's discretion to permit otherwise, the Facilities shall become available for utilisation only after the Bank has received such documents and/or conditions precedent as the Bank may require or impose in the Facility Documents.

#### 4. Overdraft limit

- 4.1 The overdraft limit shall be determined by the Bank at its discretion from time to time. The total outstanding must not exceed the approved overdraft limit and/or the current market value of the Secured Assets multiplied by the lending ratio applicable from time to time, failing which the Bank may:

- (a) reduce the overdraft limit; and/or
- (b) request the Customer to deposit additional Assets immediately into the Facilities account,

so that such requirement is met. Should the Customer fail to do so, the Bank may demand immediate repayment. The Bank's lending ratio will differ for various types of Secured Assets

and may be varied from time to time. For details, please contact the Customer Service Hotline or any Branch.

- 4.2 The Bank may, in its sole discretion, allow the Customer to draw in excess of the approved overdraft limit but this is not a waiver of the Bank's right to require the Customer to maintain within the approved limit.

## **5. Payments from the Secured Assets**

All interest, dividends, distributions and other payments or monies whatsoever made, paid or payable in respect of any Secured Assets shall be paid to the Facilities account (notwithstanding any contrary instruction given by the Customer) and shall be applied to or towards repayment of the Facilities.

## **6. Effect on guaranteed returns/other product benefits**

Where the Secured Assets include any benefit or return that is conditional (e.g. a condition that the Secured Assets are held until maturity), the Customer understands and accepts that by charging the Secured Assets, the Customer will no longer have control over the Secured Assets and following a default the Bank is fully entitled to realise the Secured Assets at any time, without prior notice and so any such benefit or return may not be realised.

## **7. Confirmation letter**

Other than for Automatic Secured Line of Credit, a confirmation letter will be issued to successful applicants stating:

- (a) the amount of the Facilities approved; and
- (b) the final applicable interest rate, lending ratio and any applicable handling charges.

## **8. Availability**

- 8.1 The Facility is revolving and subject to the terms of the Facility Documents, any amounts utilised within the Facility limit and repaid may be utilised again.
- 8.2 The Bank may at any time refuse further utilisation of the Facilities without giving any reason, even if the maximum amount of the Facilities has not been utilised.

## **9. Periodic review**

In addition to the Bank's customary overriding right of repayment on demand, the Bank may carry out periodic reviews of the Facilities. The Bank has no obligation in respect of such review but will notify the Customer if the Bank decides to discontinue the Facilities. If renewed, the Facilities will remain subject to the provisions of these Terms and Conditions and the Facility Documents.

## **10. Replacement of interest rate**

- 10.1 For Facilities denominated in Hong Kong Dollar, if the prevailing HIBOR is higher than the Prime Rate, the Bank may at its discretion and without notice adopt the prevailing HIBOR in place of the Prime Rate, as the base of interest rate determination.
- 10.2 For Facilities denominated in US Dollar, if the prevailing US Dollar LIBOR is higher than the USD Prime Rate, the Bank may at its discretion and without notice adopt the prevailing LIBOR in place of the USD Prime Rate, as the base of interest rate determination.

## **11. Credit references**

- 11.1 The Customer authorises the Bank to contact all relevant parties including any credit reference agency for verification of information provided and/or to obtain any other information from time to time as it deems reasonably necessary, without further reference to or consent of the Customer.
- 11.2 In relation to consumer credit, Customer has the right to:

- (a) request to be informed which items of data are routinely so disclosed to credit reference agencies or debt collection agencies;
- (b) request to be provided with further information to enable an access and correction request to be made to the relevant credit reference agency or debt collection agency; and
- (c) ask the Bank to request the relevant credit reference agencies to delete data of Customer's Facilities Account once the Facilities Account has been fully repaid and terminated, if there is no payment default in excess of 60 days in the past 5 years from the account termination date. If Customer has any such payment default, Customer is liable to have the Facilities Account data retained by the relevant credit reference agencies until 5 years from the final settlement date of the default amount.

## 12. Cancellation rights

Once submitted, the Customer may not cancel the Facilities application but may in writing request the Bank to do so. It is at the Bank's discretion to allow any cancellation and if possible, the Customer shall pay to the Bank all costs and expenses in connection with the cancellation as determined by the Bank.

## 13. Overdraft Application enquiry

13.1 To allow the Customer to make telephone enquiries, the Customer hereby agrees that if the enquirer gives the Customer's correct Hong Kong Identity Card number and the overdraft limit applied for (to within the nearest thousand dollars), the Bank is authorised to disclose by telephone:

- (a) loan approval status (approved, pending or declined); and
- (b) if approved, details of the Facility.

13.2 The Bank shall be under no obligation to verify the enquirer's identity further and **the Bank shall have no liability for any Losses that the Customer may suffer (if any) if such disclosure is made to any person other than the Customer.**

## 14. Repayment

The Customer will repay the Bank all amounts owed on demand in accordance with Clause B18.4, including all fees, charges and interest owing under this Section F.

## 15. Payments

15.1 All sums payable by the Customer to the Bank shall be paid without set-off, counterclaim or any other restriction or condition and free and clear of any Tax or other deduction or withholdings of any nature.

15.2 Any moneys received by the Bank in respect of any of the Customer's liabilities to the Bank, howsoever arising may be applied to such liabilities as the Bank may in its absolute discretion determine, or be paid into and held in a suspense account for so long as the Bank thinks fit. In the event of any proceedings in or analogous to bankruptcy, winding-up, liquidation, composition or arrangement, the Bank may prove for and agree to accept any dividend or composition in respect of the Customer's outstanding liabilities as if there had been no suspense account or no credit therein.

15.3 The Bank shall have the right at all times to reverse any erroneous entries to any of the Accounts with effective back-value to when the correct entry (or no entry) should have been made.

## 16. Obligation to keep Bank informed

The Customer will promptly inform the Bank in writing:

- (a) if the Customer's employment or employment status changes; or



(b) of any difficulty in meeting the Customer's payment or other obligations.

**17. Correctness of information**

The Customer acknowledges and agrees that the Bank will rely on the correctness and completeness of information provided, in assessing the Facilities application and warrants and represents to the Bank that all such information and any other information from time to time provided is and shall be true and correct.

## Part IV – OTHER SERVICES RELATED TERMS AND CONDITIONS

### G. General Service Channels

This Section G of Part IV is applicable to the use of any of the service channels.

#### 1. Transactions during non-business hours

All Instructions given outside of business hours on Bank Business Days or during such time when a black rainstorm or typhoon no. 8 (or above) signal is hoisted will be treated as being given on the next Bank Business Day.

#### 2. Personal Identification Number (PIN)

2.1 The Bank may issue a PIN to the Customer for accessing a service channel. The PIN is issued and delivered to the Customer at its own risk.

2.2 The Customer undertakes to ensure that all necessary precautions are taken to keep the PIN confidential. In no circumstances should the Customer disclose the PIN to any other person. In particular, the Customer must:

- (a) destroy the original printed copy of the PIN;
- (b) not allow anyone else to use their PIN;
- (c) not write down or record the PIN without disguising it; and
- (d) change the PIN regularly for protection.

**2.3 Access of any service channel by any person (whether or not authorised by the Customer) with the correct PIN is deemed as use by the Customer and any Instructions received by the Bank pursuant to such access is binding on the Customer.**

2.4 The Bank is not under any duty to verify the identity of the person giving any Instructions through any service channel with the correct PIN, but may, as the Bank sees fit, require the provision of personal identification information and satisfy an identity verification process before carrying out any Instructions.

2.5 If the Account is a joint account or if the Customer is a limited company or an Unincorporated Entity, any person accessing any service channel with the correct PIN is entitled to give Instructions to the Bank singly irrespective of the signing authority under the Accounts and all such Instructions are binding on the Customer. The Customer is solely responsible for the selection and control of person(s) having access to the PIN.

#### 3. Unauthorised use /loss of PIN

The Customer must, immediately after becoming aware of any loss or actual or possible unauthorised use or disclosure of the PIN, change the PIN and notify the Bank. **The Bank assumes no liability or responsibility to the Customer or any third party for the consequences arising out of or in connection with such loss or actual or possible unauthorised use or disclosure, except in the case of fraud, negligence or wilful default of the Bank or Bank Personnel and only to the extent of direct and reasonably foreseeable Loss (if any).** The Customer is fully responsible for all Instructions given through any service channel with the correct PIN, whether or not authorised by the Customer, prior to the Bank's receipt of such notice and having reasonable time to act on it. If the Customer had acted fraudulently or negligently (including failing to take all necessary precautions to protect and keep the PIN confidential), the Customer is responsible for all Instructions given, whether before or after such notice and agrees to indemnify the Bank on demand for all Losses in respect of or relating to or in connection with the use of the PIN, whether or not authorised by

the Customer.

#### **4. Liability of the Bank**

4.1 The Bank, any Bank Personnel and/or any Member Bank assumes no liability or responsibility to the Customer or any third party for any consequences arising out of or in connection with any transaction involving the use of Card or PIN not being honoured or if there is any malfunction and/or failure of an ATM, PIN or Card, except:

- (a) in the event of misuse, when the Card or PIN has not been received by the Customer;
- (b) for all transactions not authorised by the Customer after the Bank has been given adequate notification that the Card or PIN has been lost or stolen or that someone else knows the PIN (as provided in Clause G3 above) and the Bank has had reasonable time to act on it;
- (c) when faults have occurred in the terminals or other systems used, which causes the Customer to suffer direct loss unless the fault was obvious or advised by a message or notice on the ATM display; or
- (d) when transactions are made through the use of, in the Bank's determination, a counterfeit Card,

and in any such case, such liability is strictly limited to direct and reasonably foreseeable loss (if any).

4.2 The Customer is liable in respect of all transactions using its Card and/or PIN, except those for which the Bank is responsible, as described in Clause 4.1 above.

4.3 In using any point of sales terminal, no claim by the Customer against a merchant or any other person may be the subject of set-off or counterclaim against the Bank and the Bank is not responsible in any way for the goods and/or services supplied to the Customer by or other acts or omissions of such merchant or other person.

## **H. Phone Banking Services**

**This Section H of Part IV is applicable to Customers holding a Phone Banking Service Account (“PBS Account”).**

### **1. Use of the Phone Banking Services**

Phone Banking Services must be accessed with the PIN issued for the PBS Account. The Customer may use the Phone Banking Services to request or accept specified Services and to give Instructions.

### **2. Joint Account**

Any requirement in the mandate for joint signatories is regarded as satisfied by the use of the correct PIN for Phone Banking Services.

### **3. Acceptance of Instructions**

3.1 Instructions given through the Phone Banking Services once acknowledged by the Bank are treated as accepted and binding and any amendment, cancellation or reversal is not normally possible and will be at the discretion of the Bank.

3.2 The Bank reserves the right to reject certain types of Instructions to be given through the Phone Banking Services.

### **4. Confirmation of Instructions**

Each Instruction given through Phone Banking Services will be confirmed by a confirmation reference number, if applicable, given during the same telephone call.

### **5. Exchange Rate / Interest Rate**

Any exchange rate or interest rate quoted is for reference only and shall not be binding on the Bank. Where the Bank confirms an exchange rate or interest rate for the purpose of a transaction, such confirmed exchange rate or interest rate, if accepted by the Customer through Phone Banking Services, shall be binding on the Customer notwithstanding that a different exchange rate or interest rate might have been quoted by the Bank through other means of communication.

## **I. Automatic Teller Machine Card Services**

### **Applicable to Customers issued with Cards.**

**The use of the DBS Octopus ATM Card is also subject to the DBS Octopus ATM Card Terms and Condition and other terms and conditions imposed by Octopus Card Limited and Octopus Rewards Limited in addition to these Terms and Conditions.**

#### **1. Availability**

- (a) Availability of ATM Services is subject to the Bank's approval, including approval of the Customer's selected PIN and Accounts that can be operated through ATM Services.
- (b) The Customer must activate each Card in accordance with the Bank's requirements for use of ATM Services at ATMs outside Hong Kong.

#### **2. Termination**

- 2.1 The Customer may terminate ATM Services with written notice to the Bank. ATM Services will be terminated automatically if the Card is cancelled.
- 2.2 The Bank may terminate ATM Services at any time at its discretion and without giving any reason or prior notice to the Customer, by suspending the use of the Card or the ATM Service or by refusing to renew the Card.
- 2.3 The Card is the property of the Bank and must be surrendered upon request.

#### **3. Cash / Cheque deposit by ATM**

Hong Kong Dollar cash (but not coins) and/or cheques may be deposited by the use of the Card at ATMs of the Bank provided always that:

- (a) cash deposits will be credited to the Account after verification by the Bank (which may not be on the same day), and the Customer cannot withdraw or utilise the deposit unless it is so credited;
- (b) cheques deposited are accepted for collection only and the proceeds will not be available for withdrawal or transfer until after the cheques have been duly cleared;
- (c) the advice issued by the ATM upon acceptance of a deposit represents what the Customer has purported to have deposited and does not bind the Bank as to its correctness; and
- (d) the Customer agrees to indemnify the Bank and keep the Bank fully indemnified against all Losses which may be suffered or incurred by the Bank arising from or relating to the making of deposits using the Card, and ATM.

#### **4. Use of the Card**

- 4.1 The Card incorporates ATM functions to operate the Current Account and/or Savings Accounts. It is also accepted by ATMs installed by or belonging to the Bank or any Member Bank and can be used to make payment at point of sale terminals as recognised by the Bank as notified to the Customer from time to time, EPS, PPS and to deposit cash and cheques via ATM and to operate any other services that may from time to time be provided.
- 4.2 The Customer irrevocably authorises the Bank to debit (without notice to the Customer) from any Account the amount of any transaction arising from use of the Card and PIN, whether or not made with the knowledge or authority of the Customer, save only where the Bank is responsible for the transaction, as described in Clause G4.
- 4.3 The Card is issued and delivered to the Customer at its own risk. The Card is non-transferable and must only be used by the Customer. The Customer must safeguard the PIN in accordance with Clauses G2 and G3 above. The Card should be used in conjunction with the

PIN. The Customer agrees to keep the Card safe and never write down the PIN on the Card or on anything usually kept with or near it.

- 4.4 The Customer is required to sign on the signature panel on the back of the Card. A merchant may verify the Customer's signature against that signed on the signature panel.

## **5. Insufficient funds**

The Card shall only be used for cash withdrawal or transfer if there are sufficient funds in the Customer's relevant Account failing which, the Customer shall repay to the Bank immediately on demand such amount overdrawn together with bank charges and interest at the rate shown in the Bank Charges Schedule.

## **6. Transaction processing**

- 6.1 The Bank shall at its discretion determine the transaction date of every transaction and may reject any transaction and/or any cheque presented via the ATM.
- 6.2 Card transactions which are effected in currencies other than the currency of the Account will be debited to the Account after conversion into the currency of the Account at such exchange rate as shall be determined by the Bank.

## **7. Transaction Records**

- 7.1 Fund transfers and withdrawal transactions and any other transaction carried out by the use of the Card will be shown on the statement or passbook for Current Account and Savings Account respectively.
- 7.2 The records of the Bank and/or any other Member Bank in relation to any transaction made by the user of the Card on any ATM and/ or point of sale terminals (save for manifest error or fraud, or negligence on the part of the Bank or Bank Personnel) is conclusively binding on the Customer.

## **8. Limits on the usage of the Card**

The Bank is entitled from time to time to determine and impose any limit whether in amount, frequency of use or otherwise on the use of the Card.

## **9. Charges**

The Bank is entitled to levy a reasonable charge for issuance, re-issuance and use of the Card or PIN, as shown in the Bank Charges Schedule.

## **J. Internet Banking Services**

Please refer to the DBS iBanking Terms and Conditions for terms and conditions applicable to the use of the internet banking services.

## K. e-Cheques

### 1. e-Cheques Deposit Services provisions - applicability and definitions

1.1 This Section K of Part IV applies to the Bank's services relating to e-Cheques. Other agreements between the Customer and the Bank applicable to paper cheques or generally to the Bank's services ("**Other Agreements**") continue to apply to e-Cheques and the Bank's e-Cheques Deposit Services to the extent that they are relevant and not inconsistent with the provisions in this Section K. The provisions of this Section K prevail if there is any inconsistency between them and provisions in the Other Agreements with respect to the e-Cheques Deposit Services.

1.2 For the purpose of the e-Cheques Deposit Services, the following terms have the following meanings:

**"Bills of Exchange Ordinance"** means the Bills of Exchange Ordinance (Cap. 19, Laws of Hong Kong), as may be amended from time to time.

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

**"e-Cheque"** has the meaning ascribed to it in the e-Cheque Drop Box Terms.

**"e-Cheques Deposit Services"** mean the services offered by the Bank to customers from time to time for depositing e-Cheques.

**"e-Cheque Drop Box"** or **"e-Cheque Drop Box Service"** has the meaning ascribed to it in the e-Cheque Drop Box Terms.

**"e-Cheque Drop Box Account"** has the meaning ascribed to it in the e-Cheque Drop Box Terms.

**"e-Cheque Drop Box Terms"** means all the terms and conditions prescribed by HKICL from time to time for governing the e-Cheque Drop Box Service provided by HKICL 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 HKICL 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.

**"Payer Bank"** has the meaning ascribed to it in the e-Cheque Drop Box Terms.

### 2. Nature and scope of e-Cheques Deposit Services

2.1 The Bank may provide e-Cheques Deposit Services at its discretion. If the Bank provides e-Cheques Deposit Services to a Customer, the Customer may deposit e-Cheques. In order to use the e-Cheques Deposit Services, the Customer has to provide such information and documents and accept such terms and conditions which may be required or prescribed by the Bank and HKICL respectively from time to time. The Customer may also be required to sign forms and documents prescribed by the Bank from time to time.

2.2 e-Cheques Deposit Services allow the Customer and other persons to present e-Cheques (whether payable to the Customer 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 HKICL or using the Bank's Deposit Channels, in accordance with Clause K3 below.



- 2.3 The Bank may provide e-Cheques Deposit Services relating to e-Cheques that are issued in any currency specified by the Bank from time to time, including Hong Kong dollars, US dollars or Renminbi.
- 2.4 The Bank has the right to set or vary from time to time the conditions for using the e-Cheques Deposit Services. These conditions may include the following (or any of them):
- (a) the service hours of the e-Cheques Deposit Services (including cut-off times for presenting e-Cheques); and
  - (b) any fees and charges payable by the Customer for the e-Cheques Deposit Services.

### **3. e-Cheques Deposit Services**

- 3.1 The e-Cheques 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 HKICL or using the Bank's Deposit Channels.

#### **3.2 e-Cheque Drop Box Service**

- (a) The e-Cheque Drop Box Service is provided by HKICL. The Customer is bound by the e-Cheque Drop Box Terms in relation to its use of the e-Cheque Drop Box Service. The Customer is solely responsible for performing its obligations under the e-Cheque Drop Box Terms.
- (b) In order to use the e-Cheque Drop Box Service, the Customer 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 Customer is allowed by the e-Cheque Drop Box Terms to register an e-Cheque Drop Box Account with a Payee Bank Account that is its same-name account or an account other than its same-name account. The Customer is responsible for the presentment of all e-Cheques by it or any other person using its e-Cheque Drop Box Account (including presentment of any e-Cheques to a Payee Bank Account other than its same-name account).
- (c) 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 have no obligation to) provide reasonable assistance to the Customer. 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 Customer's request, the Bank may (but have 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 Customer's e-Cheque Drop Box Account.
- (d) 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 HKICL. Unless otherwise stated in the e-Cheque Drop Box Terms, the Customer 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 Customer or any other person may incur or suffer arising from or in connection with the use of the e-Cheque Drop Box Service.

#### **3.3 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.

### **4. Handling of e-Cheques, associated risks and the Bank's liabilities**

#### **4.1 Handling of e-Cheques**

The Customer 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 Customer. Accordingly, the Bank is entitled to collect any e-Cheque payable to the Customer 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 other manner for presentment of cheques.

#### 4.2 Restriction of the Bank's liability

Without reducing the effect of the other provisions of the Other Agreements:

- (a) the Bank is not liable for loss, damage or expense of any kind which the Customer or any other person may incur or suffer arising from or in connection with the use of the e-Cheques Deposit Services or the handling, processing, presentment, payment, collection, clearance or settlement of e-Cheques presented by the Customer or any other person using the Deposit Channels provided by the Bank to the Customer, 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 Bank Personnel;
- (b) in particular and for clarity, the Bank is not liable for loss, damage or expense of any kind which the Customer or any other person may incur or suffer arising from or in connection with the following (or any of them):
  - (i) use of the e-Cheque Drop Box Service by the Customer or any other person, or the e-Cheque Drop Box Terms;
  - (ii) the Customer's failure to comply with its obligations relating to the e-Cheques Deposit Services;
  - (iii) presentment of any e-Cheque payable to the Customer in accordance with the Industry Rules and Procedures despite the provisions of the Bills of Exchange Ordinance; and
  - (iv) any failure or delay in providing the e-Cheques Deposit Services, or any error or disruption relating to the e-Cheques Deposit Services, caused by or attributed to any circumstance beyond the Bank's reasonable control; and
- (c) in no event will the Bank be liable to the Customer or any other person for any loss of profit or any special, indirect, consequential or punitive loss or damages.

#### 4.3 The Customer's confirmation and indemnity

- (a) The Customer accepts the restriction of liabilities and disclaimers imposed by the Bank and HKICL in relation to the e-Cheques Deposit Services and the services provided by HKICL respectively. The Customer accepts and agrees to bear the risks and the liabilities for depositing e-Cheques.
- (b) Without reducing the effect of any indemnity given by the Customer under the Other Agreements or any other rights or remedies that the Bank may have, the Customer will indemnify the Bank and its 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-Cheques Deposit Services or the Customer's use of the e-Cheques Deposit Services.
- (c) 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 its officers, employees or agents.

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

## **L. Safe Deposit Box**

Please refer to the DBS Safe Deposit Box Terms and Conditions for terms and conditions applicable to the use of the safe deposit box services.

## M. Bank Services relating to Faster Payment System

### 1. Bank Services relating to Faster Payment System

(a) The Bank provides the FPS Services to Customers to facilitate payments and funds transfers using the Faster Payment System. The Faster Payment System is provided and operated by HKICL. The FPS Services are therefore subject to the rules, guidelines and procedures imposed by HKICL in relation to the Faster Payment System from time to time. This Section M of Part IV governs the Bank's provision to the Customer and the Customer's use of the FPS Services. Unless otherwise specified, the provisions of this Section M of Part IV shall prevail if there is any inconsistency between them and the rest of these Terms and Conditions with respect to the FPS Services.

(b) **By requesting the Bank to register any Proxy ID for the Customer in the HKICL FPS or to set up any eDDA for the Customer using the HKICL FPS, or by initiating any payment or funds transfer using the HKICL FPS, the Customer will be regarded as having accepted and will be bound by the provisions of this Section M of Part IV. The Customer should not request the Bank to register any Proxy ID or set up any eDDA for the Customer and should not initiate any payment or funds transfer using the HKICL FPS unless the Customer accepts the provisions of this Section M of Part IV.**

(c) In this Section M of Part IV, the following terms have the following meanings:

**"Addressing Service"** means a service provided by HKICL as part of HKICL FPS to facilitate customers of Participants to use predefined Proxy ID instead of account number to identify the destination of a payment or funds transfer instruction and other communications for the purpose of HKICL FPS.

**"FPS Services"** means the services (including the QR Code Services) provided by the Bank to Customers from time to time to facilitate payments and funds transfers using HKICL FPS and the Addressing Service, eDDA Service and any other services and facilities provided by HKICL in connection with the Faster Payment System from time to time.

**"Default Account"** means the account maintained by the Customer with the Bank or any other Participant and set as the default account for receiving payment or funds using HKICL FPS or (if and to the extent specified or permitted by the rules, guidelines and procedures of HKICL) for debiting payment or funds using HKICL FPS.

**"eDDA"** means a direct debit authorisation set up by electronic means using HKICL FPS.

**"eDDA Service"** means a service provided by HKICL as part of HKICL FPS to facilitate customers of Participants to set up direct debit authorisation.

**"FPS Identifier"** means a unique random number generated by HKICL FPS to be associated with the account of a customer of a Participant.

**"HKICL FPS" or "Faster Payment System"** means the Faster Payment System and related facilities and services provided, managed and operated by HKICL from time to time for (i) processing direct debits and credits, funds transfers and other payment transactions and (ii) exchanging and processing instructions relating to eDDA Service and Addressing Service.

**"Participant"** means a participant of HKICL FPS which may be a bank or other financial institution, a retail payment system operator, a licensed stored value facility, or any other person accepted by HKICL as a participant of HKICL FPS from time to time.

**Proxy ID"** means the identifiers which may be accepted by HKICL for registration in the

Addressing Service to identify the account of a customer of a Participant, including the mobile phone number or email address of the customer, or the FPS Identifier.

**"QR Code Services"** means the QR code and the associated payment and funds transfer services provided by the Bank to Customers from time to time.

**"Regulatory Requirement"** means any law, regulation or court order, or any rule, direction, guideline, code, notice or restriction (whether or not having the force of law) issued by any regulatory authority, governmental agency (including tax authority), clearing or settlement bank or exchange, or industry or self-regulatory body, whether in or outside Hong Kong, to which HKICL, the Bank or any other Participant or the respective affiliates or group companies, or the Customers are subject or are expected to comply with from time to time.

## **2. Scope of FPS Services and conditions for use**

- (a) The Bank provides the FPS Services to Customers to facilitate payment and funds transfer using the Faster Payment System and the Addressing Service, eDDA Service and any other services and facilities provided by HKICL in connection with the Faster Payment System from time to time. The Bank has the right to set or vary from time to time the scope of the FPS Services and the conditions and procedures for using the FPS Services. In order to use the FPS Services, the Customer has to accept and follow these conditions and procedures.
- (b) The Bank may provide the FPS Services to facilitate payment and funds transfer in any currency specified by the Bank from time to time, including Hong Kong dollars and Renminbi.
- (c) **In order to enable the Bank to handle an instruction for the Customer in relation to payment or funds transfer using HKICL FPS, the Customer has to provide or input the necessary information and complete the process by such means or in such manner prescribed by the Bank from time to time.**
- (d) All payment or funds transfer transactions using HKICL FPS will be processed, cleared and settled under the interbank clearing and settlement arrangements including without limitation the arrangements in relation to the Faster Payment System agreed by the Participants and HKICL from time to time.
- (e) The Bank reserves the right to suspend or terminate the FPS Services in whole or in part at any time without giving notice or reason.

## **3. Addressing Service - registration and amendment of Proxy ID and related records**

- (a) In order to use the Addressing Service to receive payment or funds transfer using HKICL FPS, the Customer has to register the Customer's Proxy ID in the HKICL FPS. The Bank has discretion as to whether to offer the FPS Identifier as Proxy ID to the Customer.
- (b) Registration and amendment of Proxy ID and related records in the HKICL FPS must be done in accordance with the applicable rules, guidelines and procedures imposed by HKICL from time to time. In order to enable the Bank to register or amend Proxy ID or any related records for the Customer, the Customer has to provide or input the necessary information and complete the registration process by such means or in such manner prescribed by the Bank from time to time.
- (c) **At any time where the same Proxy ID is registered by the Customer for more than one account (whether maintained with the Bank or with any other Participant), the Customer must set one account as the Default Account. By instructing the Bank to set or change the Default Account for the Customer, the Customer consents and authorises the Bank to submit the request on the Customer's behalf to HKICL FPS to override the existing Default Account registered in HKICL FPS.**

#### **4. eDDA Service**

In order to enable the Bank to handle a request for the Customer in relation to eDDA setup, the Customer has to provide or input the necessary information and complete the process by such means or in such manner prescribed by the Bank from time to time. The prescribed process may include requiring the relevant parties to set up the eDDA using their respective account numbers or customer identification numbers or codes. For the avoidance of doubt, a Proxy ID is not intended for verifying eDDA setup. Any amendment of a Proxy ID and the related records or termination of a Proxy ID after an eDDA setup will not affect that eDDA.

#### **5. The Customer's responsibility**

##### **(a) Present genuine owner or authorised user of Proxy ID and accounts**

The Customer can only register the Customer's own Proxy ID for the Customer's own accounts or set up eDDA for the Customer's own accounts. The Customer must be the present genuine owner or authorised user of each Proxy ID and each account provided to the Bank for registration in the Addressing Service and the eDDA Service. By instructing the Bank to register any Proxy ID or any account for the Customer in relation to the Faster Payment System, the Customer confirms that the Customer is the present genuine owner or authorised user of the relevant Proxy ID or account. This is particularly important for mobile phone numbers as they may be recycled in Hong Kong.

##### **(b) Proxy ID**

Any Proxy ID to be registered by the Customer for the Addressing Service must satisfy any applicable requirements imposed by HKICL from time to time. For example, HKICL may require the mobile phone number or email address to be registered as Proxy ID to be the same number or address registered by the Customer as contact information on the Bank's records at the relevant time. The Customer understands and agrees that the Bank, other Participants and HKICL have the right and discretion without giving notice to deregister any Proxy ID that is not correct or up-to-date in accordance with available information without the Customer's consent.

##### **(c) Correct information**

(i) The Customer has to ensure that all the information provided by the Customer for registration or amendment of Proxy ID (or any related records) or for any eDDA setup is correct, complete, up-to-date and not misleading. The Customer has to notify the Bank as soon as reasonably practicable of any changes or updates to such information by such means or in such manner specified by the Bank from time to time.

(ii) The Customer is fully responsible for using the correct and up-to-date Proxy ID and related records in giving each payment or funds transfer instruction. The Customer is solely liable for and will hold the Bank harmless from any incorrect payment or transfer effected by the Bank and HKICL FPS due to incorrect or outdated Proxy ID or related records.

##### **(d) Timely updates**

The Customer is fully responsible for giving instructions and information changes or updates to the Bank on a timely basis for amending the Customer's Proxy ID (or related records) or any eDDA setup, including without limitation changing the Customer's Default Account, or terminating any Proxy ID or eDDA. The Customer acknowledges that keeping the Customer's Proxy ID, eDDA and all related records up-to-date is critical for ensuring effective execution of payment and funds transfer instructions and for avoiding incorrect payment or transfer due to

incorrect or outdated Proxy ID, eDDA or related records.

**(e) Change of Default Account**

If an account is terminated as the Default Account by the Customer or by the relevant Participant for any reason (including suspension or termination of the account), the system of HKICL will automatically assign the most recently registered record in the Addressing Service that is associated with the same Proxy ID to be the Default Account. If the Customer wishes to set another account as the Default Account, the Customer has to change the registration through the Participant where the Customer maintains that other account.

**(f) Transactions binding on the Customer**

(i) For any payment or funds transfer, once the Customer confirms the details of a transaction and submit instruction to the Bank, such instruction and any resulting transaction is final, irrevocable and binding on the Customer.

(ii) For any Proxy ID registration or eDDA setup, once the Customer submits an instruction to the Bank, such instruction is irrevocable and binding on the Customer. The Customer may amend or cancel any Proxy ID or eDDA setup in accordance with the procedures and requirements prescribed by the Bank from time to time.

**(g) Use FPS Services responsibly**

The Customer must use the FPS Services in a responsible manner. In particular, the Customer has to comply with the following obligations:

(i) The Customer must comply with all Regulatory Requirements that govern the Customer's use of the FPS Services, including collecting, using and handling the personal data and other information relating to any other person in compliance with the Regulatory Requirements protecting data privacy. The Customer must not use the FPS Services for any unlawful purposes or any purposes other than those authorised or contemplated in the rules, guidelines and procedures of HKICL.

(ii) In sending remarks or messages to be displayed to recipients or counterparties of the Customer's payment or funds transfer instructions or eDDA setup using HKICL FPS, the Customer should mask the name or other data of such recipients or counterparties to prevent unauthorised display or disclosure of any personal data or confidential data.

(iii) If the Bank offers the FPS Identifier as Proxy ID to the Customer, the Customer should not repeatedly cancel the registration and request for generation of another FPS Identifier in an attempt to generate a number or value that the Customer desires.

**(h) Other obligations regarding payments and funds transfers**

Any instruction given by the Customer in relation to the FPS Services will be handled by the Bank in accordance with this Section M of Part IV and the applicable provisions in these Terms and Conditions. The Customer has to comply with the other obligations with respect to payments, funds transfers and direct debit authorisations, including without limitation maintaining sufficient funds in the relevant accounts for settling payment and funds transfer instructions from time to time.

**(i) The Customer is responsible for the Customer's authorised persons**

Where the Customer authorises any other person to give instructions or requests to the Bank in connection with the use of the FPS Services (whether the Customer



**is an individual, a company, a corporation, or a sole proprietorship or partnership firm or any other unincorporated body):**

- (i) the Customer is responsible for all the acts and omissions of each person authorised by the Customer;**
- (ii) any instruction or request received by the Bank, believed by the Bank in good faith to be given by the Customer or any person authorised by the Customer, will be irrevocable and binding on the Customer; and**
- (iii) the Customer is also responsible for ensuring that each person authorised by the Customer will comply with the provisions of this Section M of Part IV that are applicable to him/her when acting on the Customer's behalf.**

## **6. The Bank's responsibility and restriction of liability**

- (a) The Bank will process and submit the Customer's instructions and requests to HKICL FPS in accordance with the applicable rules, guidelines and procedures imposed by HKICL from time to time. HKICL FPS has the right to process and execute the Customer's instructions and requests in such sequence or manner as HKICL considers appropriate. The Bank has no control over the operation of HKICL FPS nor the timing on which the Customer's instructions or requests are executed by HKICL FPS. Where the Bank receives status update notifications involving any of the Customer's Proxy ID (or related records) or eDDA setup or any other matter relating to HKICL FPS from or through HKICL FPS from time to time, the Bank will notify the Customer accordingly by such means and at such time as the Bank considers appropriate.**
- (b) Without reducing the effect of Clause 6(a) above or the other provisions of these Terms and Conditions:**
  - (i) the Bank is not liable for loss, damage or expense of any kind which the Customer or any other person may incur or suffer arising from or in connection with the use of the FPS Services or the processing or execution of instructions or requests given by the Customer in relation to the FPS Services or HKICL FPS, 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) for clarity, the Bank is not liable for loss, damage or expense of any kind which the Customer or any other person may incur or suffer arising from or in connection with one or more of the following:**
    - (1) the Customer's failure to comply with the Customer's obligations relating to the FPS Services; and**
    - (2) any delay, unavailability, disruption, failure, error of or caused by HKICL FPS, or arising from any circumstances beyond the Bank's reasonable control; and**
  - (iii) in no event will the Bank, any Affiliate, the Bank's licensors, and the Bank's and their respective officers, employees and agents be liable to the Customer or any other person for any loss of profit or any special, indirect, incidental, consequential or punitive loss or damages (whether or not they were foreseeable or likely to occur).**
- (c) The Customer's confirmation and indemnity**
  - (i) Without reducing the effect of any indemnity given by the Customer under these Terms and Conditions or any other rights or remedies that the Bank may have, the Customer 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 FPS Services or the Customer's use of the FPS Services.

- (ii) 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 willful default or that of the Bank's officers, employees or agents. The above indemnity shall continue to have effect after the termination of the FPS Services.

## **7. Collection and use of Customer Information**

- (a) For the purposes of using the FPS Services, the Customer may be required to provide the Bank with the personal data and other information relating to one or more of the following persons from time to time:

- (i) the Customer;
- (ii) the recipient of any payment or funds transfer to be made by the Customer, or the counterparty of any eDDA to be set up by the Customer; and
- (iii) where the Customer is a company, a corporation, or a sole proprietorship or partnership firm or any other unincorporated body, any of the Customer's directors, officers, employees, authorised persons and representatives,

all personal data and information provided to the Bank or compiled by the Bank from time to time in connection with the FPS Services are collectively referred to as "Customer Information".

- (b) The Customer agrees (and, where applicable, for and on behalf of each of the Customer's directors, officers, employees, authorised persons and representatives) that the Bank may collect, use, process, retain or transfer any of the Customer Information for the purposes of the FPS Services. These purposes include without limitation one or more of the following:

- (i) providing the FPS Services to the Customer, maintaining and operating the FPS Services;
- (ii) processing and executing the Customer's instructions and requests in relation to the FPS Services from time to time;
- (iii) disclosing or transferring the Customer Information to HKICL and other Participants for their use for the purpose of the operation of HKICL FPS;
- (iv) meeting the requirements to make disclosure under any Regulatory Requirements; and
- (v) purposes relating to any of the above.

- (c) The Customer understands and agrees that the Customer Information may be further disclosed or transferred by HKICL, the Bank or any other Participants to their customers and any other third parties who are users of HKICL FPS for the purposes of providing and operating the Addressing Service and the eDDA Service.

- (d) If the Customer Information includes personal data or other information of any person other than the Customer (including any persons specified in Clauses 7(a)(ii) or 7(a)(iii) above), the Customer confirms that the Customer will obtain and has obtained the consent from such person regarding the use (including disclosure and transfer) of his/her personal data and other information by HKICL, the Bank and the other Participants as specified in this Clause.

## 8. QR Code Services

- (a) This Clause 8 applies to the use of the QR Code Services, together with these Terms and Conditions and any other terms and conditions that apply to the mobile application ("App") through which the Customer accesses the QR Code Services.
- (b) Using the QR Code Services and the Customer's responsibility
  - (i) The QR Code Services allow the Customer to scan a QR code provided by the Bank or by another person to automatically capture the payment or funds transfer data without the need for manually entering the data. Any QR code provided by another person must meet the specifications and standards prescribed by HKICL in order to be accepted. **The Customer is fully responsible for ensuring that the captured data is accurate and complete before confirming any payment or funds transfer instruction. The Bank is not responsible for any error contained in such payment or funds transfer data.**
  - (ii) The QR Code Services can be used on a mobile device running an operating system supported and specified by the Bank from time to time.
  - (iii) Updates to the QR Code Services may be issued periodically through the supplying app store for the App. For some devices, updates will be downloaded automatically. For other devices, the Customer will need to download the updates themselves. Depending on the update, the Customer may not be able to use the QR Code Services until the latest version has been downloaded. **The Customer is fully responsible for ensuring the latest version has been downloaded to the Customer's mobile device for the purpose of using the QR Code Services.**
  - (iv) The QR Code Services are intended for use by the Bank's customers only. The Bank has the right to cancel the Customer's account for the App and/or block the Customer from accessing the QR Code Services if the Bank discovers that the Customer is not eligible to use the QR Code Services.
  - (v) The QR Code Services are not intended for use in any jurisdiction where their use would be contrary to any law or regulation of that jurisdiction or where the Bank is not licensed or authorised to provide the QR Code Services.
  - (vi) **The Customer must comply with all applicable laws and regulations that govern the Customer's download of the App, or access or use of the App or the QR Code Services.**
- (c) **Security**
  - (i) **The Customer must not use the QR Code Services on any device or operating system that has been modified outside the mobile device or operating system vendor supported or warranted configurations. This includes devices that have been "jail-broken" or "rooted". A jail broken or rooted device means one that has been freed from the limitations imposed on it by the Customer's mobile service provider and the phone manufacturer without their approval. The use of the QR Code Services on a jail broken or rooted device may compromise security and lead to fraudulent transactions. Use of the QR Code Services in a jail broken or rooted device is entirely at the Customer's own risk and the Bank will not be liable for any losses or any other consequences suffered or incurred by the Customer as a result.**
  - (ii) **The Customer is fully responsible for all instructions or requests given by the Customer or any other person authorised by the Customer during the use of the QR Code Services.**
  - (iii) **The Customer is fully responsible for ensuring that the information shown or**

**stored on the Customer's mobile device is kept secure.**

- (iv) If the Customer knows or suspects that any other person knows the Customer's security details, or has used or tried to use them, or if the Customer's mobile device is lost or stolen, the Customer must notify the Bank as soon as reasonably practicable.**
- (d) The Bank's responsibility and restriction of liability**
  - (i) While the Bank makes commercially reasonable efforts to provide the QR Code Services, the Bank is not liable for any failure to provide the QR Code Services.
  - (ii) The QR Code Services are provided on an "as is" basis with no representation, guarantee or agreement of any kind as to their functionality. The Bank cannot guarantee that no viruses or other contaminating or destructive properties will be transmitted or that no damage will occur to the Customer's mobile device in the use of the QR Code Services. The Bank is not responsible for any loss the Customer may incur as a result of the Customer's use of the QR Code Services.
  - (iii) the Customer understands and agrees that:**
    - (1) The Customer uses the QR Code Services at the Customer's sole risk. To the maximum extent permitted by law, the Bank expressly disclaims all warranties and conditions of any kind, whether express or implied.**
    - (2) The Customer downloads or obtains any material or information through the use of the QR Code Services at the Customer's sole risk and discretion. The Customer is solely responsible for any damage to the Customer's computer or other device or loss of data resulting from downloading, obtaining or using such material or information.**
  - (iv) For the avoidance of doubt, nothing above is intended to exclude or restrict any condition, warranty, right or liability which may not be lawfully excluded or restricted.