

**Bank SinoPac**  
(永豐商業銀行股份有限公司)  
CE Number : ABR747

**TERMS AND CONDITIONS FOR AGENCY FOR**  
**SUBSCRIPTION OF SECURITIES**  
**(代理申購證券總約定書)**

These terms and conditions set out the rights and obligations of you, the Customer, and us, the Bank, in connection with the above matters contained or mentioned herein. All these terms and conditions are legally binding, so please read them through carefully before you agree to be bound by them.

**1. DEFINITIONS AND CONSTRUCTION**

**1.1 In these Terms :**

**"Application Form"**(申請書) means the written application or document (howsoever named) in a form prescribed by the Bank from time to time that sets out in Chinese and/or in English the terms of the Subscription Transaction and/or Securities Transaction for execution and submission by the Customer, provided that in the case of a Securities Transaction that involves shares, stocks, loan stocks or any other type of Securities as the Bank may prescribe from time to time, "Application Form" shall also mean the instructions and/or requests given by the Customer by telephone which are expressed to come from the Customer and which are honestly believed by the Bank to be so, even if they are not followed by written confirmation;

**"Bank"**(銀行) means Bank SinoPac (永豐商業銀行股份有限公司), a licensed bank under the Banking Ordinance (Cap.155 of the Laws of Hong Kong) and a registered institution (CE Number: ABR747) under the Securities and Futures Ordinance registered to carry on Type 1 (dealing in securities) and Type 4 (advising on securities) regulated activities, carrying on business in Hong Kong;

**"Confirmation"**(確認書) means, with respect to any Securities Transaction, a letter, notice or confirmation issued by the Bank confirming the relevant Subscription Transaction and the Bank's successful subscription of any Subscribed Securities on behalf of the Customer pursuant to these Terms and an Application Form;

**"Constitutive Document"**(產品相關說明) means, with respect to a Securities Transaction, any prospectus, memorandum and articles of association, operation memorandum, trust deed, declaration of trust, limited partnership agreement, scheme document, constitutive document, principal documents governing the formation of the

scheme, programme document, circular, offering circular, offer documents or information memorandum issued by the relevant Issuer or Dealer and any supplements or agenda thereto whether written in English, Chinese or other languages;

**"Customer"** (客戶) means the person or persons who has/have signed and/or specified as such in the Investment Account Opening Form and any legal or personal representative, executor, successor in title and/or permitted assign thereof, and where the Customer consists of more than one person means all of such persons collectively and any legal or personal representative, executor, successor in title and/or permitted assign thereof, and shall include its authorized account signatories where the context permits;

**"Dealer"** (交易商) means any company, corporation or financial institutions involving in any issue, allotment, subscription, distribution, placing or placement of Securities and shall include without limitation placing or placement manager or agent, arrangers, brokers, dealers, distributors, guarantors (保證機構) and custodians (保管機構);

**"Financial Product"** (金融產品) means, in this context, any securities as defined under the SFO;

**"Hong Kong"** (香港) means the Hong Kong Special Administrative Region of the People's Republic of China (中華人民共和國香港特別行政區);

**"Hong Kong Regulators"** (香港監管機構) means the Stock Exchange of Hong Kong Limited, Securities and Futures Commission ("SFC"), Hong Kong Monetary Authority and/or any other regulatory or supervisory authority having jurisdiction or regulatory or supervisory power or authority over dealing in Securities in Hong Kong;

**"Indemnified Person"** means any officer, director, employee, agent, delegate, nominee, correspondent or representative of the Bank;

**"Interests"** (權益) means all dividends, distributions, payments, interest, coupons, incomes, entitlements, returns or benefits relating, incidental or attached to the Subscribed Securities;

**"Investment Account"** (投資帳戶) means any account now or in future established and maintained by the Customer with the Bank and designated by the Bank to handle, deal in and hold, among others, the Securities Transactions, Subscription Transactions and Subscribed Securities;

**"Investment Account Opening Form"** (投資帳戶開戶表格) means the Investment Account Opening Form including the declaration, information, notes and statements thereto (such as any statement of personal information of a shareholder or other person) to be completed and signed by the Customer and, as the context requires, any amendments made thereto from time to time pursuant to these Terms;

**"Issuer"** (發行機構) means any bank, financial institution, deposit taker or acceptee, fund corporation, trustee, limited partnership, general partner, governmental authority,

statutory body, issuer or grantor of or relating to the Securities as approved by the Bank for the purpose of a Securities Transaction;

**"Liabilities"** (有關債務) means all monies, liabilities and obligations, whether actual or contingent, present or future, due, owing or incurred from or by the Customer to the Bank, its nominee, subsidiary or other associated company in connection with the Investment Account, the Settlement Account and/or these Terms (including, for the avoidance of doubt, the Schedules, where applicable) or for which the Customer may otherwise be or become liable to the Bank, its nominee, subsidiary or other associated company on any account or in any manner or currency whatsoever (whether alone or jointly with any other person and in whatever name, style or firm), together with interest from the date of demand to the date of payment, legal costs and all other costs, charges and expenses incurred by the Bank, its nominee, subsidiary or other associated company in connection with the recovery or attempted recovery of such monies, liabilities and obligations;

**"Market"** (市場) means any stock, securities or other exchange, market, over-the-counter market, responsible association of dealers or corporation, whether within or outside Hong Kong, so dealing in Securities as to provide a market for Securities;

**"Parties"** mean collectively the Bank and the Customer, and **"Party"** means each or any one of them;

**"Securities"** (證券) means (a) any shares, stocks, debentures, loan stocks, funds, bonds or notes of, or issued by, any body, whether incorporated or unincorporated, or a government or municipal government authority for the time being traded in a Market and acceptable to the Bank and may include, in the absolute discretion of the Bank, (i) rights, options or interests (whether described as units or otherwise) in or in respect of any of the foregoing; (ii) certificates of interest or participation in, temporary or interim certificates for, receipts for or warrants to subscribe for or purchase, any of the foregoing; or (b) securities as defined under the Securities and Futures Ordinance;

**"Securities and Futures Ordinance" or "the SFO"** (證券及期貨條例) means the Securities and Futures Ordinance (Cap. 571 of the Laws of Hong Kong);

**"Securities Transaction"** (證券買賣) means any agreement, subscription, acquisition, purchase or transaction to be made between the Bank and the Issuer or the Dealer in which the Bank will purchase, acquire, invest in, subscribe for, sell, exchange or otherwise dispose of any Securities and generally dealing in any and all kinds of Securities on behalf of the Customer pursuant to the Application Form, the Subscription Transaction and these Terms;

**"Settlement Account"** (結算帳戶) means the bank account opened and maintained by the Customer with the Bank and designated by the Customer for the purpose of handling, settling and clearing money transactions relating to the Subscription Transaction and the dealing in the Subscribed Securities, and other relating transactions;

**"Subscription Money"** ( 申購款項 ) bears the meaning as defined in Clause 4.2;

**"Subscription Price"** ( 申購金額 ) means the full amount of the subscription price representing the aggregate price for the relevant Subscribed Securities or any part thereof as referred to in the Application Form that the Customer has agreed to subscribe as indicated in the Application Form.

**"Subscribed Securities"**( 申購標的證券 ) means the Securities as purchased, acquired, or subscribed for by the Bank under a Securities Transaction and pursuant to these Terms, and as issued, allotted by the Issuer pursuant to such Securities Transaction, and includes the Subsequent Securities;

**"Subscription Transaction"** ( 申購買賣 ) bears the meaning as defined in Clause 4.4;

**"Subsequent Securities"** ( 繼後證券 ) means replacing, substituting, converted, consolidated shares, stock or securities in respect of or attributable to the Subscribed Securities or any new or further shares, stock or securities derived or originated from the Subscribed Securities;

**"Terms and Conditions"** ( 條款及條件 ) means, with respect to any Subscribed Securities, the terms and conditions of the terms sheet, the Constitutive Documents, offering document or circular, Securities instrument, subscription agreement or document, certificate or definitive Securities of that Subscribed Securities and the Securities Transaction relating thereto whether written in English, Chinese or other languages; and

**"these Terms"** ( 本總約定書 ) means this Terms and Conditions for Agency for Subscription of Securities ( 代理申購證券總約定書 ), the Investment Account Opening Form and, where applicable, notice of authorized account signatories, as from time to time amended or supplemented pursuant to Clause 15.

## 1.2 In these Terms :

- (a) The Schedule(s) (if any), Annexure(s) (if any) and Exhibit(s) (if any) to these Terms shall form part of these Terms and shall have the same force and effect as if expressly set out in the body of these Terms and any reference to these Terms shall, unless the context otherwise requires, include such Schedule(s) (if any), Annexure(s) (if any) and Exhibit(s) (if any).
- (b) Unless the contrary intention appears, references to Clause, Sub-clause, Paragraph, Schedule, Annexure and Exhibit are to clause, sub-clause, paragraph, schedule, annexure and exhibit to or of these Terms.
- (c) References to ordinance, statutes or statutory provisions shall where the context so admits or requires be construed as references to those ordinance, statutes or statutory provisions as respectively replaced, amended, consolidated, extended, or re-enacted or as their application is modified by other ordinance, statutes or statutory provisions from time to time and for the

time being in force, and shall include any subordinate legislation, rules or regulations made under such ordinance, statutes or statutory provisions.

- (d) Headings in these Terms are for convenience and reference only and shall not be construed to have any binding effect and shall be ignored in construction or interpretation of these Terms.
- (e) Unless the context otherwise requires, reference to the masculine gender includes the feminine and neuter gender and reference to the singular includes the plural and vice versa and reference to a person includes a company, institution, firm, partnership or other entity.
- (f) The expression the "Bank" shall, where the context permits, include its successors, personal representatives and permitted assigns.
- (g) Where the "Customer" includes or comprises two or more persons or corporations then all agreements, representations, warranties, indemnities, undertakings, commitments, acceptances, acknowledgments, guarantees, covenants, conditions and obligations (express or implied) of the "Customer" shall be or shall be deemed to be made and given by such persons or corporations jointly and severally.

## 2. **APPOINTMENT AND SCOPE OF AGENCY**

- 2.1 The Customer hereby appoints the Bank and the Bank agrees to act as the Customer's agent to :-
  - (a) effect and enter into Securities Transactions;
  - (b) act as custodian and administrator of the Subscribed Securities and do and perform such acts, matters, things as set out in Clause 6;
  - (c) do and perform such acts, matters, things, and exercise and enforce such powers, rights, discretion, benefits, interest as if the Bank were the registered and beneficial owner of the Subscribed Securities;
  - (d) do and perform such acts, matters, things and instructions as may be from time to time given by the Customer and accepted by the Bank;
  - (e) exercise and enforce such powers, rights, discretion, benefits, interest in relation or incidental to all or any of the above as the Bank thinks fit and proper; and
  - (f) do and perform such acts, matters, things, duties, obligations in relation or incidental to all or any of the above.
- 2.2 The Customer hereby irrevocably authorises the Bank to take such action on the Customer's behalf and to exercise such rights, remedies, powers and discretions as are specifically delegated to the Bank by these Terms, together with such powers and discretions as are reasonably incidental thereto. The Bank shall not, however, have any duties, obligations or liabilities to the Customer beyond those expressly stated in these Terms and except those obligations or liabilities directly and solely caused by the Bank's gross negligence or wilful misconduct. Nothing herein contained shall constitute the Bank as trustee for the Customer or a partnership between the Bank and the Customer.

- 2.3 The Customer hereby irrevocably authorises the Bank to exercise all voting rights and other rights and powers, if any, attached or pertaining to the Subscribed Securities in a manner as the Bank may see fit without prior notice to or consent from the Customer.
- 2.4 Notwithstanding the Bank's acceptance of the appointment as agent of the Customer under these Terms, the Bank may, in its sole and absolute discretion and without prior notice, decline to enter into any particular Subscription Transaction and/or Securities Transaction without giving any reason therefor. The Bank shall not be liable to the Customer for any loss whatsoever arising out of or in connection with its refusal to enter into any Subscription Transaction and/or Securities Transaction.
- 2.5 The Bank does not and shall not guarantee successful subscription, purchase or acquisition of the Subscribed Securities or otherwise completion of any Securities Transaction. The Bank shall not be liable (whether in contract, tort or otherwise) for any loss, expenses or damages suffered by the Customer as a result of any loss of opportunity owing to any cause whatsoever or due to the Bank's failing to perform its obligations hereunder by reason of any cause beyond its control, unless directly and solely caused by the Bank's gross negligence and wilful misconduct.
- 2.6 The Customer is not entitled to and shall not take any action or proceedings against any Indemnified Person in respect of any claim or action the Customer may have against the Bank or in respect of any act or omission of any kind by that Indemnified Person in connection with these Terms.

3. **NON-EXCLUSIVE AGENCY**

- 3.1 The Customer acknowledges and accepts that the Bank shall be at liberty from time to time without notice to the Customer to provide and enter into similar services and transactions contemplated hereunder to or with any other customers of the Bank. Without prejudice to the foregoing, at the time of application, purchase, acquisition or subscription for the Subscribed Securities on behalf of the Customer, the Bank may simultaneously apply, purchase, acquire or subscribe for the same Subscribed Securities on behalf of other customers of the Bank.
- 3.2 The Customer further agrees and accepts that the Bank may act on behalf of both the Customer and any other customers of the Bank in one single Securities Transaction with the Issuer or Dealer.
- 3.3 The benefits, rights, interest, title, obligations and liabilities of the Customer and any other customers of the Bank under and in any single Securities Transaction and Subscribed Securities shall be several. Where there are other customers of the Bank involved in a Securities Transaction and Subscribed Securities, the benefits, rights, interest, title, obligations and liabilities of the Customer under and in such Securities Transaction and Subscribed Securities shall be governed by the Application Form of the Customer.

4. **APPLICATION AND SUBSCRIPTION TRANSACTION**

- 4.1 The Customer shall make an application to subscribe for, purchase or acquire Securities by execution of an Application Form. The Bank shall be fully entitled to

rely on any Application Form delivered to the Bank which is complete and regular on its face as regards its contents. Each submission of an Application Form by the Customer shall constitute :-

- (a) an irrevocable and unconditional offer made by the Customer for the subscription, purchase or acquisition of the relevant Subscribed Securities or any part thereof as referred to in the Application Form;
- (b) an irrevocable and unconditional offer made by the Customer to the Bank to enter into a Subscription Transaction; and
- (c) an irrevocable and unconditional instruction to the Bank to enter into a Securities Transaction as contemplated by or in pursuance of the Application Form.

4.2 The Customer shall simultaneously with the submission of an Application Form pay to the Bank the subscription money (the "**Subscription Money**") being the aggregate amount of the Subscription Price together with all applicable tax or levy and commission and/or charges charged or requested by the Bank, Dealer and the Issuer or otherwise.

4.3 After receipt of an Application Form, the Bank shall as soon as reasonably practicable inform the Customer, whether orally or in writing, in the event that the Bank shall not enter into the particular Subscription Transaction. The Customer acknowledges that the Bank will incur costs and expenses in acting on any Application Form submitted and agrees that all Application Forms, once submitted, shall be irrevocable and the respective Subscription Money, once deposited with or otherwise paid to the Bank or its receiving agent as may be nominated by the Bank from time to time, shall not be withdrawn unless and until the Bank has informed him that the Bank shall not enter into that particular Subscription Transaction with the Customer or that the Securities Transaction as contemplated by or in pursuance of such Application Form has not been entered into or completed.

4.4 From time to time upon confirmation, whether made orally or in writing, to the Customer of a successful subscription of the Subscribed Securities pursuant to the relevant Securities Transaction, the Bank and the Customer shall conclusively enter into a Subscription Transaction (each, a "**Subscription Transaction**").

4.5 The Customer agrees, accepts and acknowledges that in respect of each Subscription Transaction entered into between the Bank and the Customer from time to time, such Subscription Transaction shall be entered into upon and subject to, and the Customer shall be bound by, the following provisions and in the following order of prevalence :-

- (a) the terms and conditions as contained in the Application Form;
- (b) the terms and conditions of these Terms;
- (c) the terms and conditions of the relevant Securities Transaction relating to such Subscription Transaction;
- (d) the Terms and Conditions;
- (e) all applicable rules, by-laws, regulations of the Market, clearing system on or through which the Subscription Transaction, Securities Transaction or any transaction relating to the Securities or Subscribed Securities is transacted, executed, cleared and settled;
- (f) all applicable laws, rules and regulations of government, statutory and regulatory bodies and agencies of the relevant jurisdiction; and

- (g) the practices of the Market in which the Subscription Transaction and the Securities Transaction is effected and carried out.
- 4.6 If the subscription as contained in a Subscription Transaction only constitutes a portion of the subscription as contained in the Securities Transaction relating to such Subscription Transaction and part of the subscription for the relevant Subscribed Securities, the rights, benefits, title, interest, entitlement, obligation and liability of the Customer of, in and under the Subscribed Securities shall be in proportion to the ratio of (i) the value of the principal amount subscribed by the Customer as stated in the Application Form bear to (ii) the principal amount of the Subscribed Securities.
- 4.7 Physical delivery of the Subscribed Securities to the Customer shall be subject to the sole and absolute discretion of the Bank. The Customer agrees and accepts that the issuance of a Confirmation by the Bank to the Customer in lieu of physical delivery of the Subscribed Securities shall be sufficient and satisfactory evidence of successful subscription of the Subscribed Securities on behalf of the Customer.
- 4.8 The Customer agrees that the Customer must examine and verify such Confirmation and will inform the Bank of any mistake, omission, disagreement or unauthorised transactions within 7 days from the date of the said Confirmation. If the Customer fails to do so, the Customer shall not be entitled to dispute any transaction or entry recorded in such Confirmation and accepts such Confirmation as final and conclusive and the same shall be binding on the Customer for all purposes.
- 4.9 For any Securities Transaction or Subscription Transaction in connection with derivative products (including futures contracts or options), the Bank shall deliver to the Customer (1) a statement in relation to the product specifications and any prospectus or other offering document covering such derivative products upon the Customer's request; and (2) a full explanation of margin procedures and the circumstances under which the Customer's positions may be closed without the Customer's consent.

## 5. **INVESTMENT ACCOUNT**

- 5.1 The Customer shall, when required by the Bank, open one or more Investment Accounts with the Bank for the purpose of, among others, holding in any such accounts all or any part of the Subscribed Securities and Interests that are or may be issued, distributed, or allotted. The Customer shall, when required by the Bank, open one or more Settlement Accounts with the Bank for the purpose of, among others, handling, settling and clearing money transactions relating to the Subscription Transactions and the Subscribed Securities, and other relating transactions.
- 5.2 The Customer agrees and accepts that the relevant Investment Account may be maintained in the form of a sub-account in the records of the Bank under a general account within the Bank in which the Subscribed Securities and Interests arising there from may be co-mingled with those of other customers of the Bank (but not with cash or Securities held for the Bank 's own account), in which case the Customer shall be entitled in common with the other customers to its proportionate share of the Subscribed Securities.



- 5.3 The Customer agrees that the Customer must examine and verify any statement of account provided by the Bank and will inform the Bank of any mistake, omission, disagreement or unauthorised transactions within 90 days from the date on which the said statement was sent. If the Customer fails to do so, the Customer shall not be entitled to dispute any transaction or entry recorded in such statements and accepts such statements as final and conclusive and the same shall be binding on the Customer for all purposes.

6. **CUSTODIAN AND ADMINISTRATOR**

- 6.1 The Customer hereby appoints the Bank and the Bank agrees to act as custodian and administrator of all Subscribed Securities and Interests for and on behalf of the Customer to do including but not limited to the following :-
- (a) register the Subscribed Securities in the name of the Bank, the Customer or the Bank's nominee or agent;
  - (b) administer, manage, deal with and maintain the Subscribed Securities;
  - (c) receive principal and Interests, whether in cash or in scrip or kind, on, relating to, in respect of and attributable to the Subscribed Securities and/or paid, allotted, issued, distributed or made by the Dealer and/or the Issuer;
  - (d) deal and liaise with the Dealers and the Issuers of the Subscribed Securities;
  - (e) transfer, deposit or place the Subscribed Securities in an account of the Bank or any other corporation or institution provides facilities for holding or custody of Securities and documents relating thereto;
  - (f) act as or do such acts as custodian and administrator of the Subscribed Securities may act or do from time to time;
  - (g) receive, deal with, hold, handle, settle and clear moneys of the Customer in relation to transactions or dealing under or pursuant to these Terms; and
  - (h) do and perform such acts, matters, things, duties, obligations in relation or incidental to all or any of the above.
- 6.2 On completion of the purchase or subscription of the Subscribed Securities, the Customer and the Bank shall procure the transfer or holding of the Subscribed Securities to the Bank as custodian and administrator of the Customer in respect of the Subscribed Securities.
- 6.3 The Bank is entitled to nominate any of its agent, nominee or associated company (the "**Bank's Agent**") to act as custodian and/or administrator of the Subscribed Securities for and on behalf or in substitution of the Bank, or to perform any of the services or functions of the Bank as custodian and administrator of the Subscribed Securities on such terms and conditions as it may deem fit. In such event, the provisions hereof relating to custodian and administrator shall be applicable to such Bank's Agent mutatis mutandis as if the Bank's Agent were the Bank. The authority, rights, powers and benefits of the Bank as custodian and administrator of the Subscribed Securities shall be to the benefits and favour of the Bank's Agent.
- 6.4 Any Subscribed Securities held by the Bank for custody or safekeeping pursuant to these Terms may, at the Bank's discretion, be deposited in safe custody with the Bank itself or in a designated account of the Bank with a bank or another institution which

provides facilities for the safe custody of Securities and documents relating thereto. The Subscribed Securities may be co-mingled with the Securities of other customers (but not with Securities held for the Bank's own account), in which case the Customer shall be entitled in common with the other customers to its proportionate share of such Securities or the rights thereto as are held by the Bank for the account of its customers.

- 6.5 The Customer acknowledges and agrees that Subscribed Securities from time to time acquired and/or held pursuant to these Terms through or in a clearance system (to be determined by the Bank from time to time) shall be held subject to and in accordance with the applicable rules, procedures and regulations of such clearance system from time to time in force.
- 6.6 Subject to Clause 6.7, the Bank shall, as soon as reasonably practicable after having been required to do so by written instructions from the Customer, transfer or deliver the Subscribed Securities to the Customer or its nominee, provided that in the case of Subscribed Securities that are shares, stocks, loan stocks or any other type of Securities as the Bank may prescribe from time to time, the Customer may give such instructions by telephone which are expressed to come from the Customer and which are honestly believed by the Bank to be so, even if they are not followed by written confirmation.
- 6.7 The obligations of the Bank in Clause 6.6 shall be subject to the other provisions of these Terms and to the right of the Bank to require that prior to any withdrawal by the Customer, the Customer discharges in full the **Liabilities**. The Bank may, without notice to the Customer, discharge any or all the Liabilities out of moneys standing to the credit of the Settlement Account and/or Investment Account prior to implementing any transfer or delivery pursuant to Clause 6.6 or otherwise may require payment thereof to be made by the Customer prior to implementing any registration or transfer pursuant to Clause 6.6.
- 6.8 The Customer hereby authorises the Bank to act on instructions relating to the Subscribed Securities, including the exercise of all voting and other rights and powers, if any, attached or pertaining to the Subscribed Securities. The Bank may decline to act on any instruction in its absolute discretion without giving any reason therefor or any instruction which is incomplete or ambiguous, or which is not received in sufficient time for the Bank to act thereon.
- 6.9 The Bank will pay all Interests of the Customer into the Settlement Account and/or Investment Account. If the Subscribed Securities in respect of which the Interests accrues form part of a larger holding of identical Securities held by the Bank for customers, then the Customer shall be entitled to the share and proportion of such Interests arising on the larger holding as equals the share or proportion of the Customer's holding of Subscribed Securities to the total larger holding of those Securities. The determination of the Bank as to the share or proportion of the Securities or Interests held by the Customer shall be final and conclusive, except in case of manifest numerical error.
- 6.10 If any rights issues, take-over offers, capitalisation issues, exercises of conversion or redemption or subscription rights, voting rights and other rights arise in relation to the

Subscribed Securities, the Bank or its nominee shall use reasonable endeavours to notify the Customer of the same and whether and by when any decision and/or payment in relation thereto is required by the Customer. Subject to receiving the Customer's instructions in time to act thereon (and, where payment is required, to receipt of required cleared funds) the Bank or its nominee shall arrange for action to be taken, and the Bank or its nominee shall credit the Investment Account and/or Settlement Account with the resulting Securities or cash (if any). If any action is required in respect of the Subscribed Securities and the Customer cannot be contacted or fails to give the Bank or its nominee punctual or adequate instructions for such action, the Customer hereby authorises the Bank or its nominee to act, provided that the Bank or its nominee shall be under no obligation to act, on the Customer's behalf in such manner as the Bank or its nominee shall in the Bank's or its nominee's absolute discretion think fit including exercising any rights in respect of Subscribed Securities of which the Customer is the beneficial owner but which are registered in the name of the Bank's or the Bank's nominee. The Bank and its nominee shall not be liable, in the absence of fraud or wilful default, for any action that the Bank or its nominee may, or may omit to, take in furtherance of such discretion.

- 6.11 The Customer hereby authorises the Bank or its nominee in connection with the Bank's or its nominee's custodian and/or administration services to take all such action as may be required to comply with applicable laws, rules, procedures, regulations and rules of exchanges or clearing systems, including withholding and/or making payment of tax or duties payable in respect of cash or Securities in the Settlement Account and/or Investment Account. The Customer acknowledges that neither the Bank nor its nominee shall be liable in respect of any call, instalment or other payment in relation to the Subscribed Securities held by the Bank or its nominee in the Settlement Account and/or Investment Account.
- 6.12 The Bank or its nominee shall levy charges as determined by the Bank or its nominee from time to time for the Bank's or its nominee's custodian and/or administration services together with all costs, expenses and disbursements incurred by the Bank or its nominee in connection with the custodian and/or administrator services provided hereunder. The Customer shall pay such charges, costs, expenses and disbursements on demand from the Bank and the Bank is authorised to deduct from the Settlement Account, if any, or other accounts maintained by the Customer with the Bank for effecting payment of the same.
- 6.13 The Customer hereby authorises the Bank to deposit, transfer or pay all or any part of the principal of the Subscribed Securities, Interests, proceeds of sale, proceeds of redemption, or moneys payable to the Customer under these Terms into the Settlement Account, if any, or any other account of the Customer maintained with the Bank.

## **7. REPRESENTATIONS AND WARRANTIES**

- 7.1 The Customer represents, warrants and declares to the Bank that :-
- (a) the Customer, if an individual, is at least 18 years old and not a U.S. citizen or resident;
  - (b) the Customer, if a company, is duly incorporated under the laws of the place

- of its incorporation and is validly existing and in good standing;
- (c) the Customer is not a U.S. person (as defined in Regulation S of the Securities Act of 1933 under the laws of the United States of America), and shall not acquire or hold the Subscribed Securities beneficially owned by or for a U.S. person or in violation of any applicable law;
  - (d) the Customer has all and full power, capacity, consents and authority to enter into the agreements and transactions constituted or contemplated by these Terms, any Subscription Transaction or any Securities Transaction and to exercise the Customer's rights and perform the Customer's obligations under these Terms. These Terms are legal, valid, binding and enforceable on the Customer in accordance with its terms;
  - (e) the Customer has read all the terms and conditions of these Terms and understands them fully, it has adequate financial expertise and resources to comply with such terms and conditions, and there is commercial justification for the Customer entering into Subscription Transaction with the Bank;
  - (f) the Customer is fully aware of the risks involved in the purchase, acquisition or subscription of the Subscribed Securities, and all Application Forms will be made and the Subscription Transactions will be entered into by the Customer in reliance upon the Customer's own judgment and at the risk of the Customer whether or not advice has been obtained from the Bank. The Customer understands that any recommendation given to the Customer by the Bank would be reasonably suitable for the Customer subject to Clause 12.3 below and the Customer acknowledges that it is the Customer's sole responsibility to assess and to satisfy itself that all Application Forms made and the Subscription Transactions entered into by the Customer are appropriate for the Customer itself;
  - (g) the Customer is the ultimate originator of all Securities Transactions and/or Subscription Transactions and is dealing on its own account as principal and beneficial owner of the Subscribed Securities and/or Securities and the Investment Account and that no one other than the Customer has any interest in the Subscribed Securities and/or Securities and the Investment Account;
  - (h) the Subscribed Securities and/or Securities are for the Customer's own investment purpose and the Customer will not offer to sell, sell or otherwise transfer the Subscribed Securities and/or Securities or any of the legal or beneficial interest therein to any other person;
  - (i) all the information, representations and warranties provided in the Investment Account Opening Form, and given or made by the Customer are complete, true and accurate at all times, and the Bank may rely on such information, representations and warranties until the Bank has received written notice from the Customer of any changes therein;
  - (j) the Customer has disclosed and declared to the Bank all the necessary information and documents which may affect the Bank's decision as to whether to act as the Customer's agent and/or to act as the Customer's custodian and administrator of the Subscribed Securities under and pursuant to these Terms; and
  - (k) the Customer has or will have good and unencumbered title as beneficial owner to all Securities which the Customer instructs the Bank to sell or otherwise dispose of.

7.2 The Customer shall forthwith notify and make known to the Bank in writing of any

changes in the information, representations and warranties provided in the Investment Account Opening Form, and provided, given or made by the Customer pursuant to these Terms or any agreement entered into pursuant to these Terms or relating to the Investment Account. The Bank shall reserve the right to decide whether to accept a Subscription Transaction and/or to act as the Customer's custodian and administrator of the Subscribed Securities under and pursuant to these Terms after considering the change to such information, representations and warranties.

- 7.3 The Customer undertakes to the Bank to do or execute any act, deed, document or thing which the Bank requires the Customer to do being in the reasonable opinion of the Bank necessary or desirable in connection with the implementation and enforcement of these Terms.
- 7.4 Without prejudice to the Customer's obligations under Clause 7.2, each Party undertakes to notify the other in writing within a reasonable time after any material changes to the information provided by that Party in or in relation to these Terms regarding such Party's name and address, the nature of services hereunder or the fees and remuneration payable by the Customer under these Terms or, in the case of the Bank, its SFC registration status and CE number or, in the case of the Customer, the information set out in the Investment Account Opening Form.

## 8. **ENFORCEMENT**

- 8.1 The Customer hereby irrevocably authorises the Bank (but the Bank is not bound to do so), for and on behalf of the Customer, to exercise such rights, remedies, powers and discretions, to give such consent or approval, and/or to take or enforce such act, conduct, proceedings, action, petition under or pursuant to the Terms and Conditions and/or in respect of and in relation to the Subscribed Securities or the Interests in such manner as the Bank may determine, at its sole discretion exercised in good faith, without prior notice to or consent from the Customer.
- 8.2 The Bank shall not be required to take any legal action in connection with the Subscribed Securities unless fully indemnified to the Bank's satisfaction against all claims which the Bank may incur in acting on behalf of the Customer or otherwise.
- 8.3 The Customer shall not take or enforce any act, conduct, proceedings, action, petition directly against the Issuer and/or the Dealer under or pursuant to the Terms and Conditions and/or in respect of and in relation to the Subscribed Securities or the Interests.

## 9. **CHARGES & CURRENCIES**

- 9.1 The Customer shall pay the Bank's normal foreign exchange and other fees, commissions and charges of the Bank as set out in the Application Form. The Customer shall also be liable for all applicable taxes, duties, levies, stamp duties and other similar expenses for entering into a Securities Transaction.
- 9.2 The Bank shall be entitled to levy charges as determined by the Bank and set out in the Application Form from time to time for the Bank's services (if applicable) together with all costs, expenses (including without limitation all taxes, duties or

levies) and disbursements incurred by the Bank in connection with the services provided hereunder.

- 9.3 If the Subscription Transaction, the Securities Transaction and/or the instruction of the Customer for any subscription, acquisition, purchase, sale or disposal of Securities requiring or involving an exchange into or from one currency to another, the costs thereof and any profit or loss arising as a result of a fluctuation in the exchange rate of the relevant currency will be entirely for the account of the Customer. The Bank may convert moneys in the Investment Account and/or the Settlement Account into and from any currency at such rate of exchange as the Bank shall in its sole discretion determine as being the then prevailing money market rate. Such conversion may be made for the purpose of any transaction or for the calculation of any debit balance due from the Customer or credit balance owed to the Customer.

10. **BANK'S MATERIAL INTERESTS**

- 10.1 When effecting any Securities Transaction, the Bank, its nominee, subsidiary or associated company, may have interest, relationship or arrangement that is material in relation to the Securities Transaction, the Subscribed Securities concerned or transaction relating to the Subscribed Securities. The Customer agrees that the Bank may, notwithstanding any such interest, relationship or arrangement, effect Securities Transactions or transaction on behalf of the Customer.
- 10.2 The Customer agrees and authorises the Bank to accept and receive rebate, allowance, commission, soft commission, discount, emoluments, profits, benefits, remuneration from any Issuers, Dealers and/or any other broker, dealer and person engaged relating and incidental to the Securities Transaction, the Subscribed Securities or transaction relating to the Subscribed Securities.
- 10.3 The Customer agrees and authorises the Bank to accept from any securities brokers and dealers engaged in the purchase or sale of, or other dealing with, Securities for the account of the Customer any goods and services. For this purpose, such goods and services may include: research and advisory services; economic and political analysis; portfolio analysis, including valuation and performance measurement; market analysis, data and quotation services; computer hardware and software incidental to the above goods and services; clearing and custodian services and investment-related publications.
- 10.4 In the absence of fraud or wilful misconduct on the part of the Bank, the Bank shall not be liable to the Customer for any claims against the Bank or any of its nominees, subsidiaries or associated companies or to account to the Customer for any rebate, allowance, commission, soft commission, discount, emoluments, profits, benefits, remuneration, interest or goods and services whatsoever accepted, gained or received by the Bank or any of its nominees, subsidiaries or associated companies in relation to any Securities Transaction or transaction referred to in Clause 10.
- 10.5 The Customer agrees and accepts that the the full amount of the subscription or purchase price representing the aggregate price for the relevant Securities or any part thereof as referred to in the Securities Transaction (the “**Securities Money**”) is different from or less than the Subscription Money, and agrees, accepts the Bank to

earn, have, make and receive profits, benefits, mark-up and income from the difference between the Securities Money and the Subscription Money.

- 10.6 In the absence of fraud or wilful misconduct on the part of the Bank, the Bank shall not be liable to the Customer for any claims against the Bank or any of its nominees, subsidiaries or associated companies to account to the Customer for any profits, benefits, mark-up and income whatsoever earned, had, made or received by the Bank or any of its nominees, subsidiaries or associated companies in relation to any Securities Transaction or transaction referred to in Clause 10.

## **11. DEALINGS OF BANK**

- 11.1 The Customer acknowledges and accepts that the Bank or any of its nominees, subsidiaries or associated companies may :-

- (a) buy or sell Securities, have dealing in Securities, or have long, short or other positions in Securities economically or in any way related to any Subscribed Securities;
- (b) be the counterparty as principal for its own account in respect of any Securities Transaction or any Subscribed Securities;
- (c) have an investment, banking or other commercial relationship with the Issuer (or its associate) or Dealer (or its associate) of any Subscribed Securities;
- (d) involve with the Subscribed Securities as underwriter, sponsor or otherwise; and
- (e) match the Customer's subscription or order with those of other customers.

- 11.2 The activities mentioned in Clause 11, may affect the value of the Subscribed Securities, or may result in the Bank or any of its nominees, subsidiaries or associated companies having interests in conflict with those of the Customer. The Customer agrees and accepts that the Bank or any of its nominees, subsidiaries or associated companies is entitled to retain any rebate, allowance, commission, soft commission, discount, emoluments, profits, benefits or remuneration it receives under or relating to the activities mentioned in Clause 11.

## **12. RESPONSIBILITY FOR SECURITIES' PERFORMANCE**

- 12.1 Subject to Clause 12.3 below, the Customer acknowledges that the Customer not only has referred to such statement, opinion, forecast or other representation in relation to the Financial Product(s) reasonably made by the Bank to solicit or recommend the Customer to enter into these Terms and submit the Application Form, but also has made and will continue to make his own appraisal of the creditworthiness, financial condition, prospects and affairs of the Issuer or Dealer in connection with the Subscribed Securities. The Bank shall not have any duty or responsibility, either initially or on a continuing basis, to provide the Customer with any credit or other information with respect to the Issuer, Dealer and the Subscribed Securities.

- 12.2 The Bank shall not have any responsibility to the Customer on account of the failure of the Issuer or Dealer to perform its obligations in connection with the Subscribed Securities, or for the financial condition of the Issuer or Dealer, or for the truthfulness, validity, correctness, completeness or accuracy of any information, accounts,

statements, representations or warranties in any Constitutive Document or any document delivered under these Terms or in connection with the Subscribed Securities, or for the execution, effectiveness, adequacy, genuineness, validity, enforceability of any agreement entered into by the Bank on behalf of the Customer pursuant to these Terms and any Application Form.

- 12.3 If the Bank solicits the sale of or recommends any Financial Product to the Customer, the Financial Product must be reasonably suitable for the Customer having regard to the Customer's financial situation, investment experience and investment objectives. No other provision of these Terms or any other document the Bank may ask the Customer to sign and no statement the Bank may ask the Customer to make derogates from this Clause 12.3.
- 12.4 For the avoidance of doubt, any advertisements, marketing or promotional materials, market information or other information in relation to any Financial Product or services provided by the Bank shall not, by itself, constitute solicitation of the sale or recommendation of any Financial Product or services of the Bank.

### 13. **INDEMNITY**

- 13.1 The Customer agrees that the Bank shall not be liable for any loss or liability which the Customer may incur (including losses and liabilities resulting from Securities Transactions executed by the Issuer, Dealer and any other brokers and dealers) unless due to fraud, gross negligence or wilful default on the part of the Bank or a broker or dealer which is an associate of the Bank.
- 13.2 The Customer agrees that the Bank shall not be 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 Customer's failure to provide complete, accurate and up-to-date information such as the Customer's financial situation, investment experience and investment objectives etc. as specified in Clause 12.3 above, requested by the Bank in discharging the Bank's regulatory or legal duties.
- 13.3 The Customer shall indemnify the Bank (including but not limited to any Indemnified Person) for all actions against the Bank for all losses, damages and reasonable costs and expenses which the Bank may incur or suffer as a result or in connection with the Customer's failure to provide complete, accurate and up-to-date information such as the Customer's financial situation, investment experience and investment objectives etc. as specified in Clause 12.3 above, requested by the Bank in discharging the Bank's regulatory or legal duties.
- 13.4 The Customer shall indemnify the Bank from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, legal expenses and other expenses or disbursements of any kind or nature whatsoever (other than those resulting from fraud, gross negligence or wilful default on the part of the Bank) which may be imposed on, incurred by or asserted against the Bank (including but not limited to any Indemnified Person) in performing its services under these Terms or any action taken by the Bank pursuant to any Application Form or resulting from the default or breach by the Customer of any provision of, or any of the Customer's obligations under, these Terms and the Application Form, save where the same were



caused by the Bank or the relevant Indemnified Person's own fraud, gross negligence or wilful default.

13.5 The Customer shall fully indemnify the Bank against all liabilities, damages, costs and claims whatsoever incurred by the Bank under Clause 8.

13.6 The Customer shall further indemnify the Bank against any claim which may be made against the Bank by a purchaser or any other person by reason of any defect in the title of the Customer to the Securities.

14. **ASSIGNMENT**

14.1 The Customer shall not transfer or assign any of the Customer's rights or obligations under the terms and conditions of these Terms and/or the terms of any Subscription Transaction and/or Securities Transaction. The Customer shall not create or grant any security interest on or over any such rights, nor shall any of such rights or obligations be capable of assignment or transfer or of having security interest created over them, except with the prior written consent of the Bank. The Bank may assign any of its rights under these Terms without the Customer's consent.

15. **AMENDMENT**

15.1 The Bank shall notify the Customer promptly in writing of any amendments to these Terms or any agreement or terms and conditions entered into pursuant to these Terms or relating to the Securities Transaction. The Bank may at its discretion amend, delete or substitute any of the terms herein or add new terms to these Terms by sending to the Customer a notice setting out such amendment, deletion, substitution or addition at least 30 days prior to such amendment taking effect (unless any change is not within the Bank's control) and such amendment shall (save as aforesaid) be deemed incorporated in and shall form part of these Terms or the respective terms and conditions (as appropriate).

16. **SEVERABILITY**

16.1 Any provision in these Terms which is illegal, invalid or unenforceable for any reason in any jurisdiction shall be ineffective only to the extent of such illegality, invalidity or unenforceability and shall not affect the legality, validity or enforceability of the remaining provisions hereof or the legality, validity or enforceability of such provision in any other jurisdiction.

17. **TERMINATION**

17.1 The Bank or the Customer may terminate these Terms at any time by 15 days notice in writing to the other party. This shall not affect any obligations which have arisen under these Terms on or prior to the date of termination.

17.2 Any notice of termination to be given by the Customer pursuant to Clause 17.1 shall specify the names of the persons to whom the Bank shall deliver the Subscribed Securities in the Investment Account or, in the case that there is no Settlement Account, moneys generated from transactions under the Investment Account. If notice

of termination is given by the Bank, the Customer shall, within 7 days or such longer period as the Bank may agree following the giving of such notice, deliver to the Bank a written notice specifying the names of the persons to whom the Bank shall deliver the Subscribed Securities in the Investment Account or, in the case that there is no Settlement Account, moneys generated from transactions under the Investment Account. In either case, the Bank shall deliver such Subscribed Securities and/or moneys to the persons so specified, after deducting therefrom all Liabilities. If after 7 days or such longer period as the Bank may agree following the giving of a notice of termination by the Bank, the Bank does not receive from the Customer any written notice as aforesaid, the Bank shall continue to hold such Securities and moneys (in the case that there is no Settlement Account) until a written notice as aforesaid is delivered to the Bank, but without being subject to the obligations imposed on the Bank hereunder and the Customer is liable for all costs, expenses, fees and charges as imposed by the Bank for such purpose until actual delivery of the Subscribed Securities and moneys (in the case that there is no Settlement Account) to the Customer or other person specified by the Customer.

- 17.3 Upon termination of these Terms pursuant to this Clause 17, all amounts due or owing by the Customer to the Bank under these Terms shall become immediately due and payable. The Bank shall cease to have any obligation to effect any Subscription Transaction or Securities Transaction in accordance with the provisions of these Terms, notwithstanding any instructions from the Customer to the contrary.
- 17.4 As soon as practicable after termination of these Terms, the Bank may sell, realise, redeem, liquidate or otherwise dispose of all or part of the Subscribed Securities for such consideration and in such manner as the Bank shall in its absolute discretion consider necessary to satisfy first, all costs, charges, fees and expenses (including legal expenses) incurred by the Bank in such sale, realisation, redemption, dissolution or other disposal and all other monies and sums due or owing and other liabilities accrued or accruing due to the Bank and outstanding (whether actual or contingent, present or future or otherwise) under these Terms and second, all other liabilities, at the Customer's sole risk and cost and without incurring any liability on the part of the Bank for any loss or damage incurred by the Customer.
- 17.5 Any cash proceeds remaining after satisfaction of all sums specified in Clause 17.4 shall be credited to the Settlement Account, if any, or be returned to the Customer as soon as practicable and in such manner as determined by the Bank. The Bank may deliver to the Customer all Subscribed Securities not realised or disposed of together with any relevant documents of title in the Bank's possession at the Customer's sole risk and expense. The Bank shall have no liability for any loss or damage incurred by the Customer arising from such delivery.
- 17.6 If the sales proceeds are insufficient to meet the payments of all costs, charges, fees, expenses and other liabilities pursuant to Clause 17.4, the Customer hereby authorises the Bank to debit from the Settlement Account, if any, to cover the shortfall, and if there is still any shortfall, the Customer shall immediately pay to the Bank an amount equal to such debit balance together with the Bank's cost of funding such amount and interest at the rate of three percent above the Bank's prevailing prime or best lending rate for the relevant currency from time to time up to the date of actual receipt of full payment by the Bank (after as well as before any judgment).

## 18. **NOTICES**

- 18.1 Unless otherwise specified in these Terms, any notice to be made or given by either Party to the other under these Terms shall be in writing and addressed to the last known address, telex number, facsimile number or email address of the other Party (as the case may be) and shall be deemed effective on (i) the date two days (if local) or seven days (if international) after posting if delivered by mail (if the notice was properly addressed and posted), or (ii) the date of transmission if transmitted by facsimile when a transmission report was produced by the machine from which the facsimile was sent, which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient, or (iii) the date of dispatch if sent by personal delivery, or (iv) the date of transmission if transmitted by email.
- 18.2 The Customer understands that electronic communication (including facsimile and email) is not a secure means of communication and there are risks involved. The Customer agrees to accept and bear all the risks associated with the sending and receiving of electronic communication, including but not limited to risks of interruption, virus-infection, transmission blackout, delayed transmission or incorrect transmission, unauthorized access by third party. The Customer further agrees that the Bank shall not be liable for any loss and damages, actual or constructive, caused as a result of such risks or failures.

## 19. **JOINT AND SEVERAL LIABILITY**

- 19.1 Where the Customer comprises two or more persons,
- (a) references to the Customer shall be deemed to include each such person (each a “**Joint Customer**” and collectively the “**Joint Customers**”) individually and the obligations and liabilities of the Joint Customers under these Terms shall be joint and several;
  - (b) any act or omission of any Joint Customer shall be deemed the act or omission of all the Joint Customers;
  - (c) the Bank is authorized to act on the instructions of any Joint Customer acting singly but each of the Joint Customer shall be jointly and severally liable to the Bank with the other Joint Customer for any obligation or liability incurred by any of them to the Bank in connection with any Subscription Transaction, Securities Transaction and/or Subscribed Securities, or otherwise under or in connection with these Terms;
  - (d) any advance to the Joint Customers by way of overdraft or in any manner howsoever with or without security can be made at the request of such Joint Customer;
  - (e) on the death of any Joint Customer, the Bank will hold any credit balance on the Investment Account and the Settlement Account to the order of the surviving Customer(s), without prejudice however to any right which the Bank may have arising out of any lien, mortgage, charge, pledge, set-off, counter-claim, or otherwise whatsoever, and the surviving Customer(s) agrees to indemnify the Bank in respect of any claim which may be made against the Bank as a result of complying with the surviving Customer(s)’ request and authorization;
  - (f) notwithstanding any provision to the contrary found in this Clause 19, the

Bank shall be entitled to deal separately with any one of the Joint Customers on any matter (including (i) the variation or discharge of any liability to any extent or (ii) the granting of time or other indulgence to or making other arrangements with any such person) without prejudicing or affecting the Bank's rights, powers and remedies against any other such persons. Therefore, the Bank shall be at liberty to release or discharge any of such persons from his liability hereunder or to accept any composition from or make other arrangements with any of such persons without releasing or discharging the other or others or otherwise prejudicing or affecting the rights and remedies of the Bank against the other or others, and none of them shall be released or discharged by the death of any one of them;

- (g) any communication required to be made to the Customer may be sent to the last known address of any one or more of such persons;
- (h) any notice to the Customer under these Terms shall be validly served if served on any one of such persons;
- (i) these Terms shall not be affected by the death, incapacity or dissolution of any Joint Customers; and
- (j) the authorization in (c) and (e) above may be revoked (i) in writing by any of such persons or (ii) upon the mental incapacity of any of such persons.

## 20. **NO WAIVER**

- 20.1 No failure or delay on the part of the Bank to enforce or exercise any right or power under these Terms shall operate as a waiver thereof nor shall any waiver by the Bank of any particular default by the Customer affect or prejudice any right or power of the Bank in respect of any other default or any subsequent default of the same or different kind nor shall any single or partial enforcement or exercise by Bank of any right or power under these Terms preclude any other or further enforcement or exercise thereof or the enforcement or exercise of any other right or power. No waiver of any default by the Customer shall be effective unless it is in writing and expressly stated to that effect and signed by the Bank.

## 21. **USE OF CUSTOMER INFORMATION**

- 21.1 The Bank will keep information relating to the Investment Account and Settlement Account confidential, but is authorised to conduct credit enquiries on the Customer to verify the information provided and may provide any such information to (i) its auditors, legal advisers, brokers or dealers instructed by the Bank on behalf of the Customer, (ii) the Market, (iii) the Hong Kong Regulators or any other regulatory authority to comply with their requirements or requests for information and (v) any of the Bank's branches or associates or any group company of the Bank. The Bank shall not be liable in any way to the Customer for any disclosure made pursuant to this Clause 21.
- 21.2 Where the Customer is an individual, the Customer agrees to be bound by the Bank's "Notice to Customers relating to the Personal Data (Privacy) Ordinance" (the "Notice"), a copy of which is available with these Terms, and to the use of his/her personal data in the manner specified in the said Notice.

## 22. **COMBINATION AND SET-OFF**

- 22.1 The Bank may, at any time and without notice to the Customer, notwithstanding any settlement of account or other matter whatsoever, combine or consolidate all or any of the Customer's accounts with the Bank (including Investment Account and Settlement Account) or with any subsidiaries or associated companies and set-off or transfer any Securities, receivables held in or for the account of, or monies standing to the credit of, any one or more of such accounts in or towards satisfaction of any of the Liabilities. Where any such set-off, consolidation, combination or transfer requires the conversion of one currency into another, such conversion shall be calculated at the rate of exchange conclusively determined by the Bank to be applicable.
- 22.2 For the purpose of exercising the right of set-off or of discharging any Liabilities, the Bank may sell or dispose of any of the Securities, receivables or monies from time to time held in or for the account of the Investment Account, Settlement Account or any other account with the Bank. The Bank shall be under no duty to the Customer as to the price obtained in respect of any such sale or disposal.

23. **GOVERNING LAW**

- 23.1 These Terms shall be construed and governed in accordance with the laws of Hong Kong, and the parties hereby submit to the non-exclusive jurisdiction of the Hong Kong courts in respect of any disputes or claims which may arise out of or in connection with these Terms.
- 23.2 If the Customer does not have a place of business, or is not resident, in Hong Kong, the person named in the Investment Account Opening Form shall act as agent of the Customer to receive and acknowledge on the Customer's behalf service of any notice of legal process in Hong Kong. The Customer agrees that any such legal process shall be sufficiently served on it if delivered to such agent for service at the address specified in the Investment Account Opening Form. If for any reason the said agent ceases to act, the Customer shall promptly appoint a successor agent and notify the Bank, provided that until the Bank receives such notification, the Bank shall be entitled to treat the first-mentioned agent as the agent of the Customer for the purpose of this Clause.

24. **CONTRACTS (RIGHTS OF THIRD PARTIES) ORDINANCE**

- 24.1 Save for any Indemnified Person, a person who is not a party to these Terms shall not have any rights under the Contracts (Rights of Third Parties) Ordinance (Cap. 623 of the Laws of Hong Kong) to enforce any term of these Terms. Notwithstanding anything to the contrary in these Terms or in the Contracts (Rights of Third Parties) Ordinance:
- (a) the Parties may terminate, rescind or agree any variation, waiver or settlement under these Terms without the consent of any Indemnified Person; and
  - (b) no Indemnified Person may enforce any right under this Clause without first obtaining the prior written consent of the Bank.

25. **LANGUAGE**

- 25.1 The Chinese translation of these Terms is provided for convenience only and the

English version shall prevail for all purposes.

26. **CONFIRMATION**

- 26.1 The Customer confirms that it has read these Terms and that the contents of these Terms have been fully explained to the Customer in a language which the Customer understands, and that the Customer agrees and accepts these Terms.

27. **RISK DISCLOSURE STATEMENTS**

27.1 Risk of Securities Trading

THE CUSTOMER ACKNOWLEDGES THAT THE PRICES OF SECURITIES CAN AND DO FLUCTUATE, SOMETIMES DRAMATICALLY. THE PRICE OF A SECURITY MAY MOVE UP OR DOWN, AND MAY BECOME VALUELESS. THE CUSTOMER APPRECIATES THAT LOSSES MAY BE INCURRED RATHER THAN PROFIT MADE AS A RESULT OF BUYING AND SELLING SECURITIES. THIS IS A RISK THAT THE CUSTOMER IS PREPARED TO ACCEPT.

27.2 Risk of Providing an Authority to Repledge Customer's Securities Collateral etc.

- (a) THE CUSTOMER ALSO ACKNOWLEDGES THAT THERE ARE RISKS IN LEAVING SECURITIES IN THE CUSTODY OF THE BANK OR IN AUTHORISING THE BANK TO LEND THE CUSTOMER'S SECURITIES TO OR DEPOSIT THEM WITH CERTAIN THIRD PARTIES (E.G. AS COLLATERAL FOR LOANS OR ADVANCES MADE TO THE BANK) UNDER THE SECURITIES AND FUTURES ORDINANCE (CAP.571) AND RELATED RULES. THE CUSTOMER UNDERSTANDS THAT THIS IS ALLOWED ONLY IF HE CONSENTS IN WRITING, WHICH CONSENT MUST SPECIFY THE PERIOD FOR WHICH IT IS CURRENT AND CANNOT EXCEED 12 MONTHS IF HE IS NOT A PROFESSIONAL INVESTOR. THE CUSTOMER ALSO UNDERSTANDS THAT HE IS NOT REQUIRED BY ANY LAW TO SIGN THESE AUTHORITIES.
- (b) THE CUSTOMER IS AWARE THAT AN AUTHORITY AS STATED IN (a) ABOVE MAY BE REQUIRED BY THE BANK IF MARGIN LENDING FACILITIES ARE OFFERED TO THE CUSTOMER OR TO ALLOW THE CUSTOMER'S SECURITIES TO BE LOANED TO OR DEPOSITED AS COLLATERAL WITH THIRD PARTIES AND THAT THE BANK WILL EXPLAIN TO THE CUSTOMER THE PURPOSES FOR WHICH THE AUTHORITIES GIVEN BY THE CUSTOMER WILL BE USED.
- (c) THE CUSTOMER ACKNOWLEDGES THAT IF HE SIGNS ONE OF THE AUTHORITIES STATED ABOVE, AND THE CUSTOMER'S SECURITIES ARE LENT TO OR DEPOSITED WITH THIRD PARTIES, THOSE THIRD PARTIES WILL HAVE A LIEN OR CHARGE ON THE SECURITIES. THE CUSTOMER FURTHER UNDERSTANDS THAT ALTHOUGH THE BANK IS RESPONSIBLE TO THE CUSTOMER FOR

THE SECURITIES LENT OR DEPOSITED UNDER THE AUTHORITY, A DEFAULT BY THE BANK COULD RESULT IN THE LOSS OF THE CUSTOMER'S SECURITIES.

- (d) THE CUSTOMER ACKNOWLEDGES THAT AN AUTHORITY REFERRED TO ABOVE MAY BE DEEMED TO BE RENEWED (I.E. WITHOUT THE CUSTOMER'S WRITTEN CONSENT) IF THE BANK (OR ITS NOMINEE) ISSUES THE CUSTOMER A REMINDER AT LEAST 14 DAYS PRIOR TO THE EXPIRY OF THE AUTHORITY, AND THE CUSTOMER DOES NOT OBJECT TO SUCH DEEMED RENEWAL BEFORE THE EXPIRY DATE OF HIS THEN EXISTING AUTHORITY.
- (e) THE CUSTOMER UNDERSTANDS THAT HE NEED NOT SIGN ANY ABOVE AUTHORITY AND ASK FOR A CASH ACCOUNT IF HE DOES NOT REQUIRE MARGIN FACILITIES OR DOES NOT WISH HIS SECURITIES OR SECURITIES COLLATERAL TO BE LENT OR PLEDGED.

27.3 Risk of Providing an Authority to Hold Mail or to Direct Mail to Third Parties

THE CUSTOMER ACKNOWLEDGES THAT IF HE PROVIDES AN AUTHORITY TO HOLD MAIL OR TO DIRECT MAIL TO THIRD PARTIES, IT IS IMPORTANT FOR HIM PROMPTLY TO COLLECT IN PERSON ALL CONTRACT NOTES AND STATEMENTS OF HIS ACCOUNT AND REVIEW THEM IN DETAIL TO ENSURE THAT ANY ANOMALIES OR MISTAKES CAN BE DETECTED IN A TIMELY FASHION.

27.4 Risk of Customer's Assets Received or Held Outside Hong Kong

THE CUSTOMER ACKNOWLEDGES THAT ANY OF HIS ASSETS RECEIVED OR HELD BY THE BANK (OR ITS NOMINEE) OUTSIDE HONG KONG ARE SUBJECT TO THE APPLICABLE LAWS AND REGULATIONS OF THE RELEVANT OVERSEAS JURISDICTION WHICH MAY BE DIFFERENT FROM THE SECURITIES AND FUTURES ORDINANCE (CAP. 571) AND THE RULES MADE THEREUNDER. CONSEQUENTLY, SUCH CUSTOMER ASSETS MAY NOT ENJOY THE SAME PROTECTION AS THAT CONFERRED ON CUSTOMER ASSETS RECEIVED OR HELD IN HONG KONG.

27.5 Currency Risks

THE CUSTOMER ACKNOWLEDGES THAT THE PROFIT OR LOSS IN TRANSACTIONS IN FOREIGN CURRENCY-DENOMINATED CONTRACTS (WHETHER THEY ARE TRADED IN THE CUSTOMER'S OWN OR ANOTHER JURISDICTION) WILL BE AFFECTED BY FLUCTUATIONS IN CURRENCY RATES WHERE THERE IS A NEED TO CONVERT FROM THE CURRENCY DENOMINATION OF THE CONTRACT TO ANOTHER CURRENCY.

27.6 Risk on Off-Exchange Transactions

THE CUSTOMER ACKNOWLEDGES THAT IN SOME JURISDICTIONS, AND

ONLY THEN IN RESTRICTED CIRCUMSTANCES, THE BANK IS PERMITTED TO EFFECT OFF-EXCHANGE TRANSACTIONS. THE BANK MAY BE ACTING AS THE CUSTOMER'S COUNTERPARTY TO THE TRANSACTION. IT MAY BE DIFFICULT OR IMPOSSIBLE TO LIQUIDATE AN EXISTING POSITION, TO ASSESS THE VALUE, TO DETERMINE A FAIR PRICE OR TO ASSESS THE EXPOSURE TO RISK. FOR THESE REASONS, THESE TRANSACTIONS MAY INVOLVE INCREASED RISKS. OFF-EXCHANGE TRANSACTIONS MAY BE LESS REGULATED OR SUBJECT TO A SEPARATE REGULATORY REGIME. BEFORE THE CUSTOMER UNDERTAKES SUCH TRANSACTIONS, THE CUSTOMER SHOULD FAMILIARISE HIMSELF WITH APPLICABLE RULES AND ATTENDANT RISKS.

27.7 Risk on Deposited Cash and Property

THE CUSTOMER ACKNOWLEDGES THAT HE SHOULD FAMILIARIZE HIMSELF WITH THE PROTECTIONS GIVEN TO MONEY OR OTHER PROPERTY HE DEPOSITS FOR DOMESTIC AND FOREIGN TRANSACTIONS, PARTICULARLY IN THE EVENT OF A FIRM INSOLVENCY OR BANKRUPTCY. THE EXTENT TO WHICH THE CUSTOMER MAY RECOVER HIS MONEY OR PROPERTY MAY BE GOVERNED BY SPECIFIC LEGISLATION OR LOCAL RULES. IN SOME JURISDICTIONS, PROPERTY WHICH HAD BEEN SPECIFICALLY IDENTIFIABLE AS CUSTOMER'S OWN WILL BE PRO-RATED IN THE SAME MANNER AS CASH FOR PURPOSES OF DISTRIBUTION IN THE EVENT OF A SHORTFALL.

27.8 Commission and Other Charges

THE CUSTOMER ACKNOWLEDGES THAT BEFORE HE BEGINS TO TRADE, HE SHOULD OBTAIN A CLEAR EXPLANATION OF ALL COMMISSION, FEES AND OTHER CHARGES FOR WHICH HE WILL BE LIABLE. THESE CHARGES WILL AFFECT HIS NET PROFIT (IF ANY) OR INCREASE HIS LOSS.

27.9 Risk on Transactions in Other Jurisdictions

THE CUSTOMER ACKNOWLEDGES THAT TRANSACTIONS ON MARKETS IN OTHER JURISDICTIONS, INCLUDING MARKETS FORMALLY LINKED TO A DOMESTIC MARKET, MAY EXPOSE HIM TO ADDITIONAL RISK. SUCH MARKETS MAY BE SUBJECT TO REGULATION WHICH MAY OFFER DIFFERENT OR DIMINISHED INVESTOR PROTECTION. BEFORE HE TRADES HE SHOULD ENQUIRE ABOUT ANY RULES RELEVANT TO HIS PARTICULAR TRANSACTIONS. HIS LOCAL REGULATORY AUTHORITY WILL BE UNABLE TO COMPEL THE ENFORCEMENT OF THE RULES OF REGULATORY AUTHORITIES OR MARKETS IN OTHER JURISDICTIONS WHERE HIS TRANSACTIONS HAVE BEEN EFFECTED. HE SHOULD ASK THE FIRM WITH WHICH HE DEALS FOR DETAILS ABOUT THE TYPES OF REDRESS AVAILABLE IN BOTH HIS HOME JURISDICTION AND OTHER RELEVANT JURISDICTIONS BEFORE HE STARTS TO TRADE.

27.10 Risk on Trading Facilities



THE CUSTOMER ACKNOWLEDGES THAT ELECTRONIC TRADING FACILITIES ARE SUPPORTED BY COMPUTER-BASED COMPONENT SYSTEMS FOR THE ORDER-ROUTING, EXECUTION, MATCHING, REGISTRATION OR CLEARING OF TRADES. AS WITH ALL FACILITIES AND SYSTEMS, THEY ARE VULNERABLE TO TEMPORARY DISRUPTION OR FAILURE. THE CUSTOMER'S ABILITY TO RECOVER CERTAIN LOSSES MAY BE SUBJECT TO LIMITS ON LIABILITY IMPOSED BY THE SYSTEM PROVIDER, THE MARKET, THE CLEARING HOUSE AND/OR PARTICIPANT FIRMS. SUCH LIMITS MAY VARY AND THE CUSTOMER SHOULD ASK THE FIRM WITH WHICH HE DEALS FOR DETAILS IN THIS RESPECT.

#### 27.11 Risk on Electronic Trading

THE CUSTOMER ACKNOWLEDGES THAT TRADING ON AN ELECTRONIC TRADING SYSTEM MAY DIFFER FROM TRADING ON OTHER ELECTRONIC TRADING SYSTEMS. IF HE UNDERTAKES TRANSACTIONS ON AN ELECTRONIC TRADING SYSTEM, HE WILL BE EXPOSED TO RISKS ASSOCIATED WITH THE SYSTEM INCLUDING THE FAILURE OF HARDWARE AND SOFTWARE. THE RESULT OF ANY SYSTEM FAILURE MAY BE THAT HIS ORDER IS EITHER NOT EXECUTED ACCORDING TO HIS INSTRUCTIONS OR IS NOT EXECUTED AT ALL.

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