

# Bank Account General Terms and Conditions

## 1. DEFINITIONS AND INTERPRETATION

1.1 In these Terms and Conditions, unless the context otherwise requires:

**"Account"** means any current account, savings account, call and/or time deposit opened or placed by a Customer with the Bank or all of them;

**"Agreement"** means the account opening form, these Terms and Conditions, Schedule(s) to these Terms and Conditions and any Applicable Documents, as each may from time to time be amended or supplemented or introduced;

**"Applicable Documents"** means any document, agreement, security document, terms of business or other terms and conditions in the form approved by the Bank, duly completed and signed or agreed to by the Customer or agreed between the Bank and the Customer for the opening of an Account with the Bank and/or requesting Services to be provided by the Bank from time to time;

**"Authorized Signatory"** means the authorized signatory appointed by the Customer and accepted by the Bank for or in connection with the operations of any Account(s) or (as the case may be) provision of any Service(s), subject to such changes as may be agreed by the Bank from time to time. For the avoidance of doubt:

- (a) where the Customer is an individual or consists of two or more individuals, such Authorized Signatory may include such individual or (as the case may be) any one or more such individuals; and
- (b) where the Customer is a corporation, the Authorized Signatory must be approved by a board resolution of that corporation, or by such other means as are effective in accordance with that corporation's constitution and applicable law, to have power to act for and/or sign on behalf of such corporation;

**"Bank"** means Malayan Banking Berhad, incorporated in Malaysia with limited liability and acting through its Hong Kong Branch, located at 29/F, Lee Gardens Three, 1 Sunning Road, Causeway Bay, Hong Kong, such branch being an authorised institution under the Banking Ordinance (Cap 155 of the Laws of Hong Kong);

**"Business Day"** means any day on which the Bank is open for business in the HKSAR, but excludes Saturdays, Sundays and public holidays in the HKSAR;

**"Connected Person"** means a person or entity (other than the Customer) whose information (including Personal Data) is provided by the Customer, or on the Customer's behalf, to the Bank or its affiliates in connection with the Account or Services. A Connected Person may include, but is not limited to, any guarantor or third party security provider, a member, director or officer of a company, partners or members of a partnership, any substantial owner, controlling person, or investor of a fund, a beneficial owner, trustee, settlor or protector of a trust, an account holder of a designated account, a payee of a designated payment, a representative of the Customer, agent or nominee, or any other persons or entities with whom the Customer has a relationship that is relevant to the Account or Services;

**"Credit Facility"** means a credit facility granted by the Bank to the Customer pursuant to Clause 8 and documented in a Facility Agreement, or in a case where the Customer acts as a guarantor and / or third party security provider to a credit facility granted by the Bank to another customer of the Bank, the credit facility of that other customer;

**"Customer"** means any individual, corporation, sole proprietorship, partnership, statutory body or authority, or other body of persons or form of association or committee (whether incorporated or not) who has entered into the Agreement with the Bank relating to any Account, any Service, Credit Facility, Uncommitted Facility or any other services granted

by the Bank from time to time, including: (i) in the case of a sole proprietorship, the sole proprietor and any personal representative and lawful successors of the sole proprietor; (ii) in the case of a partnership, each of the present and future partners of the partnership and any personal representatives and lawful successors of a partner; (iii) in the case of a corporation, its lawful successor or successors; and (iv) where the context permits, Authorized Signatories of a Customer;

**Customer Information**" means all or any of the following items relating to the Customer, any Connected Person or its Authorized Signatory: (i) Personal Data; (ii) information about the Customer; (iii) information about the Customer's Account; (iv) information about Services provided to the Customer; (v) information about the Customer's relationship with the Bank; and (vi) documentation or information about the Customer's tax affairs;

**"Defective Instruction"** means an instruction which the Bank (acting in good faith) determines is ambiguous, conflicting, erroneous, vexatious, not authentic, unauthorized, is or would be illegal or in violation of any applicable law, rule, regulation or order, or is in a form or contains content which does not comply with the requirements of the Bank, as notified to the Customer from time to time;

**"Deposit Confirmation"** means a confirmation, certificate or other written document issued by the Bank to the Customer to evidence a call or time deposit (as applicable) and its essential terms;

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

**"e-Cheque Deposit Service"** means the Service offered by the Bank to Customers from time to time for depositing e-Cheques under the e-Cheque Terms and Conditions;

**"e-Cheque Terms and Conditions"** means an agreement, together with all and any applicable terms and conditions as stipulated by the Bank from time to time, setting out the terms on which the Bank agrees from time to time to provide the e-Cheque Deposit Service, as may be amended, supplemented or replaced from time to time and which shall, where the e-Cheque Deposit Service is provided to the Customer, form a Schedule to these Terms and Conditions;

**"Facility"** means a Credit Facility or an Uncommitted Facility, as the context may require;

**"Facility Agreement"** means an agreement, together with all and any applicable terms and conditions as stipulated by the Bank from time to time, setting out the terms of a Facility granted by the Bank to the Customer, including but not limited to the credit amount/limit (as applicable), the basis of calculation of the credit amount together with interest charged/accrued, the applicable interest rate, handling/administrative charges (if any) and any other terms of the Credit Facility or Uncommitted Facility;

**"Faster Payment System"** means the system provided and operated by the Hong Kong Interbank Clearing Limited and its successors and assigns;

**"Faster Payment System Terms and Conditions"** means an agreement, together with all and any applicable terms and conditions as stipulated by the Bank from time to time, setting out the terms on which the Bank agrees from time to time to provide a Service relating to the Faster Payment System, as may be amended, supplemented or replaced from time to time and which shall, where such Service is provided to the Customer, supplement and form a Schedule to and a part of these Terms and Conditions;

**"Financial Crime"** means money laundering, terrorist financing, bribery, corruption, tax evasion, fraud, evasion of or being subject to Sanctions, or any acts or attempts to circumvent or violate any laws or regulations relating to such matters.

**"Financial Crime Risk Management Activity"** means any action or activity taken by the Bank to meet its compliance obligations relating to or in connection with the detection, investigation and prevention of Financial Crime as set out in Clause 5.

**"HKSAR"** or **"Hong Kong"** means the Hong Kong Special Administrative Region of the People's Republic of China;

**"HKICL"** means the Hong Kong Interbank Clearing Limited;

**"Hong Kong Dollar"** or **"HK\$"** means the lawful currency in HKSAR at the relevant time;

**"Interest Period"** means, in relation to a call or time deposit (as applicable), the period from and including the date specified in the Deposit Confirmation to but excluding:

- (a) in relation to time deposits, the due date as specified in the relevant Deposit Confirmation or any day thereafter; or
- (b) in relation to call deposits, the due date as specified in the relevant Deposit Confirmation or a day specified by the Customer in the notice of withdrawal provided to the Bank for the withdrawal of funds;

**"Interest Year"** means, for the purpose of calculating accrued interest, the number of days in a year as determined by the Bank in respect of the call or time deposit (as applicable);

**"Multiple Credit Reference Agencies Model"** means the multiple credit reference agency model developed by the Hong Kong Association of Banks, the DTC Association and the Hong Kong S.A.R. Licensed Money Lenders Association which enables credit providers to share and use consumer credit data through more than one credit reference agency for the provision of consumer credit reference services;

**"Personal Data"** means any information relating directly or indirectly to a living individual, from which it is possible and practical to ascertain the identity of the individual, and in a form in which access to or processing of the data is practicable;

**"Renminbi"** or **"RMB"** means the lawful currency of the People's Republic of China at the relevant time;

**"Sanctions"** means any sanctions issued, administered or enforced by the US Department of the Treasury's Office of Foreign Assets Control, the US Department of State, the United Nations Security Council, the European Union, Her Majesty's Treasury, the Hong Kong Monetary Authority, Government of Malaysia or any other relevant sanctions authorities or pursuant to any sanctions regime;

**"Service"** means any service or services maintained or provided by the Bank to the Customer under or pursuant to the Schedule(s) to these Terms and Conditions or a separate agreement (including, without limitation, any Facility);

**"Signing Arrangement"** means the signing arrangement stipulated in the Bank's signature card or in any resolutions of or in any instructions provided by the Customer and accepted by the Bank for or in connection with the operation of Account with the Bank or (as the case may be) the provision of a Service by the Bank, subject to such changes as may be agreed by the Bank from time to time;

**"Tariff Schedule"** means a schedule (as amended from time to time by the Bank in accordance with its prevailing practice at the time) of fees, charges, costs, rates which may be imposed or levied by the Bank in respect of an Account or a Service, and which any be obtained at the Bank's premises from the Customer's usual contact at the Bank or by such other means as the Bank makes available from time to time;

**"Tax Authorities"** means the tax, revenue or monetary authorities of Hong Kong and of each other relevant foreign jurisdiction;

**"Tax Information"** means documentation or information about the Customer or the tax status of any owner, controlling person, substantial owner or beneficial owner or Connected Person, including but not limited to information about tax residence and/or place of organisation (as applicable), tax domicile, tax identification number, documents required by a Tax Authority or by the Bank to confirm the Customer's or Connected Person's tax status and certain Personal Data (for example, name, residential address, age, date of birth, place of birth, nationality and citizenship);

**"Uncommitted Facility"** means any uncommitted facility granted by the Bank to the Customer pursuant to the provisions set out in Clause 7 and documented in a Facility Agreement, or in a case where the Customer acts as a guarantor and / or third party security provider to an uncommitted facility granted by the Bank to another customer of the Bank, the uncommitted facility of that other customer; and

**"US Dollar"** or **"US\$"** means the lawful currency of the United States of America at the relevant time;

- 1.2 Headings in these Terms and Conditions are for convenience of reference only and shall not affect the construction of the provisions of these Terms and Conditions.
- 1.3 The provisions of these Terms and Conditions shall not in any way be limited by, and are in addition to, the rights, powers and remedies of the Bank as stipulated in any Applicable Document or Facility Agreement. In the event of any inconsistency between these Terms and Conditions and the provisions of any Applicable Document or Facility Agreement, the provisions of the Applicable Document or Facility Agreement will prevail.
- 1.4 Unless the context otherwise requires:
  - (a) words denoting the singular include the plural and vice versa;
  - (b) words importing a gender include every gender; and
  - (c) the word "person" includes any individual, company, firm, partnership, joint venture, association, sole proprietorship, state or agency of a state, trust, other incorporated or unincorporated entity or any two or more of the foregoing.

## 2. **JOINT ACCOUNT**

- 2.1 The following provisions shall apply if the Customer consists of two or more persons:
  - (a) the obligations and liabilities of such persons under the Agreement or in connection with any Account, Services, transaction or contract made under the Agreement shall be joint and several, and:
    - (i) any demand made by the Bank to any one or more of the persons constituting the Customer shall be deemed to be made to all such persons constituting the Customer;
    - (ii) any transaction entered into by an Authorized Signatory will be binding on all the persons constituting the Customer; and

- (iii) the Bank is authorized to provide information on or relating to the Account or a Service or any transaction or contract made under the Agreement to any one of them in such form and manner, and to such extent as any one or more of such persons shall request or as the Bank shall in its sole discretion determine at any time and from time to time;
- (b) each person constituting the Customer shall be bound by the Agreement notwithstanding that:
  - (i) any other person, or person intended to be bound by the Agreement, is not so bound; or
  - (ii) the Agreement may be invalid or unenforceable against any one or more of such persons by reason of fraud, forgery or otherwise (whether or not the deficiency is known to the Bank);
- (c) where any one of them is authorised to operate the Account singly, the Bank is authorised to comply with the instructions or directions of any of such persons in relation to the Account and acceptance of any terms and conditions of any Services rendered by the Bank in respect of the Account by any one of such persons will be deemed acceptable by each and all of them, and accordingly such terms and conditions will be binding on each and all of them;
- (d) the Bank may, in its discretion, release or discharge any one or more of the persons constituting the Customer from liability under the Agreement in whole or in part without in consequence releasing or discharging any other persons constituting the Customer from the Agreement or otherwise prejudicing or affecting the Bank's rights and remedies against those other persons;
- (e) the death, bankruptcy, liquidation, or mental disorder and/or other incapacity of any one or more of the persons constituting the Customer shall not prejudice any right or remedy which the Bank may have arising out of any lien, charge, pledge, set-off, claim, counterclaim or otherwise whatsoever or any step or legal proceedings which the Bank may in its absolute discretion deems desirable to take in view of any claim by any person other than the survivors or the executors or administrators of the deceased;
- (f) subject to Clause 2.1(e) above, on the death of any of the persons constituting the Customer the Bank shall hold all credit balances and properties in all Accounts and all monies due by the Bank to the Customer to:
  - (i) the order of survivor(s) of that person; or
  - (ii) in the case of death of all the persons constituting the Customer, the executors or administrators of the last survivor of the Customer,and any payment by the Bank as above shall be an absolute full and conclusive discharge of the Bank as against the Customer (including the deceased and his/her estate and successor);
- (g) following notice of the Customer's death or incapability, the Customer's Account can be operated only by the Customer's personal or other legal representative upon production of such evidence as required by the Bank; and
- (h) the Bank's set off right hereunder may be exercised against any one or more of the persons constituting the Customer such that money, property or proceeds otherwise payable to the Customer (including, but not restricted to, credit balance in the joint Account) may be applied by the Bank in or towards the satisfaction of

any obligations or liabilities owing to the Bank (including, but not restricted to the debit balances) in other accounts which may be held by any one or more of the persons constituting the Customer.

### 3. CORPORATE CUSTOMERS

3.1 If the Customer is a sole proprietorship or partnership (a "**firm**"), the following provisions shall apply:

- (a) the Customer and its sole proprietor/partners and persons carrying on business in the name of the firm shall be jointly and severally liable under this Agreement;
- (b) the Customer shall immediately advise the Bank of any change:
  - (i) in the constitution or membership of the firm (whether by retirement, death, bankruptcy, mental disorder and/or other incapacity or admission of new parties); or
  - (ii) in the name of the firm, and

the Customer and all persons signing the Agreement as a sole proprietor or partner of the Customer shall continue to be liable under the Agreement irrespective of any such change unless the Bank expressly agrees to release their liabilities;

- (c) unless the Bank has actually received written notice from the Customer of any change in the membership or constitution of the firm, whether as a result of death or otherwise, and irrespective of whether such change has been reported to or filed on public records with the Hong Kong Companies Registry or (as the case may be) any business registry in any other jurisdiction or any other relevant government department or authority, the sole proprietor or the partners (as the case may be) of the firm on record with the Bank shall remain liable to the Bank as such and be deemed to have represented at all times to the Bank that the constitution, membership and name of the firm have remained unchanged and the Bank shall be entitled to act accordingly and all the terms and conditions under the Agreement and authorities given in respect of the Accounts and/or the relevant Services shall continue to be binding and of full effect;
- (d) these Terms and Conditions shall prevail over any contrary agreement between all partners, whether or not known to the Bank; and
- (e) in case of a partnership, if any one or more of the partners cease to be a partner of the partnership by death, retirement, bankruptcy, mental disorder and/or other incapacity or otherwise, the Bank shall be entitled and is authorized:
  - (i) to treat the surviving or continuing partner(s) for the time being as having full power to carry on the business of the partnership and to deal with any matter whatsoever concerning or arising from the Account or (as the case may be) the Service and any transactions relating thereto as if there had been no change in the partnership, and all transactions effected pursuant to the request or instruction of such surviving or continuing partner(s) shall be conclusively binding on all the partners or their respective estates and personal representatives, including those who have ceased to be a partner or partners; and/or
  - (ii) in the absence of written instructions to the contrary signed by all partners of the partnership immediately before such cessation, to close or suspend the Account or (as the case may be) to terminate or suspend the Service without any prior notice or reference to the Customer and the properties or proceeds held in any Account of the Customer (subject to any of rights or

claims of the Bank thereon) shall be held by the Bank to the order of all partners of the partnership immediately before such cessation; and/or

- (iii) at the request of the surviving or continuing partners for the time being, to open a new Account or (as the case may be) to set up new Service with them in the same name as that of the partnership (hereafter, the "**New Firm**") and to carry on business with them and to collect and pay thereto any or all cheques, bills drafts, notes and/or other instrument with the name of the firm as the named payee (whether they are in fact payable to the partnership or the New Firm) without enquiry and such collection and payment shall be a valid discharge to the Bank and conclusively binding on all the partners of the New Firm and their respective estates and/or personal representative, including any of the partners who have so ceased to be partner or partners, irrespective whether or not such payment or collection will in fact result in reduction, payment or satisfaction of any or all of the debts or liabilities of the New Firm to the Bank and/or otherwise be used only for the benefit or business of the New Firm or the partners of the New Firm to the Bank's knowledge.

For the avoidance of doubt, it is hereby expressly declared that this sub-clause 3.1(e) shall continue to apply and to have effect irrespective of whether or not any notice of change in the constitution or name of the partnership has in fact been sent to and received by the Bank and whether or not the partnership has been, or is deemed by law to have been, dissolved or ceased to exist.

- 3.2 If the Customer is an association, committee or other unincorporated body, the Agreement shall remain in full force and effect and shall be binding on the Customer, notwithstanding any change in the membership or constitution of the Customer.
- 3.3 If the Customer is a corporation (including a limited liability company), the Customer hereby warrants and represents that it is:
  - (a) duly established in accordance with all applicable laws, rules and regulations; and
  - (b) duly authorized to enter into the Agreement relating to the Account and Service with the Bank.

The Agreement shall remain in full force and effect and such Customer shall be bound by the terms and conditions of the Agreement notwithstanding any change in the shareholding or in any constitutional arrangements of the Customer.

- 3.4 The Bank may conduct searches at the Hong Kong Companies Registry in respect of Customers which are companies incorporated in Hong Kong or registered as an overseas company in Hong Kong and may conduct or arrange for searches at the appropriate registries in other jurisdictions where it deems it necessary in its sole discretion. Should there be any discrepancy between any search result and the information provided by a Customer, the Bank reserves the right to:
  - (a) decline Account opening requests from the Customer and/or to decline to provide Services to the Customer; or
  - (b) if the Customer has already opened an Account with the Bank or has been using Services provided by the Bank, require rectification of such discrepancy and/or limit the use of, suspend and/or terminate, such Account or Services.

- 3.5 The Customer must ensure that all acts, conditions and obligations required to be done, performed and observed in order for the Agreement to constitute the legal, valid and binding obligations of the Customer enforceable in accordance with its terms, have been done, performed and observed in strict compliance with all applicable law and regulation



and with the constitution of the Customer.

- 3.6 Unless otherwise agreed by the Bank, all accounts opened by Customers who are sole proprietors, partnerships, corporations, statutory bodies or authorities, other bodies of person, associations or committees are subject to a non-refundable account opening fee as specified in the Tariff Schedule.

#### 4. **ACCOUNT OPERATION**

- 4.1 The Customer must provide all such documents, information and authorisations as the Bank may reasonably require in order to open and maintain the Account and/or the Service. This includes, without limitation of the foregoing, all such documents, information and authorisations as the Bank may require for the purposes of applicable anti-money laundering and anti-terrorism financing requirements or (without limitation) other applicable laws and regulations. The Customer must notify the Bank in writing should there be any change in any documents, information or authorisation provided to the Bank and give the Bank supporting documents and documents of any change.

- 4.2 The Customer hereby:

- (a) represents and warrants that it is, and further undertakes that it shall be and continue to be, in full compliance with all applicable laws, rules, regulations, restrictions, directions or guidelines issued by the relevant authorities; and
- (b) represents and warrants that any assets deposited or placed in an Account are not, and further undertakes that it shall not deposit or place any assets in an Account which are, in any way derived from Financial Crime or from any other criminal or unlawful activity.

- 4.3 The Customer undertakes that it shall not:

- (a) engage, directly or indirectly, in a transaction that involves proceeds of any Financial Crime or any other criminal or unlawful activity;
- (b) acquire, receive, possess, disguise, transfer, convert, exchange, carry, dispose, use, remove from or bring into proceeds of Financial Crime or any other criminal or unlawful activity; or
- (c) conceal, disguise or impede the establishment of the true nature, origin, location, movement, disposition, title of, rights with respect to, or ownership of, proceeds of Financial Crime or any other criminal or unlawful activity.

- 4.4 If the Customer becomes aware of any breach, or any action, investigation or proceeding brought against the Customer with respect to any breach of applicable law in connection with the Account or Service, the Customer shall promptly notify the Bank in writing.

- 4.5 Subject to the provisions of the Agreement, the Bank shall be entitled and is authorized by the Customer:

- (a) to honour and act on all instructions for transfer of funds, remittance, withdraw and/or payment and to debit the same to the Account specified; and
- (b) to act on all requests, instructions, orders and/or directions relating to the Accounts, their operation and/or closing provided that they are:
  - (i) signed in accordance with the Signing Arrangement for the time being agreed and in force for the Account concerned; or

- (ii) given in such other manner or pursuant to such other arrangement as the Customer and the Bank may from time to time agree. Any change of such arrangements shall be agreed in writing between the Bank and the Customer.

4.6 Notwithstanding the provisions of Clause 4.5, and save as otherwise expressly agreed in writing by the Bank, no instruction for withdrawal, transfer or payment out of any Account will be accepted unless:

- (a) there are sufficient available funds in the Account specified when the relevant instruction is being processed by the Bank;
- (b) the Banks' internal policies and requirements are satisfied to the extent that the Bank is obliged to comply with such policies and requirements as a matter of law and / or regulation;
- (c) the Account is active; and
- (d) all the laws, rules and regulations applicable to the Bank are being complied with and no government, court, regulatory body or competent authority in any jurisdiction has prohibited the Bank from performing the instruction.

Where an instruction for withdrawal, transfer or payment out of any Account has been accepted by the Bank, the Bank shall be entitled to reject such instruction if at any relevant time the balance of the available funds in the relevant Account is less than the minimum requirement (if any) which is applicable at the time. In no case shall the Bank be liable for any consequences or losses of the Customer resulting from the delay or the non-implementation of the instruction.

4.7 Any instruction given for withdrawal, transfer or payment out of any Account by an Authorized Signatory, as understood and acted on by the Bank in good faith, shall be irrevocable and binding on the Customer. The Bank shall be under no obligation to verify the identity or authority of the Authorized Signatory or the authenticity of such instruction.

4.8 Any request by the Customer to stop or cancel any instructions for withdrawal, transfer or payment must be made in writing, by telephone or such other means as prescribed by the Bank from time to time, provided that the withdrawal, transfer or payment has not yet been completed. The request to stop or cancel any instructions may be subject to charges at the discretion of the Bank. An instruction to stop or cancel a withdrawal, transfer or payment received after the specified cut-off time in Hong Kong in respect of that type of Account or Service will be processed on the next Business Day. The Bank shall not be liable for any liabilities, losses, damages, claims, costs and expenses howsoever arising as a consequence of a stop or cancellation instruction given in accordance with this Clause nor shall the Bank be liable for any withdrawal, transfer or payment that is effected or completed prior to the processing of a stop or cancellation instruction.

4.9 The Customer authorizes the Bank to collect inward remittances, cheques and other instruments acceptable to the Bank for the account of the Customer from time to time as the Bank may think fit. If the Bank elects to collect an inward remittance, cheque or instrument which is acceptable to the Bank for the account of the Customer, the Customer shall be bound by the following terms and such other terms and conditions as the Bank may, from time to time, impose, subject to Clause 23 hereof:

- (a) the Bank reserves the right not to accept any inward remittances, cheques or, other instruments that are not acceptable to the Bank;
- (b) for cheques or other instruments presented by the Customer to the Bank for collection, the Customer warrants that the Customer has a good title to the cheque(s) or instrument(s) and that the cheque(s) or instrument(s) are within the

Customer's own disposition and control;

- (c) the Customer agrees that the e-Cheque Terms and Conditions shall apply for any e-Cheques deposited by the Customer with the Bank using the Bank's e-Cheque Deposit Service;
- (d) the proceeds shall, after deduction of all costs, charges and expenses, be paid to the account of the Customer nominated in the remittance or deposit instruction or such other Account as the Bank may determine according to prevailing banking practice (the "**Collection Account**") and for this purpose, the Bank may convert the currency of the proceeds into the relevant currency of the Collection Account at the then prevailing spot rate of exchange quoted by the Bank (as conclusively determined by the Bank);
- (e) the Bank shall not in any way be liable to account to the Customer for any interest or benefit which the Bank may receive from or derive out of the remittance proceeds or any part thereof prior to the Bank's credit of the same into the Collection Account and such interest and benefit (if any) shall be received and held by the Bank to its own use and benefit absolutely;
- (f) all remittances, cheques and other instruments accepted for collection are credited subject to the receipt by the Bank of freely remittable and immediately available and disposable funds therefor (the "**Final Payment**"). Unless otherwise agreed by the Bank, funds are not available for withdrawal by the Customer until receipt of Final Payment by the Bank. Further, irrespective of whether the Bank has permitted withdrawal prior to the Final Payment, the Bank shall be entitled to charge or debit the Account concerned with the items which are subsequently returned unpaid together with:
  - (i) interest thereon; and
  - (ii) any cost and expenses incurred;
- (g) all remittances, cheques and other instruments payable in Hong Kong received for collection after the normal clearing time on any day in Hong Kong will be treated as received for the Account concerned on the following Business Day;
- (h) notwithstanding any cheque or instrument for collection and payment into an Account has not been endorsed by the payees or bears an "Account Payee" or "Account Payee Only" crossing, the Bank shall be entitled and is authorized (but shall not be obliged):
  - (i) in case of a joint account, to collect and pay into the Account concerned any cheque or instrument payable to any one or more but not all of the account holders; and
  - (ii) in case of an Account in the name of a sole proprietorship or partnership firm, to collect and to pay into the Account concerned any cheque or instrument payable to the sole proprietor personally or payable to any one or more but not all of the partners (as the case may be);
- (i) in the event the Bank agrees to accept any remittance, cheque or instrument for collection and deposit into the Account, the Bank shall do so on the Customer's account and notify the Customer of any claim which may be raised by the drawers of the remittance, cheque or instrument or their drawee banks within a reasonable time; and
- (j) for the avoidance of doubt, nothing contained in this Clause 4.9 shall prejudice or affect any of the Bank's rights of appropriation or set-off.

- 4.10 The following provisions shall be applicable to time deposits:
- (a) a time deposit means a deposit (in Hong Kong Dollars or in any other currency) made by the Customer with the Bank for a pre-determined period of time and which accrues interest in accordance with Clause 4.10(i);
  - (b) upon accepting a deposit (in Hong Kong Dollars or in any other currency) made by remittance or cheque or other instrument acceptable to the Bank from the Customer as a time deposit, the Bank will issue to the Customer a Deposit Confirmation. The Bank may in its sole discretion specify that only a certain mode of deposit will be accepted for any specific transaction;
  - (c) the Bank reserves the right not to accept any time deposit in its absolute discretion. All time deposits accepted by the Bank shall be subject to the minimum funds requirement as stipulated in the Tariff Schedule and shall be governed by these Terms and Conditions and the terms and conditions set out in the relevant Deposit Confirmation (if any), and in the event of conflict, the latter shall prevail;
  - (d) notwithstanding any other provision of the Agreement in relation to currency conversion, if any conversion of currencies is required to set up a time deposit, the applicable exchange rate shall be determined by the Bank at the prevailing rate at the time of conversion, as determined by the Bank in its absolute discretion. The Customer understands and agrees that there are exchange rate risks involved with foreign currency deposits and adverse exchange rate movements could lead to loss of interest earned and principal upon conversion to Hong Kong Dollars or any other base currency;
  - (e) in the event that the Bank agrees in its absolute discretion to accept a time deposit pending receipt of available funds:
    - (i) the time deposit will take effect only upon actual receipt of the funds in full by the Bank;
    - (ii) the time deposit may be cancelled by the Bank without notice if such funds are not subsequently received in full by the Bank; and
    - (iii) the Customer shall on demand indemnify the Bank for all losses, payments, costs and expenses arising out of or as a result of such non-receipt of the funds in full by the Bank;
  - (f) the Bank shall be entitled (but be not under any obligation) to require the production and surrender to the Bank of the Deposit Confirmation concerned for the withdrawal of any time deposit;
  - (g) unless otherwise agreed by the Bank, time deposits can be withdrawn only on or after the applicable due date as specified in the relevant Deposit Confirmation. In an early withdrawal of a time deposit, the Bank shall be entitled to withhold all or part of the interest accrued and/or impose charges and/or other terms and conditions. Unless otherwise agreed between the Bank and the Customer, withdrawals of time deposits shall be made and be payable by the Bank in accordance with the procedures prescribed by the Bank from time to time;
  - (h) if the due date of a time deposit is not a Business Day, it shall be postponed to the next succeeding Business Day;
  - (i) **interest shall accrue prior to the due date on a time deposit at such rate as is specified in the applicable Deposit Confirmation on the basis of the number of days in the Interest Period and the relevant Interest Year up to**

**but excluding the withdrawal date.** Accrued interest will be payable only on the due date and no interest is payable if the time deposit is withdrawn prior to the applicable due date. For the avoidance of doubt, unless the time deposit and its accrued interest or any part thereof has been renewed for a new term of deposit, interest will cease to accrue as from the applicable due date;

- (j) the Customer may give standing instruction to the Bank regarding the disposal of the deposit and its accrued interest (if applicable) on the applicable due date or the withdrawal date (as the case may be). The Bank shall be entitled to act on such instructions of the Customer unless and until the Bank receives further instruction from the Customer to the contrary. Unless the Bank has received valid instructions from the Customer on or before the due date, the Bank shall rollover the total amount (principal and interest) on a daily basis and apply the Bank's savings account interest rate (as published by the Bank) thereon; and
- (k) for the avoidance of doubt, funds which are not deposited as time deposits shall be placed as overnight deposits and shall accrue interest at the prevailing rate set by the Bank.

4.11 The following provisions shall be applicable to call deposits:

- (a) a call deposit means a deposit (in Hong Kong Dollars or in any other currency) made by the Customer with the Bank on terms specifying that the deposit shall not be withdrawn unless the Customer notifies the Bank of the withdrawal date and withdrawal amount in advance, and which accrues interest in accordance with Clause 4.11(i);
- (b) upon accepting a deposit (in Hong Kong Dollars or in any other currency) made by remittance or cheque or other instrument acceptable to the Bank from the Customer as a call deposit, the Bank will issue to the Customer a Deposit Confirmation. The deposit may be for a fixed or indeterminate period, as the Customer may specify or determine from time to time, but subject to a minimum deposit period of twenty-four (24) hours. The Bank may in its sole discretion specify that only a certain mode of deposit will be accepted for any specific transaction;
- (c) the Bank reserves the right not to accept any deposit as a call deposit at its absolute discretion. All deposits accepted by the Bank shall be subject to the minimum funds requirement as stipulated in the Tariff Schedule and shall be governed by these Terms and Conditions and the terms and conditions set out in the relevant Deposit Confirmation (if any), and in the event of conflict, the latter shall prevail;
- (d) notwithstanding any other provision of the Agreement in relation to currency conversion, if any conversion of currencies is required to set up a call deposit, the applicable exchange rate shall be determined by the Bank at the prevailing rate at the time of conversion, as determined by the Bank in its absolute discretion. The Customer understands and agrees that there are exchange rate risks involved with foreign currency deposits and adverse exchange rate movements could lead to loss of interest earned and principal upon conversion to Hong Kong Dollars or any other base currency;
- (e) in the event the Bank agrees in its absolute discretion to accept a call deposit pending receipt of available funds:
  - (i) the deposit will take effect only upon actual receipt of the funds in full by the Bank;
  - (ii) the call deposit may be cancelled by the Bank without notice if such funds are not subsequently received in full by the Bank; and

- (iii) the Customer shall on demand indemnify the Bank for all losses, damages, claims, payments, costs and expenses arising out of or as a result of such non-receipt of the funds in full by the Bank;
- (f) the Bank shall be entitled (but not under any duty) to require the production and surrender to the Bank of the Deposit Confirmation concerned for the withdrawal from a call deposit;
- (g) unless otherwise agreed to by the Bank, not less than 24 hours' prior notice of any withdrawal must be provided to the Bank for the withdrawal of funds from call deposits. If a withdrawal is made not in accordance with the terms and conditions set out in the relevant Deposit Confirmation, the Bank shall be entitled to withhold all or part of the interest accrued and/or impose charges and/or other terms and conditions. Unless otherwise agreed between the Bank and the Customer, all withdrawals shall be made and payable by the Bank in accordance with the procedures prescribed by the Bank from time to time;
- (h) if the due date of a call deposit is not a Business Day, it shall be postponed to the succeeding Business Day;
- (i) **interest shall accrue on a deposit in a call deposit at such rate as specified in the applicable Deposit Confirmation on the basis of the number of days in the Interest Period and the relevant Interest Year up to but excluding the withdrawal date.** Accrued interest will be payable only on the day of withdrawal on the basis that the notice as stipulated in the Deposit Confirmation has been provided; and
- (j) in respect of call deposits, the Customer may give standing instructions to the Bank regarding the disposal of the deposit and its accrued interest on the applicable due date or the withdrawal date (as the case may be). The Bank shall be entitled to act on such instructions of the Customer unless and until the Bank receives further instructions from the Customer to the contrary. Unless the Bank has received valid instructions from the Customer on or before the due date, the Bank reserves the right to (but is not obliged to) place the total amount (principal and interest) on similar terms and deposit period as the previous deposit, at the then applicable interest rate.

4.12 The following provisions shall be applicable to current accounts:

- (a) The Bank will issue cheque books only for current accounts denominated in Hong Kong Dollars and US Dollars and will do so on the following terms and conditions:
  - (i) the Customer must exercise caution in the safekeeping of cheque books and must keep them safe at all times so as to be inaccessible to unauthorized persons;
  - (ii) cheques must be drawn in the currency of the account which is either Hong Kong Dollars or US Dollars, as the case may be;
  - (iii) when a signed cheque, blank cheque or a cheque book is lost or stolen, the Customer must report such loss in writing to the Bank as soon as possible;
  - (iv) when a cheque is sent through the post or otherwise, the words "OR BEARER" should be deleted and the cheque crossed;
  - (v) the Bank shall, upon receipt of a cheque book application request, deliver the required cheque book to the Customer by post to the address of record kept by the Bank. The Bank assumes no responsibility for any delay or loss

caused by any mode of delivery or forwarding;

- (vi) upon receipt of a new cheque book, the Customer should verify the cheque serial numbers, account number and name of the account holder printed thereon as well as the number of cheques before use. Any irregularities should be promptly reported to the Bank;
  - (vii) the Customer should exercise care when drawing a cheque to ensure its correctness and agrees that it will not draw cheques by any means and/or in any manner which may enable a cheque to be altered or may facilitate fraud or forgery. The Customer should write the amount, both in words and figures in the spaces provided on the cheque, as close to each other and to the left-hand margin as possible so as to leave no space for insertions. The word "only" should be added after the amount state in words. Only Arabic numerals should be used for figures;
  - (viii) all cheques must be written in non-erasable ink or ball-point pen in Chinese or English and be signed in conformity with the specimen signature registered with the Bank;
  - (ix) any alteration on a cheque must be confirmed by the full signature of the drawer. The Customer acknowledges that the Bank will not be held responsible for losses arising from alterations which cannot be readily detected; and
  - (x) the Customer must not pre-sign any cheque in blank;
- (b) any Customer who has been issued with a cheque book by the Bank agrees that:
- (i) cheques drawn by the Customer which have been paid may, after having been recorded in electronic or other form as determined by the Bank, be retained by the collecting bank or HKCIL for such period as is stated in the rules relating to the operation of HKICL's clearing house for the related currency and after this, they may be destroyed by the collecting bank or HKICL as the case may be;
  - (ii) the Bank is authorized to contract inter alia with collecting banks and HKICL in accordance with the terms of paragraph (i) of this Clause 4.12(b); and
  - (iii) the Customer will be bound by the conditions printed on the inside cover of the cheque book and by such other conditions as are in force at the relevant time;
- (c) the Bank reserves the right to return cheques where there are insufficient funds in the relevant Account, where there is a technical error or for any other reason as the Bank may determine in its absolute discretion from time to time and to impose a service charge in respect of returned cheques.
- (d) a Customer may only cancel (countermand) payment of a cheque by giving instructions (the authenticity of which the Bank must be able to verify to its satisfaction) to the Bank clearly identifying the cheque in question by reference to its cheque number before the cheque has been paid. For the avoidance of doubt:
- (i) if the Customer identifies the cheque in question by reference to other details in addition to the cheque number, the Bank shall not be responsible for ensuring that those other details correspond with the details of the cheque in question identified by the cheque number;
  - (ii) if the Customer identifies the cheque in question by reference to other



details instead of identifying the cheque number, the Bank shall not be required to take any action; however, the Bank may in its absolute discretion and without responsibility follow such instruction; and

- (iii) if the Customer cancels (countermands) payment of a cheque by means of an instruction which cannot be verified by the Bank to its satisfaction, the Bank shall not be required to take any action; however, the Bank may in its absolute discretion and without responsibility follow such instruction;
- (e) where the Customer cancels (countermands) payment of a cheque by means of an instruction to the Bank which cannot be verified by the Bank to its satisfaction, and regardless of whether or not the Bank acts on such instruction, the Customer shall immediately confirm such instruction to the Bank in writing and in such manner as enables the Bank to verify the authenticity of such instruction. The Bank shall be bound to follow the instruction only once it has been authenticated and shall not be liable for having followed any unauthenticated instruction which is incorrect, false, unclear or in any other circumstances;
- (f) withdrawals of cash from US Dollar denominated current accounts are not allowed except by the Customer or by a third party duly authorized by the Customer, and are subject to two (2) Business Days' prior notice and to availability of the currency; and
- (g) **unless otherwise specified by the Bank, no interest is payable on credit balances in a current account.**

4.13 The following provisions shall be applicable to savings accounts:

- (a) Hong Kong Dollar denominated savings accounts:
  - (i) **interest at the Bank's Hong Kong Dollar savings accounts shall accrue daily on the credit balance of the Account at the rate determined by the Bank from time to time in its absolute discretion, and will be compounded at intervals as may be specified by the Bank.** Information in relation to the applicable interest rate of Hong Kong Dollar savings accounts may be obtained at the Bank's premises and / or from the Customer's usual contact at the Bank;
  - (ii) interest earned is credited to Hong Kong Dollar savings accounts at half-yearly intervals (or on such other basis as may be specified by the Bank from time to time); and
  - (iii) interest is payable on a Hong Kong Dollar savings account closed during an interest period only up to the last calendar day of that interest period;
- (b) non-Hong Kong Dollar denominated savings accounts:
  - (i) **interest at the Bank's non-Hong Kong Dollar denominated savings accounts rate shall accrue daily on the credit balance of the Account at the rate determined by the Bank in its absolute discretion and be compounded at intervals as may be specified by the Bank.** Customers may obtain information in relation to interest rates for each available currency at the Bank's premises or consult the Bank's staff;
  - (ii) interest earned is credited to non-Hong Kong Dollar denominated savings accounts at monthly intervals (or on such other basis as may be specified by the Bank from time to time);
  - (iii) interest is payable on a non-Hong Kong Dollar denominated savings account



closed during an interest period only up to the last calendar day of that interest period;

- (iv) deposits to a non-Hong Kong Dollar denominated savings account must be made in a currency acceptable to the Bank in its sole discretion and, if not deposited in the currency of the relevant account, the Bank will credit such savings accounts with an amount in the currency of the account calculated using an exchange rate determined by the Bank; and
- (v) a withdrawal from a non-Hong Kong Dollar denominated savings account may be made subject to two (2) Business Days' prior notice and to availability of the currency. Where the Bank in its sole discretion considers it necessary or expedient, it may facilitate the withdrawal by firstly converting the relevant currency into Hong Kong Dollars at an exchange rate determined by the Bank on the date of withdrawal, or by telegraphic transfer or a draft subject to a service charge.

4.14 Withdrawals made from the Account or other payments made to the Customer will be made after rounding down to the nearest ten cents (or, for other foreign currency, to the nearest unit in accordance with market practice). This constitutes full payment.

4.15 **The Customer acknowledges and agrees that the Bank may prescribe a minimum deposit amount for current accounts and savings accounts and the Bank in its absolute discretion may impose fees and charges should the balance of such accounts fall below the prescribed minimum. Such minimum amounts, fees and charges shall be agreed between the Customer and the Bank.**

4.16 Unless otherwise agreed or arranged with the Bank, Accounts shall not be overdrawn temporarily or otherwise. The Bank may, at its discretion, allow an Account to be overdrawn to the extent agreed and advised by the Bank in writing if the Customer has previously made arrangements with the Bank for such overdraft facility. Such overdraft facility may be granted, revised and cancelled at any time at the Bank's sole discretion without notice and the Bank reserves the right to demand immediate payment of any debit balance and applicable interest created under the overdraft facility. The interest charged on any unauthorised overdrawn Account will be calculated in accordance with the Tariff Schedule.

4.17 In connection with any transactions denominated in US Dollars cleared or settled through the US Dollar clearing system operated in Hong Kong by HKICL, the Customer acknowledges and agrees that:

- (a) the relevant clearing system will be operated in accordance with the US Dollar Clearing House Rules and the US Dollar Operating Procedures (as the same may be modified from time to time); and
- (b) the Hong Kong Monetary Authority shall not owe any duty or incur any liability to the Customer or other persons in respect of any claim, loss, damage or expense (including loss of business, loss of business opportunity, loss of profit, special, indirect or consequential loss) (even if the Hong Kong Monetary Authority knew or ought reasonably to have known of their possible existence) of any kind or nature whatsoever arising in whatever manner directly or indirectly from or as a result of:
  - (i) anything done or omitted to be done by Hong Kong Monetary Authority acting in good faith or by any other parties concerned with the above clearing houses, or by any other person in the management, operation or use (including the termination and/or suspension of the settlement institution, the clearing facilities or any member) of any of the clearing houses or the clearing facilities or any part of any of them; or

- (ii) without prejudice to paragraph (i) above, giving any notice, advice or approval relating to or under the US Dollar Clearing House Rules and the US Dollar Operating Procedures.

## 5. **FINANCIAL CRIME MANAGEMENT**

- 5.1 The Customer acknowledges, and agrees to assist and cooperate with the Bank in respect of, Financial Crime Risk Management Activity, which may include: (i) screening, intercepting and investigating any instruction, communication, drawdown request, application for Services, or any payment sent to or by the Customer, or on the Customer's behalf; (ii) investigating the source of or intended recipient of funds; (iii) combining the Customer's information with other related information in the Bank's possession; and (iv) making further enquiries as to the status of a person or entity, whether they are subject to Sanctions, or confirming the Customer's identity and status or that of a Connected Person.
- 5.2 The Customer acknowledges that Financial Crime Risk Management Activity may lead to delays in or the blocking or refusal of (i) making or clearing any payment; (ii) processing Customer's instructions or application for Services; or (iii) the provision of all or part of the Services. To the extent permissible by law, the Bank shall not be liable to the Customer or any third party in respect of any loss (howsoever caused) that was suffered or incurred by the Customer or a third party, caused in whole or in part in connection with Financial Crime Risk Management Activity.
- 5.3 The Customer represents and warrants to the Bank that it has not committed nor ever been convicted of any, money laundering, corruption, bribery or serious tax offences or of any other criminal activities in any jurisdiction.

## 6. **SANCTIONS**

- 6.1 The Customer represents and warrants that neither it nor any of its shareholders, directors, subsidiaries, employees, senior management members, or authorised persons is an individual or entity ("Person") which is, or is owned or controlled, by any other Person which is (i) subject to Sanctions ("Sanctioned Person"); or (ii) located, organised or resident in a country or territory that is, or whose government is, the subject to Sanctions, including, but not limited to, Cuba, Iran, North Korea, Syria, region of Crimea, Donetsk and Luhansk ("Sanctioned Country").
- 6.2 The Customer shall not, directly or indirectly, use the Service or funds in any Account to make payments, or lend, contribute or otherwise make available such funds to any subsidiary, joint venture partner or other Person (i) to fund or facilitate any activities or business of or with a Sanctioned Person or which are carried out in a Sanctioned Country; or (ii) in any other manner that would result in a violation of Sanctions by any Person.

## 7. **UNCOMMITTED FACILITY**

- 7.1 Any Uncommitted Facility is made available at the sole discretion of the Bank and is subject to these Terms and Conditions and any other terms and conditions in the relevant Facility Agreements (as amended from time to time). Where any conflict arises between these Terms and Conditions and the relevant Facility Agreement, the latter shall prevail.
- 7.2 The availability and utilization of the Uncommitted Facility is also subject to completion and production of such other agreements, documents, applications and information as may be required the Bank from time to time.
- 7.3 A Facility Agreement will set out the following information:
  - (a) the facility limit and/or the basis upon which it is calculated;
  - (b) the applicable interest rate and/or the basis upon which it is calculated; and

(c) any other terms for granting the Facility.

- 7.4 In consideration of the Bank providing and continuing to provide Uncommitted Facilities, the Customer as beneficial owner agrees to, or will procure a third party to, charge and assign certain assets to be agreed between the Customer and the Bank in favour of the Bank, and on such terms and in such form as required by the Bank, as a continuing security for the due and punctual payment and discharge of the indebtedness (the "**Uncommitted Facility Secured Assets**").
- 7.5 The Customer undertakes that the value of the Uncommitted Facility Secured Assets shall be maintained at a level specified in the Facility Agreement or as notified by the Bank from time to time. If at any time the value of the Uncommitted Facility Secured Assets falls below the required level, the Customer shall provide additional security acceptable to the Bank and/or reduce the relevant outstanding Facility.
- 7.6 Subject to any administrative or application fees or charges which may be imposed by the Bank, the Customer may cancel or withdraw any application of Uncommitted Facilities after submission to the Bank.
- 7.7 All Uncommitted Facilities granted by the Bank to the Customer shall not be available for drawdown unless appropriate applicable security documents (in a form duly approved by the Bank) have been duly executed.
- 7.8 The Customer agrees that the Bank is authorized to contact any credit reference agencies (including those approved for participation in the Multiple Credit Reference Agencies Model as well as the operator of any centralized database used by such credit reference agencies) and all other relevant parties from time to time in the Bank's absolute discretion for the purpose of verifying the information of the Customer (including, but not limited to, personal and financial details) in relation to an Uncommitted Facility (including, but not limited to, in respect of any application for or periodic review of an Uncommitted Facility).

## 8. CREDIT FACILITIES

- 8.1 These Terms and Conditions and the terms and conditions in the relevant Facility Agreement(s) (as amended from time to time) constitute the terms and conditions of the Credit Facilities granted to the Customer. Where any conflict arises between these Terms and Conditions and the terms and conditions of the relevant Facility Agreement, the latter shall prevail.
- 8.2 All Credit Facilities granted by the Bank to the Customer shall not be available for drawdown unless appropriate applicable security documents (in a form duly approved by the Bank) have first been duly executed.
- 8.3 Interest will be payable by the Customer on all Credit Facilities. The Customer shall refer to the relevant Facility Agreement for confirmation on the final interest rate(s) which is payable. In the event that the Customer fails to settle any principal repayment or interest payment, the Bank shall have the right to impose overdue interest at such rate (before or after judgment) as determined by the Bank from time to time to the extent permitted by law until settlement and/or payment thereof, together with any other late charges or administrative charges, as specified in the relevant Facility Agreement or as specified in the Tariff Schedule.
- 8.4 The Customer agrees to, or will procure a third party to, charge, pledge or assign such assets as the Bank requires from time to time, and on such terms and in such form as required by the Bank, ("**Credit Facility Secured Assets**") as continuing security for the repayment of the Credit Facilities, and irrevocably appoints the Bank as its attorney when dealing with the Credit Facility Secured Assets. The Customer shall not sell, dispose of, or otherwise deal with, or engage in any negotiations involving the Credit Facility Secured

Assets without the prior written consent of the Bank during the continuance of the Credit Facility. The Customer agrees to, upon demand by the Bank, execute such transfers and other relevant documents as may be necessary to enable the Bank to, or any other party the Bank may nominate for this purpose, to be registered as the owner of, or otherwise obtain the legal title to, any assets which are Credit Facility Secured Assets, or to do such things in order for the Bank to have enforceable security interest over the assets.

8.5 In the event that the Customer:

- (a) breaches these Terms and Conditions and/or the provisions as set out in the relevant Facility Agreement;
- (b) fails to repay any loaned amount as and when they become due; or
- (c) becomes subject to bankruptcy, insolvency, restructuring proceedings (or any similar proceeding in another jurisdiction),

the Bank may (at its absolute discretion), take possession of the Credit Facility Secured Assets and the Bank shall not be responsible or liable for any losses, damages, liabilities, claims, cost and expenses which the Customer may suffer or incur as a result of such possession.

8.6 The Bank is authorized to deduct any amount which is due and payable by the Customer under the terms of a Facility Agreement from the Account(s) of the Customer. Where the funds of the Customer are placed on time deposit or call deposit and have not matured yet, the Bank is authorized to break the deposit and deduct any sums due therefrom. The Bank shall not be responsible for any loss suffered by the Customer (for example, loss in interest payment) as a result of the breaking of a time deposit or call deposit. All and any granting of a Credit Facility will be subject to review by the Bank (at the absolute discretion of the Bank) and the Bank reserves its right to withdraw any Facilities and request repayment on demand without providing reason therefor.

8.7 Subject to any administrative or application fees or charges which may be imposed by the Bank, the Customer may cancel or withdraw any application of Credit Facilities after submission to the Bank.

8.8 The Customer agrees that the Bank is authorized to contact any credit reference agencies (including those approved for participation in the Multiple Credit Reference Agencies Model as well as the operator of any centralized database used by such credit reference agencies) and all other relevant parties from time to time in the Bank's absolute discretion for the purpose of verifying the information of the Customer (including, but not limited to, personal and financial details) in relation to a Credit Facility application (including, but not limited to, in respect of any application for or periodic review of a Credit Facility).

## 9. **INSTRUCTIONS TO THE BANK**

9.1 Instructions to the Bank from the Customer or any Authorized Signatory shall be given by facsimile transmission, in writing, via the SWIFT system or in such manner or pursuant to such arrangements as are from time to time mutually agreed between the parties and accepted by the Bank. Without prejudice to the Bank's right to refuse to accept the instruction under the Agreement, the Bank shall be entitled not to accept any instruction which the Bank (in good faith) determines is not given in accordance with the Signing Arrangement, or which is a Defective Instruction, except where the Bank otherwise agrees.

9.2 All instructions received from the Customer or any Authorized Signatory which the Bank (in good faith) determines to be in compliance with the relevant Signing Arrangement shall be treated as genuine, authentic and fully authorized and binding on the Customer.

9.3 The Customer agrees that the Bank may (but shall not be obliged to) record any

instructions given by the Customer over the telephone or orally. The Customer further agrees that all such recordings shall be the property of the Bank and the recordings shall be conclusive evidence and binding on the Customer.

- 9.4 The Bank does not accept any responsibility for unauthorized, misuse and/or fraudulent use of the Accounts unless the same is a direct result of negligence, wilful default or fraud of any of the directors, employees or officers of the Bank.
- 9.5 The Customer agrees to use the Bank's services responsibly. In giving instructions to the Bank to make payments or effect transactions, the Customer agrees to take reasonably practicable steps to safeguard the Customer's own interest, money and assets from fraud or other illegal activities. The Customer acknowledges that one of these steps for the Customer before giving instructions to the Bank, is to use the information or tool made available to the public by law enforcement agencies, governmental or regulatory authorities to check whether the party receiving payment from or transacting with the Customer is real and credible. Such information or tool includes Scameter made available the Hong Kong Police Force. Given the quantity of payment instructions received by the Bank from customers, the Customer acknowledges that it is not feasible in practice for the Bank to conduct the check for the customers before processing their payment instructions and agrees that it is therefore the duty of the Customer (and not the Bank) to check before giving instructions to the Bank.

## 10. **AUTHORIZED SIGNATORY AND SIGNING ARRANGEMENT**

- 10.1 The Authorized Signatory (when signing in accordance with the terms of the applicable Signing Arrangement) shall have full authority to act on behalf of the Customer to deal with the Bank in respect of any matter whatsoever concerning or arising from the relevant Account or (as the case may be) the relevant Service or to give to the Bank any directions, orders or instructions of whatever nature (in the form of a standing instruction or otherwise) relating thereto and/or enter into all types of agreements with the Bank in connection with the aforesaid matters, but excluding:
- (a) the application for opening of new Account or (as the case may be) setting up of new Service, save as otherwise provided in the Agreement; and
  - (b) any change of Authorized Signatory and/or his/her/their specimen signatures and/or the relevant Signing Arrangement.
- 10.2 Unless otherwise agreed to by the Bank, and save as otherwise provided in the Agreement, any change in the Authorized Signatory and/or his/her/their specimen signatures and/or Signing Arrangement and/or application for any new Account or (as the case may be) new Service shall only be effected as and when both:
- (a) the Bank has received:
    - (i) where the Customer is an individual or the Customer consists of several individuals (including a partnership and joint account), written instructions from the Customer or, as the case may be, all the individuals constituting the Customer;
    - (ii) where the Customer is a corporation, a certified true copy of the board resolution(s) of the Customer authorising such change or application; and
    - (iii) in any other case, such duly authorized written instruction from the Customer requesting such change or application as is in a form satisfactory to the Bank in its absolute discretion; and
  - (b) the Bank agrees to give effect to such change or application.

- 10.3 Where the Authorized Signatory and the relevant Signing Arrangement in relation to an Account or Service (the "**Relevant Account and/or Service**") are described as "the same as" those of another Account or Service (the "**Reference Account**"), if there is any change in the Authorized Signatory and/or his/her/their specimen signatures and/or the relevant Signing Arrangement of the Reference Account, the corresponding Authorized Signatory and/or his/her/their respective specimen signatures and/or the relevant Signing Arrangement of the Relevant Account and/or Service shall be deemed to change accordingly without the Bank referring to the Customer, provided that the closure of the Reference Account shall not affect the continuity or effectiveness of the Authorized Signatory and Signing Arrangement of the Relevant Account and/or Service.
- 10.4 In respect of any of the Services, if the Signing Arrangement thereof shall consist of two or more levels of authorization, all and any of such levels of authorization shall be equally effective as the Signing Arrangement of such Service.
- 10.5 Notwithstanding that the Accounts and Services may be established simultaneously under one single document or agreement, the Authorized Signatory and the Signing Arrangement of each and every Account and Service will be treated as independent by the Bank so that any change in the Authorized signatory and/or his/her/their specimen signatures and/or the Signing Arrangement for any Account or Service will not affect the others.
- 10.6 The Customer agrees to ratify at all times all acts, deeds, directions, orders or instructions given by any or all of the Authorized Signatories in accordance with Clause 10.1 above and acknowledges that the same shall at all times be binding on the Customer.
- 10.7 The Authorized Signatory shall have continuous authority and powers to deal with the Bank in accordance with Clause 10.1 above until and unless the Bank shall have actually received written notice to the contrary in the prescribed form and duly signed by the Customer in accordance with Clause 10.2 above and the Bank shall have notified the Customer of the Bank's acceptance of, or have actually accepted and acted upon, such contrary notice.
- 10.8 Notwithstanding anything contained herein, the Customer agrees and acknowledges that the Bank shall have the absolute right at any time, without prior notice or giving any reason therefore, not to accept any order, request or instruction from all or any of the Authorized Signatories.
- 10.9 Any instruction given by the Authorized Signatory may not be rescinded or withdrawn without the written consent of the Bank. The Bank will act on any instruction which it in good faith believes has come from the Authorized Signatory and such instruction shall be irrevocable and binding on the Customer. The Bank shall be under no duty to verify the identity of the Authorized Signatory giving the instruction or the authenticity of such instruction.
- 10.10 In the event of the death of the Customer or any one or more or all of the Customer (where the Customer constitutes of more than one person), any payment, act thing or matter made or done by the Bank pursuant to the request instruction or direction of the Authorized Signatories or any of them after such death but prior to the actual receipt of notice in writing thereof by the Bank shall be absolutely and conclusively binding on the Customer, the respective estates and personal representatives and any party/parties claiming through or under the Customer or any one or more of them.
11. **SET-OFF AND LIEN**
- 11.1 To the extent permitted by applicable law, and in addition and without prejudice to any lien, guarantee, right of set-off or similar right or security (now existing or established at a later date) to which the Bank is entitled by law or under any agreement, the Bank shall have the right and is hereby authorised at any time and from time to time, without notice



to the Customer (any such notice being expressly waived) to:

- (a) debit any amount payable by the Customer to the Bank (including any fees, expenses or interest) from the Customer's Accounts maintained with the Bank, irrespective of whether there are sufficient available funds, overdraft or other Facilities in the relevant Account or accounts (and whether in the sole name of the Customer or held jointly with others);
- (b) withhold, combine or consolidate the balance on all or any of the Customer's Accounts maintained with the Bank (whether in the sole name of the Customer or held jointly with others) and set off or transfer any moneys (in the form of credit balance or Credit Facility) standing to the credit of any such Account or Accounts in or towards settlement of any amount owing by the Customer to the Bank; and
- (c) refuse to pay the Customer any moneys in any currency standing to the credit of the Customer's Account or Accounts maintained with the Bank (whether in the sole name of the Customer or held jointly with others) when due or on demand by the Customer if and to the extent that such moneys are equal to or less than the amount owing by the Customer to the Bank and, if the Bank exercises this right with respect to any moneys, such moneys will remain outstanding from the Bank on substantially the terms and conditions in force immediately before the Bank exercised this right or on such other terms as the Bank may consider appropriate from time to time,

and, for the purposes of these provisions:

- (i) "amount owing by the Customer to the Bank" may include (without limitation) amounts which: (A) are actual or contingent, present, future, or deferred, primary or collateral; (B) are owing by the Customer solely or jointly with any other person; (C) include fees, expenses or interest; (D) are in any currency; and (E) wherever situated or payable; and
- (ii) where any such set-off and/or application of a credit balance requires the conversion of one currency into another, such conversion shall be calculated at the then prevailing spot rate of exchange as determined by the Bank in its absolute discretion.

11.2 To the extent permitted by applicable law, the Bank may be entitled to retain all or any securities, valuable or any other property whatever and wherever situated which may be deposited with or otherwise held by the Bank or in the name of Customer or any one or more of them whether for safe custody or otherwise and to sell the same or any part thereof at such price as the Bank shall determine whether by public auction, private treaty or tender and the Bank may engage such agent or broker therefore and apply the proceeds thereof to set off any or all sums owing from the Customer to the Bank after first deducting all costs and expenses, without notice to the Customer (any such notice being expressly waived).

11.3 If the exercise of the right of set-off by the Bank in accordance with the terms set out herein results in insufficient funds in any account of the Customer and as a result of such insufficiency, a remittance from the Account or withdrawal by the Customer is dishonoured, the Bank shall not be held liable for any losses which may be suffered by the Customer as a result.

## 12. INDEMNITY FROM THE CUSTOMER

12.1 The Customer shall indemnify and keep the Bank, its directors, employees and officers fully indemnified from and against all costs and expenses (legal or otherwise), and all losses, damages, actions, demands, claims, proceedings whatsoever ("**Liabilities**") which the Bank (acting reasonably) may suffer, incur or sustain, whether actual or contingent,

as a result of or arising from any transactions, contracts or services entered into and/or provided by the Bank under any Account or (as the case may be) any Service or as a result of maintaining or continuing any Account or Service in accordance with these Terms and Conditions, including:

- (a) any dispute between the Customer and its beneficiaries in relation to opening, managing or maintaining the Account;
- (b) the Bank acting on the instructions of the Authorized Signatories which the Bank believes in good faith to be genuine; and
- (c) the Customer failing to observe or keep to the Terms and Conditions,

except to the extent that such Liabilities are caused by or result from the negligence, wilful default or fraud of the Bank or any of the directors, employees or officers of the Bank.

### 13. **EXCLUSION OF LIABILITY**

13.1 The Bank shall not be liable for any loss or damage (direct or otherwise) suffered by the Customer or any other person (except if and insofar as the same is caused by the negligence, wilful default or fraud of the Bank or any of the directors, employees or officers of the Bank) as a result of:

- (a) the use or cancellation of all or any Account or (as case may be) any Service by the Customer, the Authorized Signatory or any other person whether or not authorised;
- (b) a Defective Instruction;
- (c) the withdrawal or suspension of any transaction of the Customer or any failure to effect or execute any order or instructions from the Customer attributable, either directly or indirectly, to any circumstances or events outside the control of the Bank;
- (d) its inability to act in accordance with an instruction from the Customer or the Authorized Signatory due to prevailing market conditions, the manner and timing of execution of an instruction and failures of any electronic systems (of the Bank, the Bank's service providers or agents or any other third parties) used by the Bank in the provision of these Terms and Conditions and Services;
- (e) any mechanical, electronic, internet, cyber, power or other failure, malfunction, interruption, inaccuracy or inadequacy of any telecommunication system or channel, computer system or other equipment used by the Bank or the installation or operation thereof or Acts of God, act of terrorism, war, or declaration or moratorium or any other causes beyond the control of the Bank;
- (f) any leakage of instruction or information relating to the Customer or any Authorized Signatory from any telecommunication company, channel or system, equipment, device or intermediary through which the instruction or information passed to or by the Bank or the Bank's agents or any other third party;
- (g) the imposition or change of any applicable law, market disruption or fluctuation, or procedures, restrictions or suspension in respect of the Account and/or Service imposed by any government, regulatory authority, clearing house or market, or bankruptcy, insolvency or liquidation of any relevant bank, financial institution, exchange, clearing house or government;
- (h) any execution of an instruction as given in accordance with this Agreement or any inability or decision of the Bank not to execute such instructions for whatever



reason (including but not limited to, suspicion of forgery of instructions) or any incomplete or erroneous transmission of any instruction or order of the Customer or any error in the execution of any such instruction or order or any delay, loss (including loss of profit or any economic loss), expenses or damages whatsoever incurred or suffered by the Customer as a result thereof; and/or

- (i) any delay, interruption, failure or suspension howsoever caused by any third party, including but not limited to service providers or equipment suppliers, which interfere with, affects or disrupts the performance of the Bank of its obligations hereunder.

13.2 In no circumstances shall the Bank be liable for any consequential or special damage to, or loss (direct or indirect) suffered by, the Customer (including without limitation to the unauthorized access to any messages sent by the Bank to the Customer).

13.3 Any default by the Customer in discharging the Customer's liability under any other agreements between the Bank and the Customer shall be deemed to be a default under these Terms and Conditions and vice versa and the Bank shall be entitled to exercise any or all of its rights under these Terms and Conditions. Further, any default in discharging the Customer's liabilities under any other agreement entered into between the Customer and the Bank's affiliates shall be deemed to be a default under these Terms and Conditions and vice versa entitling the Bank to recall the Facilities granted to the Customer.

#### 14. **TERMINATION/SUSPENSION OF ACCOUNT(S) AND SERVICES(S)**

14.1 The Bank has the right to suspend the Account and/or Services without giving any notice and reason.

14.2 The Bank may terminate the Account and/or Services with or without cause, and with or without prejudice to the continuance of the other Account and/or Services which shall continue to be governed by the Agreement, provided that not less than thirty (30) days prior notice has been given to the Customer.

14.3 Without prejudice to the generality of Clause 14.2 the Bank shall be entitled to close all or any of the Accounts immediately by giving notice to the Customer if:

- (a) there is any change of law which prohibits or renders illegal the maintenance or operations of such accounts or any part thereof;
- (b) the account is being or is suspected of being used for Financial Crime or an associated risk or any other unlawful or criminal activity;
- (c) the Customer or any Authorized Signatory shall commit any breach of, or omit to observe any obligation under, these Terms and Conditions; or
- (d) the Account shows a zero balance for a period of six (6) continuous months or for such shorter period as the Bank may prescribe.

14.4 The suspension or termination of any of the Accounts or Services, and any withdrawal of cash or property, whether or not following such suspension or termination, shall be without prejudice to the right of the Bank to settle any transactions entered into, or to settle any liability incurred by the Customer under these Terms and Conditions or by the Bank on behalf of the Customer, prior to such suspension or termination and, upon such suspension or termination, the Bank may cancel all or any unexecuted instruction at its discretion.

#### 15. **PAYMENT NOT SUBJECT TO DEDUCTION**

15.1 All sums payable by the Customer under the Agreement (including without limitation any repayments under Clause 8) shall be paid to the Bank in Hong Kong Dollars or otherwise

as the Bank may from time to time direct in full, free and clear of any present or future taxes, levies, imposts duties, charges, fees or withholding and without set-off or counterclaim or any restriction, condition or deduction whatsoever. If the Customer is compelled by any applicable law to make any deduction or withholding, the Customer shall promptly pay to the Bank such additional amount as will result in the net amount received by the Bank being equal to the full amount which would have been receivable had there been no deduction or withholding. Any additional amount paid under this Clause 15 shall not be treated as interest but as agreed compensation.

16. **FEES AND CHARGES**

16.1 **The Bank may impose such fees, charges and/or commissions for the operation or maintenance of any Account or for the provision or maintenance of any Account or Service at such standard rate as specified in the Tariff Schedule or advised to the customers from time to time, provided that the Bank may vary the amount of fees or their basis of calculation upon a reasonable period of notice to the Customer, unless such changes are not within the Bank's control.**

16.2 In the event of any non-payment of sums owed to the Bank by the Customer, the Bank shall have the right to impose overdue interest on any unsettled sum at such rate (before or after judgment) as determined by the Bank to the extent permitted by law, in addition to any late or administrative charges which may be applicable and levied by the Bank as specified in the Tariff Schedule. The Bank will inform the Customer of the nature and amount of charges debited to their accounts promptly after any such charges is debited (save for in circumstances whereby a prior notice has already been given by the Bank to the Customer in relation to the charges).

16.3 The Customer hereby authorizes the Bank (without prior notice or reference to the Customer) to deduct such fees, charges and/or commission from any one or more of the Accounts.

16.4 The Bank reserves its right to vary its fees and/or charges in relation to Accounts and Services at any time by giving at least thirty (30) days' prior written notice to the Customer. However, in the event that such variation in fees and/or charges are imposed as a result of events beyond the control of the Bank, the Customer agrees that notice of less than thirty (30) days can be given and shall be accepted by the Customer.

16.5 If no transaction has taken place in relation to an Account for over a period of twelve (12) months, the Bank is entitled upon thirty (30) days' prior notice the Customer to charge a fee on such account. Such fee will be debited to the relevant Account of the Customer.

17. **ADVICE AND STATEMENT**

17.1 The Bank shall, unless otherwise specifically requested by the Customer, provide a monthly statement in respect of an Account to the Customer. The statement shall be provided to the Customer by way of personal delivery, ordinary post, email or other means of delivery (including by not limited to electronic means, the SWIFT system or other channels or systems used in the industry for such purposes) prescribed by the Bank and shall be include transactions concluded pursuant to or as result of telephone instruction.

17.2 The Customer agrees to examine each advice, contract note, receipt, account statement ("**Statement of Account**") received from the Bank to check if there are any errors, discrepancies, unauthorized debits or other transactions or entries arising from whatever cause, including, but without limitation, forgery, forged signature, fraud, lack of authority or negligence of the Customer or any other person (the "**Unauthorized Transaction**").

17.3 The Customer agrees that each Statement of Account shall, as between the Bank and the Customer, be conclusive evidence as to the balance shown therein and that the Statement

of Account shall be binding upon the Customer, who shall be deemed to have agreed to waive any rights to raise objections or pursue any remedies against the Bank in respect thereof unless the Customer notifies the Bank in writing of any Unauthorized Transaction within ninety (90) days after:

- (a) personal delivery of such Statement of Account to the Customer if it is personally delivered;
- (b) the Bank has posted such Statement of Account if it is sent by ordinary post;
- (c) the Bank has email such Statement of Account if it is sent by email; or
- (d) such Statement of Account has become available for the Customer to access if it is delivered by other means of delivery.

17.4 Nothing in Clause 17.3 or contained herein shall affect the Customer's right of recourse in relation to:

- (a) unauthorized transactions arising from forgery or fraud by any third party including any employee, agent or servant of the customer and in relation to which the Bank has failed to exercise its reasonable care and skill;
- (b) unauthorized transactions arising from forgery or fraud by any employee, agent or servant of the Bank; or
- (c) other unauthorized transactions arising from the negligence, wilful default or fraud on the part of the Bank, or any of directors, employees or officers of the Bank.

17.5 Notwithstanding any provisions to the contrary, whether express or implied, the Bank reserves its absolute right at any time upon discovery of:

- (a) any entries being made by mistake; and/or
- (b) any omission of entries; and/or
- (c) any error in calculation in relation to any of the Accounts any/of transaction thereon or in connection therewith,

to rectify its records and to make corrective entries (whether credit or debit) to the statement of accounts of the Account concerned. For the avoidance of doubt, the above shall not affect the duty of the Customer as provided in Clauses 17.2 and 17.3 and their binding effect on the Customer.

## 18. **NOTICE**

18.1 The Bank shall be entitled to prescribe, from time to time, the form of notice (whether written or any other form) and the mode of communication with respect to each type of Services.

18.2 Communications delivered personally, by post, facsimile transmission, email or by other means will be deemed to have been delivered to the Customer: (i) where delivered personally, at the time of personal delivery or upon leaving it at the registered office of the Customer; (ii) where by post, when posted by the Bank to the address last registered with the Bank; (iii) where sent by facsimile transmission or by email, on the date of dispatch to the facsimile number or the email address last registered with the Bank; and (iv) where by other means, on the date of dispatch by the Bank. Items sent to the Customer or delivered to an authorized representative are supplied at the Customer's risk.

18.3 In the event that a communication delivered by post to the Customer has been returned

to the Bank, the communication shall still be deemed to have been delivered to the Customer on the date of posting. The Bank is not obliged to attempt to deliver such communications by any other means set out in Clause 18.2 and will withhold further communications until the Customer provides an updated address to the Bank or requests the Bank to deliver communications by one of the alternative means in Clause 18.2.

- 18.4 All communications sent by the Customer to the Bank shall be in writing and shall be sent to the branch office at which the Account is kept unless the Bank prescribes other form of notice or mode of communication and shall be deemed to have been delivered to the Bank on the day of actual receipt.
- 18.5 The notice or communication shall be deemed to have duly served to the Customer if it is duly displayed in the banking hall or on the Bank's website.

## 19. **CONFIDENTIALITY AND DATA PROTECTION**

19.1 The Bank will use its best endeavours to ensure that the confidentiality of all Customer Information will not be compromised. In this respect, the Bank undertakes to keep Customer Information held by it confidential, save where disclosure is required pursuant to or is otherwise made in accordance with:

- (a) applicable law or regulation;
- (b) a court order;
- (c) requests of regulators or government agencies anywhere in the world;
- (d) the Bank's legitimate business purposes which require disclosure;
- (e) the consent of the Customer or data subject; and/or
- (f) the Personal Data (Privacy) Ordinance Notice ("**PDPO Notice**") provided by the Bank to the Customer.

19.2 It is the policy of the Bank to observe the data protection and privacy provisions of the laws of the HKSAR in the collection, maintenance and use of customer data. The Bank will not, therefore, without the consent of the Customer, provide a banker's reference in respect of that Customer.

19.3 From time to time the Customer may provide, or will be requested (by the Bank or otherwise) to provide, Customer Information to the Bank. The Customer authorizes the Bank, its head office, branches or its affiliates to collect, use, disclose, obtain or transfer (whether within or outside Hong Kong) such Customer Information in accordance with applicable laws and regulations and for the purposes and to the recipients set out in the PDPO Notice, and such authorization includes the use by the Bank of bank application programming interfaces. The Customer consents to his/her/its Personal Data being used by the Bank and any of the affiliates, agents, contractors and service providers of the Bank for the purposes of matching against any data held by the Bank or the Bank's affiliates (whether or not with a view to taking any adverse action against the Customer) and/or otherwise in accordance with the PDPO Notice.

19.4 The Customer acknowledges and agrees that the Bank may need to provide or disclose Customer Information to the Bank's head office, branches, affiliates, service providers and to other persons who are outside Hong Kong. This Customer Information may be held, processed or used by them outside Hong Kong.

19.5 The Customer confirms and warrants that it has obtained the express and prescribed consent of each individual or Connected Person whose Personal Data he/she/it provides to the Bank for the purposes of receiving, holding and process those Personal Data by the

Bank. The Customer shall, at the same time, advise any such individual or Connected Person that they have rights of access to, and correction of, their Personal Data. The Customer agrees to indemnify and hold the Bank harmless from all costs, penalties, damages and losses incurred as a result of this warranty being untrue and any other breach of this warranty.

- 19.6 The Customer agrees to notify the Bank immediately in writing, and in any event within thirty (30) days, of any change of Customer Information including without limitation, mailing address, contact numbers and Personal Data of any individual, as previously provided to the Bank. The Customer accepts sole responsibility for any consequences which may arise as a result of his/her/its failure to notify the Bank of such changes of Customer Information.
- 19.7 Notwithstanding the foregoing, if the Customer objects to the disclosure of its Customer Information to the Bank or the Bank's affiliates for marketing purposes, the Bank shall not refuse to provide the Customer with basic banking service.

20. **PERSONAL REFEREES**

- 20.1 The Bank may require the Customer to provide in the applications for Account and Service the name and particulars of persons who have agreed to act as referees for the Customer. The role of referees is confined to providing, on a voluntary basis and upon request by the Bank, information about the Customer in respect of the Account and Service specified in the application. Referees have no legal or moral obligations to repay to the Bank liabilities of the Customer unless they have entered into a formal agreement to guarantee the liabilities of that Customer.
- 20.2 The Bank shall require the Customer to confirm that he/she/it has obtained the prior consent of the referees for their names to be used. If the Customer fails to give such confirmation, the Bank shall not approach the referees. In such case, the Bank shall decide at its sole discretion whether to continue to process the application.
- 20.3 The Bank shall not attempt to seek, directly or indirectly, repayment of debt from the Customer's referees who are not acting as guarantors. Moreover, the Bank shall not pass information about referees to its debt collection agencies, if any. If a referee is to be approached for information to help locate a debtor or guarantor, this shall be done without causing nuisance to the referee, by staff of the Bank.

21. **INDEPENDENT LEGAL/TAX/FINANCIAL SERVICES ADVICE**

The Customer should read and understand these Terms and Conditions and, whenever necessary, consult its own independent legal, tax and/or financial advisers.

22. **TAX COMPLIANCE**

- 22.1 The Customer and each Connected Person acting in their capacity as a Connected Person (and not in their personal capacity) acknowledge that the Customer is solely responsible for understanding and complying with the Customer's tax obligations in all jurisdictions in which those obligations arise and relating to the Account and Services provided by the Bank or its affiliates. Each Connected Person acting in its capacity as a Connected Person (and not in its personal capacity) also makes the same acknowledgement in its own regard.
- 22.2 Tax Authorities may require the Bank to supply Tax Information in relation to the Customer and its Connected Persons from time to time. Where the Customer or any Connected Person fails to provide promptly Tax Information and accompanying statements, waivers and consents requested by the Bank, then the Bank may make its own judgment with respect to the status of the Customer or the Connected Person, including whether the Customer or a Connection Person is reportable to a Tax Authority,

and may transfer the relevant Tax Information or Customer Information to the Tax Authority. In addition, the Bank may itself or require other persons to withhold amounts as may be legally required by any Tax Authority, and may pay such amounts to the appropriate Tax Authority.

- 22.3 If the Bank is at any time required to pay, or obligated to pay, under any laws of any jurisdiction any present or future taxes, duties or other amounts on any sum received or receivable from the Customer, the Customer will promptly pay the Bank on demand an amount equal to such taxes, duties or other amounts paid or payable by the Bank. The Customer understands and irrevocably and unconditionally acknowledges and agrees that any payment by the Bank will subject to withholding of an estimated amount on account of any present or future withholding taxes, duties or other amounts on any sum received or receivable from the Customers.
- 22.4 If any Account is treated as a U.S. account for the purposes of FATCA (as defined below), and the Customer does not consent to or withdraws the Customer's consent to reporting the Customer's information and documentation to the U.S. and Hong Kong tax and government authorities and any other persons in accordance with the requirements of the U.S. Foreign Account Tax Compliance Act, any Hong Kong law, regulation or official guidance, any inter- governmental agreement between the U.S. and Hong Kong, or any related agreement affecting the Bank ("**FATCA**"), or if the Bank is otherwise required to do so pursuant to FATCA, the Bank may, without liability to the Customer, close, transfer or block such Account. The Bank may, without notice or liability to the Customer, make any deduction and withholding in respect of any sum payable by the Bank to the Customer, pursuant to FATCA.

## 23. **AMENDMENTS**

- 23.1 These Terms and Conditions (including any fee schedule provided to the Customer) can be amended at any time in such manner and to such extent as the Bank may from time to time in its absolute discretion think fit. Notice of such amendment shall be deemed duly and effectively given to the Customer in accordance with Clause 18 above. Any amendments to such terms and conditions made by the Bank shall take effect and be

binding on the Customer immediately upon notice to the Customer provided always that the amendments which affect fees and charges and the liabilities or obligations of the Customer shall be notified to the Customer in accordance with Clause 16.1 above and shall not take effect until at least thirty (30) days' prior written notice has been given to the Customer. For other variations, customers shall be given reasonable notice. Upon expiry of such notice if the Customer does not close the relevant Account, the Customer is deemed to have accepted the changes as set out in the notice.

- 23.2 Where the Customer refuses to accept the amendment and chooses to terminate the relevant Account or (as the case may be) Service to which the amendment relates within a reasonable period, the Bank shall, on application of the Customer, repay any annual or other periodic fee (if any), which can be separately distinguished, paid in advance in relation to such Account or (as the case may be) Service, on a pro rata basis unless the amount involved is minimal.

## 24. **MISCELLANEOUS**

- 24.1 The Bank is not the Customer's fiduciary, and insofar as any fiduciary obligations would otherwise arise, these are hereby excluded under this Agreement.
- 24.2 The Customer agrees to, upon the Bank's request, provide or execute such documents or perform such acts to allow the operation or enforcement of these Terms and Conditions.
- 24.3 Neither the Bank nor the Customer shall be liable for any loss sustained by the other,

directly or indirectly, if either is prevented from acting as a direct or indirect result of governmental restrictions, the imposition of emergency procedures or suspension of trading by any relevant market, civil disorder, act or threatened act of terrorism, natural disaster, war, strike or other circumstances beyond the party's control.

- 24.4 Each of the clauses and provisions of the Agreement is severable and distinct from the others and if at any time one or more of such clauses or provisions is or becomes invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.
- 24.5 A person who is not directly involved in this Agreement may not enforce any of these Terms and Conditions under the Contracts (Rights of Third Parties) Ordinance (Cap 623 of the Laws of Hong Kong).
- 24.6 Time shall be of essence as regards any obligation of the Customer under the Agreement or under any transaction in connection with any Account or (as the case may be) any Service, but no delay or omission on the Bank's part in exercising any right, power, privilege or remedy under Agreement shall impair such right, power, privilege or remedy, or be construed as a waiver of it. Nor shall any single or partial exercise of any such right, power, privilege or remedy preclude any further exercise of it or the exercise of any other right, power, privilege or remedy. The rights, powers, privileges and remedies under the Agreement are cumulative and not exclusive of any rights, powers, privileges or remedies provided by law.
- 24.7 These Terms and Conditions shall be binding on and inure to the benefit of the Bank and its assigns, the Customer and in the case of the Customer is a corporation, its lawful successor and in the case the Customer is a sole proprietorship or partnership, the personal representative and lawful successor of the sole proprietor or each partner and shall also be binding notwithstanding the absorption or amalgamation of the Bank by or with any other person.
- 24.8 The Customer must not assign, transfer, create, attempt to create or permit to arise any mortgage, pledge, charge, lien or other form of encumbrance or security whatsoever on or over any of its right and interest under the Agreement or any contracts or transaction effected or concluded pursuant to the Agreement without the prior written consent of the Bank.
- 24.9 In the event of any conflict between any provision of the English version of this Agreement and its corresponding Chinese version, the English version shall prevail.

## 25. **GOVERNING LAW AND JURISDICTION**

- 25.1 The Agreement shall be governed by and construed in accordance with the laws of the HKSAR.
- 25.2 The parties hereby irrevocably agree that the courts of the HKSAR shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with the Agreement.
- 25.3 The Customer shall appoint, if the Bank requests, a process agent as its agent to receive any documents in a court action in connection with the Account and Services and notify the Bank of the name and address of such process agent. The Bank may appoint a process agent for the Customer should the Customer fails to appoint such process agent within seven (7) Business Days after receiving a request from the Bank.



## Schedule 1

### Addendum to Bank Account General Terms and Conditions

#### Bank Services relating to Faster Payment System

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

(a) We provide the Bank 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 Bank 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 Addendum governs our provision to you and your use of the Bank Services. The Bank Services form part of our banking services. This Addendum supplements and forms part of our Bank Account General Terms and Conditions ("**Existing Terms**"). The provisions of the Existing Terms continue to apply to the Bank Services to the extent that they are relevant and not inconsistent with the provisions in this Addendum. Unless otherwise specified, the provisions of this Addendum prevail if there is any inconsistency between them and the provisions of the Existing Terms with respect to the Bank Services.

(b) **By requesting us to register any Proxy ID for you in the HKICL FPS or to set up any eDDA for you using the HKICL FPS, or by initiating any payment or funds transfer using the HKICL FPS, you will be regarded as having accepted and will be bound by the provisions of this Addendum. You should not request us to register any Proxy ID or set up any eDDA for you and should not initiate any payment or funds transfer using the HKICL FPS unless you accept the provisions of this Addendum.**

(c) In this Addendum, 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.

"Bank Services" means the services (including the QR Code Services) provided by us 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 you with us 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" means Hong Kong Interbank Clearing Limited and its successors and assigns.

"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.



"Hong Kong" means the Hong Kong Special Administrative Region of the People's Republic of China.

"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 us 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, we or any other Participant or the respective affiliates or group companies, or you are subject or are expected to comply with from time to time.

"you" and "your" means each customer to whom we provide Bank Services and, where the context permits, includes any person authorised by the customer to give instructions or requests to us in connection with the use of the Bank Services.

"we", "us" and "our" means Malayan Banking Berhad, a company incorporated in Malaysia and acting through its Hong Kong Branch, located at 29/F, Lee Garden Three, 1 Sunning Road, Causeway Bay, Hong Kong, such branch being an authorised institution under the Banking Ordinance (Cap 155 of the Laws of Hong Kong) and its successors and assigns.

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

- (a) We provide the Bank 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. We have the right to set or vary from time to time the scope of the Bank Services and the conditions and procedures for using the Bank Services. In order to use the Bank Services, you have to accept and follow these conditions and procedures.
- (b) We may provide the Bank Services to facilitate payment and funds transfer in any currency specified by us from time to time, including Hong Kong dollars and Renminbi.
- (c) **In order to enable us to handle an instruction for you in relation to payment or funds transfer using HKICL FPS, you have to provide or input the necessary information and complete the process by such means or in such manner prescribed by us 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) We reserve the right to suspend or terminate the Bank 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, you have to register your Proxy ID in the HKICL FPS. We have discretion as to whether to offer the FPS Identifier as Proxy ID to you.

(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 us to register or amend Proxy ID or any related records for you, you have to provide or input the necessary information and complete the registration process by such means or in such manner prescribed by us from time to time.

(c) **At any time where the same Proxy ID is registered by you for more than one account (whether maintained with us or with any other Participant), you must set one account as the Default Account. By instructing us to set or change the Default Account for you, you consent and authorise us to submit the request on your behalf to HKICL FPS to override the existing Default Account registered in HKICL FPS.**

#### 4. eDDA Service

In order to enable us to handle a request for you in relation to eDDA setup, you have to provide or input the necessary information and complete the process by such means or in such manner prescribed by us 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. Your responsibility

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

**You can only register your own Proxy ID for your own accounts or set up eDDA for your own accounts. You must be the present genuine owner or authorised user of each Proxy ID and each account provided to us for registration in the Addressing Service and the eDDA Service. By instructing us to register any Proxy ID or any account for you in relation to the Faster Payment System, you confirm that you are 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 you 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 you as contact information on our records at the relevant time.**

(c) **Correct information**

(i) **You have to ensure that all the information provided by you 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. You have to notify us as soon as reasonably practicable of any changes or updates to such information by such means or in such manner specified by us from time to time.**

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

**(d) Timely updates**

You are fully responsible for giving instructions and information changes or updates to us on a timely basis for amending your Proxy ID (or related records) or any eDDA setup, including without limitation changing your Default Account, or terminating any Proxy ID or eDDA. You acknowledge that keeping your 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 you 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 you wish to set another account as the Default Account, you have to change the registration through the Participant where you maintain that other account.

**(f) Transactions binding on you**

- (i) For any payment or funds transfer, once you confirm the details of a transaction and submit instruction to us, such instruction and any resulting transaction is final, irrevocable and binding on you.**
- (ii) For any Proxy ID registration or eDDA setup, once you submit an instruction to us, such instruction is irrevocable and binding on you. You may amend or cancel any Proxy ID or eDDA setup in accordance with the procedures and requirements prescribed by us from time to time.**

**(g) Use Bank Services responsibly**

You must use the Bank Services in a responsible manner. In particular, you have to comply with the following obligations:

- (i) You must comply with all Regulatory Requirements that govern your use of the Bank 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. You must not use the Bank 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 your payment or funds transfer instructions or eDDA setup using HKICL FPS, you 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 we offer the FPS Identifier as Proxy ID to you, you should not repeatedly cancel the registration and request for generation of another FPS Identifier in an attempt to generate a number or value that you desire.**

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

Any instruction given by you in relation to the Bank Services will be handled by us in accordance with this Addendum and the applicable provisions in the Existing Terms. You have 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) You are responsible for your authorised persons**

**Where you authorise any other person to give instructions or requests to us in connection with the use of the Bank Services (whether you are an individual, a company, a corporation, or a sole proprietorship or partnership firm or any other unincorporated body):**

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

**6. Our responsibility and restriction of liability**

- (a)** We will process and submit your 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 your instructions and requests in such sequence or manner as HKICL considers appropriate. We have no control over the operation of HKICL FPS nor the timing on which your instructions or requests are executed by HKICL FPS. Where we receive status update notifications involving any of your 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, we will notify you accordingly by such means and at such time as we consider appropriate.
- (b)** Without reducing the effect of Clause 6(a) above or the provisions of the Existing Terms:
  - (i)** we are not liable for loss, damage or expense of any kind which you or any other person may incur or suffer arising from or in connection with the use of the Bank Services or the processing or execution of instructions or requests given by you in relation to the Bank 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 our negligence or wilful default or that of our officers, employees or agents;
  - (ii)** for clarity, we are not liable for loss, damage or expense of any kind which you or any other person may incur or suffer arising from or in connection with one or more of the following:
    - (1)** your failure to comply with your obligations relating to the Bank Services; and
    - (2)** any delay, unavailability, disruption, failure, error of or caused by HKICL FPS, or arising from any circumstances beyond our reasonable control; and
  - (iii)** in no event will we, our affiliates or group companies, our licensors, and our and their respective officers, employees and agents be liable to you 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)** Your confirmation and indemnity
  - (i)** Without reducing the effect of any indemnity given by you under the Existing Terms or any other rights or remedies that we may have, you will indemnify us and our 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 us or any of them and all actions or

proceedings which may be brought by or against us or any of them as a result of or in connection with our provision of the Bank Services or your use of the Bank 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 our negligence or wilful default or that of our officers, employees or agents. The above indemnity shall continue to have effect after the termination of the Bank Services.

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

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

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

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

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

- (i) providing the Bank Services to you, maintaining and operating the Bank Services;
- (ii) processing and executing your instructions and requests in relation to the Bank 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;
- (v) assisting other credit providers in Hong Kong approved for participation in the Multiple Credit Agencies Model to conduct credit checks and collect debts; and
- (vi) purposes relating to any of the above.

- (c) You understand and agree that the Customer Information may be further disclosed or transferred by HKICL, us 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 yourself (including any persons specified in Clauses 7(a)(ii) or 7(a)(iii) above), you confirm that you 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, us 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 the Existing

Terms and any other terms and conditions that apply to the mobile application ("App") through which you access the QR Code Services.

- (b) Using the QR Code Services and your responsibility
- (i) The QR Code Services allow you to scan a QR code provided by us 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. **You are fully responsible for ensuring that the captured data is accurate and complete before confirming any payment or funds transfer instruction. We are 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 us 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, you will need to download the updates yourself. Depending on the update, you may not be able to use the QR Code Services until the latest version has been downloaded. **You are fully responsible for ensuring the latest version has been downloaded to your mobile device for the purpose of using the QR Code Services.**
  - (iv) The QR Code Services are intended for use by our customers only. We have the right to cancel your account for the App and/or block you from accessing the QR Code Services if we discover that you are 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 we are not licensed or authorised to provide the QR Code Services.
  - (vi) **You must comply with all applicable laws and regulations that govern your download of the App, or access or use of the App or the QR Code Services.**
- (c) **Security**
- (i) **You 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 your 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 your own risk and we will not be liable for any losses or any other consequences suffered or incurred by you as a result.**
  - (ii) **You are fully responsible for all instructions or requests given by you or any other person authorised by you during the use of the QR Code Services.**
  - (iii) **You are fully responsible for ensuring that the information shown or stored on your mobile device is kept secure.**
  - (iv) **If you know or suspect that any other person knows your security details, or has used or tried to use them, or if your mobile device is lost or stolen, you must notify us as soon as reasonably practicable.**
- (d) Our responsibility and restriction of liability

- (i) While we make commercially reasonable efforts to provide the QR Code Services, we are 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. We cannot guarantee that no viruses or other contaminating or destructive properties will be transmitted or that no damage will occur to your mobile device in the use of the QR Code Services. We are not responsible for any loss you may incur as a result of your use of the QR Code Services.
- (iii) You understand and agree that:**
  - (1) You use the QR Code Services at your sole risk. To the maximum extent permitted by law, we expressly disclaim all warranties and conditions of any kind, whether express or implied.**
  - (2) You download or obtain any material or information through the use of the QR Code Services at your sole risk and discretion. You are solely responsible for any damage to your 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.